

Opinion

# **Sexual harassment and legal claim: How litigation laid the ground for accountability after #MeToo**

Thursday 19 April 2018, by [MACKINNON Catharine](#) (Date first published: 23 December 2017).

**It was legal recognition that broke the rule of impunity that the more power a man has, the more sex he can exact from those with less power.**

Women's voices recounting sexual abuse being heard, believed, and acted on is a real change. The accountability for sexual harassment seen today, termed "voluntary compliance" in the discrimination field, has been driven primarily by mainstream and social media, not by litigation. But make no mistake. If sexual harassment had not been recognized as a legal claim for sex discrimination decades ago, powerful, prominent men would not be losing their lucrative jobs, political and academic positions, deals and reputations. Transforming a privilege of power into a disgrace so despicable that not even many white upper-class men feel they can afford to be associated with it took decades of risk, punishment and work, including legal work. It was legal recognition that broke the rule of impunity that the more power a man has, the more sex he can exact from those with less power. Destroying the legitimacy of what women previously just had to live through required effective legal intervention based on recognition of the reality that this practice of inequality is sexual and gender-based. Despite the inadequacies of the legal system, this breakthrough was a precondition for this moment of cultural transformation. And the moralistic conflation of the inappropriate sex of "sex scandals" with reports of sexual exploitation and predatory molestation is at last being disentangled. Most importantly, I suspect that a lot of the sexual harassment that has been a constant condition of women's lives since forever is not happening just now.

It is something of a miracle when anyone claiming sexual violation is believed, even if it takes multiple accusers. But the odds of being believed are irrelevantly improved by any kind of privilege – be it race, ethnicity, religion, class, celebrity status, nationality, caste, sexuality, age, gender, or combinations of these.

The prominence of the harasser stokes media interest, too, although anyone who sexually harasses women is plenty big to his targets. As stunning as the revelations have been to those who failed to face the long-known real numbers, the structural and systemic underbelly of this dynamic has only begun to be revealed. Sexual harassment, as I wrote in 1979, is "less 'epidemic' than endemic".

A lot of women's work, like the rest of women's lives, is sexualized. Working for tips in a restaurant to make anything close to a living wage, for example, largely requires women in effect to sell themselves sexually. The entertainment industry commodifies the sexuality of the women in it. The fact that so many of the exposed harassers in the entertainment field subjected their victims to a pornographic spectator sexuality, masturbating over them in real life like consumers do over women

in pornography, is no coincidence. Pervasively normalized, this is what an endemic abuse looks like.

In its fundamental dynamics, sexual harassment turns real work into a form of prostitution. The imperative to exchange sex for survival, or its possibility whether real or not, rules women's inequality, hence women's lives, worldwide. In prostitution, virtually all of women's and girls' options are precluded except for this one, making her consent to it, or choice of it, fraudulent and illusory.

Women who supposedly have human rights, including equality rights in employment and education, are reduced to this same floor of women's status when tolerance of sexual harassment, or sexual delivery in any form from objectification to rape, becomes a requirement in the paid labor force (including in paid housework, where it is widespread) or in educational or career advancement. As one prostituted female colleague once observed to me, "... and you have to do all that other work, too". This is what is being widely rejected today. If requiring sexual use as the price of survival is a human rights violation when combined with a real job or other entitlement, it certainly violates human rights when it is the only thing a woman is valued for. Yet it is not effectively illegal to buy a person for sexual use in most places. When will we see near unanimity of revulsion and rejection when sexual harassment's dynamic in its pure form - prostitution - is exposed? Or will those who report it - women and girls, men and boys, transgender persons - continue to be stigmatized, shamed, blamed, their violators defended? When will the men who outright buy others for sexual use be unmasked, rejected and penalized as the predators they are? That will be the transformation this one prepared.

Meantime, many social sectors are recognizing their obligation to foster environments free from sexual objectification, pressure or aggression, in which reporting of sexual abuse is welcomed rather than punished, accountability not impunity prevails for individuals or institutions that engage in or enable such abuse, and excellence and inclusion rather than hierarchy and fear actually operate as standards.

Real equality, finally, could begin here.

**Catharine A MacKinnon**

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**P.S.**

\* The Guardian. Sat 23 Dec 2017 10.00 GMT Last modified on Sun 11 Mar 2018 05.34 GMT:  
<https://www.theguardian.com/commentisfree/2017/dec/23/how-litigation-laid-the-ground-for-accountability-after-metoo>

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