Law as a Tool for a Sexual Revolution: Israel's Prevention of Sexual Harassment Law- 1998

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INTRODUCTION · 292
I. BACKGROUND: THE SOCIAL STATISTICS AND ASSOCIATED COSTS · 293
II. THE OLD STATUS QUO: STATUTORY AND LEGAL DEFICIENCIES · 297
   A. Sexual Harassment: The Available Law Pre-1998 · 297
   B. Deficiencies of the Existing Law · 299
      1. Conceptual Deficiencies · 299
      2. Statutory Inadequacies · 302
III. THEORETICAL UNDERPINNINGS TO THE 1998 LAW · 304
IV. LEGISLATIVE HISTORY · 308
   A. Revising the EEO: A Broader Definition Within the Labor Context · 309
   B. Sexual Harassment in New Contexts: A New Approach · 310
   C. Areas of Contention—the Debate in Committee · 312
      1. The Responsibility of the Person Harassed · 313
      2. Sexual Orientation as a Protected Ground · 314
V. AN INNOVATIVE NEW LAW · 317
VI. A BRIEF COMPARISON TO SEXUAL HARASSMENT LAW IN THE U.S. · 319
VII. ANALYSIS & IMPLICATIONS · 323
    A. Institutional and Agency Reception · 324
    B. Judicial Acceptance and Cooperation · 325
    C. Conflicting Privacy and Liberty Concerns · 327
    D. Feminist Pitfalls · 328
CONCLUSION · 330

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Introduction

"You’re putting an end to romance; it’ll have a chilling effect on courtship and flirting in Israel," bemoaned Knesset members to the local media.1 "It" referred to the legislative proposal for a comprehensive sexual harassment prevention law. "You" referred to Parliament Member ("MK") Yael Dayan (Labor), the Chairwoman of the Knesset's Committee on the of Status of Women. Yet condemnations aside, on March 10, 1998, the Israeli Parliament passed the proposal with only one dissenter, after relatively tame second and third readings. The final draft broadened the scope and the jurisdiction of sexual harassment beyond its traditional focus in the workplace or in exploitative relations of authority.

Today, Israel boasts an extraordinary law, billed as one of, if not the most, progressive laws of its kind in the world. The new law provides wider protection and holds greater potential for social change than any existing laws in the United States, Canada, and most European nations.

Educating individual MKs—whose party ideology ranged from enlightened liberalism to Zionism and religious fundamentalism—about sexual harassment to enable the passage of the law was no easy feat. The philosophical underpinning, as embodied in the law's purpose, the specific provisions (including protection against sexual harassment based on sexual orientation), the less than optimal experience of similar laws abroad (particularly in the United States), and the far-reaching social revolution hidden between the lines all comprised the launching pad. Next came the daunting task of pushing the private legislation through Committee and into the required three readings to pass the law by a parliamentary coalition of right-wing conservatives, orthodox religious groups, fervent Zionists, and equality fighters.2


2. Several MKs with strong party and religious ideology led the discussion and debate in Committee. The 14th Knesset, elected in 1996, sported a "national coalition" and an opposition "peace camp."

The Right-wing Likud-Tsomet bloc led the fragile coalition government which included 3 ultra orthodox and religious parties (Shas, 10 seats; National religious Party, 9 seats; United Torah Judaism, 4 seats). Other coalition members included the Russian immigrant party (Yisrael Ba-Aliya, 7 seats) and the Third way (7 seats), a
As with any successful legislative proposal, timing is paramount. Yet, for an issue such as sexual harassment in an essentially Mediterranean, "macho" society, where people hum (and a MK mentioned in the hearing) a popular song titled, "When you say no, what is it you mean?" timing is nearly irrelevant. This paper purports to uncover the path to the affirmative vote by tracing the pre-legislation social and legal status quo (Parts I & II), including the emerging need for such a law that made the timing opportune.

Discussion of the newly enacted law will outline the theoretical underpinnings and their effect on the resultant version (Part III), followed by the legislative history, including the Knesset and the public debate surrounding the bill (Part IV), and the impact of that debate on the final outcome of the law (Part V). Part VI will pay particular attention to the innovative approach of the law as a whole and some of the revolutionary specific provisions within. In particular, the legislative framework will be considered in the context of a nation founded and conducted on traditional religious tenets of Judaism. Finally, an analysis of the implementation and implication of the law will encompass sociocultural factors, feasibility, and potential impact (Part VII).

I. BACKGROUND: THE SOCIAL STATISTICS AND ASSOCIATED COSTS

While the 1998 Prevention of Sexual Harassment Law ("PSH") employs gender-neutral language, its purpose and origin are derived from a mounting need to safeguard women's autonomy, dignity and equal opportunity. In Israel, as in the rest of the world, women are the primary targets of sexual harassment. The multitude of international studies investigating the phenomenon focus mainly on harassment in

party created to cling to the Golan. The Gesher party withdrew from the coalition in January 1998. The pro-settler Moledet (2 seats) supported the coalition from outside.

The peace camp was a relatively solid amalgamation of Labor (34 seats) and parties to the left, such as Meretz (9 seats), a left-liberal party seeking to reduce the role of religion in civic affairs, and the two Arab parties (The Arab democratic Party-United Arab List (4 seats)). Hadash and the National Democratic Alliance supplied another 5 seats to the opposition. Divide and Multiply, ECONOMIST, Apr. 25, 1998, at 58; see also Israel Key Indicators, June 1998, QUEST ECONOMICS DATABASE.

3. Legislative History, supra note 1.
the context of labor relations. Admittedly, the cost of sexual harassment is difficult to measure and consequently few studies, if any, have adequately assessed the full impact of the problem. Israeli researchers conducted only a few surveys on the domestic scope of the phenomenon. Nonetheless, this handful of studies successfully established a pattern of harassment sufficient to alert lawmakers to the personal and social costs of sexual harassment.

General surveys reveal that between a third and a half of working women suffer from some form of sexual harassment during the course of their working years. A comprehensive study of harassment in the civil service revealed that 34% of the women surveyed encountered unwelcome verbal sexual harassment, nearly 33% reported unwelcome physical contact, and 10% recounted pressure to participate in joint outings. In another study of professionals, 52% of women have been exposed to unwelcome physical contact, 48% to sexual innuendoes, 38% to indecent proposals of a sexual nature, and 4% to pornographic pictures.

Little quantified data exists outside of the employment context. Between 1995 and 1997, Haifa University conducted one of the few surveys of sexual harassment in educational institutions. Of the sampled

5. IWN-SH, supra note 4
7. MKs with initial trepidations about the bill were persuaded to support it when they were informed about the extent of sexual harassment in Israel. General surveys found that as many as half of Israeli women say they have been harassed, and three-quarters of them were afraid to complain or were convinced it would do no good. Larry Derfner, Flirting With Disaster, THE JERUSALEM POST, Mar. 13, 1998, at 17 (quoting Rachel Benziman, legal advisor at the Israel Women’s Network).
9. IWN-SH, supra note 4 (citing the Status of Women, No. 16, Nov. 1987) (publication of the Office of the Advisor to the Prime Minister on Status of Women). “Joint outings” refers to extracurricular activities with officemates and superiors. The study also revealed that 21% (of the 34% subjected to verbal sexual harassment) encountered such behavior at least once a week. On a more recent, though less comprehensive, study of the civil service, 27% of the women surveyed reported exposure to verbal sexual harassment, 16.4% reported sexual proposals, 2.7% recounted use of threats for sexual favors and 7.7% experienced at least one sexual assault. See IWN-SH, supra note 4 (citing Adia Pinto, Examination of Correlation Between Actual and Subjective Estimation of Sexual Harassment, at 54 (1989) (unpublished master’s thesis (Tel Aviv University). Verbal harassment included sexual innuendoes or suggestive remarks.
10. Women in Israel—Information & Data, IWN (1997), at 47. Note that the term “white collar” was translated as “professional.”
students, 67.7% reported sexual harassment by another student and 56.2% by an instructor. Although the bulk of harassment was verbal, 8% of students suffered a sexual assault by another student and 2% by an instructor.\textsuperscript{11}

While sexual harassment is also prevalent in Israel's military, the Israel Defense Forces ("IDF") only recently began collecting data on the scope of the phenomenon.\textsuperscript{12} For the first time in 1995, the army started to keep statistics on sexual harassment complaints.\textsuperscript{13} Two years later, the first instruction manual dealing with sexual harassment was circulated among IDF commanders, and a hotline for complaints was established.\textsuperscript{14}

Recent statistics reveal a 43% jump in indictments for sexual harassment offenses between 1997 and 1998.\textsuperscript{15} Higher rates of indictment are attributed to the slowly growing willingness to report such incidents. In 1997, 280 women soldiers filed sexual harassment complaints, a 20% increase from 1996 figures.\textsuperscript{16} Actual incidence of harassment is believed to be higher than reported,\textsuperscript{17} as many soldiers fear retaliation, worsened conditions, or dismissive attitudes as a result of filing grievances.

Given the scope of the phenomenon, the social costs that flow from pervasive sexual harassment are noteworthy. Sexual harassment sports an expensive price tag; the cost translates into damaging implications for the individuals involved and to women (as the predominant target) in general. Supporters of the proposed PSH law argued that whether in the workplace, the university, or the army, sexual harassment perpetuates the inferior social status quo of women.\textsuperscript{18} Drawing on international and domestic social research, the bill's proponents cited the phenomenon as responsible for deterring women from entering male-dominated professions, the lack of promotions

\textsuperscript{11} IWN-SH, supra note 4 (citing Press Release, University of Haifa, May 18, 1997, at 1, 4).

\textsuperscript{12} Benziman, supra note 8.

\textsuperscript{13} The IDF launched the project as a result of pressure led by MK Naomi Chazan. Louise Lief, Second Class in the Israeli Military: Women are Fighting for Equality in the Ranks, US News & World Report, May 22, 1995, at 47.

\textsuperscript{14} Amir Rappoport, Instructional Manual to Commanders: Don't Hint, Don't Touch, YEDIOT-IAHRONOT, Mar. 10, 1997, at 9.


\textsuperscript{16} Gideon Alon, IDF Sees Upswing in Sexual Harassment, HA'ARETZ, Jan. 8, 1998 http://www3.haaretz.co.il/eng/scree...ment&mador=1&se=true&datee=2/26/99.

\textsuperscript{17} Sarah Friedman, Starting January '97: Hotline Catering to Sexually Harassed Women Soldiers, MA'ARIV, Nov. 13, 1997, A430.

\textsuperscript{18} IWN-SH, supra note 4.
within existing frameworks, and the inability to completely fulfill personal and economic capabilities and goals.\(^9\)

Studies of sexual harassment in the workplace supported these concerns. For example, nearly a third of the sexually harassed women in Israel reported an adverse effect on their working conditions or responsibilities.\(^20\) The most common result of harassment was the creation of a hostile working environment in which working relations and cooperation with colleagues and supervisors suffered substantially.\(^21\) A significant percentage of those harassed experienced a reduction in their job responsibility or were transferred to another position, often not comparable to their previous status.\(^22\)

Apart from the individual social and economic harm, supporters of the PSH bill pointed to losses incurred by employers. Decreased productivity and high employee turnover were cited as examples of inefficient and costly sources of lost profit to firms and government employers.\(^23\) In addition, legal fees and compensation to victorious claimants provide further incentives to employers to prevent harassment. For instance, a Tel Aviv labor court recently awarded NIS 100,000 for emotional and financial harm to an office manager who was fired for refusing to comply with sexual demands.\(^24\) While meager in American terms ($24,242), such an award is considered substantial by Israeli legal standards, especially in the context of sexual harassment.\(^25\)

The social costs compound the individual economic, mental and physical harm. The consequences of sexual harassment translate into revenue loss to employers from reduced productivity, legal fees and compensation, and damage to the company’s reputation, as well as ongoing impediments to the advancement of women’s social and economic status. The disparate impact on women as the group most affected by sexual harassment and the adverse effects of such conduct

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19. IWN-SH, supra note 4 (citing HAZEL HOUGHTON-JAMES, SEXUAL HARASSMENT 6, at 29, 30 (London, 1995)).
20. Benziman, supra note 8, at 324.
22. IWN-SH, supra note 4.
23. IWN-SH, supra note 4.
24. Plonit v. Ploni, 3/836, Municipal Labor Court of Tel Aviv (opinion not yet published). NIS is the currency used in Israel (New Israeli Shekel).
prompted one of the grounds on which the law was later justified—that of sex discrimination and the aim for gender equality.27

II. THE OLD STATUS QUO: STATUTORY AND LEGAL DEFICIENCIES

A. Sexual Harassment: The Available Law Pre-1998

Explicit protection against sexual harassment first appeared in Israeli law in 1988.28 Proscribed conduct was narrowly defined and restricted solely to the employment context. It was not until ten years later that the new sexual harassment law expanded the meaning of sexual harassment to include all non-domestic relationships.

The Equal Employment Opportunity Law ("EEO") of 1988 included a provision on "sexual harassment" which prohibited employers from mistreating employees (limited to a list of circumstances) who have refused or objected to propositions or acts of a sexual nature attempted by the employer or supervisor.29 Such protection was afforded only in the areas listed: hiring, work conditions, promotions, training and professional development, firing, or compensation for dismissal.30

The EEO provision, however, failed to define sexual harassment beyond its characterization of unwelcome "propositions or acts of a sexual nature."31 While the legislature interpreted "propositions of a sexual nature" to include requests for sexual contact or going out on dates, it provided no guidance in defining "acts of a sexual nature."32 Consequently, lawyers, left with the task of statutory interpretation, struggled to construct a definition for "harassment" that would include both physical and verbal "conduct."33 As drafted, the provision omits verbal harassment, such as comments about persons' sexual ability and

27. See discussion infra Part III.
28. The Israeli Penal Code proscribes acts that may also double as sexual harassment (though not framed as such), including indecent suggestions, nonconsensual sex, assault, rape, abuse of employment position, bribery, and blackmail by threats. Rachel Benziman "Sexual Harassment at the Workplace" IWN, Employee Rights material [hereinafter IWN-employee rights] (Copy on file with author).
32. Benziman, supra note 8, at 332.
33. The approach to define "acts" as behavior sought to impose a broad definition on the provision. This means that verbal as well as non-verbal actions, allusions, suggestive behaviors, etc. would also qualify as sexual harassment.
experience or speculation about their bodies. Additionally, no mention is made of non-verbal behavior, such as notes, photographs or drawings of a sexual nature targeting specific employees. As a result, some of the more common forms of sexual harassment reported in academic studies of the phenomenon were excluded from protection under the EEO, the only pre-1998 law that explicitly addressed sexual harassment.

Next, the law required that the proposition or act be unwelcome. Injury to the employee, then, had to be a result of the employee's rejection of the harassment. Successful claimants had to prove their active refusal, which required that the harasser received clear notice about the unwanted acts. A causation link had to be established between the rebuke of the harassment by the target and the harm (in terms of prescribed employment-related benefits) sustained. More specifically, a claimant carried the burden of proof to show the causation link between her refusal to date her supervisor and her lack of promotion.

Since the provision only forbade the "result" or "outcome" of such refusals, the legal construct failed to independently prohibit acts of harassment or threats of harassment not resulting in employment-related discrimination. Employer responsibility and liability were likewise restricted only to the outcome of the harassment, not the actual behavior. In the same vein, the law contained no guidelines for employers' responsibility to provide either protection against harassment by other employees or to establish a uniform grievance procedure.

Under the 1988 EEO law, employees could receive economic compensation for financial loss due to the discrimination by the employer-harasser. In some cases, the court could award damages for non-pecuniary harm. As prescribed, the civil penalty for sexual harassment was double the fine for invasion of privacy. The resultant criminal offense of sexual harassment yielded up to one-year imprisonment.

34. Benziman, supra note 8, at 332.
35. Benziman, supra note 8, at 333. Benziman also cites an Israeli study in which thirty-four percent of female employees encountered suggestive verbal behavior at least once a week. Benziman, supra note 8, at n.61.
36. Benziman, supra note 8, at 333.
37. Benziman, supra note 8, at 337.
38. Benziman, supra note 8, at 333.
B. Deficiencies of the Existing Law

Prior to the 1998 PSH law, Israeli women enjoyed virtually no protection against sexual harassment in the army, in academic settings, or in the workplace. In the decade following its inception, the EEO law, as a prohibition on retaliation for rebuffed sexual advances, was characterized as a "dead letter." Many critics proclaimed the law as ineffective in protecting employees from harassment. While employees declined to make use of the available legal recourse, the incidence of sexual harassment did not decrease. Furthermore, the few complaints filed failed to produce any meaningful decisions on sexual harassment in the context of the 1988 EEO law.

The old law’s shortcomings fall along two main interdependent lines: 1) broad inadequacies in understanding the social harm of sexual harassment as a phenomenon, a misperception shared by legislators, judges and the public at large; and 2) legal technicalities and definitions that either hindered or made impractical filing and successfully resolving cases. Since the 1998 Sexual Harassment Prevention law attempts to combat both strands, it is important to examine the pre-existing deficiencies that motivated the legislation of the new law.

1. Conceptual Deficiencies

Prior to the new legislation, sexual harassment was confined solely to the workplace and focused on the effects, rather than the actual phenomenon and prevention of sexual harassment. Even though broad definitions of sexual harassment were considered by legislators seeking to deal with the problem, only narrow terminology was actually adopted, as reflected in the 1988 EEO law. The reluctance to institute a sweeping approach was attributed to the inability of the legislators to

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42. Kamir, supra note 26, at 369.
43. Kamir, supra note 26, at 369–370.
44. Benziman, supra note 8, at 338. One estimate reported twenty to thirty sexual harassment cases have been filed. Kamir, supra note 26, at 369 n.120. The rare exceptions include several Labor courts decisions in 1997 and a landmark decision by the Supreme Court in 1998, which has adopted the broad definition of sexual harassment suggested in the then still pending proposed sexual harassment law.
45. Benziman, supra note 8.
conceptualize sexual harassment as an issue of equality and discrimination.  

Equality, as a fundamental social and legal construct, never garnered legislative consensus. While briefly mentioned in the Declaration of Independence, equality is not constitutionally mandated. Even in the absence of a written constitution, the value of equality has not gained the statutory status of a Basic Law. The 1951 Equal Opportunities for Women law itself does not guarantee complete equal rights, as it forbids equality in the personal status realm.

By barring sexual harassment in the context of an “Equal Employment Opportunity Law,” legislators attributed the phenomenon to a type of sex discrimination. However, that understanding was limited, not only in scope but also in practice. Not only was the 1988 EEO law exclusive to the employment sphere, it overlooked the broader negative implications of sexual harassment. Fundamentally, the EEO law failed to grasp the detrimental impact of sexual harassment on women and society in general. Far beyond the specific incidents of sexual harassment, early legislative attempts disregarded critiques that sexual harassment reinforced women’s subordinate or inferior position in society and bolstered the damaging image of women as objects for sexual gratification.

46. Kamir, supra note 26, at 370–73.
47. Declaration of Independence, (Declaration on the Establishment of the State of Israel), 1 L.S.I. 3 (1948). “[Israel will] foster the development of the country for the benefit of all its inhabitants; . . . [to] ensure complete equality of social and political rights to all its inhabitants, irrespective of religion, race, or sex.” (Emphasis added.)
48. Kamir, supra note 26, at 373.
49. Israel lacks a written constitution, but the series of legislated Basic Laws are designed to eventually be codified into such a document. The Basic Law: Human Dignity & Freedom, passed in 1992 is one of few fundamental laws of principle rights. 1992 S.H. 150. See generally INTRODUCTION TO THE LAW OF ISRAEL (A. Shapira ed. 1995).
50. Id. at 373. “Personal status law, derived directly from religious and cultural traditions, often governs the domestic sphere in areas of marriage, divorce and maintenance, child custody, and in some cases, inheritance.” Paula Abrams, Reservations About Women: Population Policy and Reproductive Rights, 29 CORNELL INT’L L.J. 1, 30 (1996). In Israel personal status matters are generally adjudicated by the religious courts.
51. American influence on Israeli legislators is apparent, not only from the title of the first law dealing with sexual harassment akin to that of the Equal Employment Opportunity Commission (“EEOC”), their underlying theories align as well. Both legislated frameworks derive from an understanding of sexual harassment as a form of discrimination, namely that based on sex.
52. See Benziman, supra note 8, at 320 (drawing on C.A. MacKinnon, Sexual Harassment of Working Women (Yale University Press, 1979).
Instead of mounting a multi-front strategy to combat harassment, Israeli legislators confined recourse and remedy to improper behavior in the workplace and to relations between employers and their subordinates. Thus, sexual harassment was only prohibited under the EEO, which dealt exclusively with limited instances within the domain of labor relations.\textsuperscript{53}

A notable remedial deficiency under Israeli law was the exclusion of suits based on "hostile work environment," a well-established ground under American sex discrimination law, because such harassment does not result in economic loss.\textsuperscript{54} As detailed in the EEO's Provisions 2 and 7, sexual harassment referred only to matters directly relating to financial loss from the job, such as prejudicial treatment in hiring, promotion, training, and firing.\textsuperscript{55} That is, only in situations in which the employee had directly lost job stature due to refusal of sexual advances, in a quid pro quo manner, would she be entitled to legally object to her treatment.\textsuperscript{56} By including only material loss, legislators created a limited system for recourse.

In sum, the old law failed to proscribe the conduct itself, but rather prohibited the discriminatory outcome of the harassment, and then only if due to a specific job-related loss. Additionally, legislators created no provisions for the prevention of sexual harassment, including imposing a responsibility on employers to provide an environment free from sex discrimination. By failing to fully grasp sexual harassment as discriminatory behavior which must in itself be eradicated, drafters of the 1988 EEO law produced a systematically ineffective law that provided little recourse or remedy. In reality, the law contributed little to ensure true "equal opportunity" in the job market, educational institutions, or in the military.


\textsuperscript{54} The Law and the Limits of Harassment, supra note 53. Sexual harassment law under the EEO provides for two types of claims. One is based on quid pro quo theory in which an employer (or other employee) requires sexual favors in exchange for job-related benefits. The other revolves around the "hostile environment" concept in which the general circumstances create an unpleasant work environment which affect the employees' work.

\textsuperscript{55} Equal Employment Opportunity Law, 1988, S.H.

\textsuperscript{56} Benziman, supra note 8, at 334 n.65.
2. Statutory Inadequacies

Essentially, the 1988 EEO law lacked any specific definition of sexual harassment. The prohibition against the conduct has likewise been criticized for narrow construction. As mentioned previously, the proscribed harassment could only transpire in relation to work-related discrimination in hiring, promotion, training, work conditions, and firing. Yet, even the potentially broad “work conditions” provision has been narrowly interpreted by the Labor courts, effectively precluding any hostile environment-based sexual harassment suit.

Commonly read, the prohibition against sexual harassment disregarded harassment by other employees (i.e. harassers who are neither employers nor supervisors). The law also precluded recourse to workers who felt coerced to comply with unwelcome sexual demands. Another excluded group of victims included workers who suffered harm not solely due to the harassment, or who did not experience actual demotion or deterioration in their work-related circumstances. Thus, the existing narrow definition of unacceptable conduct and employer responsibility barred recourse and remedy to many workers who were subjected to sexual harassment.

The 1988 EEO legislation did not require employers to promulgate guidelines regarding prevention and remedy for sexual harassment in the workplace. While this indicated to employers that they bear no responsibility for harassment by employees, the omission also cut in the reverse. Employers have successfully prevailed in most sexual harassment lawsuits simply by arguing that they “have gone the extra mile” by instituting prevention and grievance policies which were followed. In other words, the lack of statute-based obligations allowed employers to circumvent liability for sexual harassment by hiding behind the shield of procedural fairness.

The burden of proof presented another statutory hurdle to accessible legal recourse. Placing the burden of proof on the target of harassment often proved an impossible task. In order to create the link between rejection of “come-ons” and an employee not receiving a promotion or training opportunity, the petitioner had to have access to information and materials available only to the employer. Thus, the burden of proof made proving discrimination near impossible. Advo-

57. Benziman, supra note 8, at 335 n.65.
58. IWN-employee rights, supra note 28.
59. IWN-employee rights, supra note 28.
cates for revision of the 1988 EEO law argued that the burden of proof should be transferred to the employer who has primary access to the relevant material evidence. That is, the employer would need to show that the reason for the lack of promotion, for example, was not a result of the petitioner’s refusal to comply with the employer’s or supervisor’s sexual requests.

Hoping to correct some of the 1988 EEO’s deficiencies, legislators attempted to fundamentally overhaul the law by enacting a revised EEO. The new regulations were designed to provide the old law with litigious “teeth.” Under these requirements, once the petitioner shows she refused or denied the sexual advances of an employer or supervisor, the burden of proof shifted to the employer to show that no discrimination occurred. Employers, however, continued to successfully rebuff claims by arguing that privately instituted sexual harassment guidelines had been followed.

Another innovation of the law broadened standing to include not only the victim or a representative labor organization, but also pre-existing bodies that work to advance protected groups’ rights. Under the revised EEO, civil and social advocacy organizations (such as consumer rights or women’s groups) have standing to sue employers on behalf of sexually harassed employees. Even these innovations, however, failed to encourage employees harmed by sexual harassment to bring suit against their employers, as only a few cases were ever filed under the revised law.

The proposed sexual harassment prevention legislation was also designed to tackle the existing inadequacies in the statutory law and case interpretation. Drafters sought to specify proscribed behavior and prohibit sexual harassment in itself, not just the associated work-related harms. Women, they hoped, would be able to complain about sexual harassment, sexual exploitation and deprecatory treatment without fear and within the framework of regular, permanent procedures, regardless of whether an authority relationship existed.

60. Benziman, supra note 8, at 337.
61. Benziman, supra note 8, at 337.
62. Kamir, supra note 26, at 370.
63. Benziman, supra note 8, at 337.
64. Kamir, supra note 26, at 370.
65. The Law and the Limits of Harassment, supra note 53, at 18.
III. Theoretical Underpinnings to the 1998 Law

Whereas many countries with sexual harassment laws justify them on the grounds of sex discrimination, Israel adopted a broader theoretical justification. Israeli legislators expanded both the sweep of sexual harassment law and its purpose and emphasized local norms and traditions to bolster the legal foundation. Proponents of the law devised a culturally-sensitive theoretical construction in order to persuade the conservative-dominated Knesset of the expansive statute's significance. Instead of importing wholesale established justifications based on sex discrimination, which underlie American sexual harassment law, the Israeli drafters built on existing Basic Laws to "anchor" the revolutionary law in accepted values and norms.

The preamble to the proposal stated that sexual harassment is a common and difficult social phenomenon which damages fundamental social values, including dignity, liberty, privacy and equality. MKs pushing for the law cleverly drew on the Basic Law: Human Dignity and Liberty, to gather support for the law. Since the concept of equality is neither enshrined in a basic law nor widely accepted socially, proponents chose to emphasize the harm to human dignity and liberty, rather than attempt to argue for a predominantly equality-based statute.

As stipulated in the preamble to the 1998 proposal, sexual harassment was depicted as a humiliating and devaluing experience to one's...

66. Sexual Harassment International, Sexual Harassment at the Work Place—Part Two, EIRR, Jan. 1998, at 25. In Finland, Luxembourg and the U.K., for example, sexual harassment claims can be brought under sex-discrimination legislation. In contrast, French legislation defines sexual harassment in terms of an abuse of power. Id.


68. See supra note 49 and accompanying text.

69. See supra note 47 and accompanying text. A popular example for entrenched inequality in Israel is the "Law of Return," which confers immigrant benefits, including automatic citizenship only to Jews. In contrast, one of the first laws passed in Israel was the Equal Opportunities for Women—1951. The law, while inapplicable in personal status issues, guarantees equal rights for women in all legal actions. Only a few equality laws exist, including Equal Wages Laws for Men and Women—1996, and Equal Employment Opportunity law, first adopted in 1981; and Equal Retirement Age Law—1987.

The equality laws mentioned deal solely with work-related issues, not general protection in areas that most directly affect women's personal lives, such as marriage and divorce. In addition, what is problematic is the lack of acceptance for the concept of equality as a broad societal goal, rather than as only applicable in carefully delineated circumstances. Kamir, supra note 26, at 362 n.105.
humanity by being treated as a sexual object for the use of another person. The preamble continued, stating that such treatment abrogates a person's right of autonomy over one's body and sexuality, damages the right to self-definition and invades one's privacy. Finally, drafters linked the degradation to dignity resulting from sexual harassment to the notion of equality. The preamble connects the two concepts: "the sexual harassment of women humiliates them in relation to their sexuality and hinders their ability to enter the work force and other areas of life as equal members, and as such hurts their equality.

A strong emphasis on "anchored" values in Israeli society—i.e. dignity, liberty and privacy—emerged from the proposal, and the surrounding debates. Dignity and liberty, as prescribed in the 1992 Basic Law with that title, represent central building blocks in the Israeli judicial system, as well as important "cultural ethos." Professor Kamir, who played a dominant role in drafting the law, argued that basing the law on these values over the equality value would be more appropriate for Israeli society. According to Kamir, dignity and liberty as values find representations in many aspects of Israeli society; in the independence of a young country, the victory for "Jewish dignity" humiliated and persecuted in the Diaspora and in particular during the Holocaust, and the Mediterranean and Middle Eastern notions of "honor" adopted by the new generations of sabras (Jews born in Israel).

The drafters adopted Professor Kamir's argument that reliance on the "dignity and liberty" values would prove the most efficient and persuasive line to the diverse, though predominately conservative Knesset. Indeed, during the second and third hearing discussions in Committee, parliament members asserted their support for the law to be based on honor and respect to human liberty and dignity. The sentiment was evoked by MKs ranging from the Zionist visionary party, Moledet, to the ultra religious United Torah Judaism, to Likud, to the socially

70. Preamble, Legislative Proposal Prevention of Sexual Harassment, 1997 H.H. 2641, at 484.
73. Kamir, supra note 26, at 375.
74. Kamir, supra note 26, at 375.
75. Kamir, supra note 26, at 374-375.
76. See infra note 85; see also Legislative History, supra note 1, at 18.
77. Reuven Rivlin (Likud-Gesher-Tzoemt) reasserts the law aims to address situation in which one person degrades another. Legislative History, supra note 1, at 12.
progressive Meretz and Chadash (the Democratic Front for Peace and Equality). 78

Employing the accepted values of dignity and liberty and the associated rights of privacy and autonomy, the proposal's advocates succeeded in winning over a skeptical public and an initially jeering Parliament. Even so, the turn-around of public sentiment was no easy feat. By couching sexual harassment in terms of humiliation and degradation to one's self respect and ability to make personal decisions, promoters of the law launched a triumphant public education campaign.

Early comments by MKs to the media chided the law as the death knell of romance, courting and flirting. 79 Skeptical politicians painted extreme scenarios in which they claimed the free Mediterranean culture of flirting, founded on espousing compliments, would be criminalized with the signing of the law. Older men would be prevented from embracing a young female student or soldier in “fatherly concern” 80 for fear of judicial reprimand. Other critics warned women would exploit the law for retaliation or revenge. 81

Politicians also cited the potential criminalization of innocent social overtures. At least one MK feared the law would punish helpless men suffering from involuntary eye spasms or uncontrollable winking that could be misconstrued as unwelcome harassment. 82 Other concerns involved fear of overloaded court dockets, misuse of the law and of turning into “America,” where “men are afraid to so much as compliment a co-worker on her dress for fear of getting sacked or prosecuted.” 83

The campaign successfully addressed these concerns and resulted in a large majority vote in the Knesset. Efforts to gain support for the law also provided a rare public education opportunity. Such success can be measured from the support of unlikely candidates. For example, the initially reluctant orthodox MK Binyamin Elon (Moledet) voted for the

78. MK Tamar Gozinsky (Chadash), one of the law's proposers, emphasized that Israel's law—unlike other countries—was based not on an equality rationale, but rather, as the purpose section stated to protect a person's dignity, liberty and privacy. Gozinski then explicitly links the prevention of sexual harassment law to the values contained in the Basic Law: Liberty and Dignity. Legislative History, supra note 76, at 9.

79. Dayan (Labor) summarized public sentiments, Legislative History, supra note 1, at 3.
80. Legislative History, supra note 1, at 3.
81. Legislative History, supra note 1, at 3.
82. Rehavam Ze’evi (Moledet) expressed his concern for those who are unable to control their eyelids and eyebrow movements. Legislative History, supra note 1, at 26.
83. Derfner, supra, note 7, at 17.
law. In contrast, his fellow party member Rehavam Ze’evi—the lone dissenter—“filibustered” the Committee discussion with excerpts from the Song of Solomon, which he claimed would have resulted in sanctions against the biblical King under the new law. 84

In his statement to the Committee during the second reading, MK Elon (Moledet) summarized the sentiments of many:

I think that we are helping to create a norm of mutual respect. . . . It is unacceptable to have a cultural style that treats women as sexual objects [when they reject such advances]. [The law] is logical, it is respectful and it is Jewish. I will support this law because it is a law on human dignity. 85

That principle reconciled effortlessly with halakhic norms of modesty and protection of women’s chastity. 86 In the context of sexual harassment, the orthodox view of women’s “chastity” and feminist views of equality and independence for women, which often represent polar opposites, worked in tandem to gather support for the legislation. The common view that women should be sheltered from vulgar harassment diverged on the reason why such protection was needed. While feminists argue that such treatment erodes human dignity, the orthodox view demands protection against conduct that undermines women’s chastity.

But perhaps most striking was then Prime Minister Binyamin Netanyahu’s declaration upon presenting the bill to the milieu:

In the matters of women there is no Left and no Right and no considerations of government against opposition . . . . MKs and ministers acted together as one because there is only one opposition to this bill: the opponents to this bill are . . . employers who threaten to fire a worker if she becomes pregnant; and the entities which discriminate in wages. Against all of them we stand as one coalition. 87

Though he painted an exaggerated picture of solidarity, the Prime Minister’s comment, delivered on International Women’s Day, reflected

84. Legislative History, supra note 1, at 23.
85. Legislative History, supra note 1.
the little recognized, yet tremendously effective campaign that gathered the requisite non-partisan support.

IV. LEGISLATIVE HISTORY

In order to gain a fuller appreciation for the radical transformation, one must trace the legislative developments starting with the 1988 EEO law and on through the various revisions of the 1998 PSH law. The reservations and discussions in the parliament that accompanied the changes paralleled many of the public qualms about the sweep of the evolving new standards. As such the revisions and comments reflect a process of consensus building rooted in a new theoretical understanding of the phenomenon and the necessary tools needed to combat it.

In March 1997, prompted by findings of widespread sexual harassment, particularly in the workplace, MKs from the Committee on the Status of Women ("CSW"), women's rights groups\(^8\) and feminist legal scholars\(^9\) submitted a legislative proposal on the prevention of sexual harassment. All eight women parliament members of the 14th Knesset\(^9\) joined to sponsor the draft for the requisite three readings in the Committee on Constitution, Law and Justice ("CLJ") prior to a Knesset vote.\(^9\)

The original proposal, titled "Prohibition on sexual harassment through exploitation of authority or dependency relations, including by service providers, educators, etc.—1996," was broadened by the CSW to cover a wider range of contexts and situations in which the phenomenon prevails.\(^9\) Accordingly, the expanded bill's title became "Law

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88. Two women's advocacy groups were particularly influential. The Israel Women's Network, who operates an employment discrimination hotline through which the scope of the harassment and the lack of effective legal recourse and Na'amat, an advocacy group for working women.

89. Dr. Orit Kamir of Hebrew University's Law Faculty has authored the seminal theoretical articles leading to the proposal, and later led the efforts to broaden the scope of the legislation. Prof. Kamir cites American law professor Catharine MacKinnon as a main influence in her thinking about sexual harassment, MacKinnon also served as an advisor during the process of drafting the proposal. Kamir, supra note 26.

90. The MKs included: Yael Dayan (Labor; Chair, CSW); Dalya Itzik (Labor), Naomi Blumenthal (Likud-Tzomet-Gesher), Sophia Landver (Labor), Marina Solotkin (Yisrael Ba'aliya), Tamar Gozinski (Hadash-Balad), Naomi Hazan (Meretz) and Anat Maor (Meretz). Minister of Communications, Limor Livnat (Likud), did not cosponsor the bill because as a cabinet member she may not sponsor a private proposal.

91. Kamir, supra note 26, at 379.

92. Kamir, supra note 26, at 379.

The final version adopted in 1998 represents a revolutionary conceptual and legal understanding of sexual harassment and is light years away from the narrow bill proposed in 1986 (codified as the Equal Employment Opportunity Law—1988), which contained the first and only explicit reference to sexual harassment in Israeli law.

A. Revising the EEO: A Broader Definition
Within the Labor Context

In 1986, one of the first comprehensive government-sponsored studies of the prevalence of sexual harassment in the civil service yielded some alarming figures. More than a third of the surveyed women reported unwelcome verbal comments of a sexual nature as well as unwanted physical contact.

That same year, four proposed revisions to the EEO law were submitted to the CLJ Committee. All four advocated a broad definition of sexual harassment in the workplace. The CLJ Committee members, its counsel and observers voiced their support and commitment to the prevention and eradication of the phenomenon.

Nonetheless, the final draft of proposed revisions embodied only a narrow vision of sexual harassment. As stated by the law, sexual harassment amounted to a criminal violation only if: 1) the harasser was an employer or supervisor; 2) the advancements were refused or rejected; and 3) the targeted person’s job-related rights were harmed as a consequence of the harassment (such rights include, hiring, work conditions, promotion, training and development, and job security).

93. Kamir, supra note 26, at 379.
94. Legislative History, supra note 1, at 49.
95. TWN-SH, supra note 4, citing the Status of Women, No.16, Nov. 1987, Publication of the Office of the Advisor to the Prime Minister on Status of Women. See supra note 9.
96. Kamir, supra note 26. Of the legislative proposals, three were private, and one submitted by the parliament.
97. Kamir, supra note 26, at 363.
The adoption of a narrow definition reflected the legislators' inability to perceive sexual harassment as an issue of equality and discrimination. Advocates for a broader-based prohibition, against both the actual phenomenon and the adverse consequences related to the workplace, shifted their attention to new theoretical grounds and began to develop new strategies.

**B. Sexual Harassment in New Contexts: A New Approach**

Drafters of the proposal adopted a new approach to sexual harassment—one in which the theoretical underpinnings of the prohibition against sexual harassment included fundamental constitutional tenets such as respect for human dignity, liberty and equality. While the law places special emphasis on harassment in the sphere of labor and exploitation of authority, it applies in a myriad of contexts. Instead of proscribing the behavior only in particular contexts, the law sports eight specific definitions of behaviors that constitute sexual harassment.  

100. Article 3 provides:

(a) Each of the following acts constitutes sexual harassment:

(1) blackmail by way of threats, as defined in section 428 of the Penal Law, where the act demanded to be performed . . . is of a sexual character;

(2) indecent acts, as defined in sections 348 and 349 of the Penal Law;

(3) repeated propositions of a sexual character to a person, where that person has shown to the harasser that he is not interested in the said propositions;

(4) repeated references directed toward a person, which focus on his sexuality, where that person has shown to the harasser that he is not interested in the said references;

(5) an intimidating or humiliating reference directed towards a person concerning his sex, or his sexuality, including his sexual orientation;

(6) propositions or references as described in paragraphs (3) or (4), directed towards one of those enumerated in paragraphs (a) to (c), . . . even where the person harassed has not shown the harasser that he is not interested in the said propositions or references:

(a) a minor or a helpless person, where a relationship of authority, dependence, education or treatment is being exploited;

(b) a patient undergoing mental or medical treatment, where a relationship of authority between the patient and the person treating him is being exploited;

(c) an employee in the labour relations sphere and a person in service, within the framework of such service, where a position of authority in a work relationship or in service is being exploited.
Proscribed acts include physical contact, threat of retaliation for refusing sexual contact, repeated sexual propositions or references to the person’s sexuality where the target communicates that this is unwelcome, and humiliating denigrating expressions relating to a person’s sex, sexuality, or sexual tendencies. The list built on acts already proscribed in the Penal Code and set up a clear and concise guide for the public and the legal establishment differentiating criminal conduct (i.e. sexual harassment) from acceptable behavior.

Many important institutional structures fall under the reach of the proposal: adult educational and vocational institutions, the security forces (including the military (the IDF), the police, prison authorities and other security organizations) and human resources placement centers. Moreover, each of these institutions, in addition to all employers with twenty-five or more workers, must publish a “code of practice” (guidelines) that includes the law’s definitions of sexual harassment and retaliatory conduct, as well as available grievance and investigation procedures. Failure to promulgate such guidelines, based on the model guidelines released by the CSW, would result in fines and penalties for every week of delay in compliance. This marks a significant departure from the 1988 EEO law that failed to require such guidelines. The new provision, however, could still duplicate prior situations in which employers who elected to institute a “code of practice” in their workplace escaped liability because of the existence of guidelines. That is, the

(d) Prejudicial treatment is any harmful act, the source of which is sexual harassment or a complaint or court action filed in relation to sexual harassment.


102. Of course, by legislating specific proscribed acts in a rigid list, lawmakers compromised the future flexibility needed for unforeseen behaviors that may not fall under the existing criteria.

103. Since for most Israelis service in the military is mandatory, lawmakers took great care to include the security forces under the law’s purview. For many young Israelis their military service is their first “real world” experience of an “employment type” relationship. The experience is invaluable in contributing to the formation of their self image. Thus, sexual harassment in the military carries strong ramifications for impressionable youngsters, especially within a military structure known for its particularly sexist stance. See Kamis, supra note 26, at 378–9.

104. PSH-1998, supra note 100, at Art. 2.

105. PSH-1998, supra note 100, at Art. 7.

106. PSH-1998, supra note 100, at Art. 8.

107. See infra note 63 and accompanying text.
defense of compliance with procedural guidelines remains a viable claim of impunity for employers.

As under the previous regime, the Labor courts retain exclusive jurisdiction over sexual harassment suits. Civil remedies permit NIS 50,000 absent proof of damages flowing from the harassment. Request for greater sums requires that the petitioner document her suffering. If employers disregard complaints about harassment, they can be held liable for up to NIS 50,000 in damages. Employers, however, are not subject to criminal penalties of imprisonment. Criminal sanctions for harassers range from two to four years imprisonment depending on the severity and repetition of the offensive conduct, and the harm caused to the person subject to the harassment.

C. Areas of Contention—the Debate in Committee

During the second and third readings, nearly all of the reservations to the proposal were dropped prior to the final vote, at the request of the CSW chairwoman Dayan (Labor). The only reservation ultimately adopted expanded the duty to promulgate sexual harassment prevention regulations to institutions of higher education, including professional and vocational schools. Nonetheless, some areas proved contentious to the Committee members. For example, the affirmative duty of those harassed to refuse advances as a safety latch against frivolous or vindictive complaints proved an important issue. Also, the inclusion of sexual orientation as one of the protected grounds from harassment sparked a lively debate led by MKs from Moledet, the religious, pro-settler party.

108. Upon recommendation of the Justice Ministry advisors, undocumented damages was reduced from the originally proposed NIS 100,000. Legislative History, supra note 1, at 7.
111. PSH-1998, supra note 100, at Art. 5.
112. Legislative History, supra note 1, at 37.
113. Legislative History, supra note 1, at 45. Reservation accepted by a 17 to 1 vote.
114. See infra Section IV.C.2.
1. The Responsibility of the Person Harassed

While agency responsibility for preventing sexual harassment constitutes a focus for the law, the core assumption of the law is that the sexual propositions are repeated, and the person harassed demonstrates her disapproval.\(^{115}\) That is, the harassed women share in the responsibility; they must "show that they are uninterested in propositions or references of a sexual nature."\(^{116}\) The attribution of responsibility to the "victim" became an important selling point for the law. The fact that those harassed would have an affirmative duty to put their harassers "on notice" alleviated fears that the law would sanction men who were unaware of the effect of their conduct, or that women would employ the law as a vindictive tool for retaliation.\(^{117}\)

MK Anat Maor, of the progressive Meretz party, took issue with the exceptions to that requirement.\(^{118}\) Various individuals are excused from having to affirmatively refuse sexual harassment. This waiver applies to minors, "helpless persons," medical or mental patients, employees and people in the security services.\(^{119}\) MK Maor's objection derived from a feminist, rather than a sexist perspective intended to excuse men for their "ignorance" of the impact of indecent propositions and comments. Maor sought to strike the waiver for repeated refusals of harassment by employees. She argued that equating women (the predominant group the law seeks to protect) with minors, the helpless and the mentally ill robs women of their equal and independent status in society.

Accordingly, Maor advocated that adult women employees, as responsible, autonomous persons, should have the responsibility to notify their harassers that such conduct is unacceptable to them.\(^{120}\) Anything short of repeal of the waiver for employees, she warned, would result in a regression in equality, as well as open the law to abuse.\(^{121}\) However, in order not to stall the law in Committee, MK Maor withdrew the reservation from the final vote on the bill.\(^{122}\)

\(^{115}\) Legislative History, supra note 1, at 5.

\(^{116}\) PSH-1998, supra note 100, at Art 3.

\(^{117}\) Legislative History, supra note 1, at 22. Ze'evi (Moledet) cited the America experience to warn against revenge-motivated suits.

\(^{118}\) Legislative History, supra note 1, at 17.

\(^{119}\) PSH-1998, supra note 100, at Art. 3(a)(6).

\(^{120}\) Legislative History, supra note 1, at 17–18.

\(^{121}\) Legislative History, supra note 76, at 17.

\(^{122}\) For a critique of the waiver requirement, see infra notes 201–07 and accompanying text.
2. Sexual Orientation as a Protected Ground

Article 3(a)(5) prohibits "intimidating or humiliating references directed toward a person concerning his/her sex, or sexuality, including sexual tendencies." As interpreted by the drafters, the law would bar mistreatment based on the person's gender, level of sexual activity, or sexual tendencies (orientation), regardless of whether the characterization is true or not. Sexual harassment is then proscribed regardless of whether the sexuality prescribed to the person harassed or the harasser is heterosexual, homosexual, or bisexual.

Several MKs, and in particular ones from the conservative Zionist Moledet party and ultra-orthodox Shas (Sephardic Torah Guardians), voiced strong opposition to the inclusion of the phrase "sexual orientation" or "tendencies" as one of the proscribed grounds for harassment. The contentious debate, however, must be placed in the broader Israeli context, where secular and religious voices clash repeatedly on the issue of homosexuality.

While the issue of homosexuality is still controversial in Israel, both civil and military institutions have either laws or regulations barring discrimination on the basis of sexual orientation. The 1988 EEO law prohibited discrimination against employees on the basis of sexual orientation. In 1994, Israeli lawmakers enacted one of the world's most liberal policies on the service of gays in the military. Unlike the U.S. military's policy of exclusion of self-professed homosexuals, the official Israeli military policy prohibits discrimination against homosexuals,

123. PSH-1998, supra note 100. The tentative English translation used the term "sexual tendencies." It is quite likely the phrase "sexual orientation" would be synonymous in this context.
124. Kamir, supra note 26, at 382.
125. Kamir, supra note 26, at 382.
126. Shas, the religious party representing Sephardic Jews, (descendants of Jews originally expelled from Spain and Portugal before the Inquisition) has an ultra-orthodox leadership, but unlike Haredi society in general, it does not reject Israel's lack of religiosity. Many of its leaders and supporters served in the army, thus setting Shas apart from other ultra-orthodox groups, whose exemption from the army service infuriates most Israelis. Moledet, the pro-settler party, has ultra—religious inclinations. See supra note 2.
from the point of induction, through posting, promotion and to retirement.\(^{129}\)

Even more far reaching, some Israeli laws and policies extend equal treatment to partners of homosexuals. Partners of employees in the private sector, and the civil service, including the security forces, receive the same pension rights as unmarried heterosexual partners.\(^{130}\) In a 1994 landmark gay rights case, the Israeli Supreme Court ruled that El Al, the national air-carrier, must provide comparable benefits to partners of gay employees.\(^{131}\)

A 1997 precedent expanded the doctrine of “equal rights to gay couples” in private contracts between companies and individuals to apply equal monetary treatment applicable to the entire public sector.\(^{132}\) Adir Steiner, a longtime companion of Colonel Doron Maisel who died of cancer, sought and won the right to receive the same benefits to which other IDF widowers are entitled;\(^{133}\) one such benefit is the partner’s right to pension payments. Since the public Treasury issues the pensions, the court’s holding extended to partners of all public sector employees, including soldiers, police officers and teachers.\(^{134}\)

Yet, reactions over a recent Supreme Court decision permitting the national channel’s broadcasting of a program on gay teenagers reflect the divides in Israel over the issue of homosexuality. The traditionally liberal Court authorized the broadcast over the objections of the

\(^{129}\) Homosexuality may not be used to lower a soldier’s induction profile which determines a soldier’s eligibility for elite assignments or influences the soldier’s placements or promotions. The 1994 law replaced a 1983 IDF directive that limited gays’ assignments and banned them from top security positions. Bazelon, \textit{supra} note 128, at 7.


\(^{131}\) “In a decision hailed as a victory by gays and assailed by rabbis, the court upheld the petition of El Al flight attendant Jonathan Danilovitz, who fought a five-year court battle to force Israel’s national carrier to honor his request for an annual complimentary flight with his partner.” \textit{Israeli Court Rules in Gay Couples’ [sic] Favor}, \textit{L.A. Times}, Dec. 1, 1994, at A10.


\(^{133}\) Even more significant for grieving IDF widowers were the non-monetary benefits: They were granted the right to be invited to memorial ceremonies and allowed to write an entry in the IDF’s memorial volumes in memory of their loved ones. Hecht, \textit{supra} note 132.

\(^{134}\) Adir Steiner, the partner of the late Colonel Doron Meisel, successfully challenged IDF policies which denied him his partner’s pension benefits. Hecht, \textit{supra} note 132.
Minister of Education, Zevulun Hammer.\textsuperscript{135} Hammer, a member of the National Religions Party, asserted that he opposed the program because it “ignored social values and encouraged homosexual experimentation by creating the expectation of a positive experience.”\textsuperscript{136} While civil rights organizations hailed the decision, Deputy Minister of Health Rabbi Shlomo Benziri unleashed harsh comments. Benziri, a Shas (Sephardic Torah Guardians) member, called the decision a “poverty certificate for the High Court which is already lacking in spirituality and Judaism, Jewish ethics and values . . . [because of the Supreme Court] restraints have been lifted and the perversion has been allowed.”\textsuperscript{137}

Yet several months later, the Chairmen of the CLJ committee, MK Hannan Porat, also of the National Religious Party, suggested that a form of contractual relationship for homosexual couples should be allowed since they already receive economic privileges as couples.\textsuperscript{138} Most notably, Porat and Hammer, who share a political party membership, diverged on the contentious issue of gay and lesbian rights. Such social and ideological divisions within the religious parties reflect the ambivalent and polemical nature of the debate surrounding the issue. Secular politicians, likewise, are not immune to splintering views about homosexuality. When the secular President Ezer Weizman made an offensive comment about homosexuality,\textsuperscript{139} the public uproar resulted in a retraction and an apology.

Orthodox Judaism’s condemnation of homosexuality and the reality of a liberal secular Jewish state commingled in the drafting of the law and the debate over the inclusion of the provision. Attempting to pre-empt controversy, the drafters proclaimed that “the law does not purport to enforce sexual morals or to intervene in consensual social relations, but rather to prevent a person from forcing himself on those who are not interested in such attention.”\textsuperscript{140} Whereas drafters attempted

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\textsuperscript{136} Reinfeld, \textit{supra} note 135.
\textsuperscript{137} Reinfeld, \textit{supra} note 135.
\textsuperscript{139} President Weizman advocated for legal measures to treat “this negative phenomenon,” and declared: “I like it when a man wants to be a man and a woman behaves like a woman.” Leslie Susser, \textit{Who Needs a President Anyway?} JERUSALEM REPORT, Feb. 14, 2000, at 12.
\textsuperscript{140} Preamble, Legislative Proposal, \textit{supra} note 67, at 484. (emphasis added).
\end{flushright}
MK Alon (Moledet) ruled that the prohibition of “humiliating or degrading treatment concerning a person’s sex, sexuality or sexual orientation” is not directly relevant to sexual harassment. Rather, Alon argued, such behavior should fall under general prohibitions against degrading treatment of people. MK Yitzak Vaknin (Shas) and MK Rabbi Moshe Gafni (United Torah Judaism) joined their ultra orthodox colleague in expressing awe at the “relevance of sexual tendency” to a law about sexual harassment.

Interestingly, while the subtext was clear, neither MK publicly aired any condemnations against homosexuality. Instead, the three MKs excused their reservation to strike the article as based on the “overinclusive nature” of the law as it was phrased. MK Ze’evi refused to strike the reservation from the final vote and the Committee voted 14 to 3 to allow sexual orientation as a prohibited ground for sexual harassment. The final version of the 1998 PSH law includes the clause.

V. An Innovative New Law

The new legislation carries widespread ramifications on legal, social and political dimensions. Several features set the law apart from similar legislation worldwide. The broad scope was designed to revolutionize the social outlook about women and equality. Starting from the view that sexual harassment does injustice to human dignity and limits the economic and social opportunities available, particularly to women, lawmakers wished to account for all non-domestic relations. Accordingly, the law forbids sexual harassment in schools, in the military, on the street, in hospitals, prisons, in the police force and in shopping malls. The law also forbids sexual harassment in an inexhaustive catalogue of possible configurations: teachers may not harass students;
shoppers have the right not to be harassed by the proprietor; and Sergeants must respect both their civilian and active duty secretaries.\textsuperscript{147}

The law grants explicit protection to all men and women, whether heterosexual, homosexual or bisexual.\textsuperscript{148} Protected by affirmative legislation, gays, lesbian and bisexuals may claim damages and redress for sexual harassment in their workplace, university, hospital, or even the local grocery store.

Touted as one of the most "user-friendly" sexual harassment laws worldwide, the Israeli legislation spells out exactly what behaviors constitutes harassment. With eight clear definitions, the law aims to provide guidance to those who claim ignorance of what is offensive, to targets of sexual harassment, and to the enforcers and adjudicators of the law. The supplemental government guidelines, approved August 5, 1998, further clarify the prohibited behavior; definitions include sexual blackmail at the threat of termination, unwelcome touching or exposure, repeated sexual invitations, repeated references to sexuality (when it is made clear they are undesired), and deprecatory remarks about an individual's sex or sexual orientation, regardless of the reception.\textsuperscript{149}

Another feature designed to reduce the inherent ambiguity in the nature of sexual relations claimed by the critics, is a demand that the subject of the harassment make it as clear as possible that she or he is not interested in the advances or comments.\textsuperscript{150} An exception to the rule applies to situations where the harasser has direct authority over the person harassed. Under such circumstances, the behavior would be considered harassment, regardless of whether the subject of the unwelcome attention voiced her disapproval. The rationale for the exception encompasses situations where complaints or attempts to rebuff the unwanted conduct would likely result in termination from a position or institution.\textsuperscript{151}

The law defines a broad agency responsibility over actors who engage in sexual harassment. Adult educational and vocational institutions, Israeli security forces, and all employers with 25 or more workers must post sexual harassment guidelines and facilitate an


\textsuperscript{148} PSH-1998, \textit{supra} note 100, at Art. 3; see also \textit{supra} notes 123–126 and accompanying text.

\textsuperscript{149} Sommer, \textit{supra} note 110.

\textsuperscript{150} PSH-1998, \textit{supra} note 100, at Art. 3. For a discussion of the relevant exceptions, see \textit{supra} notes 119–122 and accompanying text.

\textsuperscript{151} The two most common situations cited as indicative of the need for the exception are professor-student or direct employer-employee relationships. IWN-SH, \textit{supra} note 4.
adequate grievance procedure, including an efficient investigation mechanism. While the agency is exempt from criminal charges, it is subject to fines and payment of damages for failure to institute an approved procedure.

Lawmakers eliminated any explicit mention of a sphere (e.g. labor relations), or a framework (e.g. quid pro quo versus hostile environment), in which sexual harassment must operate to be considered offensive. Although relations of authority, such as between employer-employee and instructor-student received special emphasis, the law rejects any confinement to a particular context or circumstance. Adopting a multi-area approach, the law draws upon and combines labor, criminal, civil and tort laws.

VI. A Brief Comparison to Sexual Harassment Law in the U.S.

In contrast to American jurisprudence, legal system and culture, the Israeli legal system relies less on the common law approach and more on a hybrid of civil law emphasis on statutory schemes, with the occasional ground breaking or precedential case. Consequently, lawmakers do not shy away from legislating statutory parameters to protect, or bolster, the rights of women and other groups.

In the area of women’s rights, as the sexual harassment law was originally conceived to protect, Israel co-opted the legal scholarship and jurisprudence that has developed in the United States since the 1970’s. Yet Israeli legislators, unlike their American counterparts, were more comfortable granting women specified statutory rights.

The early version of the Israeli 1988 EEO law closely resembled the scope and structure of the American Title VII prohibitions against sexual harassment in the sphere of employment. By virtue of placing sexual harassment laws in the context of labor law, Israeli lawmakers reflected a strong American legal doctrinal influence. The new PSH law, however, marks a sharp departure from American statutory

152. See PSH-1998, supra note 100, at Art. 7, 8. According to the Supplemental Government Regulations, failure to complete an investigation without delay must be accompanied by a written explanation for the delay.

153. Neglect to promulgate the guidelines which must be approved by the CSR and Ministry of Justice, results in fines and penalties for every week of delay in compliance. PSH-1998, supra note 100, at Art. 8.


Sexual harassment prohibitions in Israel are no longer tied to a specified context, such as the workplace, but to every facet of public life. Additionally, the law covers men and women of any sexual orientation, whether as harassers or as targets of harassment.

Sexual harassment prohibitions in the United States center around the Civil Rights Act of 1964, which includes Title VII, the subsequent regulations by the EEOC, and interpretive case law. Title VII prohibits discrimination in the conditions or terms of employment based on sex. By referring to EEOC guidelines, the U.S. Supreme Court concluded that Title VII barred both quid pro quo propositions that conditioned employment on the granting of sexual favors and the creation of an offensive or hostile work environment.

The Israeli law dispensed with the distinction between quid pro quo and hostile working environment. Nevertheless, at least one MK, Tamar Gozinski (Chadash), interpreted Article 3(a)(5), which prohibits deprecatory treatment directed at a person because of her sex, sexuality or sexual orientation, to refer to the creation of a hostile work environment.

The inclusion of the article presented a significant reform of previous laws, as it refers in the abstract to what American courts consider a hostile environment, and what Israeli courts have not previously accepted.

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156. The EEOC is the administrative body delegated authority to enforce Title VII. See 29 C.F.R. § 1601.1 (1996) (establishing EEOC civil right enforcement procedures).
(a) It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion or sex, or national origin.

Note the similarity of the linguistic structure and conceptual underpinning to the Israel's EEO-1988, supra note 29–30 and accompanying text.
159. Legislative History, supra note 1, at 9–10.
160. But contrast the Israeli Supreme Court decision handed down one day before the bill's second and third reading adopting Gozinski's approach by including harassment based on "hostile environment." Justice Zamir wrote for the court: "Expressions of a crude sexual nature include such expressions that may tangibly and adversely affect
While drafters declined to adopt the American distinction between hostile environment and quid pro quo harassment, they sanctioned the types of behaviors American courts have specified as sexual harassment. The law not only details the proscribed behavior, but also outlines the appropriate response expected by the person harassed in order to establish a complaint. Targets of harassment, notwithstanding the proscribed exceptions, must indicate to the perpetrators that their sexual advances, propositions, or references are unwanted. Thus, by definition such behavior must be repeated in order to count as sexual harassment.

In contrast harassment within hierarchical frameworks, such as the workplace or in military service, carries no requirement for repeated offenses. In addition, Israeli employers of 25 or more employees, bear significant responsibility to take all reasonable steps to eradicate and prevent sexual harassment. Similarly, recent U.S. cases suggest that employers should anticipate misconduct and take action to prevent it. In 1998, the U.S. Supreme Court indicated that employers who fail to act aggressively to uproot sexual harassment may be held liable for the actions of managers, even when superiors are never put on notice of the ongoing harassment. As will be discussed in Section VIII, this approach raises some important issues of responsibility, foreseeability and privacy.

The Israeli law also rejects the notion of the reasonable person in assessing hostile work environment-type claims. Instead, the law stipulates that the person harassed must notify her harasser that such behavior is unacceptable or unwelcome. That requirement fulfills both the objective and subjective prongs of the traditional American reasonable person test. Under that test, a claimant trying to prove the existence of a hostile work environment must demonstrate that the conduct was

the work or educational environment, or undermine the ability to function appropriately within that environment. As to the subject of harassment, verbal harassment could be directed toward an individual or be circumstantial, designed to create a certain environment." Legislative History, supra note 1, at 9 (quoting Israel v. Ben Esher, decision issued March 9, 1998).

162. See PSH-1998, supra note 100, at Art. 3; see also supra notes 115–117 and accompanying text.
163. PSH-1998, supra note 100, at Art. 3; see also supra notes 115–117 and accompanying text.
164. PSH-1998, supra note 100, at Art. 7.
severe or pervasive enough to create an objectively “hostile or abusive environment.” Secondly, the subjective prong requires that the target actually deem the environment as hostile. Since, under the Israeli law, the harasser or employer are put on notice by the person harassed, that notice fulfills the objective hostile environment prong. In addition, since the employee must communicate that the conduct is unwelcome, she at least subjectively believes that the environment is hostile.

In shedding the reasonableness test, Israeli drafters internalized the critique of the “reasonable person” in its various permutations, including as the “reasonable woman,” or the “reasonable victim.” Professor Kamir, a forceful influence in the drafting of the law, outlined three main reasons for the rejection of the “reasonable person” test. First, Professor Kamir renounces the notion of the monolithic definition which precludes particularistic and diverse interpretation of what constitutes “reasonable.” Second, by utilizing the standard, the law fails to innovate and instead reinforces what society perhaps wrongly perceives as “reasonable” or “desirable.” Lastly, the “reasonable person” refers to the target of the harassment and not the harasser. In other words, laws that incorporate the reasonable person test fail to examine the reasonableness of the harasser’s behavior, but instead, focuses on the victim’s response. In light of such critique, the Israeli drafters steered clear of any reference to a standard evaluation of the conduct. Instead they provided an explicit definition of what behaviors are deemed “unreasonable.”

Unlike the American statute and regulations, Article 3 of the Israeli PSH law lists sexual orientation as one of the protected grounds. Title VII makes no reference to sexual orientation. According to EEOC regulations, however, the target of harassment does not have to be of the opposite sex from the harasser. Also, the U.S. Supreme Court recently declared in Onacle v. Sundowner Offshore Services Incorporated that same-sex harassment violates Title VII protection.

In the absence of any U.S. legislation prohibiting discrimination on the basis of sexual orientation, including sexual harassment per se, however, critics fear that the new decision will result in escalating discrimination against gays and lesbians. That is, instead of the

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171. Storrow, supra note 166, at 698 n.96.
innovative decision affording protection from harassment based on sexual orientation, it may lead courts to pursue more aggressively suits against harassment by homosexual rather than by heterosexual harassers.\footnote{172} The broad language of Article 3 of the Israeli law bypasses such deficiencies and legalistic loop holes.

Finally, as an anti-discrimination statute, Title VII purports to protect equal opportunity. The principle of equality forms the foundation of American legal thinking and is a pervasive force within American society. In contrast, equality never took on similar force in Israel.\footnote{173} Consequently, proponents of the bill in Israel capitalized not solely on sexual harassment as a form of sexual discrimination violative of equality,\footnote{174} but as a form of degradation to a human being’s liberty and dignity. The latter theoretical foundation strongly resonated with Israeli politics and society, as one of the tenets enshrined in one of the few Basic Laws and in Judaic teachings.\footnote{175}

VII. Analysis & Implications

On September 20, 1998 the new sexual harassment law, including the institutional guidelines, took effect. By that date, all companies with 25 or more employees had to post the sexual harassment prevention guidelines as well as evaluate an official mechanism for handling complaints.\footnote{176} But even prior to the concrete implementation, the law garnered reactions ranging from ridicule to thoughtful consideration. Regardless of its reception, “the legislation represented nothing less than ‘a social revolution’”\footnote{177} to feminist groups, conservative politicians, employers, educators and the common citizen. Regardless of the cynical banter, the consensus was that the law would be, in the words of then Justice Minister Tzahi Hanegbi, “a huge step forward in stopping the phenomenon of sexual harassment, which is a significant problem in Israel and does damage to the cause of human dignity.”\footnote{178}

\footnote{172} Storrow, supra note 166, at 698.  
\footnote{173} See supra notes 68–69 and accompanying text.  
\footnote{174} In 1986, the United States Supreme Court, in Meritor Savings Bank v. Vinson, first accepted a sexual harassment claim as sex discrimination. 477 U.S. 57 (1986).  
\footnote{175} See supra note 73.  
\footnote{176} Sommer, supra note 110, at 17.  
\footnote{177} Justice Minister Tzahi Hanegbi described the legislation as nothing less than “a social revolution.” Sommer, supra note 110, at 17 (quoting Justice Minister Tzahi Hanegbi).  
\footnote{178} Sommer, supra note 110, at 17.
Yet certain doubts linger. Is the law superimposing American political correctness on a society that prides itself on impolite jokes? Would the law be successful in curbing incidents and encouraging complaints? Would it become a tool for "blackmail and exploitation" as feared by MK Ze’evi, the lone dissenter? Can it establish a clear bright-line rule between “flirting” and “harassment”? Is the law, though gender neutral, too closely associated with being a “women’s problem” and as such be marginalized? Would employers escape liability by simply publishing the guidelines? Would the law, like the attempted no-smoking initiatives in Israel, become the subject of inappropriate jokes itself? These queries represent only a narrow line of trepidations about the new law. However, these concerns are some of the most powerful and may well determine whether the law will be successfully implemented, or like previous efforts at reforming sexual harassment laws, will become a dusty dead letter of the law.

A. Institutional and Agency Reception

Though burdened with these concerns, government agencies and private companies have already taken some important steps. Since the law passed, the IDF produced both a manual and a mandatory training film about sexual harassment. While the bill was pending, the military launched a 24-hour hotline for complaints and distributed regulations about appropriate behavior. Induced by the new law, the police force, as employer and enforcer of the law, distributed guidelines and explanation packages to the forces. In El Al, Israel’s national airline, a framework designed to deal with sexual harassment closely resembles the recommended guidelines, though issued four years prior. The manager of the flight attendants department at El Al commented that “simply sending out a message that a company takes sexual harassment seriously immediately changes behavior.”

Also, the once scarce workshops on sexual harassment held by the Israeli Management Institute have received a surge of interest. During the summer of 1998, the Institute drew standing room crowds of high level managers, human resources personnel and legal advisors from Israel’s top companies for a day-long seminar on the subject.

179. Rappoport, supra note 14.
180. Sommer, supra note 110, at 17.
181. Sommer, supra note 110, at 17 (paraphrasing the statements of Yola Reitman).
182. Sommer, supra note 110, at 17.
executives in attendance even requested follow up sessions. Clearly, the legislation has achieved one of its purported purposes: to raise awareness of the problem of sexual harassment—even if motivated by managerial desire to avoid corporate liability.

Although the law requires all adult educational (vocational and professional) institutions to publish similar guidelines, most universities in Israel will be unaffected by the new legislation. Apart from Bar-Ilan University, all other accredited universities in Israel have clear procedures for dealing with sexual harassment of students and staff. Tel Aviv University, for example, appointed a special ombudsperson and adopted a particularly strict code of conduct, which preserves the secrecy of the complaint. Even so, few women have mustered the courage to complain.

The case of the universities illustrates a situation where cultural and social constraints, such as the lack of trust in the grievance procedure to yield desirable results, or fear of being ostracized, have a greater impact than the availability of remedies at law. Proponents argue and hope that the law would give women a "shot of self-confidence and self-esteem" to take responsibility and send out a message of what type of behavior is unacceptable. In that respect, the legislation is meant as an educational, consciousness-raising tool designed to reform deep-seated social perceptions of responsibility and permissible conduct.

B. Judicial Acceptance and Cooperation

The real test of laws is often their treatment by the courts. Judges often dismiss or dilute the intended impact of certain legislation, especially laws considered overbroad or over-reaching. In a show of support a day before the scheduled second and third readings of the bill,
the Israeli Supreme Court issued a forty-four page decision on a sexual harassment case that incorporated the proposed statute into the common law. The justices not only mentioned the pending legislation, but drew upon its theoretical underpinnings as well as concrete definitions of sexual harassment to find in favor of the plaintiff. The Ministry of Education did not allow the head of the Teachers' College to dismiss an instructor disciplined for sexual harassment complaints. Reversing the dismissal of the complaint by the Ministry of Education, the Court elaborated on the concept of sexual harassment, basing many of the legal rationales against harassment, whether individual or as contributing to a hostile environment, on the bill pending in the Knesset.

Additionally, the Court supported the broad reach of the law. Justice Zamir agreed that sexual harassment is always inappropriate, whether in the workplace, in school, or elsewhere in public. The Justice concluded that free behavior must reflect the free will of the two parties involved, thus rendering sexual harassment as always impermissible because it is forced by one person on another against his or her will. The Justice drew on ideas of sexual harassment as undermining human dignity, and as such, individual equality.

[Sexual relations], is by definition, an area which more than any other is reserved for mutual consent. [Sexual harassment] is inappropriate ... because it relates to a person in an employment or academic environment on the basis of his sexuality in a damaging way, in a situation where he should be related to on the basis of his job or the level of his contribution.

In contrast to the drafters' reluctance to incorporate a standardized criteria to judge inappropriate behavior, the Supreme Court adopted a
variation of the "reasonable person test" familiar from American sexual harassment jurisprudence. The objective test to determine sexual harassment requires that a reasonable person would see the behavior as causing real harm. However as critics have noted, in the United States, a "jury of peers" makes that determination, while in Israel the judge alone is entrusted with that decision. Since the statutory law explicitly rejects the test in favor of detailed definitions, the decision issued prior to the promulgation of that law may be transformed into a doctrine more closely guided by the law's aims.

Further, the strong presence of female judges in the Labor Courts, which retain exclusive jurisdiction over sexual harassment matters, may contribute to a sexual harassment doctrine based more on the "user-friendly" and accessible statute. Women constitute 40% of Israel's judiciary, with 60% and 25% of women judges in the regional labor courts and the national labor courts, respectively. Critics' concerns over the potential of continued reliance on the "reasonable person" standard may be relieved by the presence of numerous women on the bench, whose understanding of "reasonable behavior" as professional women in a male populated field may be more in sync with the claimants than even a carefully hand-picked jury.

C. Conflicting Privacy and Liberty Concerns

Sexual harassment suits delve into the intimate details of the lives of both the target and the perpetrator of the harassment. But even prior to the grievance or legal proceedings, the PSH law, designed to protect human dignity and equality against the damage of sexual harassment, may translate into violations of liberty and privacy rights. This critique, however, is not meant to reiterate the notion that men will no longer be free to extend compliments to well-dressed or attractive women, but rather a deeper notion of conflicting legal and human rights.

The conflict between the Privacy Protection Law and the 1998 PSH law illustrates the tension between protection against sexual

195. Sinai, supra note 194.
harassment and the right to privacy and freedom. The Privacy Act of 1982 stipulates that employers may not infringe on a worker's privacy rights. Accessing an employee's computer to read his e-mails, for example, would be considered a violation of that law. The 1998 PSH law, however, requires employers to take all reasonable steps to prevent sexual harassment in the workplace. One such step may entail reading employees' e-mails sent from their work computers in order to monitor for sexually-harassing messages. Consequently, employers who fail to monitor electronic messages for offensive material may be held accountable for sexual harassment. Yet, employers who do monitor may escape liability for sexual harassment but will be guilty of violating the statutory privacy rights of their workers.

While the above scenario may be resolved by notifying workers that their e-mails will be monitored, the conflict between agency or employer responsibility for a sexual-harassment free environment and their workers' liberty and privacy rights remains. Striking an appropriate balance between the competing rights involved will likely require close coordination and cooperation of different regulatory agencies, the judicial branch and top executives in the private sector.

D. Feminist Pitfalls

Even with its good intentions, the law suffers from several feminist pitfalls. Whereas the law is gender neutral, the rationale and the statistics used to persuade MKs and the public of the seriousness of sexual harassment were based on the disproportionate damage inflicted on women. The public debate centered around the law and the phenomenon as a "women's problem," rather than a broad societal issue. One illustrative example is that even though many male MKs

198. Yisraeli & Nativ, supra note 197, at 197 (noting that Art. 2, Privacy Protection Act, 1981, clearly states that the law applies to electronically generated and delivered messages).
199. PSH-1998, supra note 100, at Art. 7(a).
200. Note Dayan (Labor) declared that sexual harassment was not a women's problem, but rather a social ill. Legislative History, supra note 1.

As presented by the media and groups that supported the law (mostly women's advocacy groups), however, the message was drowned in the mainstream view of the bill as specifically protective of women. Similarly, opponents of the bill cited women motivated by revenge and vindication as potential exploiters of the law. Such criticism builds on the stereotype of the scorned, vindictive woman. Opponents would
supported the bill, no male MK signed on as a co-sponsor. The query then becomes why would the liberal supportive male MKs shy away from having their names identified with the law? Possibly the initial uproar over the segregation effect that the law would create between the sexes carried over to the reluctance of male MKs to be in the same “camp” as the female MKs, all of whom signed on as co-sponsors.

Another feminist peril lies in the exceptions for affirmative responsibility of repeated refusal of unwanted sexual advances or propositions. Article 3 waives that requirement for minors, mental patients, employees and persons in (military) service. Drafters offered the compelling rationale that such persons may lack the capacity or ability to rebuff unwanted sexual advances or propositions either because of their mental instability (mental patient), lack of knowledge (minor), or fear that they might lose their position (employees).

However, as alluded to by MK Maor (Meretz), since the law was designed to predominantly protect women, the gender-neutral language only thinly veils the text’s equivocation of minors, the mentally ill, and the hapless, with women (in subordinate positions). Such comparison is reminiscent of early 20th century work condition cases in the United States, in which the courts permitted government regulation of maximum work hours for “wards of the state,” such as minors, children, lunatics and women. Men, unlike women, were seen as sui juris, independent, fully capable individuals who could contract and make their own decisions.

In a gesture designed to enshrine women’s fledgling equality, the American Supreme Court reversed such cases, reasoning that since the adoption of the 19th amendment, granting women the right to vote, the “civil inferiority of women was thus almost at a vanishing point.”

have us believe that women, unlike their male counterparts, will falsely claim they were harassed when abandoned by their lovers, or when bypassed for a promotion or raise.

201. PSH-1998, supra note 100, at Art. 3 (a)(6).
202. See Legislative History, supra note 1, and accompanying text.
203. Muller v. Oregon, 208 U.S. 412, 421 (1908) (sustaining an Oregon law limiting work hours for women only because “woman’s physical structure . . . place[s] her at a disadvantage in the struggle for subsistence”).
The Israeli law’s waiver for women employees suffers from the same perceptual pitfalls of the early American cases which relied on gender stereotypes to justify discriminatory protective measures. A related concern is that the sexual harassment prevention measures may be marginalized as special structures dealing primarily with the concerns of women (and possibly gays) separate and apart from the generally accepted criminal or civil laws already prohibiting similar behavior.

Yet, in counter, the passage of the specific legislation indicated a problem of non-enforcement or non-compliance with the general criminal or civil prohibitions in that particular context. The advantage of the explicit particularistic approach to legislation designed to protect specific groups lies in its potent educational value. By outlining a specific context for certain offenses, the public as well as the justice system, are put on notice of the expected standard of behavior. The approach allows for vague sanctions to materialize into specific examples of inappropriate behavior, clarifying and simplifying pre-existing laws and evolving norms of social conduct.

CONCLUSION

Truly enlightened to the pervasive reach of sexual harassment, Israeli women’s rights advocacy groups succeeded in passing one of the most progressive laws in the world. These groups, along with the Committee for the Status of Women and outspoken MKs, managed to transform an initially vehemently resistant public and parliament to active participants in a social revolution designed to combat the adverse effects of sexual harassment.

A long way has passed from sexual harassment prohibited only in a subsection of the EEO law, which referred solely to authority relations

206. Note that the exceptions apply equally to male employees. However, the context for the exception derived from the disparate impact of sexual harassment on women and as such was designed to protect women in particular.

207. For example, Israeli Penal Code and other laws already prohibits certain acts that fall under the new sexual harassment law, including extortion, attempted assault, unequal treatment in the workplace, and violations of human dignity.

208. A possible, though admittedly unlikely, side effect of specific legislation designed to primarily protect women from sexual harassment, may be a reluctance on the part of employers to hire women, especially “attractive” women who they may fear will become the target of sexual advances. In order to avoid liability, no matter how remote, employers or top military officials may eschew hiring women (and homosexual) in lieu of male employees. Conversely, some employers may elect not to fire bad workers for fear of “retaliatory” sexual harassment suits.
in the workplace. Today the sexual harassment law covers all public sphere transactions, protecting anyone regardless of gender or sexual orientation.

Cleverly, the law covers Israel's most rigid and hierarchical institutions: the security forces, the civil service, and the private sector. Embracing an interdisciplinary approach, the law combines criminal and civil penalties in an intersection of civil, labor, criminal and tort laws.

Possibly the most important ramification of the new law is its purpose to educate, to raise awareness of the problem, and to contribute to the transformation of accepted norms of behavior. If nothing else, though much has already transpired, the law has successfully opened a healthy discussion about what should be considered acceptable behavior and what constitutes degrading, deprecatory and disrespectful treatment. Concerns that the law will become a tool for blackmail and exploitation, that it will have a chilling effect on the relations between the sexes, were alleviated by the law’s two basic premises. First, prevention of sexual harassment was shown to be rooted in protecting the fundamental dignity and autonomy of the person. Second, the law requires repeated refusals and the assertion of affirmative responsibility by the target of the harassment to set the limits for what makes them uncomfortable.

Unlike previous laws that were put to little use, the public discussion and publicity of the law educated people not only about what behaviors are impermissible, but also about what remedies are available. Thus, the problem of little relief to the nearly non-existent number of women informed enough to utilize the law has likely been eliminated.

But of course, the real effects of the law remain to be seen. According to legal and social science experts, at least a decade must pass before the new law is internalized sufficiently by Israeli society in order to yield a change in perception of the issues involved. By 2000, several sexual harassment suits were filed as a consequence of the new law, including one against a senior official in a major public institution and one against a religious-Zionist organization. One suit was successfully settled for NIS 50,000 for psychological damaged incurred by a housemother in Bnei Akiva, a religious-Zionist youth organization, who


claimed she was harassed by her supervisor for five years. The settlement for psychological damages is unique and seems to be directly informed by the civil remedies provision of the new PSH law that stipulates for a maximum of NIS 50,000 for mental harm even absent proof of actual damages due to the harassment. Yet, with social revolutions, such as the one attempted by the passage of the 1998 Sexual Harassment Prevention law, only time can tell their true impact.  