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REVIEW OF THE SAUDI ANTI-SEXUAL HARASSMENT LAW: EVOLUTION AND CHALLENGES

Sexual harassment in Saudi Arabia is a significant problem that mainly affects women in society. Sexual harassment of women is detrimental and undermines society's security and social harmony. While Saudi Arabia is a conservative and religious nation, there is sexual harassment of women. It impacts the well-being of women as well as their social involvement in society when it happens. It is therefore crucial that lawmakers pass laws and determine as soon as possible severe punishments on sexual harassment. The enactment of a sexual harassment law will help spread security in society and will serve as a deterrent to such wrongful behaviour by determining an explicit punishment. In May 2018, Saudi Arabia approved the Anti-Harassment Law. On Tuesday, May 29, 2018, the Saudi Arabian Council of Ministers, which is the formal authority of Saudi Arabia's executive branch, approved the Anti-Sexual Harassment Law; just one day after ratification of the 150-seat Shura Council, which serves as the official advisory body (Parliament) of the Kingdom. The Law includes stringent punishments on perpetrators committing sexual actions. It also includes increased penalties for crimes committed against people with special needs and other situations. The Law also focuses on harassment that occurs through social media platforms. From such a Law, one can deduce that the country considered sexual harassment as a serious issue and saw the need to combat it. Following the deductive approach, this study aimed to discuss the evolution and challenges that hindered the promulgation of the Anti-Harassment Law and why the long-overdue Law took this long to be passed.

Keywords: Harassment, Sexual Harassment, Anti-Sexual Harassment Law, Saudi Arabia.

1. Introduction

Sexual harassment is one of the most debated issues in society. This is mainly because of its prevalence and effects both to the victims and other associated parties. It is a pervasive problem existing in almost every institution, organization and society. Despite its pervasiveness, it can also be elusive and in most cases go unnoticed with the victims suffering in silence. Considering its apparent yet complex nature, there has always been the consistent need to research and understand more about the subject of sexual harassment in an attempt to find effective strategies and solutions for its prevention. However, while it can be complicated and pervasive, sexual harassment is increasingly prevalent in the workplace. This may be due to several factors, including the complex nature that includes the different forms of it, such as verbal, non-verbal or physical sexual harassment.

Sexual harassment is a common threat for women in the workplace and public and can violate both criminal and civil laws. It is the unwanted sexual behaviour towards the female that occurs by the other party regularly in a position of authority. For example, a teacher towards the student, a doctor towards the patient, or an employer towards the employee. Behaviours of harassment can either be in the form of a sexual gaze or sexually suggestive words or actions. The most important aspect when analyzing the conduct of sexual harassment is that it must be unwanted or undesirable. Sexual harassment involves sexual conversations, jokes, flirting, or offensive sexual comments or statements¹.

Sexual harassment happens in all countries and cultures. Yet, the definition of what constitutes sexual harassment varies. Interpretations of behaviours being sexual may differ according to culture. Religion plays a significant role in how certain societies view, perceive, and handle sexual behaviours².

¹ Ahsan, M. (2007). Sex and Sexuality in Islam. *Culture, Health & Sexuality*, 9(5), 551-552.

² Kalra, G., Bhugra, D. (2013). Sexual violence against women: Understanding cross-cultural intersections. *Indian journal of psychiatry*, 55(3), 244.

For example, where some cultures are more conservative, they often understand that sexual harassment only occurs if the woman is dressed provocatively or seductively. Not only cultural factors affect the interpretations of sexual behaviours, but also male and female definitions of what practices constitute sexual harassment may differ¹.

Seventy-eight countries around the world have passed laws and legislation prohibiting sexual harassment in the workplace.¹⁶ Even though there are many policies and legislation to prevent sexual harassment, yet it remains pervasive and underreported. Not filing a complaint or not reporting sexual harassment incidents makes these policies and legislations inefficient since these policies initially depend on reporting these sexual harassment incidents². It is critical to address the issue of sexual harassment and to combat all forms of harassment against women, whether if the event occurs in the workplace or any other place.

Although Saudi Arabia is a religious and conservative country, sexual harassment against women does occur. Some Saudis argue that since Saudi society is traditional and adheres to a sex segregation policy, sexual harassment incidents do not happen and are minor. However, incidents of sexual harassment in Saudi Arabia occur and continues to occur despite the affirmation of Saudi Arabia's conservative nature.

Incidents of "Al Nahda Tunnel in Riyadh", "Dhahran Mall in the Eastern Region", and "Jeddah's Corniche", are all infamous sexual harassment incidents that took place in these places in Saudi Arabia. These incidents of sexual harassment were recorded and spread all over social networking sites and outraged the Saudi public for some time.

The case of "Al Nahda Tunnel" in Riyadh happened on September 23, 2005, in Al-Nahda tunnel in Al-Malaz district in Riyadh, when a group of young men grouped two girls wearing the abaya from head-to-toe. They touched and hugged them from behind. They were arrested after the video was published all over local newspapers. Later, the perpetrators were arrested, and the court sentenced them to imprisonment ranging from 12 years to 6 years, and between 600 and 400 lashes³.

Unfortunately, this incident was not the only one. On October 2013, another sexual harassment incident took place in Dhahran mall in the Eastern Region of Saudi Arabia. It reached the point where the young perpetrators physically battered the girls who were harassed after the girls tried to defend themselves and stop the harassment. This specific sexual harassment incident happened in the broad of daylight and front of a famous location (Dhahran Mall). This particular incident raised the question of the effectiveness of the role of security services in malls in preventing similar events in the future.

Saudi Arabia, in the last couple of years, has been changing considerably. Reforms and regulations are implemented quickly as a part of the Kingdom 2030 Vision. Not only the country is changing and growing, but also aspects of Saudi society are changing too. Saudis now are more adamant on fighting for their rights. Human Rights activists are calling for legal rights more impressively women's rights.

Sexual harassment against women in Saudi Arabia is a sensitive and complex issue, and what adds to its complexity is the shortage of studies, analysis, and regulation before 2018. It is considered one of the most controversially debated topics in Saudi Arabia, especially regarding its punishment. Before the passing of the Anti-Sexual Harassment Law in Saudi Arabia in June 2018, there was no explicit punishment or penal code on the crime of sexual harassment. In Saudi Arabia's criminal justice, there are no written legal guidelines that deal with the crime of sexual harassment and its punishment. Saudi Arabia applies Sharia, which is well known as Islamic law. In Islamic criminal law, the discipline of sexual harassment falls under the category of ta'zir punishments, which are punishments under the discretion of the judge⁴. As a result, there was no clear or specific punishment for sexual harassment in Saudi Law formerly. The punishment ranged from severe to mild depending on the judge, and naturally on other factors regarding the incident of the harassment. A judge can give his decision on a sexual harassment case and give a punishment of 3 months in prison, and another judge on a similar situation may give the perpetrator a sentence for up to a year or more. Thus, the absence of written penal code for sexual harassment made judges rely only on their interpretations in determining specific punishments for sexual harassment.

¹ Ulusoy, H., Swigart, V., Erdemir, F. (2011). Think globally, act locally: understanding sexual harassment from a cross-cultural perspective. *Medical education*, 45(6), 603-612.

² Hersch, J. (2015). Sexual harassment in the workplace. *IZA World of Labor*.

³ Al-Jam'an, A. (2014). Sentenced to Imprisonment and flogging on 11 accused in the case of Al-Nahda Tunnel. *ALRIYADH*. <<http://www.alriyadh.com/928863>>

⁴ Albassam, B.A. (2012). Political Reform in Saudi Arabia: Necessity or Luxury? *Journal of South Asian and Middle Eastern Studies*, 35(3), 1-17.

All of these factors urge the need for developing sexual anti-harassment law to ensure justice for the abused and prosecuted women in the Kingdom. The sexual anti-harassment law was developed after several discussions and efforts by the Saudi authorities where some challenges were encountered during the development of the law.

This study is intended to discuss the evolution and challenges that hindered the promulgation of the Anti-Harassment Law and why the long-overdue Law took this long to be passed.

2. Research objectives

Due to the complexity of the issue of sexual harassment in Saudi Arabia and the variety of factors that are all intertwined, it has become appropriate to discuss the matter of sexual harassment against women and the Anti-Harassment Law. To consider all its aspects in an attempt to reach comprehensive solutions, three features were found. First, the challenges that hindered the promulgation of the Anti-Harassment Law and why the long-overdue Law took this long to be passed. Second, the pros and cons of the Anti-Harassment Law compared to other sexual harassment laws in some Arab countries. Third, it was essential to deliberate on how the male guardianship system in Saudi Arabia affects women's rights in the country especially now changing the application of the Anti-Harassment Law and other similar legislation such as the Law of Protection from Abuse that tackles the issue of domestic violence in the country.

3. Literature Review

The issue of sexual harassment against women, in particular in the workplace, is the focus of many organizations and advocates of women's rights around the world such as the United Nations and the International Labor Organization (ILO)¹. Sexual harassment is a common threat for women in the workplace and public and can violate both criminal and civil laws. It is the unwanted sexual behaviour towards the female that occurs by the other party regularly in a position of authority. For example, a teacher towards the student, a doctor towards the patient, or an employer towards the employee. Behaviours of harassment can either be in the form of a sexual gaze or sexually suggestive words or actions. The most important aspect when analyzing the conduct of sexual harassment is that it must be unwanted or undesirable. Sexual harassment involves sexual conversations, jokes, flirting, or offensive sexual comments or statements².

Sexual harassment happens in all countries and cultures. Yet, the definition of what constitutes sexual harassment varies. Interpretations of behaviours being sexual may differ according to culture. Religion plays a significant role in how certain societies view, perceive, and handle sexual behaviours³. For example, where some cultures are more conservative, they often understand that sexual harassment only occurs if the woman is dressed provocatively or seductively. Not only cultural factors affect the interpretations of sexual behaviours, but also male and female definitions of what practices constitute sexual harassment may differ⁴.

3.1. Sexual Harassment

Before explaining the term sexual harassment, we must first clarify the term harassment. Harassment is a repetitive unwelcomed offensive behaviour. It refers to several practices that are repetitive, annoying, or irritating conduct that can torment the victim⁵. It can be any offensive behaviour that affects the dignity and integrity of a person psychologically or physically. Harassment means to target someone with a behaviour that is intended to alarm, annoy, torment or terrorize, and create reasonable fear in the victim that affects their safety. Accordingly, sexual harassment is considered one of the kinds of harassment. Sexual harassment is often known as the unwanted actions or statements of a sexual nature that violates the victim physically, psychologically and assaults the victim's dignity. In short, it is defined as unwelcome or unwanted behaviour of a sexual nature. When describing sexual harassment, we must first take into consideration the quality of the practice, which in this case must consist of sexual life and must be unwelcomed. It is also considered a form of sexual violence. As stated before, what makes sexual harassment different from any other sexual act is that it is unwelcomed and not agreeable by the two people. Thus, it is only considered sexual harassment

¹ Serantes, N.P., Suárez, M.A. (2006). Myths about workplace violence, harassment and bullying. *International Journal of the Sociology of Law*, 34(4), 229-238.

² Matulewicz, K. (2016). Law's Gendered Subtext: The Gender Order of Restaurant Work and Making Sexual Harassment Normal. *Feminist Legal Studies*, 24(2), 127-145.

³ Sapiro, V., Campbell, D. (2018). Report on the 2017 APSA survey on sexual harassment at annual meetings. *PS: Political Science & Politics*, 51(1), 197-206.

⁴ Powell, A., Henry, N. (2017). Sexual violence and harassment in the digital era. In *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Palgrave Macmillan, Cham, 205-220.

⁵ Taylor, L.D., Alexopoulos, C., Ghaznavi, J. (2016). Touchy Subjects: Sex in the Workplace on Broadcast, Cable, and Internet Television. *Sex Roles*, 75(9-10), 476-489.

if it is unwelcomed. The sexual conduct is deemed to be unwelcomed if the person did not ask for it or request it or offer it, and that the unwelcomed behaviour is considered undesirable or offensive. Sexual harassment also can occur regardless of whether the offender thinks the behaviour to be aggressive or not. It is easy to determine whether one has been sexually harassed. Acts such as unwelcome touches or pinching in the working areas, making sexually-oriented remarks, sexual advances from employers or property owners in return of favour are signs of sexual harassment. Additionally, receiving offensive images through smartphones, questions that get personal about one's sexual life, awarding low marks at school or university because of rejecting sexual suggestions or even having a colleague follow another home without seeking their consent are considered as forms of sexual harassment¹.

Countries have differed in dealing with the issue of sexual harassment. Some have defined it as an act committed through abuse of power or coercion to obtain a benefit of a sexual nature. Others limited it to actions and behaviours that are of sexual life. The concept of sexual harassment, whether it is based on sex or power, is often how scholars perceive sexual conduct. Researchers believe that sexual harassment is mainly based on the concept of unequal power. According to a 1992 study conducted by the International Labor Organization (ILO), sexual harassment is wholly associated with power. It occurs in societies where women are often treated secondary in society compared to men².

Some believe that it is challenging to consider a specific definition of sexual harassment. They argue that it is not easy to define or measure because it constitutes many behaviours, and that interpretations of what behaviours are sexual and what is not may differ from country to country, culture to culture, and even from a male or female perspective³. Not only that, but also some argue that a person's generation may determine how you perceive sexual harassment. A person sees sexual harassment depends on the person's age, for example, such as Generation "Baby-boom" where women were born between (1946-1964) are the ones that will not make a big deal if sexual harassment happened to them in the workplace and would not report it. Even "Generation X", who are women born between (1965 to early 1980s), also would not have reported a sexual harassment incident. On the other hand, Millennials, who are people born after 1980, are born in a feminist world where equality stands between men and women. Millennials are the ones that are more likely to make a big deal out of sexual harassment if it happens and report it and would not tolerate it⁴.

3.2. Sexual Harassment under International Law

As sexual harassment appears to be an international issue, it is thus significant to have a view on sexual harassment under international law. This part of the study considers the main international conventions that aim at combating the issue of sexual harassment and violence against women.

Over recent years, sexual harassment has emerged as among the common problems in many countries, a fact that has led to it being regarded as a global issue. It is a problem that not only affects the workplace environment but also can provide devastating impacts towards the health, morale, confidence and performance ability of its victims. Nationally and internationally, this has economic, social, cultural and political effects. The fact that this is a global concern, there has been increasingly high need to come up with laws and regulations concerning the status of women and their protection. This led to the emergence of international laws that have evolved.

As stated above, internationally, sexual harassment is illegal and a violation of human rights and a form of sex discrimination. Many countries around the world have laws and legislation prohibiting sexual harassment. Laws and legislation on sexual harassment are different from country to country since some are under the protection of civil law and others under criminal law. Some countries combat sexual harassment under labour law, some under criminal law, and others under their equality and non-discrimination laws⁵.

¹ Espelage, D.L., Hong, J.S., Rinehart, S., Doshi, N. (2016). Understanding types, locations, & perpetrators of peer-to-peer sexual harassment in US middle schools: A focus on sex, racial, and grade differences. *Children and youth services review*, 71, 174-183.

² Singla, A.K. (2015). Sexual harassment of women at workplace in India. *International Journal in Applied Studies and Production Management*, 1(4), 58-66.

³ Kalra, G., Bhugra, D. (2013). Sexual violence against women: Understanding cross-cultural intersections. *Indian journal of psychiatry*, 55(3), 244.

⁴ Atuhaire, P.K., Gerring, N., Huber, L., Kuhns, M., Ndirangu, G. (2018). *The Elusive Peace: Ending Sexual Violence during and after Conflict*. United States Institute of Peace.

⁵ Eisold, B. (2016). Some Present-Day Asylum Seekers in the US: Machismo and "Women on the Run". *La camera blu. Rivista di studi di genere*, 14.

Laws prohibiting sexual harassment are relatively new around the world and have only recently been adopted in some countries. The United States and the United Kingdom are considered some of the first countries that addressed sexual harassment in the late 1970s and 1980s¹. The United States is an example of a country that put an effort on this issue more than any other country in the world. Other states passed laws prohibiting sexual harassment conduct in the 1980s and early 1990s². Similarly, most countries in the Middle East, considering their strict adherence to Islam, view sexual harassment as a crime worthy of punishment under the law.

3.3. International Conventions on Sexual Harassment

In the last few decades, the issue of sexual harassment has rapidly increased in the Middle East. For a long time, sexual harassment and violence against women had to remain hidden with little known about what the women go through and experience. In the past few years, the issue of sexual harassment has caught the attention of many as the media outlets as it brought this issue to the spotlight, such as the #MeToo movement. As a result, many activists came together to combat sexual harassment.

Many governments and non-governmental organizations, and international organizations have been focusing on the issue of gender-based violence and collecting data on it in different countries and regions. However, there is a dearth of data on the nature and the various types of violence against women as it is considered a significant concern and barrier to effective legislation³.

Some international organizations have focused on the issue of sexual harassment in the workplace which include the United Nations through UNHRC, the International Labor Organization (ILO), the Organization of American States (OAS), the European Union (EU), World Health Organization (WHO), and the Caribbean Community (CARICOM). These organizations focus on the issue of sexual harassment as a human right violation and a form of violence and discrimination. At the international level, conventions are usually held to formulate policies and regulations not directly related to sexual harassment but to principles on human rights that prohibit sexual misconduct. In other words, International conventions deal with sexual harassment broadly as a form of violence against women and as discriminatory behaviour, while national laws focus more closely on illegal conduct⁴. Most of the conventions discuss how to promote dignity in the workplace, protection from sexual discrimination, and a safe working environment for all employees.

One of the notable conventions is the (ILO) Discrimination Employment and Occupation Convention, 1958. This convention addresses discrimination at the workplace based on multiple grounds that include sex and demands that countries affiliated with the International Labor Organization (ILO) declare and seek a nationalistic policy structured to encourage equality at the workplace in terms of both treatment and opportunities to eradicate discrimination. The convention was established before awareness of the issue of sexual harassment became widespread. Regardless, it recognized the seriousness of the problem, perceiving it as a severe manifestation based on sex and a human rights violation. The convention further noted that it is essential for the eradication of sexual harassment to be included as an integral part of the available legislation or related policy, free from other systems associated with discrimination with regards to sex. According to the convention, sexual harassment affects equality in the workplace. It damages an organization by weakening the pillars upon which relationships at the workplace are anchored and in the process impairing productivity⁵. Considering the seriousness of such repercussions, the convention posits that it is vital to take adequate measures to prevent and eradicate sexual harassment in the workplace.

The other prominent international convention associated with sexual harassment is the Indigenous and Tribal Peoples Convention, 1989. It focuses on the rights of indigenous and tribal people. The meeting also focused on the prohibition of sexual harassment at the workplace. Under this, it indicates that every

¹ Miller, B.C., Moore, K.A. (1990). Adolescent sexual behavior, pregnancy, and parenting: Research through the 1980s. *Journal of marriage and family*, 52(4), 1025.

² Zippel, K. (2004). Transnational advocacy networks and policy cycles in the European Union: The case of sexual harassment. *Social Politics: International Studies in Gender, State & Society*, 11(1), 57-85.

³ Basu, A., Jaising, I., Collective, L. (2005). Violence Against Women: A Statistical Overview, Challenges and Gaps in Data Collection and Methodology and Approaches for Overcoming Them. UN Division for the Advancement of Women in collaboration with Economic Commission for Europe (ECE) and World Health Organization (WHO) Expert Group Meeting. *Division for the Advancement of Women*.

⁴ Dhir, A.A. (2005). Human Rights Treaty Drafting through the Lens of Mental Disability: The Proposed International Convention on Protection and Promotion of the Rights and Dignity with Disabilities. *Stan. J. Int'l L.*, 41, 181.

⁵ Al-Hadad, N.F.A. (2016). *Working women and their rights in the workplace: International human rights and its impact on Libyan law*. Routledge.

government should do anything possible to limit any discrimination between employees associated with the individuals to whom the said convention applies as well as other employees, including establishing measures to guarantee that these people are protected against sexual harassment¹.

3.4. The Legal System in Saudi Arabia

The legal system in the Kingdom is based on Sharia or Islamic law. Sharia is mostly derived from the Quran and Sunnah. They are the primary sources and foundation of Sharia. Sharia plays a fundamental role in the legal system of Saudi Arabia. It is the fundamental law of the land. The first Article of the Basic Law of Saudi Arabia states that the Quran and Sunnah are the State's Constitution. Accordingly, statutes and regulations in the Kingdom, as well as any international conventions ratified by it, must be following the Quran and Sunnah. In addition to the Quran and Sunnah, the consensus of Muslim Jurists after the death of Prophet Mohamed (*ijma*), and legal reasoning or analogy (*qiyas*) are secondary sources of Sharia. Also, Islamic jurisprudence is considered the first reference in Saudi Arabia concerning criminal cases, civil contracts, personal status, and property².

Saudi Arabia, since it was first founded, did not function under a written constitution until the promulgation of the Basic Law of Governance in 1992. On March 2, 1992, King Fahd bin Abdul-Aziz issued the Basic Law of the Kingdom by Royal Order No. (A/90) (Saudi Basic Law of Governance, 1992)³. It is considered an equivalent of a constitution in other countries. It illustrates the basic principles of the three authorities of the State, which are the executive, legislative, and judicial authority. It also describes the role of the King and the framework when ruling the country. The Basic Law includes many Articles that not only identifies the power of the King when ruling the country, but also his authority in appointing and promoting judges, ministers, and officers. The Basic Law also identifies the role, rights, and duties of Saudi citizen and Saudi families.

The Basic Law of Governance declares the Quran and the Sunnah (Traditions of the Prophet Mohammed) as the State's Constitution. Article 1 of the Basic Law of Governance states, "The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam, and its constitution shall be the Book of God and the Sunnah (Traditions) of His Messenger, may God's blessings and peace be upon him (PBUH). Its language shall be Arabic, and its capital shall be the city of Riyadh." (Saudi Basic Law of Governance B, 1992)⁴. The Article specifies that the Quran and Sunnah of the Prophet Mohammed serve as the Kingdom's Constitution. They are considered the primary sources of law in Saudi Arabia. Article 7 of the Basic Law of Governance states, "Governance in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunnah of His Messenger, both of which govern this Law and all the laws of the State." (Saudi Basic Law of Governance C, 1992)⁵. This Article establishes the religious base of Saudi rule. The article confirms that the Kingdom obtains its governmental power and authority from Islamic law. The government's system and regulations stem from the interpretation of Islamic law, and accordingly, any laws or regulations in the Kingdom must apply provisions of Islamic law.

The role of Sharia in Saudi Arabia is exceptional. Saudi Arabia is not like any other Muslim country in the world. Sharia is the State's Constitution, the only source of political legitimacy, and the law of the land or common law. Sharia is the basis of the legal system of Saudi Arabia; thus, civil and criminal law in the country is based on the provisions of Islamic law. Saudi Arabia is one of the major Muslim countries that apply Sharia in an uncodified form. The application of the uncodified Sharia in Saudi Arabia is often criticized. Some Islamic countries identify areas which Sharia law is applicable and enforce them in a codified form⁶. However, in Saudi Arabia, the Kingdom considers the uncodified Sharia is the law of the land and reject any legislation that opposes Sharia.

¹ Saul, B., Kinley, D., Mowbray, J. (2014). *The international covenant on economic, social and cultural rights: commentary, cases, and materials*. OUP Oxford.

² The Total Population In 2017 (Saudi Arabia). *General Authority for Statistics*. <<https://www.stats.gov.sa/en/indicators/1>>.

³ Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), *Umm al-Qura* No. 3397 (2/9/1412H, Mar. 5, 1992). <<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>>

⁴ Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), *Umm al-Qura* No. 3397 (2/9/1412H, Mar. 5, 1992). <<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>>

⁵ Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), *Umm al-Qura* No. 3397 (2/9/1412H, Mar. 5, 1992). <<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>>

⁶ Vogel, F.E. (2012). Shari'a in the Politics of Saudi Arabia. *The Review of Faith & International Affairs*, 10(4), 18-27.

The Saudi Judicial system consists of two significant authorities, the Sharia Courts and the Board of Grievances. Sharia Courts and the Board of Grievances both are separate bodies and have different functions in the judicial system. Sharia Courts, for example, has jurisdiction over criminal, civil, and commercial cases filed by individuals against each other. On the other hand, the Board of Grievances has authority over the circumstances that involve the government.

3.5. Sexual Harassment in Islamic Criminal Law

As previously mentioned, Saudi Arabia applies Sharia law as the basis of its legal system. Thus, it is critical to have a background on Sharia law, the categories of crimes and punishments under Islamic criminal law, and correctly and most importantly, where the crime of sexual harassment stands in these categories.

Sharia law or Islamic law is a timeless and comprehensive system covering many topics of humans matters and issues. Despite generations changing, Sharia law remains the ultimate fundamental legal system set down provisions and rules to every human act existed. As the Quran states, "And we have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims." Allah (SWT) did not leave any ruling on a primary or slight issue, or an act is affecting the human's life without addressing it in the Quran. The Quran clarifies what is forbidden and what is not.

In many cases, the Quran provides a specific punishment for a particular criminal act, for example, *hudud* crimes. *Hudud* crimes are one of the three types of offences in Islamic criminal law that have fixed punishments in the Quran. *Hudud* crimes have set penalties; most of them are stated in the Quran, and others are indicated in the Hadith. The second type of offences in Islamic law is *qisas* crimes. *Qisas* crimes include murder or bodily injury. These types of crimes have the punishment of *qisas* (retribution) or *diyyah* (financial compensation). In the case where there is no fixed punishment in the Quran or Sunnah for a particular crime, it is the responsibility of Muslim jurists to criminalize that act and determine the suitable punishment for it. For instance, the case of *ta'zir* punishments (discretionary punishments). *Ta'zir* crimes are the third type of offences in Islamic law. The sanctions for them are considered for minor offences.

3.6. The Islamic Perspective on Sexual Harassment

Sexual harassment is considered a severe offence in Islam. In all religions, fornication and adultery are extreme sexual offences. In Islamic law, the law not only criminalizes adultery but also goes further and commends the ways and behaviours to diminish sexual desires and temptations. Islamic law prevented sexual harassment and included many provisions in the Quran and Hadith relating to the prevention of Zina. Muslim law also has addressed in detail the relationship between men and women outside of marriage in the most precise way. It has set down rules and clear and reliable guidelines to acknowledge men and women on how they must conduct themselves and behave with one another.

The term "sexual harassment" is often not used in Sharia law. Nonetheless, it is not considered an unfamiliar act or behaviour. The conduct of sexual harassment existed in prehistoric times and was mentioned in the Quran in *surah Yusuf*. The verse states,

“And she, in whose house he was, sought to seduce him. She closed the doors and said, “Come, you”. “He said, [I seek] the refuge of Allah. Indeed, he is my master, who has made good my residence. Indeed, wrongdoers will not succeed.” And she certainly determined [to seduce] him, and he would have inclined to her had he not seen the proof of his Lord. And thus [it was] that We should avert from him evil and immorality. Indeed, he was of Our chosen servants.” Yusuf, 12:23-24.

A man or woman can initiate sexual harassment. Women are not the only ones who experience sexual harassment, and men experience sexual harassment as well. Both men and women can be guilty of sexual harassment whether it can be by gazing, flirting, groping or any other type of sexual advances. Islamic law condemns all these sexual behaviours. Hence, Islamic law has set provisions and rules preventing them.

One of the first and significant rules or provisions in Islamic law for preventing behaviours that lead to sexual harassment or any other sexual advances is the prohibition of gazing. In Islam, Muslim men are forbidden to look or stare at a woman stranger to them, meaning a woman not related to them. As the Quran states, "Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is Acquainted with what they do." An-Nur, 24:30. In this verse, Allah commands Muslims to lower their gaze because it leads to serious crimes such as Zina. Zina and sexual harassment cause grand corruption among Muslim society; thus, it is the reason why Allah ordered all Muslims to lower their gaze initially. Islamic law also commanded Muslim women not to stare and not expose their adornment and must be covered to men strangers to them.

As reviewed above, Islamic law has prohibited sexual harassment and all unwelcomed sexual advances. Islamic law has regulated the relationship between a man and a foreign woman to prevent any

triggers of sexual harassment. Texts in the Quran and Hadith specifically address the certain behaviours a Muslim man and woman must act upon. Islamic law prohibited Muslim men from gazing, speak flirtatiously to a woman and be in a final mixed place with a foreign woman without any essential purpose. Islamic law also commanded Muslim women to cover and dress decently and guard their chastity against illicit sexual acts. All these provisions certainly diminish temptations for any sexual act and result in preventing Zina and sexual harassment.

One of the most significant discussions on the crime of sexual harassment is that punishment of sexual harassment in Saudi Arabia is under the category of the uncodified *ta'zir* sentences. These punishments in Islamic law, are at the discretion of the judge. Judges rely solely on their interpretations to determine a suitable punishment for sexual harassment. Depending on the circumstances of the case, a judge may rule for severe punishment for sexual harassment, and another judge may not. A judge may blame the woman for dressing in a certain way which may reduce the sentence on the harasser. Since there are no fixed punishments in the Quran or *Sunnah* for *ta'zir* punishments such as for *hudod* penalties, the sentence of sexual harassment is at the full discretion of the judge.

3.7. The Status of Women in Saudi Arabia

There has been a significant development in the role and status of Saudi women socially. During the last few years, Saudi women have engaged and undertaken many roles in Saudi society. Saudi women went from the primary purpose of a mom, daughter, and wife, to becoming one of the country's most substantial forces educationally, socially, economically and politically. They are taking extra roles to cover up the family expenses for the increasingly inflated Saudi economy.

In recent years, the status of women in Saudi Arabia has transformed. For instance, the new Vision 2030 of Saudi Arabia that is led by Crown Prince Mohamed Bin Salman aims to increase the participation of Saudi women in the labour market and has given priority to the development of women's abilities and activating their role in the economy. The development of women's endowments and investment of their energies is one of their priorities. The vision aims at empowering Saudi women to find suitable opportunities to contribute to the development of society and the economy. The Kingdom of Saudi Arabia is heading in the Vision of 2030 to serve the community in all its fields. The status of women plays a significant role in this vision. This role is evident in the efforts of different ministries to empower women and raise their level of localization or to give advantages to establishments that employ women. Then comes the role of Saudi women themselves in proving their worth and entitlement to empowerment.

Today, Saudi women are successful in many fields and are outstanding in the labour market. Saudi women are successful in medicine, engineering, and are remarkable businesswomen. Previously, Saudi women were not allowed to vote or specialize in fields such as engineering, law, political science, agriculture, and journalism or even practice law and be a lawyer. Now, women in Saudi Arabia can specialize in any of the fields above, and there are many successful female lawyers and engineers.

3.8. Sexual Harassment Against Women in Saudi Arabia

In recent years, sexual harassment against women in Saudi Arabia has been receiving considerable media attention. Another infamous incident of sexual harassment that occurred in past years was the video published on YouTube on July 25, 2015, in Taif, Saudi Arabia¹. The video showed a young woman harassed by two men as she walks on the street. In the video, one of the men appears to approach the girl and grope her from the side. People who viewed the video were outraged by the actions of the two young men, especially since the girl was fully covered; as Saudi society often perceive women's covering as a deterrent to sexual harassment. After the video had been published, and after other incidents of sexual harassment surfaced on the web, consumers of social media pushed for a clear penal code on sexual harassment in Saudi Arabia².

Saudi Arabia lacked a regulation that clearly defines sexual harassment and identifies an apparent punishment for it. On June 2008, the Saudi Shura Council started to outline a draft law for unwanted sexual advances. The study of the draft law was deferred. Later, in 2014, the Shura Council suspended the draft once again after some conservative Council members criticized the law explaining that it will encourage mixing between men and women in society. The opponent members contend that approving such legislation, which in their perspective is imported from the West, will legalize men and women working together in a single environment. Others refused to discuss the bill because they believe that the Law of Protection from Abuse is sufficient. The Law of Protection from Abuse was issued in 2013, which criminalize domestic violence

¹ <https://www.youtube.com/watch?v=5wS3TY4dQKc> <الطائف في بيتاه لثا ابي من وظيفي جسديت حرش>

² Abdullah, A.G. (2015). *Physical and Verbal Harassment of a Girl by Two Young Men in Taif*.

against women and children in Saudi Arabia. The Law also states in its articles the punishments for the offenders of domestic abuse. The Law places the subject of domestic abuse under the responsibility of the Ministry of Social Affairs. In the Law of Protection from Abuse, abuse is defined as,

Any form of exploitation; physical, psychological or sexual, or the threat thereof committed by an individual against another exceeding the limits of powers and responsibilities derived from guardianship, dependency, sponsorship, trusteeship or livelihood relationship. The term “abuse” shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible.¹

The case of the Anti-Sexual Harassment Law returned to the discussion in the Shura Council after King Salman (The current King of Saudi Arabia) issued a Royal Order to the Ministry of Interior to prepare the draft of Anti-Harassment Law on September 29, 2017². The draft law determines the punishments necessary to prevent behaviours of all types of sexual harassment. This Royal Order shows how the government in Saudi Arabia is keen on the safety of society and providing safe work environments for women in particular.

On Tuesday, May 28, 2018, Saudi Arabia took a step in the right directions as the Saudi Shura Council or "Majlis Al-Shura", approved the bill of Anti-Sexual Harassment Law. However, the Shura Council has limited powers as it serves only as an advisory authority, not a legislative body. The Council can only suggest recommendations and propose laws but cannot enforce them. The draft law was approved by an 84-vote majority in the 150 members of the Shura Council. The approval came four weeks before the historical event of lifting the ban on women's driving in Saudi Arabia. King Salman bin Abdul-Aziz made this significant decision on September 26, 2017, by issuing a Royal Order to allow women to drive the beginning of June 24, 2018. A day after the approval of the Shura Council, the Cabinet or the Council of Ministers, which reviews draft laws and regulations in the Kingdom, approved the bill on May 29, 2018.

The draft law of the Anti-Harassment Law was prepared by the Ministry of Interior on the orders of King Salman who heads the Council of Ministers. The decision is in agreement with the Crown Prince Mohammed bin Salman's 2030 Vision plan for a future and modernized Saudi Arabia. However, the approval of the draft law did get mixed reactions. Some still believe that there is no need for such law since it might encourage more mixed environments in the Kingdom. This groundbreaking new law on sexual harassment protects both genders and aims at combating the crime of sexual harassment and preventing its occurrence. The rule applies the punishment on the perpetrators and protects the victims to preserve the privacy of the individual and his dignity and personal freedom guaranteed by the provisions of Islamic law and regulations³.

The law states in Article 3 that people must inform authorities of any attempted sexual harassment incident in the street or anywhere else. According to the law, the punishment may reach up to two years imprisonment and a fine of up to 100,000 SR or one of the two penalties.⁴ The bill also increased the sentence up to five years imprisonment and with a fine up to 300,000 SR if it occurred in the workplace and other cases.

4. Discussion

Saudi Arabia has taken many years to realize that sexual harassment is a serious issue that needs to be addressed by law. Some say that Saudi Arabia is one of the least countries facing sexual harassment cases because of the Islamic system prohibiting working and mixing between men and women. However, that did not prevent some from harassing women in markets, hospitals and even car chasing on the streets.

Due to the importance of finding a deterrent punishment for sexual harassers, the Saudi Shura Council in June 2008, began to outline a new law that reinforces punishments on the offenders of sexual harassment and unwanted sexual advances. The proposed Anti-Sexual Harassment Law was published in AlYaum Newspaper on Saturday 10/03/1430AH – 07/03/2009 and contained 17 articles⁴. It included punishments for up to one year and fines up to 100,000 Saudi Riyals⁵. The study of the draft law was then deferred. In 2014, the draft law was discussed again by the Shura Council but got deferred again after some

¹ Article 1, Law of Protection from Abuse, Royal Order No. M/52, (15/11/1434H, 21/9/2013).

² Royal Decree No. 96/M, (16/9/1439H, Jun. 1, 2018), *Umm Al-Qura*, No. 4730 (23/9/1439H, Jun. 8, 2018), Approval of the Anti-Harassment Law. <<https://www.uqn.gov.sa/articles/1528406489385942200>>.

³ The Council of Ministers is the direct regulatory authority headed by the King as the Prime Minister of the Council.

⁴ Alkhalidy, M. (Mar, 2009). "A Law to deter harassment: Imprisonment of 3 years and a fine of 100,000 Riyals". ALYAUM, <http://www.alyaum.com/article/2658157> (last visited December. 20, 2019).

⁵ One hundred thousand Saudi Riyals are roughly equivalent to USD \$26,664 <https://www.xe.com/currencyconverter/convert/?Amount=100%2C000&From=SAR&To=USD>.

conservative Council member criticized the law explaining that it will encourage mixing between men and women in society.

Dr. Mazen Abdul Raziq Belila, a member of the Shura Council in 2009, suggested the draft law that combats sexual harassment in Saudi Arabia¹. He stated that the draft law was prepared to prevent sexual harassment with funding from the private sector and that a legal scientific analysis was carried out included access to all laws and regulations that dealt with combating sexual harassment in the Arab, Islamic, and Western countries. With having access to all laws and regulations on sexual harassment around the world, the analysis devises what is appropriate for the Saudi society and what is not such as being contrary to Islamic provisions². The proposed punishments in the draft law of 2009 were imprisonment for up to three years and a fine of 100,000 Saudi riyals. Also, it was noted that the proposed law does not distinguish if the perpetrator was a man or woman.

On September 26, 2017, the King of Saudi Arabia King Salman issued a Royal Decree allowing women's driving³. In the first time in history women were able to drive legally and have the right to receive a driver's license in Saudi Arabia as of June 24, 2018. Two days following this decision, King Salman issued another Royal Order, ordering the Minister of Interior to prepare the draft of the Anti-Harassment Law that criminalizes sexual harassment and submit it within 60 days to be implemented. The Royal Decree reads, "Considering the dangers sexual harassment poses and its negative impact on the individual, the family, and society along with its contradiction of Islamic principles, our customs, and traditions ... the ministry shall prepare a draft law to tackle sexual harassment."⁴ The law that criminalizes sexual harassment will have a clear definition of sexual harassment and what behaviors constitute an act of harassment. A clear definition of sexual harassment and an unambiguous regulation will help authorities on how to deal with complaints on sexual harassment by taking the right decision and imposing suitable punishments on the perpetrators.

Some consider that the approval and issuance of the Anti-Harassment Law was hassled. One of the possible explanations of the hasty issuance of the Anti-Harassment Law is to pave the way for women's driving and act as a preemptive measure to curb any harassment incidents that might occur after lifting the ban on women's driving. However, the Anti-Harassment Law does not only protect women but all genders including children. The Anti-Harassment Law was studied and discussed for many years in Saudi Arabia but got delayed due to many reasons. In the next paragraphs, the discussion is about some of the challenges that delayed and postponed the issuance of the Anti-Harassment Law in Saudi Arabia.

In spite of the law been passed with many people in Saudi Arabia supporting it, the Anti-Sexual Harassment Law had many opponents since the days it was under the study in the Shura Council. Opponents claim that a law on sexual harassment leads to the validation of mixing between the sexes. However, these opponents clearly overlooked the guidelines that Sharia provisions had put in place in such cases. Their claim mostly on any new regulation or decision in the country, that it leads to (*iktilat*) which is the mixing between the sexes, such as the decision on lifting the ban on women's driving. Many opponents on the lifted ban on women's driving criticized the decision claiming that women driving leads to depravity and more mixing in the society.

The question is, are the opponents on the Anti-Sexual Harassment Law aware of the seriousness of the crime of sexual harassment that the crime does not just affect women but children also; or do they just desire to disrupt all that has to deal with protection and empowerment of women linking any law or decision in the country that it leads to *iktilat*.

Underestimating the crime of harassment and its effect and spread in the society, and delaying the approval of laws that combat such crimes is detrimental. Conservatives believed that there was no need for an Anti-Sexual Harassment Law in Saudi Arabia because it is too influenced by Western foreign laws and could contain articles contrary to Sharia. Conservatives considered that Anti-Sexual Harassment Law is grounded on liberal concepts and thus not "Islamic". They believe it is too influenced by Western laws because Western laws are secular laws; therefore, any law based on Western laws is a secular law which is

¹ Saudi Arabia studies draft law punishing Sexual Harassment in the Workplace (2009). *ASHARQ AL-AWSAT*. <<http://archive.aawsat.com/details.asp?section=43&article=506018&issueno=11029#.W0V0ZFPyvVr>>.

² Saudi Arabia studies draft law punishing Sexual Harassment in the Workplace (2009). *ASHARQ AL-AWSAT*. <<http://archive.aawsat.com/details.asp?section=43&article=506018&issueno=11029#.W0V0ZFPyvVr>>.

³ "Royal Order Issued to adopt the Provisions of the Traffic Law and its Executive Regulation, including Issuance of Driving Licenses for both Males and Females (2017). *SAUDI PRESS AGENCY*. <<https://www.spa.gov.sa/1671323>>.

⁴ Rodolfo C. Estimo Jr., Fareed, A. (Sep, 2017). Saudi society welcomes new law criminalizing sexual harassment. *ARAB NEWS*. <<http://www.arabnews.com/node/1169576/saudi-arabia>>.

contrary to Sharia law. In addition, the term “sexual harassment” is considered a Western term that is rarely used in Islamic provisions or Saudi legislations. Thus, conservatives believe that enacting a law on sexual harassment is not based on the Islamic Jurisprudence (the Quran and Sunnah) hence there is no need for it. The argument that claims that the term “sexual harassment” does not exist in Sharia law, does not preclude the fact that sexual harassment is a crime and a form of violence that must be criminalized by law. Many also use the argument, for example, that there is a law on sexual harassment in the United States that refutes all behaviors relating to sexual harassment and yet, sexual harassment is still a serious issue that threatens the American society. Nevertheless, laws are always imperative, especially when laws include articles affirming strict punishments on the offense.

b. Conservatism and the Concept of *Iktilat* (mixing):

One of the main and first problems that hindered the promulgation of the draft Anti-Sexual Harassment Law in Saudi Arabia is the issue of mixed environments and the mixing between the two sexes (*Iktilat*). Conservatives debate that mixing between the sexes is prohibited under Sharia, and if such law is approved it will increase mixed environments especially work environments. They believe that *iktilat* will lead to moral decay and corruption in the Saudi society as it did to Western societies where sexual harassment prevails. The separation between the two sexes in public is justified under the Sharia. This argument is used in particular for the issuance of the Anti-Sexual Harassment Law, which, according to this explanation, if passed, would set women on a slippery slope towards immorality. Conservatives believe that there are other ways to reduce sexual harassment incidents in the country rather than issuing an Anti-Sexual Harassment Law.

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Today society is changing. Even though schools, universities, and governmental agencies are segregated in Saudi Arabia; nevertheless, mixed environments do exist such as in malls, hospitals, and many workplaces around the country especially in the private sector. Accordingly, in August 2014 as stated before, the Shura Council decided to withdraw the Anti-Harassment Law based on the refusal of some members of the Council arguing that the law will enhance and increase the concept of mixing in society. The Shura Council returned discussing the draft law the following year in January. Three members of the Shura Council in February 2015 demanded reviewing the draft law in a broader and comprehensive manner by extending it to all types of harassment, extortion, psychological and financial exploitation. Also, they discussed changing the title of the Law to “the Law of Protection of Self-Assurance.” After that, the Shura Council decided to include the draft Anti-Harassment Law on the list of discussions in the upcoming three years. It was recommended in the study that the draft Anti-Sexual Harassment Law should become an independent separate law from other laws¹. Meaning, rather being a section of articles included in an existing law such as the Saudi Employment Law, being a separate law is much fitter since it can become more effective. Also, passing a new law is much easier than amending an existing one.⁶⁰⁹ The draft law at that time also stressed that whenever the perpetrator was superior to the victim, the punishment would be increased.

After many videos surfaced on the web that shows men harassing women in a city in Saudi Arabia, many have used social media networks to regenerate the activism against sexual harassment against women in the country.

Regarding the Anti-Harassment Law, most people agree on the fact that the long overdue law was supposed to be passed years ago. The law was recently passed in May 2018 as a part of the reforms that aim at protecting individual’s dignity in the society from all forms of harassment and abuse. Many people in Saudi Arabia were requesting a clear punishment on the crime of sexual harassment many years before. Saudis were posting their opinions about demanding the issuance of the law and advocating a clear punishment on sexual harassment on social media platforms. Human rights activists were fighting and demanding legal rights and

¹ Saudi Arabia: Study of a draft law punishing Harassment between the Sexes in the Workplace (2009). *ALSHARQ ALAWSAT*. <<http://archive.aawsat.com/details.asp?section=43&article=506018&issueno=11029#.V9XBhFeqzVr>>.

the issuance of the Anti-Harassment Law. As there was a constant demand by the Saudi people on the issuance of the Anti-Harassment Law in the past years, instead, the Saudi government in 2013 passed the Law of Protection from Abuse in its place. After its issuance, many Saudis claimed that there is still a lack of a clear legislation to punish sex offenders in the country even after the issuance of the Law of Protection of Abuse since it only covers the issue of domestic abuse. Saudi people argued that a lack of a clear punishment has dramatically increased the audacity of the perpetrators and harassers, as their behaviors go beyond verbal harassment to physical, sexual harassment, knowing that there is no deterrent punishment.

After lifting the ban on women's driving, the call for a law or punishment on sexual harassment by the Saudi people increased. Many saw that issuing a law on sexual harassment in the Kingdom is critical nowadays especially after allowing women to drive.

Fortunately, in May 2018, the Anti-Harassment Law in Saudi Arabia was approved by the Council of Ministers and was published in the Official Gazette June 8th, 2018¹. The passing of the Law is considered part of this reformist step that aims at the protection of the physical and dignity of individuals in Saudi Arabia.

Many Saudi praised the law when it was passed since it focuses specifically on the crime of sexual harassment. The law is aimed to combat sexual harassment in the Kingdom by stating a clear and specific punishment for it, as well as it protects all genders including children. As stated in this dissertation, the Anti-Sexual Harassment faced a considerable amount of disapproval, and many conservatives did not want this Law to be approved or passed as they believe it will encourage more mixed environments in the country which will then lead to immorality. In spite of what appeared to be strong praise and complete support on the issuance of the Anti-Sexual Harassment Law in the Saudi society and the human rights community in particular; unfortunately, the Anti-Harassment Law still to this day is undergoing critical scrutiny. Unfortunately, there is a part of society that always tries to question regulations being passed and question their aims and depreciate them. These opponents state redundant suspicions and reservations on statues or regulations before full comprehension of the law and its articles. This part of the society passes judgment on all the country's developments and achievements questioning every little thing the nation does or passes.

One of the challenges that hindered the promulgation of the Anti-Sexual Harassment Law in Saudi Arabia is the punishment of sexual harassment. Opponents argued that there was no need for an Anti-Sexual Harassment Law because the punishment of sexual harassment falls under the category of *ta'zir* punishments in Islamic law that do not require a law, as *ta'zir* punishments are discretionary and are under the Judge's discretion. One reason for the rejection is also that they claim that by applying an anti-harassment law it will limit a qadi's (judge) discretion. This argument is also improper. Conservatives want the punishment of sexual harassment to be under the discretion of the judge. Unfortunately, some judges may blame the victim (the woman) for the harassment and not the harasser, either because she wanted to work in a mixed work environment or went out without a mahram. Before the passing of the Anti-Harassment Law, sexual harassment was not a defined crime and the punishment for it was considered discretionary subjected to the jurisprudence of judges. As a result, the sentence on a harasser may vary. One judge may lessen the punishment on an offender, and another may intensify the punishment while the committed crime is the same. Also, other facts or accusations in a case may result in a reduced sentence for the offender. For example, blaming the victim for the way she dressed, or for her presence in a place might result in a minor punishment for the offender. It all depends on the ruling of the judge and the circumstances of the case.

In light of these many disagreements and controversy on the Anti-Sexual Harassment Law, the Law was withdrawn and suspended by the Shura Council in 2014. The Law was withdrawn because of the pressures of some members of the Council claiming that the proposed law will promote the concept of mixing between the sexes. While the argument might have made sense at the time, nevertheless, it should no longer be fitting. Times and societies are changing drastically. Currently, mixed environments between the sexes in the Saudi society exist and are expanding each day. Mixed environments in Saudi Arabia exists in hospitals, malls, restaurants, and many workplaces and no one can deny that fact. Even the Shura Council today has become a mixed environment that includes leading Saudi women in the country. Women have become more involved in the decision-making process and no one can underestimate their value or their precise development and political involvement in the country.

¹ Royal Decree No. 96/M, (16/9/1439H, Jun. 1, 2018), Umm Al-Qura, No. 4730 (23/9/1439H, Jun. 8, 2018), Approval of the Anti-Harassment Law. <<https://www.uqn.gov.sa/articles/1528406489385942200/>>.

Protecting humans and their rights is one of the State's duties mentioned in Article 26 of the Basic Law which states, "The State shall protect human rights in accordance with Islamic Sharia"¹ This article declares that it is the responsibility of the State to protect human rights. Furthermore, one of the main purposes of Sharia law is to protect Muslims dignity and protect their life from harm. Accordingly, to achieve these purposes of Sharia, it is necessary to establish laws and regulations that bring justice and security to the Muslim community and protect them from any harm or injury. Therefore, the question arises, what is the hurdle of passing a law which does not contradict Sharia and that protects women and all individuals from harassment?

The argument remains. Any new project, idea, decision, or bill presented in the Shura Council has supporters and opponents. As deliberated above, it is obvious that there were opponents against the passing of the Anti-Harassment Law in Saudi Arabia. The main disagreements over this law are the disagreements over the importance of its existence, and its benefit to the country. Nevertheless, these oppositions were the reasons behind the delay of the passing of the Anti-Harassment Law.

For a long time, sexual harassment and violence against women had to remain hidden with little known about what women go through. It is only a couple of years ago that the issue of sexual harassment in Saudi Arabia caught the attention of many as the media outlets brought it in the spotlight. Many women would upload videos of their incidents of street harassment on the internet. Such videos would receive a considerable amount of views as it caused significant concern in the society. Citizens and women's rights activists have progressively used the media as a tool to report their sentiments about women's issues in Saudi Arabia. Before social media platforms, citizens did not express their demands and opinions about what is happening in the country like nowadays. Now the public in Saudi Arabia is more open to sharing their experiences and views on every little thing that happens to them in the country. Many people openly expressing their opinions on every situation in the country resulted, for example, in the activists that are against sexual harassment coming together to fight the problem and demanding a clear punishment for it in the Kingdom.

Regarding activism on lifting the ban on women's driving, women began demanding their right to drive in the nineties of the last century. One of the first movements challenging the ban on women's driving emerged in the 1990s after 47 women protested in which they led cars in the streets of the capital of Riyadh. The government arrested them, forced them to leave their jobs, and forbid them from traveling. The case returned to public opinion in 2011 by a number of women driving their cars and posting videos of them driving on the internet. The ban on women's driving was one of the main criticisms of the Saudi government in the field of human rights and gender equality from human rights organizations. It has become the main criticism because Saudi Arabia was the only country in the world where women were banned from driving despite the absence of an explicit prohibition regulation.

The lifted ban opened more employment opportunities for women making them less dependent on the men. The lifted ban also brought about economic empowerment for the Saudi women, and more women could now seek jobs and create jobs in return. They also felt more secure as compared to the periods in which the ban was still active. The decision of lifting the ban on women's driving was a start of a joyous journey from some Saudi women, as the next move was to advocate for the total ban on the male guardianship system that contributed more to the violation of their rights and their treatment as second-class citizens. This era of reforms welcomed a new wave on women empowerment on the kingdom.

The male guardianship system in Saudi Arabia in the past years has been receiving a considerable amount of criticism. The male guardianship system is one of the most known schemes in Saudi Arabia that is continuously condemned by the people as it significantly affects women's rights in the country. The system considers adult women as minors and restrict their rights to work, travel and affects their mobility, their decisions on health issues, their education, and their freedom to make crucial decisions concerning their lives. Many Saudis including human rights activists have been calling for the male guardianship system to be abolished. Twitter is also being used by many Saudis stating the demand for the abolishment of the male guardianship system. The activism on the male guardianship system has led to the launch of an anti-male guardianship system campaign ran by Saudi women and Saudi women's rights activists to end this discriminatory system on Twitter. The popular hashtag in Twitter "#IAMMyOwnGuardian" is the campaign which the public and women's rights activists criticize and speak openly about the male guardianship system and cases of discrimination against women in the country. The people in most media outlets all around Saudi Arabia but especially on Twitter, have publicly spoken about the need to abolish the male guardianship

¹ Article 26. Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), *Umm al-Qura* No. 3397 (2/9/1412H, Mar. 5, 1992). <<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>>.

system in the country. The male guardianship system in Saudi Arabia affects women dramatically and limits their access to the majority of their rights. Women under the male guardianship system, cannot study abroad, obtain their passport, get married, travel internationally, leave jail or detention centers, or even file a complaint in court without a male's approval. A male guardian (*wali*) can be the husband, the father, brother, uncle or even a young son. Sharia does not require the application of the male guardianship system. In Islamic law, there is no religious text that states a woman should not study or work or take any decision regarding her life before obtaining her male guardian's approval. Nevertheless, the justification of this system is based on the traditional Hanbali and Wahhabi interpretation of Islamic law. Also, the guardianship system is not codified in Saudi law. There is no codified form of the male guardianship system in the Saudi Laws, instead, the basis this system refers to some historical events and social changes that took place in Saudi Arabia over the past three decades. The application of the male guardianship system gradually began in the late seventies of the last century. The enactment of laws in the Kingdom that restrict women's freedom of movement and employment with a strict separation between the sexes began in 1977. Until now, the male guardianship still has an impact on the existing laws in the kingdom. It's legalized by the strict interpretations of Sharia doctrines and traditional stereotypes of women to be weak, and that they should not be allowed the freedom that men have. In education matters, women who seek to study abroad have often been subjected to the male guardianship doctrines as they have been required to be under male supervision and company whenever they venture into studying aboard. The system has affected all Saudi women in the Kingdom regardless of their wealth, age, or status in society. The effect has been substantial on women, and some male guardians have used it as an avenue to extort money from them by allowing them to work and in return pay reparations to the men for giving them the opportunity to work or to study.

It is undeniable that the male guardianship system not only affects women's rights in the country but also might affect the efficiency of the Anti-Harassment Law and even the Law of Protection from Abuse. Governmental efforts to illuminate restrictions on women in the country or abolishing the male guardianship system is imperative. The country must abolish the male guardianship and ensure that every woman obtains her ultimate rights and freedom in the country. Providing women their full rights by ending such a system will help women unlock various opportunities in the country's economy.

Considering the complex nature of sexual harassment in Saudi Arabia, it is important to establish comprehensive, specific and effective policies that assure all related issues to sexual harassment are addressed, such as combating sexism and discrimination against women. Passing a law on sexual harassment is needed but not sufficient to change some inadequate behaviors against women that continue to occur in society. Behaviors such as harassment and discrimination should no longer be tolerated in Saudi society. Currently, the government has taken concrete steps and efforts to protect women and combat sexual harassment against them. The passing of the Anti-Harassment Law is one of these efforts, however, much more can be done to ensure practical application.

To protect victims and especially women from violence and harassment, the government should take all necessary measures relating to violence against women. If the woman's guardian is the harasser or the abuser, how can the victim (the woman) file a complaint to the police if she needs to attend to file a complaint officially. Regardless of that, the issuance of the Anti-Harassment Law as a written penal code might help to eliminate of sexual harassment in the Kingdom.

In a conservative country such as Saudi Arabia, sexual harassment incidents are mostly unreported as victims choose not to report due to fear of social stigma or blame from their parents, or the society in general. It is important for the country to emphasize the issue of sexual harassment and establish legal institutions that respond to claims effectively. As reviewed previously in this dissertation, most Arab women including Saudi women choose not to report their incidents of sexual harassment. The lack of reporting is due to a variety of reasons, such as fear of shame, blame, humiliation, the perception of the Arab society towards women, and the difficulty to prove such harassment incidents. Therefore, establishing legal institutions where women or any victim can report their occurrence privately and be provided by the necessary support, they need is necessary. The Saudi government should make reporting procedures of sexual harassment incidents much easier and more accessible by eliminating obstacles of reporting. The government should take action by not only criminalizing the act and determine a punishment under the law but also by clarifying the procedures of reporting such incidents. The government should also provide multiple avenues easy accessible by the public for reporting and filing complaints to the authorities. It would be preferable if these avenues are run by women, as some victims of sexual harassment might find it easier and more comfortable for them to report their cases to other women.

An environment that is supportive of reporting sexual harassment incidents facilitates the process of reporting incidents by the victims. Victims will find it easier to report when they believe that the behavior they experienced might constitute sexual harassment. It is vital that the victims of sexual harassment know to whom they should report their incident. Thus, the government should provide various points of contact to whom victims can report to. By providing multiple authorities that handles such complaints, the government breaks down barriers of reporting. An anonymous reporting avenue may also be beneficial to those individuals who do not feel comfortable or find it difficult to approach the authorities or the police. Regarding the workplace, employers in some organizations may also consider implementing a foreperson approach whereby certain workers are the reliable personnel for employees to contact regarding sexual harassment cases.

It is vital to raise public awareness on the importance of reporting incidents of sexual harassment and empowering women to fight for their rights. There must be awareness not only for the importance of reporting such incidents but also on the impact of sexual harassment and how it can affect people especially women or workers in the workplace. More awareness should be raised to change cultural stereotypes in the Kingdom where the woman is blamed for sexual harassment. One of the reasons for continued sexual harassment behaviors is the society's lack of seriousness about sexual harassment as it is the woman's fault. In terms of sexual harassment in the Arab countries, most people blame the woman for it and attribute such incidents to the woman not being fully covered, or dressed in a certain way that can be provocative. As deliberated in this dissertation, incidents happen to women in the Arab world frequently even when the woman is covered from head to toe. Men must have self-control and follow Islamic guidelines on how to communicate with a woman starting at lowering their gaze. To blame women for sexual harassment or sexual assault and forcing them to stay at home and not participate in the development of society just to protect her from harassment is unacceptable. It not only limits their rights of equality and abilities as women, but also can make the victims feel as if they deserved to be harassed.

To conclude, sexual harassment is a serious crime whose perpetrator must be punished. It is often that harassers are mostly men, but that does not mean that some women do not harass men. More importantly, the need to educate societies in order to change attitudes toward women is a must. We must ensure that women are seen as individuals and human beings, not sex objects. In addition, sexual harassment of any kind should be clearly criminalized with punishments which prevent men from harassing women or the opposite. Hence, the promulgation of the new Anti-Harassment Law is considered a great step in tackling the issue of sexual harassment in Saudi Arabia. The Anti-Harassment Law is considered an important effort to define the crime of sexual harassment and determine a clear punishment for it since before the passing of the Law judges had full discretion on the punishment ranging from mild to severe and not having to be obligated by precedent.

In the end, it is imperative to recognize that the criminalization and prohibition of sexual harassment in Islamic law and Saudi Arabia are forbidden and a set rule long before the passing of the Anti-Harassment Law and any other related regulations. However, the passing of the Law signifies that the Saudi government has in fact seen that sexual harassment is an issue and a crime that must be tackled. The Anti-Harassment Law was passed to combat the crime of sexual harassment and determine a punishment for it and to protect victims in order to preserve the individual's privacy, dignity and personal freedom guaranteed by Islamic law and regulations. Not only issuing a law on sexual harassment can help, but also there must be awareness and empowerment of women so that we can change the traditional perception of women as they should not be seen as only caregivers raising children as that is their only job in life.

5. Conclusion

Sexual harassment against women in Saudi Arabia is a threatening behavior that harms and effects security and social peace in the country. It is crucial that legislators initiate laws and determine severe clear punishments on sexual harassment to help spread security in all its forms in the society. Therefore, it is fundamental for a legal government intervention.

Before the passing of the Anti-Harassment Law, where sexual harassment was criminalized under the uncodified Sharia and the punishment of sexual harassment was under the discretion of the (qadi) judge, there were no established legal guidelines to tackle sexual harassment. The prevalence of sexual harassment suggests that more stringent legal responses are necessary. Laws and legal guidelines offer protection, however, developing even more strict guidelines in all institutions and ensure all people will be protected from sexual harassment are essential. Thus, through effective legal responses, sexual harassment can be adequately mitigated. Fittingly, Saudi Arabia has passed the Anti-Harassment Law and determined a punishment for it which hopefully the punishment will serve as a deterrent to such unjust behavior.

The purpose of this Law is to prevent all forms of sexual harassment to protect human dignity, freedom, privacy, and protecting and assisting victims of harassment, including most importantly punishing the offenders. Also, passing such law is an essential ground for women in Saudi Arabia to work confidently and move freely in mixed environments without any fear of experiencing any form of harassment or assault.

The Anti-Harassment Law is facing a big challenge today with many incidents that can occur after the ban has been lifted on women's driving. Unfortunately, people after the issuance of the Anti-Harassment Law still question the effectiveness of the Law and how will it be implemented in a precise, serious and safe manner. Only time will determine if the Law will successfully combat sexual harassment or not in Saudi Arabia. In the time being, the government should increase research and data on the issue of sexual harassment in the country to help the efficiency of the law.

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References:

1. Abdullah, A.G. (2015). *Physical and Verbal Harassment of a Girl by Two Young Men in Taif*. [in English].
2. Ahsan, M. (2007). Sex and Sexuality in Islam. *Culture, Health & Sexuality*, 9(5), 551-552. [in English].
3. Albassam, B.A. (2012). Political Reform in Saudi Arabia: Necessity or Luxury? *Journal of South Asian and Middle Eastern Studies*, 35(3), 1-17. [in English].
4. Al-Hadad, N.F.A. (2016). *Working women and their rights in the workplace: International human rights and its impact on Libyan law*. Routledge. [in English].
5. Al-Jam'an, A. (2014). Sentenced to Imprisonment and flogging on 11 accused in the case of Al-Nahda Tunnel. *ALRIYADH*. <<http://www.alriyadh.com/928863>> [in English].
6. Atuhaire, P.K., Gerring, N., Huber, L., Kuhns, M., Ndirangu, G. (2018). *The Elusive Peace: Ending Sexual Violence during and after Conflict*. United States Institute of Peace. [in English].
7. Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), *Umm al-Qura* No. 3397 (2/9/1412H, Mar. 5, 1992). <<https://www.boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25>> [in English].
8. Basu, A., Jaising, I., Collective, L. (2005). Violence Against Women: A Statistical Overview, Challenges and Gaps in Data Collection and Methodology and Approaches for Overcoming Them. UN Division for the Advancement of Women in collaboration with Economic Commission for Europe (ECE) and World Health Organization (WHO) Expert Group Meeting. *Division for the Advancement of Women*. [in English].
9. Dhir, A.A. (2005). Human Rights Treaty Drafting through the Lens of Mental Disability: The Proposed International Convention on Protection and Promotion of the Rights and Dignity with Disabilities. *Stan. J. Int'l L.*, 41, 181. [in English].
10. Eisold, B. (2016). Some Present-Day Asylum Seekers in the US: Machismo and "Women on the Run". *La camera blu. Rivista di studi di genere*, 14. [in English].
11. Espelage, D.L., Hong, J.S., Rinehart, S., Doshi, N. (2016). Understanding types, locations, & perpetrators of peer-to-peer sexual harassment in US middle schools: A focus on sex, racial, and grade differences. *Children and youth services review*, 71, 174-183. [in English].
12. The Total Population In 2017 (Saudi Arabia). *General Authority for Statistics*. <<https://www.stats.gov.sa/en/indicators/1>>. [in English].
13. Hersch, J. (2015). Sexual harassment in the workplace. *IZA World of Labor*. [in English].
14. الطائف في فتاه ل شابين من ولفظي جسدي تحرش <<https://www.youtube.com/watch?v=5wS3TY4dQKc>>. [in Arabian].
15. Kalra, G., Bhugra, D. (2013). Sexual violence against women: Understanding cross-cultural intersections. *Indian journal of psychiatry*, 55(3), 244. [in English].
16. Matulewicz, K. (2016). Law's Gendered Subtext: The Gender Order of Restaurant Work and Making Sexual Harassment Normal. *Feminist Legal Studies*, 24(2), 127-145. [in English].
17. Miller, B.C., Moore, K.A. (1990). Adolescent sexual behavior, pregnancy, and parenting: Research through the 1980s. *Journal of marriage and family*, 52(4), 1025. [in English].
18. Powell, A., Henry, N. (2017). Sexual violence and harassment in the digital era. In *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Palgrave Macmillan, Cham, 205-220. [in English].
19. Sapiro, V., Campbell, D. (2018). Report on the 2017 APSA survey on sexual harassment at annual meetings. *PS: Political Science & Politics*, 51(1), 197-206. [in English].
20. Saul, B., Kinley, D., Mowbray, J. (2014). *The international covenant on economic, social and cultural rights: commentary, cases, and materials*. OUP Oxford. [in English].
21. Serantes, N.P., Suárez, M.A. (2006). Myths about workplace violence, harassment and bullying. *International*

- Journal of the Sociology of Law*, 34(4), 229-238. [in English].
22. Singla, A.K. (2015). Sexual harassment of women at workplace in India. *International Journal in Applied Studies and Production Management*, 1(4), 58-66. [in English].
 23. Taylor, L.D., Alexopoulos, C., Ghaznavi, J. (2016). Touchy Subjects: Sex in the Workplace on Broadcast, Cable, and Internet Television. *Sex Roles*, 75(9-10), 476-489. [in English].
 24. Ulusoy, H., Swigart, V., Erdemir, F. (2011). Think globally, act locally: understanding sexual harassment from a cross-cultural perspective. *Medical education*, 45(6), 603-612. [in English].
 25. Vogel, F.E. (2012). Shari 'a in the Politics of Saudi Arabia. *The Review of Faith & International Affairs*, 10(4), 18-27. [in English].
 26. Zippel, K. (2004). Transnational advocacy networks and policy cycles in the European Union: The case of sexual harassment. *Social Politics: International Studies in Gender, State & Society*, 11(1), 57-85. [in English].