PERCEPTION OF SEX DISCRIMINATION AND SEXUAL HARASSMENT AMONG BANK EMPLOYEES IN NIGERIA: A COMPARATIVE STUDY OF THE NIGERIAN AND THE BRITISH EMPLOYEE PROTECTION LAWS

THESIS SUBMITTED FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY AT THE DE MONTFORT UNIVERSITY, LEICESTER

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ABSTRACT

This study examines the level of sex discrimination and sexual harassment of female workers in Nigeria to understand the pervasiveness of the problem in the Nigerian context. An empirical investigation was conducted using the Nigerian banking sector as the case study. The United Kingdom Sex discrimination and sexual harassment laws were analysed to ascertain if the laws have been effective in addressing the problems in the United Kingdom and test their applicability in Nigeria. The results of the study showed that the perception of the level of sex discrimination and sexual harassment is not very high. However, this low level of perception could be due to the impact of social factors such as culture, religion and patriarchy. With regards to the impact of these social factors, key recommendations were made to educate citizens and make them aware of the ills and effect of sex discrimination and sexual harassment of women in societies and for the government to enact new laws to protect the female gender.
DEDICATION

This thesis is dedicated to my two lovely daughters, Nicole and Naomi for their love, patience and understanding through the years it took me to complete this research. And to all African girls – for a hope of a better society where they are given equal opportunities to be whatever they choose to be.
ACKNOWLEDGMENT

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CHAPTER ONE

INTRODUCTION

1.1 Background to Study and Theoretical Consideration

Sex discrimination and sexual harassment are highly pervasive problems in Nigeria and these have been exacerbated by the patriarchal nature of the society and the various cultures found amongst the various ethnic groups in the country. It is believed that these problems are transferred into work settings and have contributed to gender gaps found at senior management positions within organisations as well as create a hostile environment for women to earn a living. This study sets out to explore the occurrence of these problems at work in Nigeria and to find possible solutions in order to give women the opportunity to advance in their career as well as earn a living in a safe and conducive environment.

It has been recognised that the freedom of an individual is threatened if he is dependent on his employer for his salary and subsistence because of the greater economic power the employer has over the individual.\(^1\) The employee is rendered vulnerable to the powers of the employer and becomes susceptible to oppression as a result of the difficulty of changing jobs and the

fear of dismissal which reduces his chances of securing another job.² The workplace has been found to be a place where civil liberties of employees are significantly constrained and employers dismiss employees as punishment or retaliation for expressing opinions which are unrelated to their jobs.³ On the basis of the power imbalance which exists between an employer and his employee, the labour unions sought to bridge the gap of an unequal relationship that exists between them. Some writers argue that an imbalance still exists in some employment relationships which are not covered by collective bargaining and that the law has failed to protect employees from the powers of the employer.⁴

According to Rowan, employers exploit their employees by way of inadequate compensation, discrimination and invasion of privacy due to the inferior bargaining position of the employee.⁵ As a consequence of their vulnerability to exploitation, Rowan argues that employers should refrain from exploiting employees because they (employees) as persons deserve to be treated in a reasonable and respectable manner in terms of their remuneration, work practice and freedom of self. The restriction on treating employees unfairly in certain circumstances is what the anti-discrimination laws set out to do. According to Gardner, the primary aim of anti-discrimination law is to ensure that people are treated justly. This treatment (in the case of sex discrimination) is measured by the way members of the opposite sex are

² Ibid
³ Bruce B. (2007). The Cringing and the Craven: Freedom of Expression In, Around and Beyond the Workplace Business Ethics Quarter 2 Vol.7 pg 263-296
⁴ Blades, L. E. (1967), see also Bruce B. (2007) ibid
treated and the court when administering justice considers the relative positions of the parties involved.\textsuperscript{6} This relative position is the main concept of direct and indirect sex discrimination. Direct sex discrimination is said to have occurred where a person is treated less favourably than a person of the opposite sex while indirect sex discrimination is when a rule or standard is applied to a person or a group of people which puts a person of a particular sex at a disadvantage when compared to people of the opposite sex.\textsuperscript{7}

A common view in Nigeria is that employees’ rights and freedom are not respected and most employers make it a condition within their employees’ contract prohibiting them from belonging to trade unions.\textsuperscript{8} The condition not to belong to a trade union not only infringes on the employees’ employment rights as laid down by \textit{section 40 of the Constitution of the Federal Republic of Nigeria 1999 as amended} (herein known as the Nigerian Constitution) which states that “\textit{every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests...}” but it also infringes on their human right of Freedom of Association laid down by \textit{the Universal Declaration of Human Rights} (UDHR) and \textit{the International Labour Organisation} (ILO) Conventions 87 and 98 which have been ratified by the Nigerian government. Okene demonstrates that employers can continually infringe on employees’ rights of association because the government plays an

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\textsuperscript{7} Ibid

\textsuperscript{8} See National Executive Council: Continued Denial of Trade Union Rights in Nigeria. Nigerian Labour Congress \textup{http://www.nlcng.org/search_details.php?id=160} accessed on 03/04/17
\end{flushleft}
active role in suppressing the activities of trade unions;\(^9\) and according to Amao, the government achieves this by making the labour law less protective of workers in a bid to attract foreign investment.\(^{10}\) Furthermore, the Federal Ministry of Labour and Productivity which has the responsibility of enforcing the Nigerian Labour Act in the case of breaches by employers, lacks the political will to enforce the rights of employees. According to Amao, “as is usually the case, where the Minister refuses to refer a matter, employees are left without redress”.\(^{11}\) Prior to the National Industrial Court Act 2006, majority of trade disputes could only be initiated at the National Industrial Court (NIC) on the reference of the Minister of Labour without which the court would lack jurisdiction. However since the Act, parties to some trade disputes had the right to file their cases at the NIC after the failure of a conciliation or arbitration without the need to refer to the Minister. The Minister can in some circumstance still refer some labour disputes to the NIC but its wide discretionary powers are now subject to prerogative writs and other powers of the NIC\(^{12}\) which could in some cases leave the aggrieved without redress.

This study will look into a social phenomenon characterized by the on-going discriminatory treatment of employees by their employers with particular reference to female employees in the place of work in Nigeria and with a special focus on female bank workers. This is because the Nigerian banking

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\(^{11}\) Ibid

sector is amongst the largest employers in the country with 19 of the 22 banks having 5242 branches nationwide.\textsuperscript{13} The problem is considered a phenomenon because such acts of discrimination are socially and legally questionable. The focus of this study therefore is to understand to what extent sex discrimination and sexual harassment are problems to women at work and the current legal or other protections that these deprived workers may be entitled to in order to propose recommendations within the context under review.

There is no provision for sex discrimination or sexual harassment under the Nigerian Labour Act; however section 42(1) of the Nigerian Constitution has a general provision against discrimination of any Nigerian citizen based on their sex or other characteristics. This apparent gap between the Labour Act and the Constitution with respect to sex discrimination and sexual harassment is indeed a substantial reason to suggest that sex discrimination and sexual harassment at work is currently not actionable under the Nigerian legal system. This is the reason why a detailed analysis of the United Kingdom (UK) sex discrimination law will be carried out acting as a basis for adopting and standardising it if need be for Nigeria. There will not be any difficulty in adopting and standardising UK law for Nigeria because Nigerian legal system is based on the English common law by virtue of colonisation.\textsuperscript{14}

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\item \textsuperscript{14} Dina Y., Akintayo J.O. and Ekundayo F. (2005). Guide to Nigerian Legal Information \url{http://www.nyulawglobal.org/globalev/Nigeria.html} accessed on 27/10/16
\end{itemize}
1.2 Aims

The aim of this study is to examine the occurrence of sex discrimination and sexual harassment of female employees in the Nigerian labour market to understand how pervasive the problems are in the Nigerian context. The degree of pervasiveness of this social problem will determine if Nigeria needs anti-discrimination laws to end the occurrence of sex discrimination and sexual harassment at work or if Nigeria needs to find other non-legal solutions to reduce or eliminate its occurrence.

1.3 Objectives

To achieve the aim of this study, an empirical investigation will be carried out using Nigerian bank workers to determine how pervasive sex discrimination and sexual harassment is in Nigeria. The UK sex discrimination and sexual harassment laws will be analysed to ascertain if the laws have been effective in addressing the problems in the UK. This will form a basis for adopting and standardising them for Nigeria taking into consideration the socio-cultural differences between the Nigerian and UK societies when making policy recommendation to the Nigerian Senate.

1.4 Research Questions

To achieve the aims and objectives of this study, the following questions will be answered:
1. To what extent is sex discrimination detrimental to female workers in the Nigerian labour market?

2. Is legislation the appropriate instrument to check the occurrence of sex discrimination of female workers in Nigeria?

3. To what extent is sexual harassment detrimental to female workers in the Nigerian labour market?

4. Is legislation the appropriate instrument to check the occurrence of sexual harassment of female workers in Nigeria?

1.5 Context of Research

1.5.1 Discriminatory Practices in Nigeria

The Nigerian society has many factors that could impact on or enhance sex discrimination and sexual harassment of female workers. These factors include gender, patriarchy, culture, religion, and social norms. In traditional African society, women are subjected to unequal treatment on the basis of their sex and are denied access or unequal access to economic opportunities, status, power and privileges in society. In Nigeria, gender preference is prevalent where preference for male children to female children is encouraged due to the traditional and cultural beliefs that a son is important and needed for the continuity of the family lineage. As a consequence of this, women are viewed and treated as inferior from birth and any woman who gives birth to

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only female children will be considered to have had a misfortune befallen her. Her husband would be encouraged to take another wife who will bear him a son so his lineage does not go into extinction.16

In marriages, husbands are seen as the heads of the families while women are viewed as their dependants and inferior, who must obey, respect and follow their husbands’ leadership, instructions and decisions which are deemed as final.17 The patriarchal structure of the Nigerian society stratifies and differentiates on the basis of sex and has been used as a means for men to dominate in all sections of society as well as provide material advantages to them while restricting the roles and activities of women to the home with the general belief that a woman’s place is in the kitchen.18 Women in Nigeria are denied the same rights as their male counterparts and the justification for this is grounded in cultural beliefs and practices.19 Culture has been defined as the totality of the way of life of a given society and it regards women as subservient to men in mental and biological capacity which acts as a limiting factor in the development of Nigerian women.20 In some parts of the country, women and girls are denied inheritance rights because the culture holds that women cannot own property or inherit their father’s land or wealth because it is deemed that a girl belongs to the husband’s family upon marriage and her

17 Ibid
19 Abara C.J. (2012) supra at no.16
20 Ibid
share of wealth is in her husband’s house.\textsuperscript{21} As a consequence of being denied ownership of land and inheritance rights, women are restricted from having access to bank loans because of lack of properties to use as collaterals. For those who have collaterals, some financial institutions refuse them access to loans unless they obtain prior consent from their husbands and this denies them gender equality in economic opportunities. Their economic opportunities are further hindered in employment with private sector employers demanding that they sign a contract stipulating that they would not get pregnant within the first three years of their employment\textsuperscript{22} and single mothers denied paid maternity leave on the basis of their marital status.\textsuperscript{23} Culture further denies women any advancement in social status except for that acquired through their fathers or their husbands and a woman’s status is considered to be that of a wife, mother and housekeeper and their competence and activities are considered inferior to that of a man. This assumption is exacerbated by the fact that in some Nigerian societies, the man pays a bride price on his wife before marriage and she is regarded as his property and whatever achievements she makes would be ascribed to her husband.\textsuperscript{24}

Women in Nigeria are also politically marginalised with a small number of them in the Senate, House of Representatives and other political appointments and they are underrepresented in all political decision making

\footnotesize{\textsuperscript{21} Ibid; see also Kangiwa A.G. (2015) no.15 above}
\footnotesize{\textsuperscript{22} Abara C.J. (2012)}
\footnotesize{\textsuperscript{23} http://www.naijalegaltalkng.com/new/article/other-important-legal-info/208-maternity-leave-and-the-nigerian-labour-law accessed on 25/03/17}
\footnotesize{\textsuperscript{24} Kangiwa A.G. (2015)}
bodies.\textsuperscript{25} Women made up 7.2\% of the House of Representative (the lower house of parliament) and 8.3\% of the Senate (the upper house of parliament) in 2015 which puts Nigeria at the bottom amongst other African countries in terms of female representation in government\textsuperscript{26} and far below the 29\% of women elected in the UK in the same period\textsuperscript{27} and 30\% recommended by the Beijing Action Goal for Women in Parliament. Women in Nigeria are discouraged from going into politics because men believe that their priority should be about home keeping and not the way the society is governed.\textsuperscript{28} This can been seen in a recent comment made by Nigerian President Muhammadu Buhari at a press conference in Germany with German Chancellor Angela Merkel. President Buhari was asked to comment on his wife, Aisha Buhari’s criticism of his government and he responded saying that he does not know which political party his wife belongs to but he knows that his wife belongs to his kitchen, his living room and his other room. When probed further in an interview afterwards, he emphasised that his wife’s function is to look after him.\textsuperscript{29} If the president of Nigeria who is the leader of the country and whose greatest responsibility is to protect his citizens, reasons in such a manner and makes such comments about his wife, what then is expected of the common man in Nigeria?

\textsuperscript{25} Abara C.J. (2012)
\textsuperscript{26} See 2015 Official Statistical Report on Women and Men in Nigeria. See also African Human Development Report 2016: Accelerating Gender Equality and Women’s Empowerment in Africa
\textsuperscript{27} http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01250
\textsuperscript{28} Kangiwa A.G. (2015)
\textsuperscript{29} https://www.theguardian.com/commentisfree/2016/oct/17/wife-job-look-after-me-buhari-nigerian-girls ; https://www.youtube.com/watch?v=n4OhVv9NFbE ; https://www.youtube.com/watch?v=W4QwMZ1y9Wo
Religion is another factor which enhances and adversely impacts on the discrimination of Nigerian women. Some religion in Nigeria encourages early marriages of girls and this denies a girl an education and as a result her economic freedom as an adult is hindered.\textsuperscript{30} A disparity in the educational attainment between boys and girls in Nigeria has been established with significantly lower levels of women in tertiary institutions, teaching and medical professions recorded. It is widely perceived to be of less value and a waste of resources to educate girls who would eventually get married and belong to their husband’s family.\textsuperscript{31} Girls are also forced to terminate their studies when they get pregnant while in school and are not allowed to complete their education even after delivery as a means of deterrent to other girls to discourage them from engaging in sexual immorality. However, the boy who contributed to the girl’s pregnancy goes free without any punishment and is allowed to continue with his education as well as seducing other girls.\textsuperscript{32}

Religion can be used in some instances to an extreme to discriminate against women, for example some religion do not allow women to be delivered of their babies in hospitals because it is seen as a taboo to have a vaginal examination and girls are therefore taught how to deliver their babies without assistance which could lead to infection and death.\textsuperscript{33} Furthermore, under the Penal Code of Northern Nigeria which is based on Sharia law, husbands have

\textsuperscript{30} Abara C.J. (2012)  
\textsuperscript{31} Kangiwa A.G. (2015)  
\textsuperscript{32} Ibid  
\textsuperscript{33} Abara C.J. (2012)
a right to beat their wives for the purposes of correcting them without it being considered a crime. Battery and marital rape is also not considered a crime.\textsuperscript{34}

The foregoing discussion shows that the characteristics of gender inequality prevalent in the Nigerian society will make sex discrimination and sexual harassment of women at work more pronounced than it is in the UK. The following sub-section will look at the Nigerian legal system and the courts to demonstrate that the legal system and the court systems are well developed to handle any legal recommendations that may be proposed as the outcome of this study.

\textbf{1.5.2 Nigerian Legal System}

Nigeria has a federal system of government where powers of government are shared between the Executive, the Legislature and the Judiciary with each arm acting as a check and balance on the other two. There are three tiers of government at the federal, state and local levels with the diverse cultures, languages and interests of citizens protected.\textsuperscript{35} Nigeria is a Federation consisting of thirty six autonomous states equal to each other and a Federal Capital Territory located in Abuja. The Legislative Powers of the Federal Republic of Nigeria is vested in the National Assembly which consists of a

\footnotesize{\begin{itemize}
\item \textsuperscript{34} Ibid
\end{itemize}}
Senate and a House of Representatives\textsuperscript{36} while the legislative powers of the States are vested in the House of Assembly of each State.\textsuperscript{37} By virtue of \textit{section 299 of the Constitution}, all legislative powers vested in the House of Assembly of a State shall vest in the National Assembly in respect of the Federal Capital Territory. By virtue of \textit{section 4 of the Constitution}, the Federal Government through the National Assembly has exclusive powers to make laws for the federation with respect to any matter included in the Exclusive Legislative List without any interference from the State Governments. The Exclusive Legislative List contains items such as aviation, labour, defence, citizenship, arms and ammunitions. The Federal Government also has powers to make laws on matters included in the Concurrent Legislative List; however, these powers are shared jointly with the State Governments as stipulated in the Constitution. But where the laws made by the State Government contravene the laws made by the Federal Government, such State Laws will be declared null and void. The Concurrent Legislative List contains subject matters such as agriculture, health, education, housing and roads. By virtue of \textit{section 7 of the Constitution}, the House of Assembly of the States have exclusive powers to make laws on residual matters not included in either the Exclusive Legislative List or the Concurrent Legislative List and where the National Assembly legislates on a residual matter, it applies only in the Federal Capital Territory.

\textsuperscript{36} Section 4(1) of the Constitution
\textsuperscript{37} Section 4(6) of the Constitution
The legal system operational in Nigeria contributes to and reinforces the discrimination of women despite the government making an attempt to improve the status of women through legislation and non-policy measures. It is difficult to achieve gender equality in Nigeria as a result of the inconsistencies created by the application of the tripartite legal system that operates in the country which consists of Common Law, Islamic Sharia Law and Customary Law.\textsuperscript{38} The sources of Nigerian Law include Legislation, English Law, Customary/Islamic Law and Judicial Precedents. Legislation is the main source of law making and law reform in Nigeria and makes up the bulk of Nigerian laws.\textsuperscript{39} The Nigerian Constitution is the supreme law of the land and any other law which is inconsistent with the provisions of the Constitution will be declared null and void to the extent of the inconsistency.\textsuperscript{40} English Law consists of common law, the doctrines of equity and statutes of general application on January 1, 1900. English law continues to apply in Nigeria except to the extent that they have been modified by the Nigerian statutes\textsuperscript{41}. The Common Law principle of vicarious liability is applicable in Nigeria where an employer may be held vicariously liable to his employee for the injury caused by the tort of another employer in the course of his employment.\textsuperscript{42}

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\textsuperscript{40} Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999  
\textsuperscript{41} ILO, Industrial and Employment Relations Department - Nigeria  
\textsuperscript{42} Uvieghara E.E. (2000). \textit{Labour Law in Nigeria} Malthouse Press Ltd
\end{flushright}
Customary law is the law of the various indigenous people of Nigeria and was the only legal system in existence prior to the introduction of the English law and other systems of law which either displaced or modified the customary law. Customary Law is formed from the numerous customs of the various groups and tribes in Nigeria and governs issues such as customary marriages, divorce, child custody of customary marriages, succession and inheritance and land tenure. Customary law is recognised by the Constitution and is subject to necessary modification to remove any inconsistency with the Constitution. The Constitution provides for the Customary Court of Appeal and empowers the State Governments to create a Customary Court System. Customary law applies in the Southern States of Nigeria while Islamic law applies in the Northern States of Nigeria. The Courts will invalidate any customary law which is unconstitutional, repugnant to natural justice, equity and good conscience, incompatible with the existing law and contrary to public policy.

Judicial Precedent is the practice of following previous decisions of courts in earlier cases with similar facts to the case before the court. Where there is no prior existing law on an issue, the judge would give a decision on the case which then becomes a precedent which may be followed in future cases. The general rule of precedence would apply in such cases in future where lower courts are bound by the decisions of higher courts. The Court is one of the three Arms of Government in Nigeria whose duty is to interpret laws and

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43 Malemi E. (2009) at p.52
44 Ibid
adjudicate on matters brought before it. If a law enacted by the legislature is clear and free of ambiguity, the need for statutory interpretation will not arise and the court will be bound to apply the law as it is to meet the intention of the Legislature. Where the words used in the statutes are not clear and are ambiguous, it is the role of the court to ascertain the intention of the legislature when interpreting the law by using the rules of statutory interpretation (literal rule, golden rule and mischief rule) if such law is to be enforced in such a way as to avoid injustice arising from improper application of the statute. Every court in Nigeria is established by law which also defines its jurisdiction. Jurisdiction of a court is fundamental in every proceeding because a court which adjudicates a matter without jurisdiction does so in vain and its judgement is a nullity.

The Supreme Court of Nigeria is the highest court in Nigeria and its decisions are final and binding on all other courts in the country. The Supreme Court does not bind itself but can either decide to follow its earlier decision or overrule itself. The Court of Appeal is next to the Supreme Court in hierarchy. It has a number of justices and three of them must be learned in Islamic Personal Law and three in Customary Law. The Court of Appeal binds itself and all other lower courts in Nigeria. The Federal High Court is conferred with jurisdiction in respect of enforcement of fundamental human

46 Ibid at 127  
47 Ibid at 129  
49 Malemi E. (2009) at p.33  
50 Ibid at 14  
51 Ibid at 33
rights and other federal matters such as revenue of the government of the federation, customs and excise duties, banks and other financial institutions, citizenship, while the State High Court is established for each state of the Federation and has the widest civil jurisdiction under the Constitution. State High Courts are courts of Co-Ordinate Jurisdiction or Equal Power and its decisions are binding on all lower courts and they are bound by their earlier decision. However, a state court's decision is not strictly bound by other states' decisions but has a strong influence in reaching their decision.

Sharia Court of Appeal is established by the Constitution in the Federal Capital Territory and for any state that requires it. The court consists of a Grand Kadi of the Sharia Court of Appeal and such number of Kadis of the Court as may be prescribed by an Act of National Assembly. The Grand Kadi or Kadi must be a legal practitioner who has been qualified for a period of not less than ten years or attended and obtained a recognised qualification in Islamic law and had a considerable experience in the practice of Islamic law or is an Islamic law scholar. The court does not have original jurisdiction but only appellate or supervisory jurisdiction in respect of Islamic Personal Law relating to Muslims regarding issues such as marriage, custody of children, gift, Will, succession where testator was a Muslim, a person of unsound mind, parties if they are Muslims and have requested the court of first instance to determine the issue in accordance with Islamic personal law and any other

52 Afolayan A.F. and P.C. Okorie (2007) at p.21, see also Malemi E. (2009) at p.177
53 Malemi E. (2009) at p.33
issue as may be conferred on it by an Act of the national Assembly. On the other hand, Customary Court of Appeal is established for the states that require it and in the Federal Capital Territory. It consists of a President and such number of judges of the Customary Court of Appeal as may be prescribed by an Act of the National Assembly. The court does not have an original jurisdiction but only appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law.

The Magistrate Court is not a direct creation of the Constitution but its creation has been enabled by the Constitution. Every state of the Federation has its own laws and provides for Magistrate Courts. Their decisions are not binding on any other court and they are not bound to follow their earlier decisions. Area Courts exist in the Northern States of the country and in the Federal Capital Territory. They are regulated by the laws of the states that have them. They are the same as Customary Courts and perform the same functions in relation to Islamic Personal Law and are found in the northern part of the country. In some northern states, they run side by side with Sharia Courts while some northern states have replaced them with Sharia Courts. Only persons subject to the jurisdiction of Area Courts can institute an action in that court. Sharia Courts have been established in some Northern states as a replacement for Area Courts on Matters of Islamic Law. Customary Courts exist in the southern states as an alternative to the Area Courts in the

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55 Ibid at 37
56 Ibid at 38
57 Malemi E. (2009) at p.33
59 Ibid at 44
North. The courts are regulated by state laws. Some states may confer more jurisdictions on the courts than others such as issues relating to marriages constituted under customary law.

The National Industrial Court is a specialised court not directly established by the Constitution but created by an Act of National Assembly known as the National Industrial Court Act 2006. The Act states that the court shall be a Superior Court of Record with powers of the High Court. This is found to be inconsistent with Section 6(5) of the Constitution which lists the Superior Courts of Record as recognised by the Constitution. The court has exclusive jurisdiction in civil cases and matters relating to labour including trade unions, industrial relations, conditions of work, restraint of strike action. The courts jurisdiction also includes dispute over the interpretation and application of the human rights provision of the Constitution, dispute on national minimum wage, unfair labour practices or international best practices in labour, dispute arising from discrimination or sexual harassment at workplace, child labour or child abuse and human trafficking. The court has jurisdiction throughout the federation in respect of the matters listed but is divided into judicial divisions for the purpose of exercising its jurisdiction. In view of the above discussion on the court system in Nigeria, it is clear that if a law is enacted prohibiting sex discrimination and sexual harassment, the court system is well structured to handle such cases and there will be no need for creation of new courts.

60 Ibid at 45
The statutes that apply to employment in Nigeria are the Constitution, the Labour Act of 1974 and the Trade Disputes Act (TDA) of 1976; Nigeria is also a governing member of the International Labour Organisation (ILO) and has ratified some of its conventions such as convention 111 which addresses discrimination. Nigeria also ratified the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) in 1985. However ratified international laws and Treaties are not applicable unless a corresponding law has been enacted by virtue of Section 12(1) of the Constitution which states that: “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly”. Without strict measures in place to protect women from sex discrimination and sexual harassment, random undocumented cases have been common place within the Nigerian society. Such cases range from impulsive dismissal of employees by middle level managers in big organisations or business owners in a small scale enterprise to the demand for sexual gratification from female employees by their superiors for promotion or to remain in their jobs, refusal of which will lead to their dismissal. In some cases of female employees having to render sexual gratification, other females as well as male colleagues have often accused the females rendering such gratification of using their femininity to seek favours from powers that be within the organisation thereby making such acts an inherent norm of the immediate organisation and society at large.  

62 Information gained during a pre-proposal interview
practice is worsened by the fact that there is no legislation against sexual harassment in Nigeria and is treated as personal problems between the employer and the employee which they are expected to resolve between themselves.\(^{63}\) Women have also been known to be dismissed after their employers learnt that they were pregnant and working mothers have been known to have to return to work after as little as one month post-delivery or risk unceremonious dismissal. In all these situations, recourse to a breach of their contracts of employment is non-existent.\(^{64}\) The ineffectiveness of the Labour Act stems from the absence of an express provision against sex discrimination in the Act leaving cases of unjust dismissal because of sex discrimination open to the discretion of the Minister in charge of the Ministry of Labour. And according to Amao, employees have no further redress should the Minister decide not to take their cases further.\(^{65}\) Consequently, the breach of the provision of the Act by employers is often met by insufficient penalties.\(^{66}\)

The study will carry out a thorough examination of existing sex discrimination and sexual harassment laws in Nigeria, the UK Equality Act and extant literature to map the existing theoretical and legal views on the subject matter. This study will also focus on the Nigerian banking sector because it is one the most organised employer of domestic graduate labour. The proposed sample set will be operational employees of Nigerian banks because the industry cuts across a representative spectrum of Nigerian identity in terms of gender,

\(^{64}\) Information gained during a pre-proposal interview  
\(^{65}\) Amao (2006)  
religion, ethnic and geographical spread as most Nigerian banks have a nation wide outreach and employ across multiple educational disciplines. An empirical investigation will be conducted using questionnaires as data gathering tools to determine the existence and extent of sex discrimination and sexual harassment. The final analysis will be targeted at highlighting the nature and extent of sex discrimination and sexual harassment of female workers in the Nigerian labour market as well as propose legal recommendations for protecting the rights of such female workers.

1.6 Structure of Research

The research is structured as follows:

Chapter One – Introduction: This chapter seeks to give an insight into the contextual background of the research. It looked at the research questions, aims, objectives, research problem and research outline.

Chapter Two – Legal Perspectives: This chapter will outline the legal history and development of the UK sex discrimination laws as well as examine the anti-discrimination legislation currently in force in Nigeria. To achieve this, the definition of sex discrimination in the UK will be identified as a reference point to determine when a breach is deemed to have occurred. This will help determine what trends and drivers can be standardised for application in the Nigerian context.

Chapter Three – Literature Review: This chapter will look into existing
theoretical views and opinions from journal articles.

**Chapter Four – Methodology:** This chapter will discuss the research philosophy, research design, and research method.

**Chapter Five – Discussion and analysis result**

**Chapter Six – Conclusions and Recommendations:** The conclusions will be based on the outcome drawn from existing literature and evidence provided from chapter five. This chapter will serve as an original contribution to knowledge as well as propose reforms to the Nigerian laws.
CHAPTER TWO

LEGAL PERSPECTIVES

A review of past and present legislation on sex discrimination in the United Kingdom and Nigeria will be carried out in this chapter to determine the effectiveness of the law and what needs to be accomplished to make the law more effective to eliminate sex discrimination and sexual harassment at work. A brief historical review of the UK Sex Discrimination Law will be carried out followed by a consideration of the relevant parts of the Equality Act 2010. Based on this review and the subsequent review of literature in the next chapter, it will be clear what needs to be achieved to improve the lives of working women in Nigeria learning from the history and mistakes of the sex discrimination legislation in the United Kingdom.

Part 1 United Kingdom

2.1 Overview of the Legal Perspectives

Evidence from literature suggests that as far back as the nineteenth century, women were legally placed under the authority of men especially in marriages. A married woman was legally regarded as a minor with absolute control of her and her property residing in her husband. Her existence was under the authority of her husband and she had no right to the custody of their
children. Women were precluded from participating in politics due to the belief that they were irrational beings and should be restricted to the home. A woman’s natural position was believed to be that of social and domestic life. When women were later granted the right to vote at the local levels with the exception of married women, this was interpreted not to include the right to contest for an election as women were deemed not fit to hold public office.

An attempt was made to alleviate women’s plight through the Sex Disqualification (Removal) Act 1919 enacted by Parliament to remove discrimination by making it unlawful to disqualify anyone based on their sex. The Act made it possible for women to go into some occupations such as holding civil or judicial offices, or teaching at the universities, which were initially restricted to men during the world wars. At this time, trade unions fought for women’s rights and pushed for equal pay between men and women and the right to maternity pay. The Trade Union Congress later pushed for the government to enforce the International Labour Organisation (ILO) Convention No 100 of 1951 on Remuneration for Men and Women Workers, which proposed the principle of equal pay for men and women for work of equal value without any discrimination based on sex. Some local governments applied this principle of equal pay for equal work but met with

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68 Ibid at p.28
69 Ibid at p.29
70 Sec. 1 of the Sex Disqualification (Removal) Act 1919
72 Ibid at p.517
73 ILO Convention No. 100 of 1951
some resistance. In *Roberts v Hopwood*\(^{74}\), Poplar Borough Council resolved to pay the same wage to their lowest grade of staff regardless of their sex but the district auditors challenged this decision on the grounds that the pay was excessive and there was no lawful ground to pay women the same rate as men. The House of Lords held that though the councillors had discretion to set the wage rate but that they had acted unlawfully by exceeding their discretion by paying above the market rate and paying women the same rate as men. It was not until 1955 that the government introduced equal pay for equal work to the civil service and the public sector. Initially, the government was reluctant to legislate on the issue but after much social confrontation, *the Equal Pay Act 1970* (EPA) was enacted to remove pay inequality by reinforcing equal pay for equal work of the same value.\(^{75}\) This legislation came into force in 1975, the same year *the Sex Discrimination Act 1975* (SDA) was enacted which encompassed a more general principle of equal treatment by removing discrimination either directly or indirectly on the grounds of sex in education, employment or provision of services.\(^{76}\)

In a bid to strengthen its anti-discrimination law, UK borrowed from the model laid down by the United States’ *Title VII of the US Civil Rights Act 1964*. *The Civil Rights Act* came as a reaction to the civil rights movement for equality of opportunities as a result of race and colour discrimination in employment and services. It was enacted to abolish discrimination in the provision of private and public services and in employment and restricted ‘disparate treatment’

\(^{74}\) [1925] AC 578

\(^{75}\) Deakin, S. and G. Morris (2009) at p.517

\(^{76}\) Fredman S. (2002) at p.32
based on one’s race or sex as well as prohibit ‘disparate impact’. These phrases were termed ‘direct discrimination’ and ‘indirect discrimination’ respectively in the UK’s *Sex Discrimination Act*. A detailed discussion on the concept of direct discrimination and indirect discrimination will be carried out below.

Another influence on anti-discrimination law in the UK is the European Union law. The Treaty of Rome (also known as the Treaty Establishing the European Community – EC) created the European Union. The United Kingdom joined the European Union on the 1st January 1973, and by doing this gave up its sovereignty over some aspects of the law to the Union such as the sex equality law. The government and the courts had a duty to make sure that the *Equal Pay Act* and the *Sex Discrimination Act* conformed to the European Union law, and where the contrary was the case, the European Union law would supersede.77

### 2.2 Sex Discrimination

The Sex Discrimination Legislation was introduced as part of a political initiative to promote equality for men and women on the grounds of sex and marital status. *The Sex Disqualification (Removal) Act of 1919* which was enacted to remove all forms of discrimination against women did not achieve its aims because women were still denied the rights to be paid on an equal basis as men for jobs of equal value although they had been given

opportunities to work in the civil service and teaching professions. During a Parliamentary Debate on issues surrounding sex discrimination, Mr Bence argued that the government has failed to put an end to discrimination of female workers even after the civil service had accepted the principle of equal pay because the government was more concerned about the financial and economic implications of enforcing the law rather than putting an end to discrimination. Members of Parliament applied pressure on the government over the years to enact laws to ensure equal rights for women and Mr Bishop made various suggestions on how this could be achieved such as amending the Sex Disqualification (Removal) Act of 1919 so as to make it a criminal offence to discriminate against women. He also wrote to the Secretary of State for Trade and Industry and referred him to the Report of Monopolies Commission on professional services that the sex of an applicant should not be a condition of employment unless there was a genuine occupational reason why a particular sex was required and that the profession should re-examine their practices with a view to abolishing sex discrimination. Baroness Summerskill argued that there was still sex discrimination in education which was contrary to the Sex Disqualification (Removal) Act because higher standards were set for female applicants than male applicants for gaining admission into medical schools. Lord Belstead opposing this view argued that admission criteria is decided by individual universities and not a matter for the government to decide upon or enforce the law if the law

78 “Equal Pay” HC Deb 13 March 1952 vol. 497 cc1786-94
79 “Women (Fair Treatment)” HC Deb 12 February 1971 vol. 811 cc271-2w
80 “Professions (Sex Discrimination)” HC Deb 25 June 1971 vol. 819 cc 369-70w
81 “Northern Universities’ Entrance Standards” HL Deb 13 July 1971 vol. 322 cc183-8
had been contravened but that it was up to any woman who felt that she had been aggrieved to bring a civil injunction against the offending university.\textsuperscript{82}

In spite of the 1919 Act, women were still treated as having inferior rights to men and there were still many barriers which prevented women from participating fully in the country’s economic activities.\textsuperscript{83} For instance, Baroness Summerskill stated that there was a shortage of doctors in the country and women were not given a fair chance to get into the medical profession instead doctors were brought in from overseas to fill in the vacant roles.\textsuperscript{84} Mr Hamilton supported by some members of the House put forward an Anti-discrimination Bill to foster a means to secure equal rights for all persons in employment, training and promotion irrespective of their gender. It was the practise at the time that women were employed in jobs which were regarded as women’s jobs and such jobs were regarded as an extension of their traditional domestic role\textsuperscript{85}. According to Baroness Seear, there were two distinctive labour markets – the customary women’s jobs and the customary men’s jobs and women’s jobs were always located at the bottom of the labour market with women dominating the semi-skilled and the unskilled work.\textsuperscript{86} She affirms that the Bill sought to merge the two labour markets with a view to ensuring fair rights to an applicant most suited for the job on the basis of their qualities and qualifications and not on the basis of their sex. She was convinced that sex discrimination would be radically reduced if the

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\textsuperscript{82} Ibid  \\
\textsuperscript{83} “Anti-Discrimination Bill” HC Deb 28 January 1972 vol. 829 cc1812-46  \\
\textsuperscript{84} “Northern Universities’ Entrance Standards” HL Deb 13 July 1971 vol. 322 cc183-8  \\
\textsuperscript{85} Ibid  \\
\textsuperscript{86} “Anti-Discrimination (No.2) Bill (H.L)” HL Deb 14 March 1972 vol. 329 cc334-421
\end{flushright}
government adopted the approach used in Sweden and Scandinavia where the governments in a bid to put an end to sex discrimination examined steelwork which was regarded as traditional men’s job to determine which aspect of the job women had the ability to do but were not allowed to because of their sex. In order to achieve this, a systematic examination of the job functions were carried out and it was found that only one aspect of the job was unsuitable for women due to physical strength and women were employed and trained for other functions of the job and this method proved successful.

Mr Sharples in contrast argued that women should remain in traditional domestic roles such as food industries, clothing and nursing because they are incapable of carrying out some functions in a large selection of industries such as engineering which are done by men. He also argued that rather than being denied for the roles that women chose not to compete with men and apply for the roles because they knew they were incapable of performing the functions of the job. He accepted that there was discrimination in employment but that legislation was not the right way of stopping it. He also argued that the Bill did not consider the fact that men and women are biologically different and due to this difference that different sexes should be qualified to carry out different functions in society. Dame Patricia Hornsby-Smith supported his view that legislation was not the right method of eliminating discrimination but by applying pressure on the various government departments to recruit women on the basis of their merit; and Baroness Sharps on the second reading of the 87“Anti-Discrimination Bill” HC Deb 28 January 1972 vol. 829 cc1812-46
Bill affirmed that persuasion and education was needed in changing people’s attitudes towards discrimination.

The argument that women did not compete against men in the traditional men's jobs was refuted by Dr Summerskill. She was of the opinion that women did not apply for these jobs because they knew they would not be selected for the jobs if they applied and this was one of the reasons the Bill was needed to give women chances to compete with men for jobs which they wished to apply for and be trained for.\textsuperscript{88} Lord O’Hagan argued that although men and women are biologically different, it would be unreasonable to assume that they were different in every aspect.\textsuperscript{89} The differences we ascribe to the male and female genders are mainly due to our associations and what we have learned in our environment to ascribe different attributes to the male gender and others to the female gender. He affirmed that through our culture, customs and intellectual heritage, our ideas about the different sexes are formed and conditioned to accept what is or is not appropriate for each sex.

Mrs Sally Oppenheim argued that the Bill was not expected to eliminate injustice or discrimination or to change people’s attitudes towards discrimination but would discourage it and make it more difficult to practise.\textsuperscript{90} Lord O’Hagan was of the view that the Bill would succeed like the Race Relations Act 1968 because it formed a major step in the process of eliminating discrimination; it would start off by making a declaration and when there was a law which could be enforced, employers would be deterred from

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\textsuperscript{88} Ibid
\textsuperscript{89} “Anti-Discrimination (No.2) Bill (H.L)” HL Deb 14 March 1972 vol. 329 cc334-421
\textsuperscript{90} “Anti-Discrimination Bill” HC Deb 28 January 1972 vol. 829 cc1812-46
breaching the law and they would find ways to eliminate discrimination in their places of work, which would encourage them to learn and be educated and in effect infuse new attitudes in society.91

The Sex Discrimination Bill (formally Anti discrimination Bill) was passed into law as the Sex Discrimination Act 1975. The Act restricted discrimination on the grounds of sex or marital status, and applied only to education, employment and provision of services and included acts carried out by public officers and on behalf of the crown covering both contractual and non-contractual obligations.92 The provisions of the Act applied equally to men and women with the requisite modifications,93 but the special treatment given to women in connection to pregnancy or childbirth was not to be taken into account when applying the Act to men.94 There were exceptions where discrimination was allowed such as in organised religion, charities, sports, acts done under statutory authority etc.95 The Act adopted the concept of disparate treatment and adverse effect used in the US Civil Rights Act 1964 and termed them direct and indirect discrimination respectively. The concept of direct and indirect discrimination will be analysed below.

After the enactment of the Sex Discrimination Act, the law fell short of meeting the requirements of the Equal Treatment Directive and the EC challenged the UK on the fact that its laws were inadequate to remove discrimination from employment such as provisions for exceptions for private households and

91 “Anti-Discrimination (No.2) Bill (H.L)” HL Deb 14 March 1972 vol. 329 cc334-421
93 Sec. 2(1) of the Sex Discrimination Act
94 Sec. 2(2) of the Sex Discrimination Act
95 Sections 19, 43, 44 and 51 of the Sex Discrimination Act
small undertakings; discriminatory retirement age; ‘protective measures’ limiting women’s working hours and access to some kinds of work and no provisions for extension of rights to pregnant workers. In a bid to bring the law in line with the Equal Treatment Directive, various amendments were made to the Sex Discrimination Act to bring it in line with the requirements of the Directive.96

2.3 The Equality Act 2010

The purpose of the Equality Act is to unify all the anti-discrimination legislation97 and make it easier to administer by a single commission. The Equality Act primarily contains similar provisions as the now defunct Sex Discrimination Act except for some modifications in the wording. The discussion on sex discrimination under the Equality Act will also include brief discussions and amendments under the SDA. This is because the concepts and case law used in the Sex Discrimination Act still applies under the Equality Act. The Act also clarifies the meaning of discrimination, harassment and victimisation and applied them across all “the protected characteristics”. Section 4 of the Act lists protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief and sexual orientation. For the purpose of this thesis, 

96 Some of these amendments include the shift of burden of proof from the claimant to the respondent as soon as the claimant establishes her case; re-definition of harassment to remove the link between the harassment and the sex of the harassed as well as enabling a third party bring a case of harassment if they found the conduct offensive; and making it unlawful for an employer not to take reasonable steps to prevent an employee from being sexually harassed.
97 Discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
consideration will only be given to the protected characteristics of sex except in some cases where consideration will be give to the other characteristics if necessary to support the analysis.

### 2.3.1 Direct Discrimination

Section 13(1) of the Equality Act defines direct discrimination as –

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

From the above definition, in bringing a case of direct sex discrimination, the claimant has to show that she has been treated less favourably than a man because of her sex for there to be a finding of liability. To achieve this, the claimant has to be compared to a person or a hypothetical person of the opposite sex in a similar or comparable situation. This provision applies equally to a man with the necessary modifications except in the cases of pregnancy where women are granted special provisions.\(^8\) In Barclays Bank Plc v. James, J was employed in 1969 by the bank with the policy that men retired at the age of 65 and women at the age of 60. The bank later adopted a retiring age of 60 for all new staff. J was dismissed at the age of 60 and she brought a claim of unlawful sex discrimination on the ground that a man who had joined the bank at the same time as she did would have retired at the age of 65. It was held that she had been treated less favourably than a man on the grounds of her sex. It was held in the case of R v Birmingham City Council ex

\(^8\) Sec 18(7) of the Equality Act 2010  
\(^9\) (1990) I.C.R. 333
parte Equal Opportunities Commission[^100] that in order to establish less favourable treatment by reason of one’s sex, it is enough that a person is deprived of a choice which was valued by him/her. It is not necessary to prove that that which was lost was better.

The main basis of direct discrimination is to prevent anyone from being treated adversely or to be pre-judged on the basis of a commonly held view about a group he or she belongs to but rather to be treated on their own merits and qualities.[^101] In Aylott v Stockton on Tees Borough Council[^102], Lord Justice Mummery found that direct discrimination can occur when assumptions are made about a claimant in regards to their group characteristics irrespective of whether the claimant or most members of the group have those characteristics. Under the SDA, the words ‘on the grounds of’ used in the Act was interpreted widely to cover cases where the reason for the discrimination was a generalised assumption that people of a particular sex possess or lack certain characteristics. So a decision to treat a woman in a particular way for reasons which contain generalised assumption about a woman’s behaviour is a decision made ‘on the grounds of her sex’.[^103] The words “on the grounds of” was replaced with “because of” to recognise the need to use plain English and not intended to change the legal definition.[^104]

Some of the changes and wording used in the Equality Act has brought about a new type of discrimination known as discrimination by perception and

[^100]: [1989] IRLR 173
[^101]: Deakin, S. and G. Morris (2009) at pg.530. See also R (on the application of European Roma Rights Centre) v Immigration Officer at Prague Airport [2005] IRLR 115
[^102]: [2010] IRLR 994
[^103]: Horsey v Dyfed County Council [1982] IRLR 395
[^104]: See the Explanatory notes to the Equality Act 2010
association. The definition of direct discrimination refers to less favourable treatment of a worker because of “a” protected characteristic. As a result of the new definition, protection is extended to some protected characteristics but remains the same for others. For instance it extends protection to sex discrimination based on perception and association which was previously not applicable as a result of the former definition ‘on the grounds of her sex’. While the protection for race discrimination remains the same because the former provision had wider protection as a result of the former definition ‘on racial grounds’. As a result of the reference “a” protected characteristic, the definition covers a protected characteristic of someone with whom the worker is associated with e.g. friends; of people with whom he comes in contact with e.g. customers and finally because the employer wrongly perceives the worker has a protected characteristic e.g. the employer thinks the worker is gay.105

Section 14 of the Equality Act intended to introduce ‘dual characteristics discrimination’ in direct discrimination claims. This is discrimination on more than one ground of protected characteristic. The Act intended to allow a claim for a combination of two relevant characteristics where the worker was treated less favourable than others because of two protected characteristics but did not intend to allow a combination of direct and indirect discrimination.106 The government recognised that some people can experience discrimination because of a combination of protected characteristics which was referred to

105 Lewis T. (2011) at 370
as intersectional discrimination.\textsuperscript{107} This provision was considered because of the complexity and multi-faceted identities of different people in society and the law at the time was not sufficient to protect people from dual discrimination as a result of their differences. In \textit{O'Reilly v BBC & Anor},\textsuperscript{108} where the decision by the respondent to refresh the look of a programme on BBC saw the 51 year old claimant removed from the programme. The new presenters were in their 30s apart from the main presenter John Craven who was 68 years old. The claimant filed a case claiming age and sex discrimination. The Employment Tribunal (ET) after considering all the evidence concluded that if the claimant had been 10 to 15 years younger, she would have been given proper consideration to remain on the show as a presenter. The ET held that the discrimination was not justified but did not accept that the decision to remove the claimant involved combined age and sex discrimination. The ET was of the view that if the claimant had been a man of the same age and skill set, that he would not have been retained and therefore held that the removal of the claimant from the programme was as a result of age discrimination.

The dual characteristics discrimination was never adopted when the Equality Act came into force. According to the Government, not introducing it will reduce the cost of regulation and save businesses money. Failure to adopt this law will deny claimants with multi-faceted identities protection under the


\textsuperscript{108} 2200423/2010 (ET)
law. To show how this will deny claimants’ protection, an example given by the Government equalities office will be considered – “a bus driver does not allow a Muslim man onto her bus claiming that he could be a terrorist.” In a case like this, the Muslim man may find it impossible to prove either religious discrimination or sex discrimination if he had to bring separate claims of religion and sex discrimination. When considered separately, a comparison with a female Muslim will show that gender is not a factor in the discrimination while a comparison with another man will show that religion in itself is not a factor in the discrimination. The discrimination can only be established where a combination of both characteristics are present which will result in him being stereotyped as a potential terrorist. With section 14 of the Act not coming into effect, victims of such discrimination will not be protected. Despite this gap, victims of this type of discrimination may still get protection under the law by virtue of the Court of Appeal’s decision in Owen & Briggs v James109, where the court held that the protected characteristics is not required to be the sole reason on which the less favourable treatment is based, as long as it is an important factor of one of many factors in the decision. This was acknowledged by the House of Lords in Nagarajan v London Regional Transport110 that discrimination may be on racial grounds though it is not the sole ground for the decision. Also in O’Reilly’s case, the tribunal agreed that an individual could be discriminated against because of the combination of both her age and sex. In other words, a claimant can successfully bring a

109 [1982] IRLR 502
110 [1999] IRLR 572
claim for multiple discrimination if he is able to show that one of the protected characteristics is part of the reason of the unfavourable treatment.

Prior to the amendments in the SDA, the direct discrimination provision posed a problem where the discrimination was on the basis of the claimant’s pregnancy. There is no appropriate comparator for a pregnant woman because a man cannot get pregnant. Initially, the courts were of the view that discrimination on the basis of pregnancy was not sex discrimination and dismissed cases of pregnancy discrimination on the basis that there is no appropriate comparator. This was seen in the case of *Turley v Allders Department Stores Ltd*\(^ {111}\) where it was held that dismissal because of pregnancy cannot be held to be discrimination between the sexes by virtue of less favourable treatment as a man cannot get pregnant. The tribunal tried to resolve this problem by holding that a pregnant woman could be compared to a man with a long term illness. If an employer was able to show that he would dismiss a man who needed a long time off due to illness, he would not be discriminating against a woman if he dismissed her based on her pregnancy.\(^ {112}\) Lockton was of the view that this was an improvement on the existing argument but that a more sophisticated way of looking at it was that an employer indirectly discriminated against women by imposing a condition that they should not get pregnant while in employment.\(^ {113}\) The European Court of Justice (ECJ) brought an end to the problems posed by

\(^{111}\) (1980)I.C.R. 66
\(^{113}\) See Lockton D. (2010)
discrimination in pregnancy by ruling that discrimination in pregnancy is direct 
discrimination.

In Webb v. EMO Air Cargo (UK) Ltd\textsuperscript{114} it was held that the dismissal of a 
female worker on the grounds of her pregnancy or refusal to employ a woman 
of child bearing age because she may become pregnant was direct 
discrimination on the grounds of her sex because child bearing and the 
capacity for child bearing are characteristics of the female sex. The ECJ 
further held that the situation of a woman who found herself incapable of 
performing her job due to her pregnancy could not be compared to a man who 
could not perform his job for medical or other reasons. In addition, it was held 
that the dismissal of a pregnant woman employed for an indefinite period 
cannot be justified on the grounds that she cannot perform the essential part 
of her contract. The Equality Act now has a provision for pregnancy and 
maternity leave by setting out in section 18(2) of the Act that a person (A) 

discriminates against a woman if, in the protected period in relation to a 
pregnancy of hers, A treats her unfavourably — (a) because of the pregnancy, 
or (b) because of illness suffered by her as a result of it. This provision 
protects pregnant women from discrimination and anyone who treats a 
woman less favourably because she is pregnant will be deemed to have 
discriminated against her.

An important factor in direct discrimination is that the motive of the 
discriminator is irrelevant but what is relevant is the fact that the act is done 

\textsuperscript{114} (1994) Q.B. 718
because of a protected characteristic. It is sufficient to establish a link to show that the claimant was treated less favourably due to the acts of the discriminator.\textsuperscript{115} It was held in \textit{R (on the application of E) v Governing Body of JFS}\textsuperscript{116} that the motive for discrimination is irrelevant but that the grounds for discrimination are the factual criteria applied by the discriminator in reaching his decision rather than the motive for taking the decision. It was held in \textit{R v Birmingham City Council ex parte Equal Opportunities Commission}\textsuperscript{117} that the intention or motive of the defendant to discriminate was not a necessary condition to liability. The important factor was that the woman would have received the same treatment as the man but for her sex. In order to determine if discrimination has occurred, it should be looked at from an objective perspective rather than from a subjective one. In other words, a treatment will not be saved from being regarded as discriminatory for the fact that the discriminator lacked motive.\textsuperscript{118} This precludes direct discrimination from being justified and would not allow good reasons for distinguishing between men and women to act as a defence to direct discrimination. For example in \textit{Moyhing v Barts & London NHS Trust}\textsuperscript{119} where the Trust had a policy that required male nurses to be chaperoned when performing intimate examinations on female patients but female nurses were not required to be chaperoned when examining male patients. It was held that a male nurse who had to be chaperoned was subjected to a less favourable

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{115} Ibid; James \textit{v.} Eastleigh Borough Council [1990] 2 A.C. 751
\item \textsuperscript{116} [2010] IRLR 136
\item \textsuperscript{117} [1989] IRLR 173
\item \textsuperscript{118} See James \textit{v} Eastleigh Borough Council [1990] 2 A.C. 751
\item \textsuperscript{119} [2006] IRLR 860
\end{itemize}
\end{footnotesize}
treatment than their female counterparts, and this could not be justified because the treatment was on the grounds of their sex.

A benign motive for the unfavourable treatment cannot act as a justification if the treatment is based on a prohibited ground. This was the fact in the racial discrimination case of *Amnesty International v Ahmed*¹²⁰ where the EAT held that Amnesty International had directly discriminated against Ahmed, a Sudanese woman for refusing to appoint her as a Sudanese researcher on the reason that her ethnic origin would compromise the organisation’s impartiality or perceived impartiality which may impact on their reputation as well as expose her to safety risk when visiting the region. The question considered by the EAT was on what grounds the respondent received the treatment and it held that the treatment was on the ground of her ethnic origin and a benign motive for denying her the role was irrelevant.

Fredman argued that when direct discrimination has been established, there is no justification for it contained in the Discrimination Act or a defence contained in the EC Law. It is not enough to justify it on the basis that it serves the interest of the employer or social policies of the state or that it is expensive to rectify.¹²¹ The law has allowed justification of direct discrimination by employers on the basis of business needs only in relation to equal pay provided it is not based on sex. But in doing this, the justification had to be objective, it is not enough for the employer to say that it serves a business need; and in order to determine this, a strict test of proportionality

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¹²⁰ [2009] IRLR 884
¹²¹ Fredman S. (1992)
was used to test that it served a real business need and achieved its objective.¹²²

Fredman emphasized that in establishing a case of discrimination, it is irrelevant if the outcome of the treatment is harsh, but what matters is the fact that both sexes have been treated equally, either good or bad. She further opined that it can be implied from the concept of equality that equality can be achieved by according benefit to the discriminated group in order to be at par with the advantaged group or a benefit can be removed from the advantaged group to be equal to the disadvantaged group. This notion was held by Holmes as she stated “... if a detriment has to occur to someone, there is value in imposing the detriment on everyone, even though the action is good for no-one.”¹²³ The act of taking away benefit to be at par with the disadvantaged group has been seen in the pension scheme where the pension age for women was increased from 60 to 65 years to match the pension age for men; in doing this the benefit of lower pension age was taken away from women and increased to match men’s pension age.¹²⁴ Since the main aim of discrimination law is equality, Bamforth agrees with Fredman and Holmes that in order to achieve equality, resources could be taken from those who have and given to those who do not have. In an extreme measure to achieve strict equality, resources would be taken from those who have more and destroyed so that they can be at par with the rest. The principles of justice might not allow strict equality to prevail as it requires people to be treated

¹²² Ibid
¹²³ See Bamforth N., Malik M. and C. O’Cinneide (2008) at pg 238
¹²⁴ See Smith v. Advel (1994) European Court Reports 1-4435
equally but does not require that others are brought down to the same level in order to maintain equality between them.\textsuperscript{125}

\subsection*{2.3.1.1 The Burden of Proof}

Direct sex discrimination cases were difficult to establish because claimants found it difficult to prove that the respondent’s actions were as a result of the claimant’s sex. The respondent could give various reasons for the treatment of the claimant which they could allege was not based on the claimant’s sex.\textsuperscript{126} Although these problems were foreseen before the SDA was enacted, the problems were not addressed but were left to the judges to address in case law.\textsuperscript{127} The judges developed rules of proof that were to be used in direct discrimination cases which specified that if the tribunal was satisfied that the facts of the case suggested that there had been less favourable treatment without any clear or specific explanation from the employer for such treatment, the complaint would succeed.\textsuperscript{128} This rule was developed in the racial discrimination case of \textit{Khanna V Ministry of Defence}\textsuperscript{129} and endorsed in \textit{Baker V Cornwall County Council}.\textsuperscript{130} The courts went on to confirm that if discrimination took place in circumstances which were consistent with unfavourable treatment on the ground of sex or race of the claimant, that the tribunal should infer that an unlawful discrimination had occurred unless the employer could give a reasonable explanation to satisfy the tribunal.

\begin{thebibliography}{99}
\bibitem{125} See Bamforth N., Malik M. and C. O’Cinneide (2008)
\bibitem{128} Ibid
\bibitem{129} [1981] I.R.L.R 331
\bibitem{130} [1990] I.R.L.R. 194
\end{thebibliography}
Guidance was given in *King v The Great Britain-China Centre*\(^{131}\) that if the tribunal considered the explanation of the employer inadequate or unsatisfactory, it would be legitimate for it to infer that the discrimination was on the basis of the precluded ground. However it set out a rule that the tribunal should reach its conclusion on the balance of probabilities after hearing the evidence and that the tribunal was under no obligation to find unlawful discrimination where the employer could not give reasonable explanation for less favourable treatment of the claimant.

This approach was nullified by the provision of the *Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001* by setting out that the tribunal had a statutory obligation to the claimant to shift the burden of proof to the respondent as soon as the claimant established facts from which the tribunal could infer that discrimination had occurred.\(^{132}\) The burden of proof under this law was introduced as a result of *Article 4 of the Council Directive 97/80/EC Burden of Proof in Sex Discrimination* which provides that:

> Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or

\(^{131}\) [1991] IRLR 513

\(^{132}\) Regulation 4 the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001
indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”

The need to shift the burden of proof from the claimant to the respondent as soon as the facts have been established is due to the fact that direct discrimination is often hidden which makes it difficult for claimants to obtain information about the existence of discrimination. More often than not, the relevant information needed to establish a sufficient amount of evidence of the occurrence of discrimination is usually with the respondent which the claimant will not have access to. To lighten the burden on the claimant, the Directive provides that the claimant must establish primary facts on a balance of probabilities from which it may be presumed that the principle of equal treatment was not applied to them so as to raise a presumption of unlawful discrimination. As soon as the claimant establishes this fact, the burden must shift to the respondent to prove that he had not in fact discriminated against the claimant.

The Burden of proof has been incorporated into the UK Equality Act 2010 through section 136 (2) and (3) which provides that:

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.


(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

In the case of *Igen Ltd v Wong*¹³⁵ it was held that in deciding if discrimination has occurred, the tribunal had to go through a two stage process. The first is that the claimant has to prove facts from which a tribunal can conclude that in the absence of any adequate explanation that the respondent has committed or is treated as having committed the unlawful act of discrimination against the claimant. At this stage, the tribunal is required to make an assumption that the discrimination complained of happened though this assumption may be contrary to what actually happened. As soon as the claimant is able to prove facts from which the tribunal can make assumptions, the second stage of the process is then triggered. In the second stage of the process, the burden of proof is shifted on the respondent to provide an adequate explanation of events to prove that he did not discriminate against the claimant or commit the unlawful act or that he had a genuine reason for doing so. Unless the respondent provides an adequate explanation, the claimant will succeed. The tribunal is not required to divide the hearings into two parts to correspond with the two stage process but to hear all the evidence from which it would conclude if facts are proved or if the respondent had discharged the onus which had shifted to him.

¹³⁵ [2005] IRLR 258
In *Kent Police v Bowler*¹³⁶, the claimant complained about the way his grievance was handled by the respondent. The Employment Tribunal concluded that the senior officer who handled the grievance did so in a lackadaisical manner which suggested that he had a stereotypical view that Mr Bowler was being overly insensitive about being treated badly because of his race. He would not have treated another grievance in a similar offhand manner. The tribunal ruled that a prima facie case of unfavourable treatment on the grounds of race had been made out based on the stereotypical assumption. The respondent appealed and argued that the failings identified in the grievance process was not sufficient enough for the tribunal to rely on it to shift the burden of proof to the respondent that a prima facie case had been made out. The Employment Appeal Tribunal (EAT) was of the view that the tribunal’s conclusion that the incompetent handling of the grievance by the senior officer indicated a stereotypical view of race complaints without proof or supported assumption was wrong. The EAT referred to the decision of the Supreme Court in *Hewage v Grampian Herald Board*¹³⁷ that the burden of proof was on the claimant to establish facts from which in the absence of an adequate explanation, the tribunal can conclude that the respondent had committed the act of discrimination. The EAT held that in the present case, there were no adequate facts from which an inference can be drawn from the manner the grievance was handled to establish a claim of unlawful direct race discrimination and further held that the tribunal had made an error in law in concluding that a case of direct race discrimination had been established to

¹³⁶ UKEAT/0214/16/RN
¹³⁷ [2012] UKSC 37
reverse the burden of proof. This will ensure that claimants do not conflate employer’s incompetence with discrimination but that the act he complains of is motivated by one of the protected characteristics.

### 2.3.2 Indirect Discrimination

Section 19 of the Equality Act defines indirect discrimination as –

1. A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

2. For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

   a. A applies, or would apply, it to persons with whom B does not share the characteristic,

   b. it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

   c. it puts, or would put, B at that disadvantage, and

   d. A cannot show it to be a proportionate means of achieving a legitimate aim.

The purpose of indirect discrimination is to eliminate practices which have a
disproportionate impact on women and are not justifiable for any reason. The provision, criteria or practice (PCP) must put or would put workers with the protected characteristics at a disadvantage when compared with workers who do not share the same characteristics. The PCP does not have to apply to others but what is required is to test if it is discriminatory is to extrapolate it to others.\textsuperscript{138} Unlike the direct discrimination provision which ensures equal treatment, the indirect discrimination provision looks beyond formal equality towards more substantive equality of results.\textsuperscript{139} In \textit{Clarke v Eley (IMI) Kynoch Ltd}\textsuperscript{140} Browne-Wilkinson J stated that the reason for the introduction of the concept of indirect discrimination was to seek to eliminate those practices which had a disproportionate impact on women and were not justifiable for other reasons. A detailed discussion on formal and substantive equality will be carried out in chapter 3.

As originally enacted in the SDA, the tribunal encountered problems with indirect discrimination cases because the claimant had the burden of showing statistical evidence to prove that the proportion of her group who could comply with a condition or a requirement was considerably smaller than the group who could comply. According to Lockton, the tribunal encountered problems in deciding where the comparable workforce would be chosen from, whether nationally, locally or within that particular workforce.\textsuperscript{141} In \textit{London Underground v. Edwards},\textsuperscript{142} LU appealed an EAT’s decision that it had

\textsuperscript{138} See British Airways plc v Stamer [2005] IRLR 862  
\textsuperscript{139} See R (on the application of E) v Governing Body of JFS [2010] IRLR 136  
\textsuperscript{140} [1982] IRLR 482  
\textsuperscript{141} Lockton D. (2010)  
\textsuperscript{142} (1999) I.C.R.494
sexually discriminated against E, a single mother, who had organised her work pattern to fit with her child care needs. They required her to enter into a new contract and work a new shift rota. She was unable to comply with this while the other 20 female train operators and the 2,023 male operators could. It was held, dismissing the appeal, that in assessing whether the proportion of women who comply with a condition or a requirement was “considerably smaller” than the men who could comply with it, the appropriate pool would be all the train operators to whom the new rota would apply. The employment tribunal found that the pool comprised of 2023 male train operators which made up 100 per cent of those who could comply and 21 female train operators of whom the respondent was one who could not comply; the female operators made up 95.2 per cent of those who could comply. It was noted that the tribunal was entitled to use its discretion and take account of statistics showing the percentage of women who were single parents who had the responsibility of a child in contrast to the percentage of men in the same position, and the number of female operators as against the number of male operators.

This requirement has now been relaxed, instead the claimant is only required to show that she has or her group has been placed at a particular disadvantage than the other group. According to Lewis, the appropriate pool to choose from will depend on the facts of the case and the type of discrimination. Lewis is of the opinion that the pool should consist of the group

the provision, criteria or practice affects or would affect either negatively or positively and it should test the discrimination complained of.\textsuperscript{144} In \textit{Somerset County Council and Secretary of State for Children, Schools and Families v Pike}\textsuperscript{145} it was held that the appropriate pool for assessment for retired teachers who were in receipt of pension but returned to work on a part time basis expecting further pension would be all retired teachers and not all teachers. Lewis stressed that it was important not to define the pool so narrowly. Sedley LJ in his judgement in \textit{Allonby v Accrington & Rossendale College}\textsuperscript{146} stated that the identification of the pool is neither of discretion nor of fact finding but of logic which is capable of producing more than one outcome. But once the requirement or condition has been defined, there is likely to be only one pool which serves to test its effect. In order to measure the disadvantage, the Act requires comparing the proportions of people affected rather than absolute numbers\textsuperscript{147} and those who do not have an advantage or disadvantage should not be brought into the pool.\textsuperscript{148} It was held in \textit{Ministry of Defence v DeBique}\textsuperscript{149} that there is no universal law that states what the pool should be in a particular case but that the tribunal should consider their position in respect of the different pools available to them and choose from the pool which they consider will realistically and effectively test the particular case before them.

\textsuperscript{144}Lewis T. (2011) at 378
\textsuperscript{145}[2009] EWCA Civ 808
\textsuperscript{146}[2001] IRLR 364
\textsuperscript{147}Lewis T. (2011) at 379
\textsuperscript{148}See Somerset County Council v Pike [2009] IRLR 870
\textsuperscript{149}[2010] IRLR 471
In the recent case of *Essop and others (Appellants) v Home Office (UK Border Agency) (Respondent)*,\(^{150}\) the Supreme Court overturned the Court of Appeal decision that required members of the disadvantaged group to show why they have suffered a particular disadvantage and that each claimant must prove that he suffered the disadvantage. The Supreme Court held that for a finding of indirect discrimination to be valid, the provisions of the Act requires that a PCP puts a group at a disadvantage but there is no express requirement for an explanation of the reasons why that PCP puts the group at that disadvantage when compared with others. This ruling is important because a claimant is not placed with an onerous burden of proving the reason why the PCP puts his group at a disadvantage but can succeed by merely showing through statistics a causal link between the PCP and the disadvantage. The Supreme Court also held that the PCP does not have to put every member of the group at a disadvantage but that the proportion of the group who could comply with the PCP is smaller than the proportion who could comply. The disadvantage suffered by the individual must correspond with the disadvantage suffered by the group. However, where the individual disadvantage is not as a result of the PCP, it is open to the respondent to show that the casual link between the PCP and the individual disadvantage is absent.

Prior to the amendment, the tribunal encountered a problem in determining the detriment the claimant suffered because she could not comply with the condition or requirement. The claimant had to show that her group was less

\(^{150}\) (2017) UKSC 27
likely to comply with the condition or requirement. In *Moyhing v. Barts &
London NHS Trust*\(^{151}\), it was held that the Trust’s policy gave rise to a
detriment because where a chaperone was not available; it would mean that
the male nurse would not be able to carry out the procedure, therefore
causing him a detriment. After the amendment, the claimant did not have to
show that the disadvantaged group or the claimant had suffered a
disadvantage because they were not able to comply with the provision,
criterion or practice;\(^{152}\) what was required was that an identifiable workforce
must be shown to have suffered a particular disadvantage which the claimant
shared or to a group to whom it potentially applies.\(^{153}\) Lewis was of the
opinion that the Equality Act allows for extra evidence to prove a particular
disadvantage such as evidence from an expert witness.\(^{154}\)

A respondent can escape liability if he could show that the provision, criterion
or practice was a ‘proportionate means of achieving a legitimate aim.’

Mummery LJ stated in *R (Elias) v Secretary of State for Defence*\(^{155}\) that in
applying the proportionality test, the objective which the employer was trying
to achieve should be considered to determine if the objective and the
measure adopted were sufficiently important to justify limiting one’s
fundamental right. In a bid to justify indirect discrimination, the discriminatory
act had to be based on evidence and not on stereotypical assumptions about

\(^{152}\) See Deakin, S. and G. Morris (2009) at p. 552
\(^{153}\) See *Eweida v British Airways plc* [2010] IRLR 322
\(^{154}\) Lewis T. (2011) at 379
\(^{155}\) [2006] IRLR 934
the group.\textsuperscript{156} It was expressed in \textit{Allonby's case} that once a condition which has a disparate impact was identified, the tribunal was required to give a critical evaluation of whether the employer's reasons demonstrated a real need; if there was such a need; a consideration of the seriousness of the disparate impact it had on women should be taken and an evaluation of whether the need outweighed the disparate impact. The onus was on the employer to show that the requirement was objectively justified for economic, administrative or other reasons but he is not required to show that he balanced the adverse impact of the requirement against the needs of the company. It was the duty of the tribunal to balance the adverse impact against the needs of the employer and the aim he intended to achieve taking into account the circumstances and the degree of the discrimination caused to the employee.\textsuperscript{157} The tribunal had to be satisfied that the requirement was introduced for the reason which the employers put forward.\textsuperscript{158} The claimant could put forward alternative criteria that could have been adopted by the employer which she thought reasonable and if the tribunal thought that the employer should have considered and adopted them, the tribunal might find that the defence was not proved.\textsuperscript{159} Whether a requirement was justifiable was a question of fact left by Parliament for the tribunal to discover and if there was evidence for which it found a requirement justifiable, its findings were not liable to be disturbed on appeal.\textsuperscript{160}

\begin{footnotes}
\item[156] See Duncan N. (2010). \textit{Employment Law in Practice 9th Ed} Oxford University Press
\item[157] Cobb v Secretary of State for Employment and Manpower Services Commission [1989] IRLR 464
\item[158] Panesar v The Nestle Co Ltd [1980] IRLR 60
\item[159] See Cobb's case
\item[160] Mandla v Lee [1983] IRLR 209
\end{footnotes}
2.3.3 Victimisation

Section 27 of the Equality Act 2010 provides that:

A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

This section of the Act does not apply where the person is discriminated against by reason of the allegation made, if the allegation is false and not
made in good faith. The section applies equally to men and women with the necessary modifications. The purpose of the victimisation provisions in the Act is to protect employees who seek to rely on the Act.\footnote{Cornelius v University College of Swansea [1987] IRLR 141} This provision protects the claimant or any other person from being victimised for bringing an action under the Act. In bringing a case against the respondent for victimisation, it suffices to show that the respondent’s acts of victimisation were brought on in relation to performing the protected act.\footnote{Deakin, S. and G. Morris (2009) at p.599}

To establish less favourable treatment, a simple comparison between the treatment given to the complainant who has done a protected act and the treatment given to or would be given to one who has not done a protected act is required.\footnote{See Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830} The Act does not require a worker to compare his treatment with that of another worker who had not done the protected act neither is it to be determined by the application of a ‘but for’ test.\footnote{Ibid} In \textit{Northern Ireland Fire and Rescue v McNally}\footnote{[2012] EqLR 821} Higgins LJ stated that in order to determine if victimisation has occurred, the court has to look at the reason the employer took that act as well as the point of view of the employer and if the said act has caused a detriment from the point of view of the alleged victim. He states that an unjustified sense of grievance from the victim’s view at the employer’s act would not amount to a victimisation but if the victim’s opinion is that the act amounts to a detriment and it is a reasonable opinion to hold, then that ought to be sufficient to prove detriment. Evidence and facts given by an employer
in his defence will not amount to a detriment for the purposes of victimisation proceedings because judicial proceedings immunity applies to witness statements.\textsuperscript{166}

In \textit{Coote v. Granada Hospital}, \textsuperscript{167} C brought a sex discrimination case against her employer GH claiming that she was dismissed because she was pregnant. It was settled by the employer and she left the company by mutual agreement. After failing to find work, she brought a complaint of victimisation against GH claiming that she was unable to find other work because GH refused to provide references and the refusal was in retaliation for her earlier sex discrimination claim. On appeal it was held that the employees were to be protected from dismissal as a reaction to equal treatment proceedings brought by the employee as well as to other measures such as victimisation after employment.

Prior to the enactment of the Equality Act, previous legislation and case laws clearly established that post-employment discrimination which included victimisation was unlawful. However, with the provisions of \textit{section 108(7)} of the Equality Act, it appears that on the natural reading of that sub-section without any reference to any contextual material, that post-termination victimisation is not proscribed.\textsuperscript{168} \textit{Section 108(7)} of the Act provides that “\textit{But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A}”. The Court of Appeal interpreting this section in

\begin{enumerate}
\item\textsuperscript{166} See Parmar v East Leicester Medical Practice [2011] IRLR 641
\item\textsuperscript{167} (1999) I.C.R. 100
\item\textsuperscript{168} Jessemy v Rowstk [2014] IRLR 368
\end{enumerate}
Jessemy v Rowstk\textsuperscript{169} concluded that the failure to proscribe post-termination victimisation is a drafting error. This is because the government did not show any prior intention not to proscribe post-termination victimisation and failure to do so would result in the UK being in breach of its obligations as a matter of EU law to prohibit post-termination victimisation which would have been inconsistent with the fundamental principles of the Act. But once other contextual materials are considered, it would be clear that post-termination victimisation is proscribed by the Equality Act. The objective for the provision of post-termination in the Act is to protect employees from being victimised after the employment relationship has ended. If there is no judicial protection from victimisation from the employer in retaliation for bringing an equal treatment proceeding after the employment has ended, employees will be discouraged from bringing such proceedings.

2.3.4 Harassment

Prior to the amendment introduced by the Employment Equality (Sex Discrimination) Regulations 2005, harassment was held to be direct discrimination which was actionable as unlawful sex discrimination under the Act. The issue considered was whether the victim had suffered a detriment due to the treatment of the employer. \textsuperscript{170} In direct discrimination, the victim had to show that she was treated less favourably than a man would have been treated, in other words in a harassment claim, the victim had to show that she was harassed because she was a woman. In \textit{Strathclyde Regional

\textsuperscript{169} Ibid
\textsuperscript{170} See Bamforth N., Malik M. and C. O’Cinneide (2008) at p.582

59
Council v. Porcelli\(^{171}\) sexual harassment was held to be a form of sex
discrimination because the conduct was “on the grounds of her sex”; they
were treated less favourably than they would have been if not for their sex. It
was held in the case of British Telecommunications plc v. Williams\(^{172}\) that
there was no need for a male comparator which was required in direct
discrimination. But the EAT in Driskel v. Peninsula Business Services Ltd\(^{173}\)
stated that a tribunal should consider if the woman was treated less
favourably compared to a man; and in doing this should also take into
consideration the view of the victim and the intention of discriminator.

Sexual harassment was seen as a type of detriment and the question for
determination was if the victim has been subjected to a detriment and if it was
on the grounds of her sex.\(^{174}\) A single incident provided it was sufficiently
serious could amount to a detriment to the victim on the grounds of her sex.\(^{175}\)
This was a matter of fact and degree for the tribunal to determine.\(^{176}\) It was
immaterial if there was no intention to subject her to a detriment. The
essential characteristics of sexual harassment was that it is a word or conduct
which are unwelcome to the recipient and it was for the recipient to decide
what she found offensive.\(^{177}\)

After the amendment, sexual harassment has been recognised as sex
discrimination in its own right. Section 26 of the Equality Act provides that:

\(^{171}\) (1986) I.C.R. 564
\(^{172}\) (1997) I.R.L.R. 668
\(^{173}\) (2000) I.R.L.R. 151
\(^{174}\) Reed and Bull Information Systems Ltd v Stedman [1999] IRLR 299
\(^{175}\) See Bracebridge Engineering Ltd v Darby [1990] IRLR 3
\(^{176}\) See Insitu Cleaning Co Ltd v Heads [1995] IRLR 4
\(^{177}\) Reed & Bull Information Systems v Stedman (1999) IRLR 299
(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

An important factor in establishing a case is that the act causes an adverse environment which violates the worker’s dignity and the act does not have to be related to the worker’s protected characteristic but could be remarks about other people or of false perception about the worker.\(^\text{178}\) In *Warby v Wunda Group plc*\(^\text{179}\) it was held that a court which decides a claim of an unlawful harassment must not look at the alleged act in isolation of all other acts but must decide what the context of the act complained of is and contextualise what has taken place. However, a court is entitled to take an alleged act as an act made in a particular context and that it does not stand on its own. It was held in *Reed and Bull Information Systems Ltd v Stedman* that the question whether or not a behaviour was unacceptable is a subjective one and that the court should not use an objective test to determine if the claimant has suffered a detriment.

*The Equality Act* also provides for sexual harassment where the harassing conduct is of a sexual nature. The conduct of the harasser has to be

\(^{178}\) See Lewis T. (2011) at 393

\(^{179}\) [2012] EqLR 536
unwanted by the worker and has the effect of violating the worker’s dignity and it is inconsequential that the worker has put up with the harassment for a long period of time and therefore it is not really unwanted. This is because there could be a host of reasons why a person could put up with harassment even though the conduct was unwanted.\textsuperscript{180} In Reed’s case it was held that it is for the recipient of the words or conduct to decide what they find acceptable and what they find offensive because it is up to them to define their own level of acceptance. If the conduct is not expressly invited it could be regarded as unwelcomed and a woman does not have to make it clear in advance that she wishes not to be touched in a sexual manner.

Lewis is of the opinion that where the harasser had no intention of causing offence and the harassment was unintentional, the conduct would not necessarily be unlawful if the worker found it offensive. In determining this, the court has to take into consideration the circumstances of the case and if it was reasonable for the conduct to have that effect.\textsuperscript{181} If the conduct can have the effect and the worker genuinely felt that his dignity was violated, then the conduct would be unlawful. But if the worker was overly sensitive and a reasonable worker would not have felt that way, then the court would hold that the conduct was not unlawful. However, if it can be shown that the harasser’s intention was to create an intimidating and hostile environment, then there will be no test to show whether the worker genuinely felt violated.\textsuperscript{182} The conduct could also be unlawful where the worker asked the harasser to stop and he

\textsuperscript{180} Lewis T. (2011) at 394 and 395
\textsuperscript{181} Ibid at 395 See also Moonsar v Fiveways Express Transport Ltd [2005] IRLR 4
\textsuperscript{182} Lewis T. (2011) at 396
did not or where the worker had never asked the harasser to stop. If the harasser continues or intensifies the harassment, the worker could have a claim for victimisation and further harassment.\textsuperscript{183} \textit{The Equality Act} also provides for a third type of sexual harassment which is where a person treats another person less favourably because the other has either rejected or submitted to a conduct of a sexual nature or conduct that is related to sex which has the effect of creating a humiliating or offensive environment.

\textit{The Equality Act} made provisions for third party harassment in section 40 of the Act. It provides –

\begin{quote}
(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A’s;

(b) who has applied to A for employment.

(2) The circumstances in which A is to be treated as harassing B under subsection (1) include those where—

(a) a third party harasses B in the course of B’s employment, and

(b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.
\end{quote}

\textsuperscript{183} Ibid at 395
(3) Subsection (2) does not apply unless A knows that B has been harassed in the course of B’s employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.

(4) A third party is a person other than—

(a) A, or

(b) an employee of A’s.

From the above provision, an employer would be held liable if a third party other than the employer or his employee harassed the worker in the course of his employment and the employer failed to take steps which are reasonable to put an end to such harassment. However, this provision would not apply unless the worker had informed the employer on at least two separate occasions and it would not matter that it was a different person on each occasion.\(^{184}\) In *Conteh v Parking Partners Ltd*\(^{185}\), the EAT stated that if a third party created a hostile environment and the actions of an employer or inaction as the case maybe, made it worse, that both parties could be responsible for the harassment. The extent of the employer’s contribution to the hostile environment would not be relevant in determining liability but only to quantum.

The section on third party harassment in *the Equality Act 2010* has now been repealed because the government argued that it was an unnecessary burden

\(^{184}\) Ibid at 400

\(^{185}\) [2011] EqLR 332
on businesses and it served no practical purpose. However, where the employer is the government or government departments, they may still be liable in third party harassment if the claimant relies directly on a Directive.\footnote{G. Pitt (2016) \textit{Pitt’s Employment Law} 10\textsuperscript{th} ed. London, Sweet & Maxwell} This was the ruling in \textit{Sheffield City Council v Norouzi}\footnote{[2011] IRLR 897} where the EAT upheld the tribunal’s decision that the council being an emanation of the state, the claimant could rely directly on the Race Directive to hold the council liable for failing to protect the claimant from harassment from a third party when the council had clearly been put on notice of the problem. However, employees in the private sector cannot rely on this ruling. They may be protected under the Act if they bring a direct discrimination claim. If an employer fails to act when a third party harasses a worker, the worker could claim direct discrimination because the act resulted in a less favourably treatment because of a protected characteristic when compared to other workers. The worker could also claim harassment on the basis of the employer’s inaction which created an intimidating and an offensive environment for the worker because of her protected characteristics. The worker can also be protected by using the provisions of the Protection from Harassment Act 1997 (PHA).

The PHA although not designed for employment can be applied in employment situations and it provides that “\textit{a person must not pursue a course of conduct—(a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other.}” A conduct could be viewed as harassment under the PHA if the person finds it
alarming and it causes him distress or if the person on two separate occasions feared that violence would be used against him. The conduct must be on at least two occasions carried out by the same person or if different people there must be a link for example one must be acting under the instructions of the other.\textsuperscript{188} The conduct will not be found to be unlawful if it was reasonable in the particular circumstance. The concept of vicarious liability would apply under the PHA and in the case of a third party, the worker could hold the third party’s employer vicariously liable for the harassment. Breach of section 1 and 4 of the PHA is a criminal offence and a worker can bring a civil liability claim for damages for loss and anxiety.\textsuperscript{189} The use of the PHA in employment cases is useful because it extends the claim to loss and anxiety and a worker does not have to prove that the conduct was because of a protected characteristic and it can be used when the act is not in the course of employment and a worker can seek an injunction to restrain the harasser from continuing with the act.\textsuperscript{190}

In \textit{Majrowski v Guy’s and St. Thomas’s NHS Trust}, the appellant NHS trust appealed against the decision of the Court of Appeal that it was vicariously liable in damages to the respondent under the PHA for harassment committed by one of its employees against the respondent. The respondent alleged that his manager had harassed, bullied and intimated him over a period of years while acting in the course of her employment. An investigation conducted by the Trust found that the manager had indeed harassed him and offered the

\textsuperscript{188} Lewis T. (2011) at 403
\textsuperscript{189} Ibid
\textsuperscript{190} Ibid at 404
manager a chance to resign. The respondent claimed against the trust for damages based on vicarious liability but the Trust submitted that the Act was not aimed at the workplace and that the award of damages under the Act was discretionary and therefore harassment could not be equated with a common law tort. Dismissing the appeal, the House of Lords held that the principle of vicarious liability was not confined to common law torts but was applicable to equitable wrongs and breaches of statutory obligation unless the statute expressly stated otherwise.

2.3.5 Vicarious Liability

The common law principle of vicarious liability states that “a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they may rightly be regarded as modes — although improper modes — of doing them.”\(^{191}\) In other words, an employer will be held vicariously liable for the tort committed by another if that other acts for him in the course of his employment because he will be deemed to have authorised or ratified the tort committed by his employee. Vicarious liability will also be imposed on cases where the employer did not expressly authorise nor ratify the act based on the test laid down by the House of Lords in *Lister v Hesley*

that the employee’s tort is so closely connected to his employment that it would be fair and just to hold the employer vicariously liable.\textsuperscript{193}

Section 109 of the Equality Act 2010 merely clarifies the common law principle of vicarious liability which has been discussed above. It provides that:


d (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

d (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

d (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.

d (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—

(a) from doing that thing, or

(b) from doing anything of that description.

From the provision above, the scope of responsibility in vicarious liability has been widened in employment cases to include acts of employees carried out

\textsuperscript{192} [2002] 1 A.C. 215
\textsuperscript{193} Michael Jones and Anthony Dugdale (Eds.) (2010) Clerk & Lindsell On Torts 20th Ed Sweet & Maxwell Ltd

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without the knowledge or approval of the employer. This is in line with Waite LJ’s judgement in *Jones v Tower Boot Co Ltd* where it was held that the words in the ‘course of employment’ should be interpreted in the sense in which they are used in everyday speech and not restricted to the principles laid down by tort law. However, sub-section 4 of the section makes provision for employers to escape liability if they have reasonably taken steps to prevent such acts from occurring. In other words, an employer who has taken steps such as having a strong policy against harassment which they are willing to enforce would be able to escape liability under the Act. *Section 110 of the Act* goes further to make the employee personally liable as well as the employer unless he can show that he relied on the statement of another that the act was not a contravention of the Act or it was reasonable for him to rely on the statement.

### 2.3.5.1 Employer’s Vicarious Liability in Employee Sexual Harassment

In the United Kingdom, the liability of the employer is as a result of the employee acting for the employer and the employer becoming vicariously liable when he has authorised or ratified the actions of his employee. Vicarious liability can also be imposed on the employer though he does not authorise or ratify the actions of his employee but the employee is acting in the course of his employment. The common law rules restricted the application of vicarious liability in the racial discrimination case of *Irving and*
Irving v The Post Office[^194] where E was employed by the post office and authorised to write on mails to ensure that they were properly dealt with and for no other reason. E did not get on well with his neighbours P who were of Jamaican origin. While sorting mails, he came across a mail addressed to P and wrote on it “Go back to Jamaica, Sambo”. P brought an action against the post office for damages. It was held dismissing the claim that E was not acting in the course of his employment when he wrote the words. On appeal, it was held dismissing the appeal that an employer’s vicarious liability for unauthorised act of his employee depended on whether the act was merely unauthorised or whether it was outside the scope of the employee’s employment. E’s act was not viewed as a prohibited way of carrying out his duties but was entirely outside the scope of his employment though his employment gave him an opportunity to carry out this act.

Judicial interpretation has widened the scope of the application of vicarious liability in the UK by interpreting the meaning of “in the course of his employment”. The Court of Appeal has held that an employer is vicariously liable for the acts of his employees in the course of their employment regardless of restrictions of the common law principles of vicarious liability whether or not it was done with the knowledge or approval of the employer.[^195] It held that the court was not bound to apply the common law concept of vicarious liability which is in a different aspect of the law (Law of Torts) in an altogether different aspect of the law (Employment Law) but that tribunals

should be free to interpret the ordinary meaning of “in the course of his employment” in a way which it is easily understood by a layman so as to bring into effect the purpose of the Act which is to eradicate racial and sexual discrimination in employment. Waite LJ in his judgement in Jones v Tower Boots Co Ltd\textsuperscript{196} stated that the widening of the scope of responsibility to include employers irrespective of their non-authorisation will help deter racial or sexual harassment in employment if the employer is made liable for the harassment of his employee during his employment and this will encourage employers to prevent such harassment from occurring because the Act gives the employer a defence if he has taken reasonable measures to prevent such harassment from occurring.

This position brings up the question of when an employee is acting in the course of his employment and Waite LJ in Tower Boot’s case specified that it is a question of fact for each tribunal to resolve in the light of the circumstances presented to it and that their decision should not be clouded by the proceedings of vicarious liability in tort. The frequent test used in determining the scope of “in the course of his employment” is that propounded by Salmon\textsuperscript{197} which states that a wrongful act is deemed to be done in the course of the employment:

“If it is either (1) a wrongful act authorised by the master or (2) a wrongful and unauthorised mode of doing some act authorised by the master. It is clear that the master is responsible for acts actually authorised by him: for liability would

\textsuperscript{196} [1997] I.C.R. 254
\textsuperscript{197} See Michael Jones and Anthony Dugdale (Eds.) (2010) at chap 6, sec 6-29
exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised that they may rightly be regarded as modes – although improper modes – of doing them.”

This test was applied in *Lister v Hesley Hall Ltd* where T appealed the decision of the court that HH was not vicariously liable for the tortuous acts of its employee D who had sexually abused children in his care at the residential home owned by HH where D was a warden. It was held, allowing the appeal, that HH had undertaken to care for the resident children and had entrusted that care to D. D’s tort were so closely connected with his employment that it was fair and just to hold HH vicariously liable.

Since the decision in *Tower Boot*, judicial interpretation has further widened the scope of “in the course of his employment” to include acts done outside of the workplace. In *Chief Constable Lincolnshire Police v Stubbs and others* the tribunal agreed that acts which occurred outside the workplace during a social event connected with the work were extensions of the work place and come within the interpretation of “in the course of his employment”. They were of the view that the harassment could not have happened were it not for the applicant’s work; and there was no reason to restrict the interpretation to only

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198 R.F.V. Heuston and R.A. Buckley (Eds.) (1996) at p. 443
199 [2001] UKHL 22
200 [1999] I.C.R. 547
what goes on in the work place. The Chief Constable was held vicariously liable for the sexual harassment of a female police officer by a male police officer. However, in *Waters v Commissioner of Police of the Metropolis*\(^{201}\), the court held that an employer would not be vicariously liable where the alleged serious sexual assault was not committed in ‘the course of employment’. At the time of the alleged offence, both the male and female officers were off duty and the male officer was visiting the female officer in her room at the police accommodation. The court was of the view that at the time and in the circumstances, that the parties were in no different position than they would have been if they were mere social acquaintances with no work connection.

The approach is slightly different in the United States. In *quid pro quo* harassment, strict liability is imposed on an employer for the harassment of an employee by a supervisor. This is so because a supervisor is seen as having a delegated power from the employer to act in his favour and he uses this power to extort sexual favours from the employee by threatening to use the power to alter the terms of the employee’s employment if she does not comply.\(^{202}\) The courts held that it is in the course of a supervisor’s employment to dismiss or promote an employee and if he uses it to retaliate against an employee who refuses to give in to his sexual advances, he will be deemed to be acting in the course of his employment and acting for his employer.\(^{203}\) The employer may be vicariously liable to an employee for a

\(^{201}\) [1997] IRLR 589 CA


\(^{203}\) Ibid
hostile work environment created by a supervisor who has authority over the employee. In the US, an employer is not vicariously liable for employees who create a hostile work environment for other employees because it is viewed that he is not acting in the course of his employment by doing so. A co-employee cannot be capable of quid pro quo harassment so cannot create an economic loss for other employees. But the employer will be held liable if he knew of the harassment and did not do anything to prevent it.

2.3.5.2 Employer’s Vicarious Liability in Third Party Sexual Harassment

An employer had a duty to protect his employee from harassment by third parties in the course of their employment. In Burton v De Vere Hotels Ltd the tribunal accepted that where an employer is shown to have actual knowledge of harassment of an employee by a third party and he closes his eyes to it or he does not act reasonably to prevent it, he will be found to have subjected the employee to that harassment. And in defining “subjecting”, the tribunal found it to mean “control” and stated that a person “subjects” another to something if he causes or allows that thing to happen in circumstances where he can control whether it happens or not.

205 Ibid at no 143, see also Faragher v City of Boca Raton
206 [1997] I.C.R. 1
The issue of control came up in the case of *Go Kidz Go Ltd v Bourdouane* where B in the course of her employment was in charge of a children’s party where a father of one of the children made sexual remarks to her. She complained to the director who encouraged her to return. The parent then physically abused her and she brought a claim of sex discrimination against her employer. It was held that the employer could not be held responsible for the initial sexual remarks but as soon as B made the complaint, the employer had actual knowledge of sexual harassment and by encouraging her to return had subjected her to a detriment by permitting the sexual harassment to continue in circumstances where he could have controlled whether it happened or not. However, *Burton* was overruled in *Pearce v Governing Body of Mayfield School* where the House of Lords held that harassment cases were not determined in the Act by employers’ failure to apply good employment practices in the workplace. But that the Act referred to an employer being liable by the act of an employee by reason of vicarious liability or by themselves by treating women less favourably than men. The court stated that this did not happen in *Burton* and that the employer’s failure to control the harassment had nothing to do with the fact that Ms Burton was black or female and in *Pearce*, the employer’s failure to control the pupils had nothing to do with the fact that Ms Pearce was female. As discussed above, the provision on 3rd party sexual harassment has now been repealed and victims can avail themselves with the provision of PHA.

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Part 2 Nigeria

2.4 Overview of the Nigerian Situation

The aim of this part is to highlight the historical discrimination of women in Nigeria and factors that reinforce such discrimination such as patriarchy, cultural and religious practices which exist in Nigeria; mainly using the Igbos (an ethnic group in Nigeria) as an example as this is the ethnic group which the author belongs to and is the culture she is conversant with.

It is suggested in literature that the subordination of women in traditional African societies came about as a result of colonisation which also brought with it Christian and Islamic religions. These religions are predominantly male centred institutions. It is believed that prior to the advent of the Europeans that equality prevailed between men and women in African societies which made it possible for women to hold leadership roles. Various African literatures cite some of these female leaders such as Queen Amina of Zaria, Queen Kambasa of Borno, Yaa Asantewa of Ghana, Mbuya Nehenda of Zimbabwe amongst various other women who wielded tremendous political powers and influence and subsequently led armies in warfare. Uchem pointed out that women had essential roles prior to colonisation and that their powers were used to protect their interests. There were no clear distinction

\[\text{208 See Uchem R. (2001). Overcoming Women’s Subordination in the Igbo African Culture and in the Catholic Church: Envisi} \]


\[\text{Perspective in Women in Nigerian History: The Rivers and Bayelsa States Experience edited by Nkparom Ejituwu and Amakievi Gabriel Onyoma Research Publiccations at p.20} \]

\[\text{209 Okoh J. (2002) at 21} \]

\[\text{210 See Bolanle Awe (Ed.) (2001) \textit{Nigerian Women: A Historical Perspective} Bookcraft Ltd} \]
between private and public domain and that women participated actively in both domains.

However with the advent of colonialism, due to the male centred nature of the colonialist institutions, African women were stripped of their powers in societies and excluded from authority and the Victorian concept of womanhood was introduced within African societies. Discriminatory practices were introduced such as the system of education which catered differently for boys and girls by establishing elite institutions which prepared boys for professional careers such as doctors, lawyers and engineers while institutions set up for girls taught them how to cook, bake and knit. Uchem was of the opinion that this was what brought about ‘inferiorization and marginalisation’ of Nigerian women leaving excesses of male domination unchecked which was used to oppress women. Igbo women in Nigeria fought this marginalisation and subsequent domination by men in various women’s wars from 1903 to 1929 and one of the most popular of these wars was the Aba riots of 1929 which challenged the unjust regime of the Europeans which they believed was evil and demanded that things be returned to the pre-colonial state and the recognition of women’s rights and dignity.

On another hand, some writers were of the view that subordination of women existed within the African society prior to the advent of the Europeans. There

211 Okoh J. (2002) at 21
212 Ibid
213 Uchem R. (2001) at 48
were many African practices which were inherently discriminatory such as widowhood rites which amongst other practices compelled women who lost their husbands to sit on a bare floor in a secluded room throughout the period of mourning which could last up to ninety-two days; and practices relating to inheritance which denied widows and girls any inheritance rights to their husband’s and father’s properties.\textsuperscript{214} The reasoning behind this is that after the death of a woman’s husband, she will be inherited by his family who will look after her and her children. This has been used as a tool to oppress widows because on the death of the husband, his family takes over his property and treats the woman badly and in the event that she does not have a male child to carry on her deceased husband’s name, she will be sent away from the house and asked to return to her parents’ home.\textsuperscript{215} A girl is denied any inheritance rights to her father’s property because it is believed that when she is of age, she will be married off to a man who will take care of her and her children. Another of these practices is that in some communities women are denied the right of ownership of land and will not be allowed to own or acquire land.\textsuperscript{216}

Uchem was of the view that though the African culture subordinates women to men, that religion introduced by the colonialists worsened their situation by adding an additional burden to their already bad situation. This is because religion has been used as an additional instrument of subordination of women

\textsuperscript{214} Okoh J. (2002) at 23
\textsuperscript{215} \url{http://www.vanguardngr.com/2014/07/agonies-widows-hit-harsh-nigerian-traditions/} accessed on 1/12/14
\textsuperscript{216} See Okoh J. (2002) at 23
by men in the African society for example 1 Corinthians 11:3 says – *But I want you to understand that Christ is supreme over every man, the husband is supreme over his wife, and God is supreme over Christ.*

And the same chapter of the Bible at verse 10 says – *On the account of the angels, then a woman should have a covering over her head to show that she is under her husband’s authority.* 1 Corinthians 14:34-35 says – *As in all the churches of God’s people, the women should keep quiet in the meetings. They are not allowed to speak; as the Jewish Law says, they must not be in charge. If they want to find out about something, they should ask their husbands at home. It is a disgraceful thing for a woman to speak in church.* In African societies, men rely on these scriptures to emphasize that women must be subordinate to them. Uchem cites Anne Wasiki as saying, “*African Christian women inherited all the burdens of biases and discriminations of Western Christian culture against women in addition to their own cultural and social disabilities.*”

### 2.5 Legal Protection in Nigeria

As discussed earlier, the Nigerian Constitution is the supreme law of the land and any other law which is inconsistent with the provisions of the constitution will be declared null and void to the extent of the inconsistency. Nigeria has a federal system of government where power is divided between the federal government, the state government and the local government. This came

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217 1 Corinthians 11:3 Good News Bible  
218 Uchem R. (2001). *Overcoming Women’s Subordination in the Igbo African Culture and in the Catholic Church* at 25  
219 Section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 as amended
about as a result of the multi-ethnic nature of the country whereby the
government sought to include the minorities in managing their affairs by giving
them powers to administer their state and local governments so they could
have a sense of belonging to the country.\textsuperscript{220} The powers of the government
are shared among these three tiers of government in such a way that each
tier of government exists separately and independently from other tiers with its
own will, authority and machinery to conduct its affairs to the exclusion of all
others and free from any interference or direction from another government. It
also operates directly on persons and properties within its locality.\textsuperscript{221} This
autonomy does not extend to all government machinery such as the courts or
the police but is essential in some matters so that it does not function as an
appendage of another government in exercising its will in carrying out its
affairs.\textsuperscript{222} The powers of the government are embodied in the Constitution
which is supreme over the general and regional governments and overrides
any act done or laws laid down by these governments if such acts or laws are
counter to the provisions of the Constitution.\textsuperscript{223}

As well as the three tier system of government, Nigeria also operates a
tripartite legal system which consists of Common Law, Islamic Sharia Law
and Customary Law. This tripartite legal system came about as a result of
confusion in the administration of English law and customary law during the
Nigerian pre-independence era. An attempt to abolish customary law was

\textsuperscript{220} Nwabueze B.O. (1983). Federalism in Nigeria under the Presidential Constitution Sweet and
Maxwell at pg. v
\textsuperscript{221} Ibid at 1
\textsuperscript{222} Ibid
\textsuperscript{223} Ibid at 21
made in 1933 but was later abandoned; instead Section 10 of the Native Courts Ordinance was promulgated to allow Native Courts administer customary law provided that it was not repugnant to natural justice, equity and good conscience. The tripartite legal system and three tier system of government makes it difficult to achieve gender equality in Nigeria. This is as a consequence of inconsistencies created by the application of the three legal systems. Some customary and religious practices which are governed by the Customary and Sharia laws are found to be discriminatory and unfavourable towards women even when these laws are found to be contrary to the provisions of the legislation. A recent example is the marriage of forty-nine year old law maker Senator Ahmed Sani Yerima to a thirteen year old Egyptian Girl in the Federal Capital Territory, Abuja, Nigeria in April 2010. The Child Rights Act 2003 prohibits the betrothal and marriage of a child. Section 21 of the Act states that “No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever.” And section 23 provides that “A person— (a) who marries a child; or (b) to whom a child is betrothed; or (c) who promotes the marriage of a child; or (d) who betroths a child commits an offence and is liable on conviction to a fine of N500,000 (five hundred thousand naira) or imprisonment for a term of five years or to both such fine and imprisonment”. Senator Yerima hides under the teachings of Islam and Sharia law to break the law. He said “I don’t care about the issue of age since I have not violated any rule as far as Islam is concerned,” and that “As a

Muslim, as I always say, I consider God’s law and that of his prophet above any other law” 225 This example highlights one of the problems Nigeria has with the tripartite legal system. The Constitution states that a ‘full age’ is 18 years but does not provide for a minimum age for marriage. Paradoxically, section 29 of the Constitution states that any woman who is married is deemed to be of full age irrespective of her actual age. Thus, Senator Yerima’s marriage is not against the Constitution or Sharia law but against the Child Rights Act which has not been enacted in Zamfara State – his state of origin and constituency. It has however been enacted in the Capital Territory where he performed his marriage and so he could potentially have been prosecuted but calls for his prosecution by various human rights organisations and human rights lawyers were ignored.

There is currently no legislation against sexual harassment in Nigeria; sexual harassment is treated as personal problems between the employer and the employee which they are expected to resolve between themselves. 226 However, the government has made an attempt to put some measures in place to eliminate sex discrimination against women such as the provisions of section 42 of the Constitution and ratifying some international conventions. Nigeria is a member state of some international organisations such as the International Labour Organisation (ILO) and the United Nations (UN) and is a signatory to the UN Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW) which prohibits all forms of discrimination against women. However, the conventions are not enforceable within Nigeria unless Parliament has enacted a corresponding domestic law by virtue of section 12 of the Constitution. In other words CEDAW though ratified will not apply within the country if the government has not enacted a law addressing the purpose the convention. Additionally, Nigeria has also ratified the Optional Protocol of CEDAW 2004 which gives individual groups and organisation the right to complain to CEDAW if the government fails in its obligation to implement the policies of the convention.

Section 42 of the Constitution prohibits discrimination against a Nigerian citizen on the basis of the characteristics listed in the Constitution including sex. It provides that:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such
executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

This provision applies equally to a man and to a woman. This is the only written law in Nigeria which provides protection against discrimination on the basis of sex. It provides protection for any citizen of Nigeria from being subjected to any restrictions by any law in force in Nigeria or any government action. Sub section (b) goes further to prohibit any privilege or advantage from being given to any Nigerian citizen by any law in force or executive or administrative action by reason of the person’s sex.

In Dr. (Mrs.) Priye Iyalla-Amadi v the Nigerian Immigration Service (NIS)227, Mrs Iyalla Amadi sought a replacement of her international passport in February 2008 and was informed by the Immigration Service that she needed a written consent from her husband as that was the policy. She sued the immigration service at the Federal High Court in Port Harcourt. The High Court declared the immigration service policy which compelled a married woman to obtain a written consent from her husband before they are granted an international passport as unconstitutional and contrary to section 42 (1) of

the Constitution and Article 18(3) of the African Charter on People’s Human Rights which prevents discrimination on grounds of sex.

In Miss Yetunde Zainab Tolani v Kwara State Judicial Service Commission and ors, the appellant who was considered fit and qualified after an interview was appointed as a Magistrate Grade II. Based on the petition letter of an unknown man who claimed to be her husband, the appellant was dismissed by the Commission claiming that she had lied about her marital status in a bid to secure employment and she was in fact a married woman. The appellant denied this in a response to the petition which was forwarded to her by the 1st respondent. The respondents withdrew its letter of employment and terminated her. On appeal delivering the leading judgement, Sotonye Denton-West, J.C.A. was of the view that the reason for the termination of the appellant was due to her marital status which was not clear whether it affected her employment. On this allegation which the employer failed to confirm but went ahead to terminate the promising career of the young magistrate on the bench. Mr Denton-West went further to express his doubt that if it was a man in the same position as Miss Tolani, where an unknown woman wrote to the employers claiming that the man was married to her, that the same measure applied to Miss Tolani would not have been applied to the man. Mr Denton-West expressed his regret on why women have to face such discrimination and be removed from their professional careers. The judgement of the lower court was set aside and the appeal upheld.

The provision of section 42 (1) of the Constitution is very limited in scope. The first limitation identified is that the constitution specifically provides
protection against “any law in force in Nigeria or any executive or administrative action of the government”. This implies that the provision only protects people from discrimination against laws and executive actions of government but does not protect against discrimination from other sources such as from individuals, private organisations, institutions or workplace policies or practices which are discriminatory. This was the approach adopted by the trial court in the case of Madu v Onuaguluchi\(^{228}\) where it held that fundamental rights are not enforceable against private individuals but only against public officials. This was also seen in the case of Onwo v Oko\(^{229}\) where the appellant, a Christian, alleged that contrary to her religious belief, the respondents assaulted her and shaved her hair and locked her up in a room in compliance with the tradition of mourning one’s deceased husband. The trial court held that fundamental rights are not enforceable against private individuals. The Court of Appeal in both cases reversed the decisions of the trial court and held that such rights were enforceable against private individuals. The Court of Appeal held in Onwo’s case that it has become necessary to extend the protection to private citizens. The decision of the Court of Appeal is a welcomed relief to individuals who have been subjected to discrimination by private individuals. However, this interpretation by the courts is still flawed and limited in scope as it is unclear if the protection extends to private organisations and institutions.

\(^{228}\) (1985) 6 NCLR 356
\(^{229}\) (1996) 6 NWLR 584
The second limitation identified from the provision of section 42 is that the constitution only gives protection to Nigerian citizens. In other words the constitution fails to give protection to any other woman who is not a Nigerian citizen but lives and works in Nigeria. This is contrary to the provisions of Articles 2 and 7 of the Universal Declaration of Human Rights provision which Nigeria had signed to which recognises that everyone is equal before the law irrespective of race or nationality. Notwithstanding the restricted provision of section 42 of the Constitution which protects citizens against discrimination by laws in force in Nigeria, various Nigerian laws are riddled with discriminatory provisions against women. A few of these laws will be discussed briefly. In spite of the provision of section 42 of the Constitution, section 26 (2) (a) of the same Constitution is found to be discriminatory against Nigerian women who wish to marry non-Nigeria men. Section 26(2)(a) confers citizenship rights to “any woman who is or has been married to a citizen of Nigeria” and there is no similar provision for women. This section of the Constitution gives a Nigerian man the right to marry any woman of his choice from anywhere in the world and by virtue of that marriage confer citizenship rights to the wife. In contrast, a Nigeria woman does not have the same rights as a Nigerian man to marry a man of her choice from anywhere in the world as her husband will be denied the right to acquire citizenship rights by virtue of that marriage.

Section 55 of the Labour Act Chapter 198 of the Laws of the Federation of Nigeria 1990 prohibits women from undertaking night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof only with the exception of nurses. Section
56 of the same Act prohibits women from being employed in an underground in a mine except for those employed in management who do not perform manual labour or in health and services or those in training as part of their studies or those who enter it occasionally for purposes of non-manual occupation.

A host of other laws are found to be discriminatory against women such as the Criminal Code applicable in the southern part of the country which makes it a felony for anyone who assaults a male person to be liable for imprisonment for three years\textsuperscript{230} while the same Act makes it a misdemeanour for anyone who assaults a woman or girl to be liable for imprisonment for two years.\textsuperscript{231} The Penal Code applicable in the northern part of the country is disproportionate in the way it applies to women in adultery cases. The charge for adultery carries a death sentence for someone who is married or has been married though now divorced. Before a man can be convicted of adultery, he would have been caught in the act by four independent witnesses whereas a woman needs only be convicted on the evidence of pregnancy alone.\textsuperscript{232} Also section 55 of the Penal Code Act does not make it an offence if a husband inflicts harm on his wife for the purpose of correcting her. Other areas of laws found discriminatory are in the provisions of the Nigerian Police Regulation and Nigeria Tax laws.

\textsuperscript{230} Section 353 of the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 1990 (Criminal Code Act)
\textsuperscript{231} Section 360 of the Criminal Code Act
As discussed above, Nigerian has a tripartite legal system with its sources of law from common law, customary law and the Islamic Law. The application of the three legal systems is flawed with contradictions and inconsistencies and makes it difficult to harmonise legislation and eliminate discrimination. The use of customs and religion has been found to be discriminatory against women and has had a negative impact on women. Any progress achieved by International Conventions and legislation has been weakened by the application of customary and religious laws. Culture has a negative impact on Nigerian women’s lives and it has been used as a justification for the discriminatory treatment they receive. In order for customary law to become law, it has to undergo three tests – (a) it must not be repugnant to natural justice, equity and good conscience, (2) it is not incompatible directly or by implication with any law in force and (c) it is not contrary to public policy. However many of the culture practiced in most places in Nigeria is against these principles such as the denial of women to own property in the South East of the country which is contrary to section 43 of the Constitution which gives rights to every citizen of Nigeria to own immovable property anywhere in Nigeria; widowhood rites practiced in the South East of Nigeria and the child marriages in the North of Nigeria.

Nigeria is committed to eliminating discrimination and has ratified some international instruments to aid in achieving this objective. Nigeria is a

233 637th and 638th Report of the Committee on Elimination of Discrimination against Women
member state of the United Nations and ratified the CEDAW in 1985. The Convention was established to bring into focus women’s rights and to promote such rights. The Convention affirms that discrimination against women still exists which violates the principles of equality of rights.\textsuperscript{235} The Convention amongst others covers the protection for civil and legal status of women such as basic rights to political participation, participation in public offices and representing their individual countries at the international level. The Convention also addresses the impact of cultural factors on gender relations such as cultural stereotypes, customs and norms which gives rise to constraints on the advancement of women. The Convention proposes a change in the traditional role of men and women in society and family to achieve full equality for men and women; and also eliminate prejudices and customary practices which are based on the idea that women are inferior. It also aims to target cultural practices which define the public domain as men’s domain and domestic field as women’s domain.\textsuperscript{236}

The CEDAW is in charge of monitoring the implementation of the Convention’s objectives in the countries which have signed and ratified the treaty which Nigeria has done. Nigeria is obliged to submit regular reports to the Committee on how the rights of the Convention are being implemented. The period reports\textsuperscript{237} identified that discrimination was ingrained in the Nigerian culture and attitudes. They identified that the role of women was determined by the socio-cultural environment of the society which determines

\textsuperscript{235} Retrieved from \url{http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx}
\textsuperscript{236} Ibid
\textsuperscript{237} CEDAW/C/NGA/2-3 (2nd July, 1998) and CEDAW/C/NGA/4-5 (28th April, 20013)
the status and place of women in the nation. It was further reported that the traditional African society emphasises that the place of women is in the kitchen and as a baby factory and that women are relegated to the background and placed in stereotypical roles which are drummed into them as children and they grow up to accept them as normal. The report identified that the government was willing to find ways in which to eliminate discrimination in the community. Panels such as Committee on Women and Children were set up to look at the law and propose recommendations in order to bring the laws in conformity with CEDAW and other Conventions. The government set up special measures to accelerate equality between men and women such as making deliberate efforts to give women economic empowerment by positioning women’s activities in the National economic policy, poverty eradication programme and poverty reduction strategy programmes. Women were also given opportunities in political participation by increasing the total number of women representation in legislative and executive arms of government and the political hierarchies. Female representation in the House of Representative and the Senate increased from 7% and 3% respectively in 1999 to 7.2% and 8.3% in 2015.238 In spite of limited protection afforded to women, they cannot seek protection under the CEDAW when they are victims of discrimination due to customary and religious practices because it has not been domesticated in Nigeria. The CEDAW report also identified women’s perception of themselves, goals and expectation for themselves as a limiting

factor in enforcing laws intended to protect them from discrimination. Only enlightened and educated women who are aware of the laws and policies in place and know their self-worth can only hope to reap from the benefits conferred on them by the law by seeking recourse under such laws. The report stated that to benefit from the Convention, focus should not only be on using laws and policies to eliminate discrimination but that other factors such as tradition, customs, religion, illiteracy and poverty should be tackled.

Nigeria also signed the Optional Protocol to the Convention on the Elimination of Discrimination against Women on 8th September 2000 and ratified it on 22nd November 2004. The Optional Protocol is a treaty in its own right which gives individuals and groups of women the right to complain to the Committee about violations of the Convention and this is known as the Communication Procedure. The second stage which is the inquiry procedure gives the Committee the right to conduct inquiries into grave or systematic abuse by a Member State to the Optional Protocol. After the investigation, the committee can make recommendations regarding the structural causes of violations. The Optional Protocol can also stimulate States to implement CEDAW to avoid complaints being made against them and it could also encourage States to remedy violations by amending their legislation, ending discriminatory practices and implementing affirmative action measures.

Section 12 of the Constitution provides that:

(1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

The essence of this section is that treaties which Nigeria has signed and ratified will not have any effect until a law is made to that effect by the National Assembly. CEDAW though ratified does not have any effect and is inapplicable. There was an attempt in 2007 to pass a CEDAW Bill in Nigeria which failed after going through the National Assembly.241 According to Iman, the reason for the failure of the Bill was that the opposition to the Bill was vocal and vehemently opposed it with the belief that it is anti-God and anti-family and put fears into the citizenry. The misconception that it was anti-God and anti-family was based on the belief that the subordination of women to men is a social order designed by God and a challenge to that is a challenge to God; in other words, any law which seeks to eliminate discrimination in the

marriage and family is anti-God and anti-family. The opposition to the Bill was also of the view that CEDAW was a foreign imposition which will bring about sexual indulgence and liberating abortion which is not permitted by law.\textsuperscript{242} In addition to these reasons, Iman was also of the view that another reason for the failure of the Bill was that the Bill which was supposed to be an executive bill was left for the under funded Ministry of Women’s Affairs to push through and it did not have any major support from any member of legislature. Also the supporters of the Bill went into the process without a clear advocacy message and effective public education of the advantages of the Bill. They under-estimated the power of the opposition and failed to address the fears and insecurities raised in the public mind about the Bill. In the end, the supporters were left to defend the Bill rather than state its true benefits to the country and citizens.\textsuperscript{243} CEDAW and other international instruments were seen to be insufficient to protect women in Africa against discrimination.\textsuperscript{244} CEDAW was criticised for having Western values and had limitations in addressing issues faced by rural women in Africa and some critical issues which women were faced with such as the issue of HIV/AIDS.

Another international instrument ratified by Nigeria is the African Charter on Human and People’s Rights (the Charter) which was enacted in 1981 to protect the rights of people in Africa including women but the Charter was found to be inadequate in addressing in detail the various discriminatory

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\textsuperscript{242} Ibid at 5 \\
\textsuperscript{243} Ibid \\
\end{flushright}
issues African women encountered in their daily lives such as being victims of harmful cultural practices.\textsuperscript{245} It failed to address the problems of inequity in laws on the subject of distribution of property and customs in relation to inheritance and succession. It also failed to address harmful customary practices women are faced with and the major limitation of the Charter is that the non-discrimination provision can only be invoked in relation to the implementation of a right under the Charter.\textsuperscript{246} However, the Charter made provisions for the adoption of protocols to complement the agreement in areas it was found lacking. This led to the adoption of the Protocol to the African Charter on the Rights of Women in African (the Protocol) in 2003 ratified in Nigeria in 2004 to address the issues which African women encounter by seeking to strengthen their control over their roles as mothers and in the community as a whole.\textsuperscript{247} The Protocol sought to ensure that women’s rights are protected so they could enjoy in full all their human rights. Akiyode-Afolabi and Amadi highlighted three areas in which the Protocol was significant. The first is that the Protocol draws attention to women’s rights that other international and regional instruments have elaborated. The second importance they highlighted was that it was the first instrument in international laws to make provisions for women’s sexual and reproductive rights to abortion when pregnancy is as a result of rape, incest or it would endanger the mother’s life. Thirdly is that it was the first time in Africa that an instrument

\textsuperscript{245} Ibid at pg 38
\textsuperscript{246} Ibid at pg 45
\textsuperscript{247} Ibid at 38
was developed by Africans for African women.\textsuperscript{248} The Protocol covers a host of issues affecting African women including elimination of all forms of discrimination against women and elderly women, disabled women, women’s dignity and their human and legal rights, prohibition of cruel, inhuman and degrading punishment and treatment, widows’ rights and inheritance rights. The Protocol also makes provisions for State Parties to undertake to provide appropriate remedies for women whose rights have been breached to seek such remedies as would be determined by competent authorities provided for by the law.\textsuperscript{249}

Nigeria is also a member of the International Labour Organisation (ILO) and commits to promoting rights of men and women at work, achieving equality between them, encouraging decent work opportunities, enhancing social protection for workers and encouraging discuss on work related matters. Nigeria has ratified some of its conventions such as convention 111 which addresses discrimination. The Convention requires States to enact laws which prohibit all forms of discrimination in employment and repeal legislation that is not based on equal opportunities.\textsuperscript{250}

The foregoing analysis considered Legislation, International instruments and case laws in relation to sex discrimination and sexual harassment both in the UK and Nigeria in order to highlight the current legal position on the subject in both jurisdictions. Nigeria has ratified a number of international instruments

\textsuperscript{248} Ibid at 47
\textsuperscript{249} Ibid
yet discrimination against women is still rampant which is mainly as a result
culture, religion and patriarchy and the laws are unable to help eliminate this
due to the inconsistencies found in the laws. The next chapter will look into
existing literature in this area to establish a theoretical framework and
highlight how the issues of sex discrimination and sexual harassment have
been studied in the past and with the above analysis will give a better idea on
ways to eliminate sex discrimination and sexual harassment in Nigeria.
CHAPTER THREE

LITERATURE REVIEW

3.1 Theoretical Framework

The focus of this chapter is directed at providing a theoretical framework for the understanding of the origin and current problems of sex discrimination in contemporary societies and as a basis of facilitating the development of laws and policy recommendation in the broader context of this study. The aim of this theoretical framework is to understand the phenomenon known as sex discrimination and sexual harassment and how they are constituted and reproduced in societies. Possible linkages between gender classifications, sex roles and sex discrimination will be examined to understand how gender classifications may have constituted as a contributory factor to sex roles and hence sex discrimination. It is important to carry out this framework in order to determine what has been done in the past and how it relates to the current study.

3.1.1 The Theory of Gender Classifications

A growing body of feminist literature currently theorizes the issues of gender and gender classifications in organisations. Some feminist scholars argue that the study of gender was and has continued to be the study of women and sex
roles rather than both male and female gender. In other words, they are of the opinion that there is no distinction between sex and gender and that society views both words as one and the same. However some sociologists have a contrary opinion and are of the view that a definite distinction exists between sex and gender. Some are of the view that sex is used to distinguish male and female biologically while gender is a social construct derived in the assignment of roles to different sexes. West and Zimmerman defined sex as “a determination made through the application of socially agreed upon biological criteria for classifying persons as females or males”, while gender is “the activity of managing situated conduct in light of normative conceptions of attitudes and activities appropriate for one’s sex category”. Based on the above definition, sex is a fixed outward characteristic of individuals while gender can change based on interaction in society and/or the social construct of the society at the time.

Acker argued that gender is a tool used by society to establish social differences between men and women in relation to their biological differences. Goffman views it as a way of characterising an individual; and West and Zimmerman termed it ‘doing gender’ and they are of the opinion that the creation of these differences are not important, natural or biological; rather it is a tool for society to reinforce the importance of gender and use it as a mechanism to create domination of men over women. They

253 Ibid
254 Acker (1992)
believe that for subordination of women to be effective, society want it to appear natural rather than a product of culture or manipulation brought about by human decisions.

West and Zimmerman distinguished sex and gender from sex categorisation stating that to place one in a sex category is to presume one’s sex through outward physical and behavioural appearances identified with a particular sex. The criteria for grouping men and women into their distinctive sex are determined at birth through their genitalia or before birth through their chromosomal grouping. They maintain that society perceives these differences as important because it is believed that the psychological competence and behaviour of the individual is definite and determined based on the sex of the individual. In response to this grouping, individuals tend to learn to exhibit behaviours associated with their assigned gender. Individuals learned this through interaction and sex role socialisation from birth; for instance boys appropriate their gender through the exercise of physical strength while girls learn the value of appearance by managing themselves as ornamental objects. Boys and girls learn at an early age that the use of sex categorisation in interaction is not voluntary but compulsory and they learn to exhibit behavioural displays of their gender identity.\(^{256}\) It has been a social norm to categorise people and the government has held that influential authority to do so and decide which category a person belongs to. Franke believes that this function should be subject to scrutiny because the categorisation has the effect of placing people in one of two groups (male or

\(^{256}\) West and Zimmerman (1987)
female) with the subsequent effect of either being in the dominant group (male) or in the inferior group (female) and be subjected to an unfavourable treatment.\textsuperscript{257}

The basis of Acker's argument is an affirmation that gender is the basis of culture and society.\textsuperscript{258} This view of Acker is further amplified by West and Zimmerman in their assertion that societies are organised and grouped by the differences in sex and gender. Goffman further identifies societal classification of gender as a \textit{sexual subculture} of society.\textsuperscript{259} Society views gender differences as fundamental and ascribe different roles and responsibilities to the different genders with women having women’s roles and men having men’s roles on the basis of pre-assigned classifications. West and Zimmerman showed that the different roles ascribed to different genders have been pre-determined by their biological make up, for instance, women take care of the family while men go out to work for the family’s sustenance. It is believed that this biological make up of individuals which puts them in a particular gender group develops their intellectual, psychological and behavioural capacity.\textsuperscript{260} Though a good number of sociologists criticise this view, they accept that certain behaviours and traits are linked to sexual make up which are important characteristics of the individual; while some are of the view that men and women should have their distinct social groups with their attendant roles with women having women’s roles and men having men’s

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\textsuperscript{258} Acker, J. (1992)

\textsuperscript{259} Goffman, E. (1977)

\textsuperscript{260} West, C. and D. H. Zimmerman (1987), see also Acker, J. (1992)
roles and that there should be no crossing between these roles. Delphy does not accept that the biological differences between male and female such as procreation is a valid reason for there to be a division of labour between the sexes which extends to all fields of activity.

West and Zimmerman further argued that gender roles are learned and enacted through socialisation in the society and are not determined through the biological make up of individuals. They are of the view that roles should not have 'master identities’ but should have ‘situated identities’. By this, they mean that roles should not be ascribed to a particular gender but should be for particular situations and should be carried out by qualified individuals irrespective of their gender. In other words, there should not be any specific role for women or men, for instance, it should not be specifically a woman’s role to look after the family but a woman can go out to work for the family’s sustenance if she is able and qualified to do so while the man stays at home to look after the family.

Acker demonstrates that society relies on the differences in gender to create domination of men over women by portraying men as the stronger being and women as weak and as a result have placed men in top positions and as head both in work settings and in the families. She further argued that the processes and distribution of power in society is based on the society’s perception of gender which she refers to as “gendered institutions”.

262 Delphy, C (1993), Rethinking Sex and Gender. Women’s Studies Int. Forum 16(1): 1-9
263 Acker, J. (1992)
asserted that the subordination of women by men was achieved by the way the institution of the state was set up with men at the highest power having the power to establish and control the state and its resources. West and Zimmerman maintained that the subordination of women by men is not institutional but cultural which individuals have accepted as normal and natural. According to Acker, the differences in gender were further substantiated in the distinction made between “production” and “reproduction”, with men being responsible for ‘production’ in the society. Men were placed with the responsibility of ‘production’ of wealth which society and families rely on for sustainability. Society viewed this function as very important in maintaining the family and society as a whole. Meanwhile, the function which was placed with women – ‘reproduction’ of offspring was seen as less important and in fact wealth consuming ignoring the fact that reproduction is in fact necessary for the continued existence of society.

Uchem in her analysis (on the subordination of women in the Catholic Church and the Igbo culture – a major tribe in Nigeria) observed that society uses the church and its teachings as an additional tool for female subordination in society. She observed that in the church, St Paul’s teaching in 1 Corinthians 14 has been used as a means to control women and deny them leadership in the church. St Paul is quoted as saying in 1 Corinthians 14:34 in the New International Bible Version that ‘Women should remain silent in the

264 Ibid
265 Ibid
churches. They are not allowed to speak, but must be in submission, as the law says’. She considers that the root cause of economic, social, political and marginalisation of women is linked to the church’s teachings which emphasises women’s subordination. Religion appears to be an effective tool for subordination of women in African societies because a traditional African is religious to the core of his being. Okolo is of the view that religion is the main principle that dominates an African’s life and defines his relationship between nature and man.267 Prior to the advent of western religion, religion was not strange to Africans because they had traditional African religion which was rooted in their ethos and belief systems and this made them receptive to the values and belief systems of western religions.268 In line with West and Zimmerman’s argument, Uchem also expressed that in traditional African society, apart from the church, culture is also an added tool of subjugation which society invokes as a means of intimidation, submission and ensuring compliance when women attempted to stand up for themselves or resist domination.269 She is of the view that the male-headship model of family and the church acts as a catalyst for suppressing women’s dignity and that the church compounds the problem by reinforcing the aspects of culture which is oppressive to women.

In line with the arguments expressed above by various authors, Uchem believes that as a consequence of subordination of women in society and the

268 Ibid
269 Ibid at 17
view that women are inferior to men, roles have been created with men having men’s role and women having women’s role. She uses an Igbo proverb to illustrate the oppressive nature of the division of labour stating that men who have done the sharing of roles have also taken the first and best share which she emphasised is unethical and unconstitutional amongst the Igbos.\textsuperscript{270} She stated that in an Igbo community, leadership roles are not determined by personal giftedness but rather by sex which has been assigned to men as heads of the family with the responsibilities of making decisions for themselves and for women irrespective of whether the decision has an adverse effect on women.\textsuperscript{271} Women are restricted from holding leadership positions instead they are relegated to domestic work and childcare roles and to wait on their men.\textsuperscript{272} From a young age, girls are taught inferior and stereotypical roles such cooking and taking care of the homes while boys could go out and play all day\textsuperscript{273} and it is accepted that boys do not have to learn such roles as they will eventually marry wives who would perform such roles for them. In other words, men have been socially conditioned to expect women to serve them.\textsuperscript{274} In addition to this, discrimination against women is also reinforced in schools through textbooks and teaching methods which emphasise gender stereotypes and discriminatory practices against girls.\textsuperscript{275}

In addition to Uchem’s view that culture and religion are added tools of subjugation of Nigerian women, Makama added that the structure of the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{270} Ibid at 62
\item \textsuperscript{271} Ibid at 16
\item \textsuperscript{272} Ibid at 65
\item \textsuperscript{273} Ibid at 94
\item \textsuperscript{274} Ibid at 97
\item \textsuperscript{275} Ibid at 15
\end{itemize}
\end{footnotesize}
Nigerian society also aids in the subjugation of women. She pointed out that Nigeria is a patriarchal society with a system of social stratification and differentiation created on the basis of sex of individuals which confers on men certain advantages in society while restricting women. She defined patriarchy as a system of male authority which oppresses women through its social, political and economic institutions. She is of the view that culture and religion were used to create roles for men and women, putting men in the dominant roles such as leadership roles in which they are trained in, while women are placed in inferior roles such as domestic work. Patriarchy has been used as a tool to justify this marginalisation of women which occurs in all spheres of life such as education, labour market, politics, business and family in the Nigerian society. She argued that gender differentials in inheritance rights and legal adulthood in patriarchal societies sets the framework for structural gender inequality in families and society where men are trained for leadership activities and women constrained to domestic activities which affect their self-worth and confidence later in their adult life and career. Patriarchal societies set up hierarchical systems which enable men dominate women by exercising control over women’s labour and maintaining the control by excluding them from access to economically productive resources. Men further exercise their power over women by requiring personal service from them, not sharing in

277 Ibid
This section has highlighted the issues of gender classification which involves the distinction made between men and women on the basis of their sex and as a tool to create division of roles between the sexes which results in the subjugation of women to men and hence sex discrimination. The following section will look at feminist theories on the issue of gender in order to understand how gender inequality is constituted.

### 3.1.2 The Feminist Theory

The body of feminist theorists believe that women are treated differently in society compared to men. They highlight the structural inequality that exists between men and women and social problems women face in societies which is as a result of the dominant male structure of societies. Some feminist theories will be reviewed to understand the different views held by different feminist school of thought and how and why they believe women are subordinated in society and their solutions in achieving a just and fair society for both sexes.

#### 3.1.2.1 Liberal Feminism

Liberal Feminism argues that women are equal to men and therefore are entitled to equal legal and political standing as well as equal economic and

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278 Ibid
social opportunity. Wendell emphasised that liberal feminism maintains that women’s reasoning and emotional capacities are on the same level as men and that an individual’s capacity should not be determined by their bodily functions. Liberal feminism therefore advocates for equality of opportunity for individuals according to their individual capacity and that each person should be valued as a human being and should be given recognition in the private and public sphere including respect for privacy and freedom.

According to Graham, liberal feminism seeks for the consistent application of liberal principles which advocates for liberty and equality to the treatment of women. Since women have the same moral and intellectual capacities as men, it follows therefore that they should not be placed in an inferior or less powerful positions than men but that both men and women should be treated as persons irrespective of their sex.

Liberal feminists advocate for the elimination of sex discrimination and the promotion of equality of opportunity for women in traditional male occupations. Wendell is of the view that the idea behind this is not that traditional men’s role are more fulfilling than traditional women’s roles but because individuals should be allowed to do work which they believe they are qualified to do and want to do, as well as be able to choose a job which they believe challenge them as individuals. To achieve this, she believes that individuals should enlist the help of the state in making laws and policies in order to end de facto

281 Ibid
283 Wendell S. (1987)
sex discrimination and achieve equality of legal rights for women.\textsuperscript{284} On the other hand, Graham does not believe that laws and government policies are sufficient to end sex discrimination. He is of the view that hidden discriminatory practices which have been perpetuated over time and has become ingrained in individuals need more than laws and policies to eliminate them. He suggests affirmative actions such as the elimination of children’s playthings which emphasizes gender bias and the rejection of gender inclusive language. He is of the opinion that such principles should be used for so long and as far as it is needed as a means to end gender blind law and social policies.\textsuperscript{285} In addition to this, Gerson is of the view that gender hierarchy could be redressed by extending liberal principles into the private sphere in order to protect women from oppression specific to the private realm such as criminalising parental and conjugal abuse, broadening definitions of rape and harassment, granting maternity benefits etc.\textsuperscript{286}

Liberal feminists have identified internal and external barriers to women’s achievement. Wendell believes that liberal feminists are of the view that male supremacy shapes a woman’s perception of themselves which helps in moulding their interests and ambition and they conclude that access to early education in childhood will help in achieving equality.\textsuperscript{287} Liberal feminists believe that legal and social restrictions on women for educational advance and gainful employment should be eliminated and that competition should be

\textsuperscript{284} Ibid
\textsuperscript{285} Graham G. (1994)
\textsuperscript{286} Gerson G. (2002) Liberal Feminism: Individuality and Oppression in Wollstonecraft and Mill Political Studies vol.50, 794-810
\textsuperscript{287} Wendell S. (1987)
open and indifferent to gender of the competitor. Graham believes that this concept would result in inequality and maintain patriarchy because such competition would not truly be open as the conception of public world fits the mentality of men better than that of women and Gerson believes that the public persona is masculine and that women are discriminated against by their inability to fit in the male mould and are further branded by having to ask for special protection.

Liberal feminists also believe that sex prejudice reinforces sex discrimination in society and to eliminate it, society needs to put an end to sex stereotyping. To achieve this, society needs to change its value system which undermines activities and achievements of women or undervalues characteristics associated with women. Liberal feminists believe that the key to creating equal employment opportunity and ending sex discrimination is by putting an end to sex prejudice and allowing access to equal education for both sexes. Liberal feminism considers education as a means through which society can achieve and maintain an equal society. It believes in the power of education as a means of human fulfilment and social reform and advocate for equal access to education for girls and women to that provided for boys and men. Central to liberal feminism view on equality of opportunity is the idea that women are not sources of pleasure and provider of services for men but are valuable in themselves as individuals. They believe that if women are granted

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288 Graham G. (1994); see also Wendell S. (1987)
289 Graham G. (1994)
291 Wendell S. (1987)
292 Ibid
293 Ibid
equal access to education, this would give them the same equal opportunity as men which would ensure that those who are suitable and capable of doing a job would be employed. Wendell believed that if this was the case, there would be no need for competition since distribution would be based on demonstrating a certain level of proficiency and society would provide work and resources to those who attain that level. This was emphasised in the words of J.S. Mill “What women by nature cannot do, it is quite superfluous to forbid them from doing. What they can do, but know so well as the men who are their competitors, competition suffices to exclude them from; since nobody asks for protective duties or bounties in favour of women. It is only asked that the present bounties and protective duties in favour of men should be recalled.” This position has been criticised by radical feminists because their view is that a level playing ground is not created if nothing is done about the conditions within which the sexes perform their free competition in view of the fact that past historical discrimination faced by women would definitely affect their own share of the distribution of wealth, power and responsibility. In order to secure the necessary playing field for women, an extended period of social policy is needed in which women are granted protective duties and ‘bounties in favour of women’.

The liberal feminists aim to eliminate discrimination through an attempt to achieve ‘gender blindness’ on the part of society and the law has been criticised because this disregards the historical discrimination which women

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294 Ibid
295 Quoted in Graham G. (1994)
296 Graham G. (1994)
had faced and will only end up reinforcing relations of inequality between the sexes. Graham asserts that allowing women access to equal educational opportunities as men by treating their applications on equal terms would only result in continued male domination of these institutions if nothing is done about the socio-historical facts which affects women because equality cannot be achieved simply by having an open door policy since past discrimination may not allow them walk through the open door.

3.1.2.2 Radical Feminism

Radical feminism focuses on the writing of women’s lives and the political analysis of women’s oppression. It draws on women’s lived experiences and creates a social theory of women’s oppression and strategies for ending it based on their experiences by looking at the root of women’s oppression. According to Robin Morgan quoted in Rowland and Klein, she believed that sexism is the root of women’s oppression which brings forth other forms of oppression such as racism, class hatred and economic exploitation which will continue to exist if sexism is not uprooted. Radical feminists look at women as part of an oppressed group because of the fear for their safety when they walk down the street or even in their own home of being violated by men.

Radical feminism believes that patriarchy is the structure used by men as a social group to oppress and dominate women as a social group. This is why

297 Ibid
298 Ibid
300 Ibid
radical feminists do not agree with liberal feminists view on achieving equality by giving women equal opportunities on male terms as a means of attaining equality. They believe in a total revolution of the social structures and the elimination of the processes of patriarchy in order to achieve equality between the sexes. It is believed that this can be achieved by changing consciousness, rediscovering the past and creating a future through women’s radical ‘otherness’ which is the idea that women are second to men.\(^{301}\)

Another focus of radical feminism is the power relationship between the two sexes. Radical feminists make visible male control over women in all aspects of their lives both in public and private. They believe that patriarchy is a system of structures and institutions created by men in order to sustain and recreate male power and female subordination. They try to dispel the notion that the social existence of men and women was as a result of nature but rather that it was created by society and that women have a right to be autonomous and not to be subordinated using patriarchal structures such as law, religion, family, ideologies and socialisation processes to continue to sustain and maintain male power and domination over women. These structures have come to be accepted as the norm and it continues to perpetuate the subordination of women. According to Rowland and Klein, legal and religious structures are dominated by men; men have structured the family in such a way that woman’s reproductive capacity is used as a means to domestically exploit her, leave her vulnerable and entrap her in economic

\(^{301}\) Ibid
dependence. Graham is of the view that all fundamental institutions of every culture history has known has been built around the reproductive differences between men and women which generates patriarchy and is used as a means of subordinating women. This is based on the fact that men’s contribution to reproduction – insemination is short, transitory and relatively cost free while women’s contribution – labour, childbirth and nurturing is long, enduring and costly in psychological and social terms.

According to Rowland and Klein, ideologies are used by patriarchy to preserve the ‘natural’ positions of men as owners of intellect, rationality and power to rule while preserving the natural inferior position of women as submissive, passive and willing to be led. It also uses socialisation processes to continue to subordinate women by socialising children in such way as to ensure that girls/women and boys/men develop behaviour and belief systems appropriate to the powerful or less powerful group to which they belong. The family has been constructed with women being economically dependent on men which interrelates with the ideologies of the compulsory nature of “heterosexuality” which defines men’s access to women as natural and their right and “hetero-reality” which is the belief that a woman’s purpose is to be ‘for man’ and a woman who is free and unattached to a man is viewed as loose and available to any man.

302 Ibid
303 Graham G. (1994)
305 Ibid
Radical feminists also believe that sexuality is an aspect of power relations between the sexes. Shulman believed that sexual relations were programmed to support male oppression of female and justify the sexual exploitation of women by men\textsuperscript{306} and Denny is of the opinion that women’s bodies have been at the root of patriarchal oppression.\textsuperscript{307} According to Graham, a woman’s contribution to reproduction which involves labour, childbirth and nurturing has been used to restrict her to the private world of family with the belief that biology requires it to be so while the public world of impersonal relations and politics are seen as the principal reserve of men because biology’s demand upon men are small.\textsuperscript{308} Firestone in the *Dialectics of Sex* argued that the biological division of labour is the root cause of male domination and exploitation of women and advocates for the elimination of patriarchal family structure and childbirth through the use of technology to develop artificial reproduction as a means of freeing women from the burden of reproduction and give everyone the freedom to do work which they find rewarding.\textsuperscript{309}

### 3.1.2.3 Postmodern Feminism

Postmodernists challenge the idea that there are universal truths and concepts such as knowledge, justice and beauty can be evaluated and...
established as universally correct. Postmodernists focus on the local meanings that ideas are socially constructed rather than universal laws and theories. Coffey and Delamont suggest that feminists can utilise the postmodern approach by legitimately abandoning their existing knowledge and create their own new ways of viewing their social world. Postmodern feminists share the emphases on difference with postmodern philosophers. According to Sands and Nuccio, postmodern feminists recognise that there is a multiplicity of women and that their differences should be recognised; they also criticise other feminists for assuming that they speak for all women when they use the term ‘woman’ without taking into consideration other factors such as race, class and heterosexuality which can affect black women, third world women and lesbians. They refuse to develop a comprehensive explanation for the idea of women but emphasised that to avoid assumptions, one must be specific about the woman about whom they speak about. 

The feminist discourse has highlighted how societies operate with normative gendered assumptions and the inequality it creates between men and women. The following section will look at life course theories and how socialisation processes and belief systems from childhood can develop ones behaviour into adulthood.

313 Ibid
3.1.3 Life Course Theory on Gender Discrimination

Some theorists believe that gender inequality stems from various factors acting together such as time, location, lived individuals’ lives, culture and social institutions. These factors work together to shape an individual’s life and this is referred to as the life course theory. This section will look at the views of these theorists to understand how lived experiences of individuals can cause gender inequality.

Life course theory also known as life course perspective has been described as the link between time and human behaviour and how people’s lives are shaped from birth to death taking cognisance of chronological age, common life transitions and social change. Hutchison is of the view that the characteristics of a person and his environment play an important role in shaping an individual’s behaviour and in order to understand a person, his history, the sequence of significant events in his life, experiences and transitions from birth to death should be examined. Life course theory looks at historical time, social location, lived experiences of family members’ lives across time, culture and social institutions as determining factors in shaping an individual’s life. Stuckelberger viewed life course perspective as a

315 Ibid
complex interplay of biological, behavioural, psychological and social and risk factors contributing to equality levels across the span of a person’s life.\textsuperscript{316}

Life course theorists believe that in order to understand why gender inequality is persistent in all societies across generations, gender inequality should be studied taking into consideration the dimension of time in individual lives and linked lives.\textsuperscript{317} Stuckelberger is of the opinion that the dimension of timing in gender inequality can be dealt with in a systematic way by analysing with clarity and efficiency, the situation of women and the solutions at hand throughout a lifetime, specific to women’s life cycle and life events. She believes that gender issues are not properly addressed because of the static way gender inequality is viewed by taking a snapshot of women’s condition at a point in time and comparing it to men’s condition while ignoring the dynamics of women’s conditions throughout their lives which involves inequalities women face in different stages of their lives and different life situations and how these inequalities accumulate through these different stages and shape who they are.\textsuperscript{318} Stuckelberger identified factors such as gender-specific life styles, labour division and socio-economic inequalities between men and women as interacting together in a time framework during the life course as risk factors that may affect equality levels.

Baunach believes that gender inequalities in childhood contribute to gender inequalities women face later in their lives. She is of the opinion that gender

\textsuperscript{316} Stuckelberger A. (2010) \textit{Why the Life-Course Approach to Gender Empowerment is Important?} In UNOSAGI and Qatar foundation (Eds.) Promoting Empowerment of Women in Arab Countries (pp 40-58) United Nations: New York
\textsuperscript{317} Ibid
\textsuperscript{318} Ibid
inequality in childhood is distinct from adulthood gender inequalities in meaningful ways and that it is important to understand childhood dynamics because inequalities which are established early in life could set the stage for later inequalities by introducing and instilling on the child patterns of oppression and domination which they come to accept as normal. There are a host of factors affecting female children which later translates into adulthood gender inequality. Cultural, familial and economic explanations are some of the factors Baunach highlights as explaining childhood inequality that later translates to adulthood inequality. For cultural explanations, she believes that inequality is more pronounced for the girl child because of patriarchy which is associated with son preference and female infanticide. In some societies, sons are more valued than daughters for a number reason such as helping the family defend parents and property and inheritance. This emphasizes the ideology of male superiority in these societies. She is of the view that familial explanations affect childhood inequality to a high degree because children’s lives are affected more than adults’ lives in the way lives are structured. Patrilocality and inheritance are factors under familial explanations which affect the female child because unlike sons, daughters are treated like outsiders because they are viewed as burdens on the family who drain the family’s resources when they are young only to grow up and leave upon marriage. Because of this, families are reluctant to expend resources on the female children who will eventually belong to another family and as a result of this, girls and women in patrilocal societies are not permitted to be

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heirs or inherit properties which will be transferred to their new families upon marriage.\textsuperscript{320}

Schoon, who looked at how life course contribute to gender inequalities and career aspirations and attainment of women, believed that multiple causes of influence that occur over the life course has to be considered.\textsuperscript{321} She is of the view that early experiences in the family and school context and multiple socio-cultural factors help shape individual’s self-concepts, choices and behaviours that become part of the gendered social world that impacts and shapes individual experiences and perceptions. To her, persisting gender differences in career aspirations and attainment is as a result of various factors which over time prime women to make different choices from men such as prioritising families over careers. Anticipated discrimination in future career opportunities, lifestyle values, family background, academic ability and self concepts could also have an influence in career choices made by women. She believes that to understand the reason why gender inequality is persistent in society, linkages between cultural constraints and the formation of individual values, attitudes and capabilities should be examined and focus should be on the discriminatory practices before pre-school and younger ages when children develop their ability of self-concepts, academic and career interests.\textsuperscript{322}

\textsuperscript{320} Ibid
\textsuperscript{322} Ibid
Stuckelberger believes that the static way in which gender inequality is viewed contributes to the persistent gender inequalities in our society today. In her view, empowerment and autonomy of women is important to achieve sustainable human development, and to close the gender gap in a sustainable and long lasting way, all women at all ages need to be empowered at every point in time. In addition to this, she is of the view that the traditional methodological framework from which gender inequality is studied should move from the static view to a more dynamic and comprehensive framework.\textsuperscript{323} In her opinion, a comprehensive approach to women’s empowerment and concept of human development would integrate and analyse the whole life span, all age groups and specificities for each generation and cultures. She believes that in re-classifying gender inequality, it will aid in bringing together what is needed in a specific life in order to increase gender equality towards the highest level possible in line with the international framework set by the United Nations.\textsuperscript{324}

Baunach believes that childhood gender inequalities such as educational differences in boys and girls can have serious repercussions for adults and will have direct effect on labour force inequalities found in adulthood. She suggests that attention should be focused on earlier stages in ones life to remove inequalities because in her view gender is cyclical and what is established at earlier stages is reinforced, enhanced and revisited on the next generation. Efforts need to be made within the school system to remove

\textsuperscript{323} Stuckelberger A. (2010)
\textsuperscript{324} Ibid
gender inequalities as the school is a place where childhood inequality begins, is taught and learned.\textsuperscript{325}

Having looked at various theorists views on the origin of gender inequality and the reasons for its pervasiveness in societies, the next section will look at how gender is practiced in organisations and how this results in sex discrimination in employment.

\textbf{3.1.4 The Theory of Gendered Organisations}

The Feminist project which argues for the equality of both the male and female gender culminates into the gender theory of organisations where it is argued that organisational role structures should be designed in such a manner to be gender balanced in all regards\textsuperscript{326}. Acker believes that gender categorizations and distinctions form the basis of the gendered organisations.\textsuperscript{327} Acker is of the view that a formalised theory is needed because work segregation, income and status inequality is created by organisational practises and processes and the framework of these processes are necessary to understand gender inequality in organizational role distribution.

Feminist writers in spite of establishing that organisations are gendered continue to hold differing opinions as to how they are gendered. Britton argues that a typical organisation is inherently gendered by the way the

\textsuperscript{325} Baunach D.M. (2001)
\textsuperscript{327} Acker, J. (1992)
organisation is conceived and arranged based on the differences between masculinity and femininity and that this arrangement ultimately creates gender differences.\textsuperscript{328} She is of the opinion that this arrangement based on the sexes will create inequalities in status because society values the characteristics of each gender differently. Ferguson however holds the view that organisations are inherently gendered due to the way they are structured, run and managed leading her to surmise that this creates a gendered effect. She is of the opinion that organisations are able to do this because they ‘feminize’ their female workers and clients by ascribing to them the characteristic of weakness which they believe is the characteristics of women.\textsuperscript{329}

Organisations have also been said to be gendered to the extent that they are predominantly dominated by male or female workers. Gender in this sense is used to mean masculine or feminine which Britton termed ‘the nominal approach’.\textsuperscript{330} She argues that using gender in this way only fuses gender with sex which is erroneous because it deflects from determining how occupations are more or less gendered. Occupation’s ‘sex composition’ which she described as the representation of a particular gender in an occupation should be identified separately from its ‘gender typing’ which she describes as a method of ascribing female or male characteristics to a particular occupation

\textsuperscript{330} Britton, D. M. (2000)
to suit female or male workers. This criticism of Britton's is echoed in Acker 1992.

Organisations can also be said to be gendered to the extent that they are culturally accepted by people. Under certain cultural persuasions, individuals have come to accept that some skills and attributes are associated with different genders. Skills such as technical skills, corporate management, managing finances and litigation have been attributed to masculine characteristics; while occupations such as nursing and clerical work have been assigned to female characteristics. Faulkner elaborates how technology is socially constructed and reproduced alongside gender through the attribution of masculinity to technology. She argues that culture and society achieves this by associating masculinity and technology with the symbolic images of masculinity and power; and this is possible because men are the ones responsible for the chain of decision making that shapes technology. Britton further argues that this approach of viewing organisations as gendered runs the risk of obscuring the historical and contextual circumstances under which gendering occurs.

Acker summarised the research in the area of gender and organisations together by postulating the theory of gender and organisations. She is of the view that a formalised theory was needed because work segregation,

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331 Ibid
332 Ibid.
335 Acker, J. (1990)
income and status inequality was created by organisational practises and processes and the framework of these processes were necessary to understand gender inequality. She also maintains that cultural images of gender are formed and recreated in organisations and the understanding of this process would aid in understanding gender construction.  

Acker demonstrates that an organisation is gendered if “advantage and disadvantage, exploitation and control, action and emotion, meaning and identity, are patterned through and in terms of a distinction between male and female, masculine and feminine”. The phrase from Acker’s Theory of Gendered Organisations if looked at from a different perspective suggests that in a gendered organisation both male and female genders enjoy different advantages as well as disadvantages derived from their gender identity within the context of the organisation. Bearing in mind that the organisation itself is a unit of society, it can be further argued that the cultural context of the organisation is derived from the cultural context of the broader society in which the organisation is based. In other words, gendered organisations in various contexts such as in Nigeria, United Kingdom and the United States will respond differently (in the same or opposing directions) to the identity spectrum of the female gender within an organisation. This reaction will derive from two major factors, the first being from the society’s cultural identity and location of the female gender and the second being from the perspective of existing employment legislation which may also be affected by pre-existing

336 Ibid
337 Ibid
societal based gender identity, a form of resistance or acceptance of the female gender in relation to the context in question.

In line with the above argument, Gherardi and Poggio are of the view that it is important to study the historical and cultural experiences of a society in order to determine how gender is constructed and reproduced in the organisation.\textsuperscript{338} This method considers in detail the language and cultural practices of the individuals and how it affects them in relation to the organisation. They affirm that this examination of cultural practices will shed more light on how gender is constructed and reproduced. In their study, they demonstrated how cultural practices affect women in the organisation through the context based cultural rules and norms which determine their behaviours and hence the gender culture in the work place. Alesina, Giuliano and Nunn examined the historical origin of the appropriate role of women in society.\textsuperscript{339} They expressed the view that societies that practised plough agriculture which required upper body strength, developed a specialisation of production along the lines of gender. Men were viewed as the stronger gender hence they worked ploughing the fields while women who were the weaker gender, worked within the homes. Women sometimes assisted their men in the fields but performed menial tasks which did not require strength such as weeding. Women were able to perform these functions in the field because part of their role which is looking after the children could be interrupted without putting the


children in harm’s way. This division of labour could generate norms about the
appropriate roles of women in society which it believed that the natural place
for women was within the home. In their opinion, cultural beliefs are seen as
the rule of thumb and can be persistent, so the cultural belief that women’s
place in society is at home and not at work can be persistent. This belief
persisted even after the economy has moved on from agriculture to
industrialisation hence gender inequality prevailed affecting women’s
participation in activities outside the home and laws, policies and institutions
strengthen these cultural beliefs.

Acker identifies five processes in which gendering occurs. A very relevant one
of them in her view is that organisations are organised along the lines of
gender.\footnote{Acker, J. (1990). See also Faulkner W. (2001)} She demonstrated that people tend to be grouped in society
according to their gender, assigned to perform certain tasks, behave in certain
ways and perform certain functions in society. From the above argument,
Acker suggests that organisations are structured in such a way as to favour
and represent the interests of men, in other words organisations are
masculinized.\footnote{Ibid} This view is in line with West and Zimmerman’s view of
society ascribing roles to individuals based on their biological make up with
men working outside the home and women staying home to look after the
home and children. When women ventured outside the homes to seek
employment, men attempted to exclude them from the workplace because
they felt threatened and feared that women would undermine their position in

\footnote{Acker, J. (1990). See also Faulkner W. (2001)}

\footnote{Ibid}
the labour market. This view of the organisation being a male domain may be a fundamental reason why women in certain communities continue to be restricted from carrying out certain functions or attaining certain positions in the organisation (the glass ceiling concept).

Acker maintains that in managing an effective organisation, there has to be a laid down standard of how the organisation should be run which includes contractual agreements between the organisation and its workers, clear cut rules of the organisation, evaluation of the jobs and hierarchy. The purpose of job evaluation is to evaluate jobs, and not the workers, by describing the tasks the job holder is expected to perform and the skills and experiences the job holder is expected to have. The job evaluation evaluates the job as an abstract position devoid of people for the purpose of assessing its characteristics and hierarchy. This assessment confers the job its responsibilities and hierarchy in the organisation. Following Ackers argument, jobs will be evaluated in such a way that it does not confer advantages or disadvantages on anybody because evaluation is carried out in isolation of people that work in the organisation as the management consultants who evaluate jobs do so in isolation of the workers in order to achieve a reasonable standard. As the evaluation is done devoid of people, it impacts adversely on women as external influences such as child birth, childcare and family responsibilities are not considered when making these evaluations.

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Acker emphasized that an abstract job is transformed into a real form when there is a worker and the organisation expects that the worker should only exist for the job without outside influences which will have an adverse effect on the job and therefore make the worker unsuitable for the job. She points out that the closest a real worker will come to this abstract worker will be a male worker whose life revolves around his job with a wife or a woman to look after him and his children. She affirms that a female worker cannot fit into this abstract role because it is assumed that she has other responsibilities outside of the organisation which requires her attention.\textsuperscript{343} Ely and Meyerson believe that the concepts of a worker and man as well as the concepts of woman and parent are inextricably bound together due to the sexual division of labour which is reflected in and sustained in organisations.\textsuperscript{344} Following from the above argument, it can be said that jobs are gendered because according to West and Zimmerman, as gender is conferred on us at birth from the moment the sex of a child is determined; the functions that we perform in society is already determined with women having the responsibility to look after the home. As society has given women the responsibility of taking care of the home and looking after the children; they are therefore precluded from the job market. Acker adds that the ‘idea of a job’ is gendered because a job accepts the division of labour based on gender and separates between domestic and work life.\textsuperscript{345} Following a different perspective on Acker’s reasoning above in relation to an abstract job being created without any gender in mind but for the

\textsuperscript{343} Acker, J. (1990)
\textsuperscript{345} Ibid
benefit of the organisation, it will follow that a man as well as a woman can fit into the abstract job if they do not have any outside responsibilities which will divert their full attention from the organisation. From Gherardi and Poggio’s study, they found that a man as well as a woman can succeed and attain a certain level in an organisation if they shed outside responsibilities in favour of their jobs. But this has different implications for men and women. For a man, this would only affect his time in relation to his family life, whereas for a woman this would mean a choice between a family life and her job.\textsuperscript{346}

Ely and Meyerson assert that images in many organisations portray the ideal worker as someone who is willing and able to put work first above other activities and those who are unable to meet this demand are penalised. This has a differential impact on men and women with white married men who have relatively high-income with spouses at home who takes care of the home and children being able to meet the characteristics of the ideal worker more than any other social groups.\textsuperscript{347} Acker shows that hierarchies are gendered because they are created based on this belief of gender based division of labour. Those who separate their work life and domestic life are seen as more suited to responsibility and authority than those who divide their attention between their work lives and domestic lives. She supports her theory of gendered jobs with Pateman and Gross’s discussion on liberal individualism where the individual is detached from the body in order to depict a universal body that represents everyone. Pateman and Gross argued that

\textsuperscript{346} Gherardi and Poggio (2001)

\textsuperscript{347} Ely R.J. and D.E. Meyerson (2000)
this detachment makes the individual a universal being that does not represent any sex or gender but one derived from a political concept, the construction of which excluded women because they were considered not to have the ability to participate in civil societies. The universal being was therefore created from a male body and is deemed to be always masculine.\textsuperscript{348} Acker argues that on the basis that a man is always the universal being that women are excluded from responsibilities in organisation because they cannot achieve the qualities of the universal being who fills the abstract job. She further argues that women are looked down upon in organisations and hence not given responsibilities due to the way organisations separate work-life from private-life by making work-life more important than private-life. The problem is further compounded by the way organisations keep the responsibility of human reproduction outside the scope of the organisation. She argues that this detachment discriminates against women because the structure makes it impossible for women to combine having children and looking after their families with work.\textsuperscript{349}

The inequality that exists between men and women relating to childcare and domestic work is believed to be the main obstacle to women’s participation in work.\textsuperscript{350} The failure of organisations to bring human reproduction into the scope of the organisation has an adverse impact on women from rising to the top of the organisations because of the difficulty they encounter in balancing

\textsuperscript{348} See Acker (1990)
their family lives with their work lives. Heilman believes that few women are
found at the top of the organisations because of the stereotypical based sex
discrimination which exists in organisations which organisational practices
perpetuate. Women were predominantly found at lower ranking jobs and they
have been blamed for their lack of advancement into top positions because
there is a belief that men and women differ in their skills, that women have
deficiency in their knowledge and they lack the drive to go for such roles.
Heilman affirms that no evidence has been shown to support these assertions
or that men and women differ in motivation and the need to acquire power or
that women are less committed to their career because their primary
commitment is to their families and homes. Evidence shows that the number
of women who has advanced into middle level ranks has increased but that
few have advanced to the same level or at the same pace as their male
counterparts.\textsuperscript{351} Straub found that research indicates that gender is the barrier
to female progression into senior management roles because of the
differences in their work and family lives. She is of the view that women
devote more time than men in family matters and spend as much time as men
on work commitments which affects their career opportunities differently and
adversely impacts on women’s ability to rise to top management positions.\textsuperscript{352}
Ely and Meyerson believe that efforts made to recruit and advance women to
top positions are unsuccessful because organisations fail to question and
change prevailing notions about the appropriate and effective way to

\textsuperscript{351} Heilman M.E. (1997) Sex Discrimination and the Affirmative Action Remedy: The Role of Sex
Stereotypes \textit{Journal of Business Ethics} 16,9, ProQuest pg. 877-889
289-304}
accomplish and reward work and these support deeply ingrained divisions between men and women in subtle ways. They are also of the view that the failure by organisations to change prevailing work practices affects men because men’s opportunities to participate at homes are restricted as well as put them under pressure to meet societal notions about masculine roles.

Acker further asserts that another aspect that brings about gendering in an organisation is the process of constructing the abstract worker as devoid of sexuality, emotions and the need to reproduce. She indicates that this may be the foundation in establishing an all male organisations because men are believed to be without these characteristics which are seen as the characteristics of the female gender. This forms the basis of excluding women from the organisations. Furthermore, the female body has been associated with illness, emotion, lack of control and impulsiveness; the organisation uses this as a ground for control and exclusion of women and justifies its decision in putting women in lower ranking jobs as it is believed that they are unable to comply with the challenges of the abstract job. For a woman to succeed at the top of the organisation, she has to disregard everything that makes her a woman and assumes the characteristics of a male body because the male body is seen as the standard with characteristics such as good health, control and reasoned actions. The image of the male body which is believed to be strong, authoritative, sexually potent and attractive with controlled emotions is seen as the ideal body to fill the abstract job and is

354 Ibid.
used as a means of superiority over women in organisations and also used to validate the hierarchy of organisational powers. In Gherardi and Poggio’s study, they found that for women to be successful and achieve their goals, they have to give up their female identity and shed their characteristics of gentility and passivity and adopt characteristics and behaviours which are found in men such as the ability to take risks, aggressiveness, competitiveness and determination.

According to Schultz, some employers and conservative judges are of the view that women lack interest in more lucrative jobs done by men, and that segregation is attributable to their own choice. These conservative judges refuse to accept the ‘futility doctrine’ in sex segregation cases as they did in racial discrimination cases where it was held that minorities’ failure to apply for higher paying predominantly white jobs was not due to a lack of interest rather than to a sense of futility created by the employer’s history of discrimination. They did not believe that employers ever discriminated against women but that women found non-traditional jobs unappealing. Liberal judges acknowledge that employers historically denied women the opportunity to do non-traditional jobs but have like the conservative judges refused to use the ‘futility doctrine’ because they were skeptical that the past generation

355 Acker (1990)
356 Gherardi and Poggio (2001)
358 Ibid
women would have done non-traditional jobs if they were given the opportunity.\textsuperscript{359}

Acker maintains that male dominance and female subordination which exists in the organisation is due to the gender substructure which prevails in the running of the organisations and this only assists in further division of labour along the lines of gender with the inherent importance of women’s role of reproduction being ignored.\textsuperscript{360} She also maintains that changes in the structure of the organisations such as reduction in the use of hierarchy systems and reinforcing team work and improved flexibility of jobs might eliminate gender substructure in the organisation and allow for other aspects of life which might influence work and reduce the adverse effect on women in employment. This, she concludes will provide women with the opportunity to work as equals with men and be evaluated on their own merits and not on a stereotypical beliefs about women.

Gherardi and Poggio also conclude that to eliminate gender substructure in an organisation, gender should not be seen as a natural occurrence but as a societal practice created by individuals. They maintain that to change this concept, gender relationships should be mobile and change with time. Organisations should revisit their policy on gender differences as frequently as they visit other issues such as their trade policies and they should view gender differently bearing in mind the dominant male nature of the society.\textsuperscript{361}

\textsuperscript{359} Ibid
\textsuperscript{360} Acker, J. (1998)
\textsuperscript{361} Gherardi and Poggio (2001)
Franke believes that in order to examine the fundamental issues of equality and differences, one needs to answer the question 'What is the wrong of sex discrimination?' Could it be the unfair consideration of the biological differences between men and women, or the outdated belief of the abilities and skills of both sexes, or the preservation of the belief of masculinity and femininity, or the unwelcome sexual advances in inappropriate settings such as the workplace? She maintains that the answer to the question would depend on one’s concept of what it means to be discriminated against because of one’s sex. She asserts that it is erroneous to define sex in biological or anatomical terms because this fails to take cognisance of the complex behavioural aspects of sexual identity, in other words, defining sex in this manner fails to consider the fact that society’s conception of most differences between men and women are based on gender norms rather than biology. The discrimination is not based on the physical attributes of differences between the sexes but is based on the culturally perceived differences; for example, traditionally women stayed at home to look after the family while men went out to work. So when a woman ventured out to work, she was discriminated against not because of her physical appearances but because society believes she should have been at home.\(^{362}\)

A recent development of how organisations can view gender differently can be seen in the recent move to change the legislation guiding maternity leave to allow women a guaranteed rest period of two weeks after the child’s birth following which she and her spouse/partner can share the remainder of her

maternity leave of up to forty six weeks allowing her to go back to work to pursue her career while her spouse/partner carries on with post natal care of the new offspring.\textsuperscript{363} Other employer centred discussions could also include government funded schemes that enable female workers who have taken time off to have children to continue to earn their full wage without having to resort to basic maternity pay. Acker also suggested that another way to reduce the discrimination of the female gender in the organisation is to balance the caring responsibilities of both women and men in the home so that either women or men could be responsible for the home and none could be expected to fill in the role of the abstract worker who lives for the job.\textsuperscript{364}

Gender discrimination is fundamentally a problem against the female gender. From the foregoing argument, there is no valid fact to show that one gender is indeed biologically superior to the other. Gender discrimination as clearly outlined is merely a societal identity. Although a biological distinction exists, the society has tended to build on these differences to create a superior gender. Gender identities should be based more on individual attributes; each individual should be treated on the basis of their characteristics and ability and not on the stereotypical belief about them based on their gender.\textsuperscript{365} The following section will look at the concept of equality and the diverse views on equality between men and women.

\textsuperscript{363} Shared Parental Leave Regulations 2014
\textsuperscript{364} Acker 1990
3.2 The Concept of Equality

As has been highlighted above, women have always been the victims of sex discrimination in society because of the belief that they were irrational and should be restricted to the home. Because of its pervasiveness in society, non-discrimination or equality cannot be achieved without deliberate and consistent efforts from the state, organisations and discriminated groups.\textsuperscript{366} Tomei in his article highlighted three models of equality – the procedural or individual justice model, the group justice model and equality as recognition of diversity. The first model can be classed as formal equality while the other two models can be classed as substantive equality.

3.2.1. Formal Equality

One basic notion of formal equality is that likes must be treated alike, in other words people should be treated equally regardless of their circumstances as they all have the same rights and entitlements. Formal equality focuses on neutrality and fairness.\textsuperscript{367} According to Barnard and Hepple, this concept embodies a notion of procedural justice which is concerned with making and implementing decisions using fair processes\textsuperscript{368} and that the rules of competition are non-discriminatory and enforced fairly on all.\textsuperscript{369} This model considers men and women to be the same and that they should be treated

\textsuperscript{369} Tomei M. (2003)
equally according to the same rules and standards hence the biological and gender differences between men and women should be regarded as irrelevant. Tomei noted that the aim of procedural justice is to reduce discrimination brought about by consideration of an individual’s characteristics which are irrelevant but have negative effects on individuals with those characteristics. According to Fredman, a fundamental principle of this model is individualism where it is believed that a person should be treated according to their individual merits rather than by a stereotypical belief based on her gender. It is believed that characterization of individuals creates barriers, elimination of which would permit individuals to be rewarded according to their personal merit and abilities. This appears to be reasonable, however Fredman points out that responding to the problem of discrimination by treating individuals according to their merits, it conceals the insistence on a particular set of values which is derived on values based on the dominant culture that depicts a universal or abstract individual who is a white, heterosexual Christian male. The existence of this abstract individual denigrates the real value of an individual’s own group identity and value because each person’s mode of reasoning and expression is partly constituted by the individual’s sense of history and identity. So the creation of the universal being devalues an individual who does not conform to those

370 Ibid
371 Fredman S. (2001)
372 Ibid
values as well as denigrate the values of her group identity which in turn creates conformist pressures.\textsuperscript{374}

Formal equality theorem holds that individuals act autonomously and make their choices. Hence the concentration of women in low ranking jobs in the employment market is as a result of women’s choices and not of structural employment inequality which needs to be remedied by law.\textsuperscript{375} Fenwick is of the view that formal equality model is inadequate in eliminating employment inequalities and curbing discriminatory effects. Tomei also holds the view that the removal of barriers or unfavourable actions against certain individuals or groups will not be adequate to eliminate discrimination and achieve equality. Formal equality rejects the use of affirmative action or reliance on gender based classifications to achieve equality or use it as a means of conferring benefit to a disadvantaged group. It only accepts a difference in treatment when there is an actual difference for example it allows for difference in treatment of a pregnant woman because a man cannot get pregnant.\textsuperscript{376} According to her, policies which are based on formal equality are more predisposed to maintaining the status quo of power imbalance between men and women in society since it is believed that both genders are unaffected by the social context in which they operate.\textsuperscript{377}

The notion that likes should be treated alike negates the value of difference and on this basis Fredman criticised the neutral vision of justice as

\textsuperscript{374} Fredman S (2001)
\textsuperscript{376} Ibid
\textsuperscript{377} Ibid
consistency because in principle there would be no difference if two people are treated equally badly or equally well as long as equality is achieved.\footnote{Fredman S. (2001)} In other words, there is no violation of the concept of formal equality if an employer treats his white and black workers equally badly or sexually harass both men and women at work. She is of the opinion that by this concept, a claim to formal equality is achieved either by depriving the privileged individuals of a benefit or levelling down to the lowest common denominator.\footnote{See also Bernard C. and B. Hepple (2000)} The idea of formal equality targets direct discrimination found in legislation which subscribes to the principle of equality as consistent treatment and uses the idea of comparison between treatment of the ideal group as compared to the treatment of the conformist group in establishing and eliminating differences.\footnote{Fredman S. (2001)} The need to find an appropriate comparator created a limitation to this principle which led to an attempt to develop the concept of substantive equality.\footnote{Barnard C. and B. Hepple (2000)}

### 3.2.2. Substantive Equality

With the failure of formal equality to address established patterns of social disadvantage, an alternative concept known as substantive equality was developed for the state to take positive measures to promote equality.\footnote{Fredman S. (2005)} Substantive equality recognises the classifications based on gender and other prohibited grounds which are disregarded and seen as irrelevant by formal
equality.\textsuperscript{383} According to Fenwick, this model recognises the fact that women have been victims of past discrimination and social attitudes which deny them equal footing in the employment market as compared to men. The model recognises that treating like as like while ignoring the social context in which the treatment is given would disadvantage women and sought to prevent its perpetuation and disadvantage flowing from it. She stated that if substantive equality approach was adopted, policies which may lead to structural reform and the use of affirmative action intended to remove under representation of women in some employment sectors can be justified.\textsuperscript{384} Substantive equality recognises that an individual’s group history and values form part of the individual’s identity therefore the abstract individual held out as the universal being by the formal equality theory is a myth. Substantive equality does not accept man as the norm on which reliance is placed in order to justify detrimental treatment of women arising from biological or socially determined differences between men and women.\textsuperscript{385} A person who has been shaped by her past history of sexism or racism cannot be expected to conform to the norm of the universal being who has been created out of the characteristics of the dominant group for the price of equal treatment. This is because the ongoing effects of past discrimination mean that their opportunities and life course may continue to be affected by their gender or relevant characteristics.\textsuperscript{386}

\textsuperscript{383} Ibid
\textsuperscript{384} Fenwick H. (1998)
\textsuperscript{385} Ibid
\textsuperscript{386} Fredman S. (2005)
Fredman is of the view that societal discrimination should extend beyond individual acts of prejudice, so States should act positively to promote equality such as duty to provide. For States to achieve this, Fredman identified two objectives of the concept of substantive equality – equality of opportunity and equality of results. True equality cannot be achieved where an individual has a fair advantage over another and to achieve equality of opportunity, Fredman believes in removal of obstacles which puts the disadvantaged group at a detriment. However, this will not guarantee that the disadvantaged group would take up the opportunities because of past discrimination. To ensure full participation, equality of opportunity requires positive measures to be adopted so that people from all sections of society have a genuinely equal chance of satisfying the criteria required for a particular social good. It should also be used to effect changes in underlying discriminatory structures and to facilitate effective freedom of choice.387

The second objective of substantive equality – equality of results as identified by Fredman cannot be achieved without positive provision. This model is concerned with the results of decisions rather than the decision making process itself.388 Rather than focus on individuals, the model focuses on the relative positions of distinct groups and aims to eliminate inequalities between dominant and discriminated groups. Since the model is concerned with results, it seeks to ensure fair participation of members of disadvantaged group in the distribution of benefits. To redress past discrimination, the model

387 Ibid
proposes the use of special measures such as affirmative action and preferential treatment to increase the participation of discriminated groups and overcome discrimination.\textsuperscript{389} Affirmative action has been challenged as a form of reverse discrimination which entails giving preferential treatment to individuals based on their characteristics which has been considered as irrelevant by formal equality model. The substantive equality model targets indirect discrimination in legislation which focuses on policies and practices that puts the disadvantaged groups at a detriment.\textsuperscript{390}

Fredman is of the view that substantive equality should be considered as a multidimensional concept and aim to achieve the following four complementary and interrelated objectives: redressing disadvantage, addressing stereotype, facilitating participation and accommodating differences.\textsuperscript{391} She is of the view that substantive equality should aim to redress disadvantage and in so doing should allow for affirmative action to remedy past discrimination. She believes that individuals should not be penalised by their characteristics rather their different identities and characteristics should be celebrated. To achieve this, structures which inhibit individuals from reaching for opportunities need to be modified or transformed to accommodate differences. Fredman asserts that using a multidimensional approach will provide a framework for the different objectives to interact with each other for an effective response to substantive equality. Using these

\textsuperscript{389} Ibid
\textsuperscript{390} Ibid
approaches will have the effect of redressing the problems that could be caused by affirmative action measures such as stigmatising victims.

Formal and substantive equality are concepts used in anti-discrimination laws to ensure that individuals are not only given an opportunity to participate in society but enable them to take advantage of that opportunity. The following section will look at the issues surrounding sex discrimination at work and the reason it persists despite anti-discrimination laws.

3.3 Sex Discrimination

Discrimination has been defined by the Oxford Advanced Learner’s Dictionary as “treating a person or a group differently (usually worse) than others”. Another source defines discrimination as “treatment or consideration of, or making a distinction in favour of or against, a person or a thing based on the group, class or category to which that person or thing belongs to rather than on individual merit”.392 Some feminist writers have argued that historically women have been subjected to discrimination and excluded from equality based treatment on the belief that they belong to an inferior gender, lack rationality and need to be supervised and guided.393 This was supported by the claim that basic rights to liberty and equality were intrinsic in individuals by

virtue of their rationality, and women were thus denied these rights as they were regarded as irrational beings.\textsuperscript{394}

Various anti-discrimination laws have been enacted in order to stamp out discrimination based on gender, and they have grown rapidly over the years in the United Kingdom since the first anti-discrimination law was enacted to ensure equality between the two genders.\textsuperscript{395} Feminist writers are of the view that these anti-discrimination laws have done little to prevent the discrimination of women in the work place such as unequal pay and segregation of women in low paying jobs.\textsuperscript{396} Fredman emphasized that the discrimination of women in the work place persists because of the restricted concept of equality used in anti-discrimination laws. She asserts that the continued reliance of the law on differences between the two genders in order to determine the occurrence of discrimination is the reason why discrimination persists. This is immediately seen in the definition of discrimination which requires that a woman be compared to a man in order to determine if she has been treated less favourably or not. In other words, equality is derived from the standards of the ideal man who lives for the job without any outside influences, standards which determine how the labour market is structured such as continuous full time work from school leaving age to retirement without any break in between with its attendant benefits such as salary increase, promotion and pension benefits; and a deviation from this would

\textsuperscript{394} Ibid
\textsuperscript{395} Fredman, S. (1992)
\textsuperscript{396} Ibid
normally be penalised. Women are bound to deviate from this standard because they are mainly responsible for childbirth and child care and are automatically disadvantaged since they cannot conform to the standards of the ideal man. Fredman affirms that the male norm is the barrier to women’s progress and any law which bases its equality on the male norm is limited and has failed in its objectives.

In addition to the above, Franke stressed that discriminatory treatment persists because the courts based the sex equality law on the premise that males and females are different kinds of beings. In her analyses of U.S. case of *Craig v Boren*, she came to the conclusion that the courts ruled that sex discrimination laws are not intended to target gender based differences but differences based on the biological sex. To buttress her point, Franke compared the sex equality law and the race equality law to show how ineffective the sex discrimination laws are. She stated that the race equality law was made in a ‘colour blind’ manner which was based on the presumption that whatever differences which existed between the races (skin colour) does not justify the differential treatment of people from different races. On the other hand, on the basis of the fact that the courts believed that the sexes are not similarly situated (they are different kinds of people), the sex equality law cannot be defined as ‘sex blind’. Franke is of the opinion that it is this notion of the sexes being two kinds of people that asserts the discriminatory treatment

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397 Ibid
399 (1976) 429 U.S. 190, 198
because the stereotypical differences are mistaken for real differences. With the new provisions of the Equality Act, it can be argued that the law is no longer sex blind because of the single definition for the different types of discrimination in the Act only distinguishing them on the basis of their characteristics.

Franke is also of the view that the division made between sex and gender is one of the central mistakes of the equality law. In line with the belief of most feminist researchers, anti-discrimination laws are founded on the premise that sex precedes gender. She opined that this assertion is erroneous because every sex discrimination claim rather than being based on sex is grounded on the normative gender rules and roles. Sex discrimination laws have failed to accept equality in its literal meaning rather it accepts the validity of biological differences and in doing so, accepts as fact, the effect of gender ideology. The division made between sex and gender is the reason why sex discrimination laws have failed to tackle the problem of sex discrimination and segregation in the workplace which in effect bars women from breaking the glass ceiling and getting to the top of the hierarchy in the organisation. In Franke’s opinion, the anti-discrimination laws should not only be limited to the distinctions which exists between the sexes but should also be applied to the social processes that construct those differences. She emphasises that biology should not be used as an excuse in ‘doing gender’ which places men in a hierarchical position over women which in turn has an effect of placing

401 Ibid
402 Ibid
women in an inferior position. She suggests that the sex discrimination laws in trying to achieve equality should not use sexual differences as a starting point because the ideology of sexual differences maintains and ensures sexual hierarchy.

To correct this anomaly, Franke surmises that the sex equality law should be reconceptualised. She is of the opinion that sexual identity should be understood from the perspective of a set of behaviours rather than from the biological context. In other words, if one says she is a woman, she should be viewed from a historical perspective of women’s experiences thereby creating an environment to determine her gender identity independent of biological sex. She is also of the opinion that discrimination based on one’s sex should be viewed beyond biological sex and that anti-discrimination laws should not limit conduct and treatment which occurred but for one’s biological sex rather it should aim higher to correct the anomalies caused by rules and policies which reinforce gender as authentic and natural.

According to Burton, one reason gender inequality exists in the workplace is because of occupational segregation where men and women have the tendency to be employed in different occupations from each other.\footnote{Burton B. (2014) Neoliberalism and the Equality Act 2010: A Missed Opportunity for Gender Justice? Industrial Law Journal, vol. 43, No.2, 122-148} She is of the view that the Equality Act has failed in achieving equality because it did not address the issues of occupational segregation at work. She believes this is as a result of the individualised approach of the complaints-led model of the Equality Act which does not correct the institutional structure that gave rise to
the discrimination. To achieve true gender equality, the law needs to move from negative prohibition on discrimination to positive duties to promote equality.\textsuperscript{404} Dickens is also of the view that the failure of the law stems from the fact that the laws foster an individual rather than organisational focus to push beyond the model that requires special provisions to overcome disadvantages and instead help women adapt and get on within the structures as they are.\textsuperscript{405} She believes that this would lead to a longer agenda which would require changes to be made to the organisational culture, male gendered practices and value systems to accommodate all which would see a shift from legislative reliance on individualised approach to non-discrimination directed at achieving neutrality towards promoting equality. Burton believes that an effective equality strategy must combine the anti-discrimination measures with a more proactive and collective approach to achieve true equality by shifting the burden of achieving equality from individual women to the society at large. According to her, the Equality Act should embrace positive action measures in order to break down the barriers that limit the real choices of women. She advocates for a combination of affirmative strategies allowing for an introduction of radical polices such as statutory quotas; and transformative strategies allowing for reformation of parental leave such as family friendly policies which will deliver equality of results and see equal representation of women in higher paid roles.

\textsuperscript{404} Ibid
\textsuperscript{405} Dickens L. (2007) The Road is Long: Thirty Years of Equality Legislation in Britain \textit{British Journal of Industrial Relations} 45(3), 463-494.
3.3.1 Gender Equality at Work

Inequality still remains a problem for the female gender and in many countries it remains enshrined in their laws.\textsuperscript{406} Many of the developing countries see women excluded from the most fundamental protection against violence by husbands, employers or state. Fredman is of the view that without such basic rights, labour market participation is severely compromised. This will have an impact on individuals’ living standards by relegating them to low paid and low quality jobs; subjecting them to victimisation, violence and harassment as well as inhibiting their opportunities for promotion. Discrimination can also impact on productivity in the workforce by excluding potentially productive workers and not capitalise on their full potential.\textsuperscript{407}

Despite the anti-discrimination laws, discrimination in the workforce still persists because of the way the courts continued to interpret the laws which reinforce discriminatory treatment in the workplace. During the 1970s and 1980s, there were a number of cases\textsuperscript{408} which challenged employers’ policies on dress codes in the workplace such as rules banning men from wearing long hair or facial jewelleries and rules requiring women to wear ‘feminine’ clothes. In these cases, the courts rejected the claims and denied that the claimants were not discriminated against on the basis of their sex. The courts


\textsuperscript{407} Ibid

\textsuperscript{408} Schmidt v Austicks Bookshops Ltd (1977) IRLR 360; Denise v Metropolitan Police Department (2013); DWP v Thompson (2004) IRLR 348; and US cases Fagan v National Cash Register Co 481 F.2d 1115 (D.C. Cir. 1973); Willingham v Macon Telegraph Publishing Co 507 F.2d 1084 (5th Cir. 1975); Lanigan v Bartlett & Co. Grain 466 F. Supp. 1388 (W.D. Mo. 1979); Carroll v Talman Federal Savings and Loan Association 604 F.2d 1028 (7th Cir. 1979)
claimed that any distinctions made in employment practices between men and women on the basis of something other than the protected characteristics does not deny the claimants any employment opportunity and that the sex discrimination laws were not intended to protect against gender role identity, dressing or hair styles. According to Franke, the law and the courts failed to protect claimants because of the distinctions they made between sex and gender and the equality law is dominated by the fact that the courts and employers are allowed to distinguish between cultural stereotypes and accepted social norms. This is validated by the fact that the courts and statutes reinforce the position of employers that men and women should exhibit their gender differently according to the cultural value and social norms by making policies which restrict them from dressing in a certain way. This makes it difficult for the courts to harmonise cases that enforce standards of accepted social norms and cases that attempt to eliminate discriminatory treatment based on sex as a result of gender stereotypes.

Feminist writers are conflicted on whether the law should seek to promote equality of opportunity or equality of results. Feminists who seek to achieve equality of opportunity aim to eliminate differences that exist between the two genders and achieve gender neutrality; while feminists who seek to achieve equality of results aim to achieve gender non-neutrality legislation in order to address the unequal experiences of women which is not as a result of

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wrongful treatment.\textsuperscript{410} Chan is of the opinion that the law should aim to eliminate inequality in practical contexts by treating people equally without necessarily treating them identically. She is of the view that the state should intervene in situations where an individual’s characteristics such as gender and maternity affect their personal experiences. But in doing so, the law should be able to accommodate gender-specific differences in order to achieve experienced equality. In other words, employment legislation should be tailored to accommodate differences and contain specific maternity rights such as family friendly policies in order to protect career opportunities of women.

Chan believes that though family friendly policies will have a positive effect on women’s employment continuity, it has the effect of damaging their career prospects because employers may choose to employ men over women who do not have any maternity protection and may likely not take parental leave to care for their children. In this manner, family friendly policies can work against women’s ability to scale the career ladder rather than facilitating and advancing their progress. This is especially obtainable in senior executive and highly skilled positions where there are fewer places at the top positions; and family friendly policies will have the effect of restricting women from getting to the top.\textsuperscript{411}

Senior management roles can be demanding and may involve excessive travel for long periods of time at short notices with unpredictable timetable. As

\textsuperscript{410} Chan W. (2013)  
\textsuperscript{411} Ibid
a result, these roles can never be made family friendly or be organised to fit in to family life and therefore such roles cannot accommodate motherhood, long parental leaves and flexible working. As a consequence, women who share their time between family and work cannot fit into senior management roles because of the demanding nature of the jobs which would usually spill-over into private lives. Hakim believes that the unpredictability and stressful demands for overtime in such roles is the reason women with children are less attracted to senior management roles and half of the women found in top management roles in Britain are childless. Women would prefer to go for lower grade jobs with lower earnings and relatively little responsibilities which can be organised on a part time basis.

Hakim propounded the preference theory in which she posits that individuals are free to make choices on the type of lifestyle they choose to live. She asserts that women make choices which fall into three lifestyle preference groups: home centred, work centred and adaptive lifestyles (those who seek to combine paid work and family work). She argues that women continually make the choice to combine their family-life with their work-life and that it is individual preferences that create the gap between opportunity and outcome. She affirms that equal opportunity already exists at market entry level in some nations and that the persisting gender pay gap in those jurisdictions should be explained away by gender attitudes in career mindset. She believes that

413 Ibid
414 Ibid
different outcomes are as a result of preference by the free choice of actors. She observed that men are more likely to prefer work centred lifestyles while women are more likely than men to choose home centred lifestyles or adaptive lifestyles which will enable them combine their work-life with their family-life. As a result women will avoid senior management roles which can affect this type of lifestyle. Gender gap in employment therefore is as a result of work orientations and labour market behaviour between men and women. The differences which exist are linked to the broader differences between two genders and the importance they attach to their life goals, family life and careers.⁴¹⁵

Hakim believes that family friendly policies will not make a difference in achieving gender equality in top management roles but will rather make it worse.⁴¹⁶ She is of the view that the state does not need to intervene because gendered employment segregation is a reflection of individual’s choices rather than of false market valuations of women. She believes that social structural and economic environment do restrain women to an extent but they are of less importance due to a decline of such factors in affecting employment choices. If this was the case, family friendly policies will not be useful in promoting gender equality in employment because the diversity of outcome would be as a result of individual choices and is predictable under the preference theory.

⁴¹⁶ Ibid
Chan opposing Hakim’s view of free choice made by individuals suggested that individuals’ characters and preferences are influenced by unequal extraneous factors which could cause them to respond differently to the same situation. Chan believes that employment decisions are not truly independent of women’s private lives and that some extraneous factors could explain the background of her preference in a way that could excuse the choices she makes.417 She holds that the level of freedom an individual enjoys depends on the extent of their impeded access to sufficient range of options. Therefore women’s access to their choice of employment does not necessarily have to be a lack of options or the impossibility of pursuing them but could be as a result of their choice being impeded by an external factor.

In a subsequent study, Hakim found that women are less likely to reach the top of the senior management in organisations as a result of family friendly policies.418 She found that Swedish women are less likely to reach the top management positions compared to their US counterpart. She posits that this is as a result of Swedish women having many family friendly policies compared to US women who have less family friendly policies. Ironically, it was found that Swedish women do not want to share their maternity leave with fathers.419 Hakim argues that social policy and family policy should in future be gender neutral to enable people choose their own family model. She advocates for a minimum amount of job protected maternity leave for the

419 Ibid
health and well being of mother and infant and all other parental leave should be available to whichever parent that chooses as this would allow for role reversal between the couple. Hakim is of the view that gender neutral policies should be available to everyone irrespective of parental status which will destigmatise parental leave. However this is not expected to produce equality of outcomes as men would most likely use it to update their skills while women would use it for family purposes. She believes that society has moved away from gender towards lifestyle preferences and legislation should ensure people are free to choose their own lifestyles.

Equal opportunities policies have been effective in bringing about changes over the years and transforming women’s lives by giving them choices between a focus on family work and/or paid employment. As a result of residual differences in tastes, values, lifestyle choices and the nature of some jobs, men will continue to dominate in the work-life and public-life while women will continue to dominate in the family-life. Hakim asserts that legislation has now given women a free choice of the type of lifestyle they live but men are still restricted in their choices as they still go for work-centred lives which are still the norm for them. Accordingly, the equality legislation should shift focus from women to address the issues men face in their choice of lifestyle.

420 Hakim C. (2008)
3.3.2 Comparative Analysis of Sex Discrimination

Comparative law involves studying the legal systems of other countries with a view to identifying difficulties and critically observing one’s own legal system and offering future development to benefit the observer’s legal system. The traditional approach to comparative law sees an analysis of the legal texts, jurisprudence and legal doctrines of foreign laws to create an understanding of the cultural and social characters of the law and provide an insight into the way law works in different cultures. This traditional approach limits the study of the law to the function of the law and this creates problems because the foreign legal system is analysed through one’s own doctrinal concept.

Many writers emphasize the need to move beyond the traditional approach in comparative law to a broader perspective by advocating an external, neutral position and looking at the quality the laws have in common, the legal discourse and the reasoning behind the law. In comparing two legal systems, there is need for the legal scholar to understand the history, tradition, culture, socio-economic and the ideology of the systems because the understanding of law involves more than rules and judicial decisions.

According to Hoecke and Warrington, carrying out a comparative study in such a broad perspective, it makes one aware of the elements that influence the law at all levels as well as confronts one’s own hidden conceptual and

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423 Ibid
424 Ibid
ideological framework.\textsuperscript{425} They are of the view that legal rules and decisions can only be understood within the framework of a different world view and a fundamentally different conception of the law and its role in society. According to Hoecke and Warrington, to carry out a cross cultural comparison, the observation of the legal rule, institutions and practice has to start from the main cultural differences identifiable in the systems. If the introduction of a foreign law is the outcome of the comparison, the foreign law needs to incorporate a part of the norms and philosophy of the native society otherwise the law introduced is bound to fail.\textsuperscript{426}

Employment discrimination law has had problems in enforcement procedures in European countries and the search for the best procedural method to resolve individual claims has proved difficult.\textsuperscript{427} There have been procedural issues of delay, inadequate relief and lack of representation, overly formalistic and fundamental lack of justice which makes any good law enacted meaningless. According to Sternlight, policymakers fail to learn from other countries’ procedures in their quest to solve their problems. In his research of a comparative study of four jurisdictions, Sternlight asserts that no single system will meet all the individual and societal interests in dealing with discrimination issues. He advocates for a multi pathway to resolving discrimination claims which will provide both litigation and conciliation options for the parties. He believes this will serve a variety of public and private

\textsuperscript{425} Ibid
\textsuperscript{426} Ibid
interests and should allow parties or a third party to choose the best option appropriate for the cases at hand.\textsuperscript{428}

3.4 Sexual Harassment as a form of Sex Discrimination

Sexual harassment has been recognised as a social problem and has formed a significant subject for feminist research since 1970.\textsuperscript{429} There has been extensive literature documented on the subject as well as legal developments over the years in the United Kingdom and the United States to address the associated social problems. Theorists on feminist issues have different views on the causes of sexual harassment and this has led to various definitions of the term.

3.4.1 Definitions of Sexual Harassment

The term sexual harassment was propounded by Catherine MacKinnon who has largely influenced the United States law which is the origin of the United Kingdom sexual harassment law. There is no set definition of sexual harassment but it can vary based on different cultural backgrounds where it is seen to occur. According to Uggen and Blackstone, the perception of sexual harassment can vary from one social group to another and is best defined by

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\textsuperscript{428} Ibid

the legal consciousness of the society in which it occurs. Based on this understanding, what a people perceive and understand as sexual harassment will vary from one society to the other and will be interpreted and viewed differently across different societies.

Generally in western countries, the definitions of sexual harassment are broadly similar. Section 26(2) of the United Kingdom’s (UK) Equality Act 2010 (EA) defines sexual harassment as unwanted conduct of a sexual nature which has the purpose or effect of violating one’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It has been defined as an “unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of men and women at work. This can include unwelcome physical, verbal or non-verbal conduct”. The above definition acknowledges that men as well as women are in a position of being sexually harassed and the definition does not restrict the protection of sexual harassment to women contrary to the general conception that only women are in a position of being sexually harassed. Farley defined it as an “unsolicited nonreciprocal male behaviour that asserts a woman’s sex role over her function as a worker”. This definition contrary to the European Commission Code of Practice on Sexual Harassment definition portrays sexual harassment in a stereotypical manner, given that only men are capable of sexually harassing women ignoring the fact that men as well as women can

431 Sec. 26 (1) and (2) of the Equality Act 2010
432 The European Commission Code of Practice on Sexual Harassment
be sexually harassed and that women do also sexually harass men. Her definition amplifies the view that a woman is identified first as a female in the workplace and not as a worker with an expectation that her ‘feminine functions’ precede any other functions in the workplace. According to McDonald, sexual harassment is an abusive or counter-productive behaviour which has hierarchical power at its core. Unlike other abusive behaviours such as bullying, mobbing and sex-based harassment, sexual harassment has a sexual undertone. She asserts that from the different definitions of sexual harassment, sexual harassment can be understood as a psychological construct appraised from the claimant’s point of view.

Mackinnon defined sexual harassment as “the unwanted imposition of sexual requirements in the context of a relationship of unequal power”. This definition shows that there is a relationship between the harasser and the victim normally in the context of a work relationship where the harasser is usually the employer and the victim, his female employee and the employer uses his organisational power to extort and subordinate his ‘weak’ female employee sexually. She goes on to argue that sexual harassment is apparent when male superiors forcefully ask for sexual favours from their female employees, or male colleagues and customers apply pressure on female employees.

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employees to concede sexual favours to the knowledge of their employers which they either encourage or ignore.436

Mackinnon divided sexual harassment into two types which she termed ‘*quid pro quo*’ which literally means ‘this for that’, and sexual harassment as a ‘*condition of work*’. She described *quid pro quo* type as involving sexual compliance in exchange for an employment opportunity. In this type of harassment, the woman has to give in to her employer’s sexual advances or face the possibility of losing an employment benefit such as promotion or day off; or it can come in the form of sanctions such as demotions, salary cuts or outright dismissal.437 Here, the employer exercises his power as the employer and compels the female employee to give sexual favours in exchange for her employment.

Mackinnon identified three forms of *quid pro quo* harassment. In the first form, a woman declines a sexual advance and loses an employment opportunity. She affirms that most successful cases normally take this form of clear pattern of harassment where there is a sexual advance followed by non-compliance by the female employee and employment retaliation by the employer or supervisor. Scalia however criticizes the use of the term *quid pro quo* for this form of harassment.438 He acknowledges that this is an act of sex discrimination but should not be actionable as sexual harassment but rather as an adverse job action. He argued that this should not be viewed as sexual

436 Mackinnon (1979) at p.2
437 Ibid at p.32
harassment because the female employee was not actually harassed, rather the employer demanded sex following which the female employee declined as a result of which the employer retaliated by withholding an employment benefit. He termed it *quid pro quo* ‘retaliation’ and distinguished it from the second form of sexual harassment where the employer demands sex and the female employee submits to the *quid pro quo* threat leading to the employer sexually abusing her. This type of discrimination is not only treated differently from other adverse job actions but acts as a strong evidence of a discriminatory motive.439

In the second form of *quid pro quo* identified by Mackinnon, the female complies with the sexual advances and does not receive any benefit. Scalia affirms that it could be argued that Mackinnon is wrong in using the term for this form of harassment as *quid pro quo* bases a job benefit on sex but in this instance there is no benefit gained for the sexual gratification. He maintains that it should be viewed as sexual harassment, even though there is no benefit gained or lost, it is the reality of the unwelcome sexual advances or adverse job action that should determine the legality of the case.440 The third form of *quid pro quo* identified by Mackinnon is that the female employee complies with sexual advances from her boss and receives a job benefit. In this instance, all the three elements of *quid pro quo* are present – the employer demands sex, the female employee submits against her will and then the employer proceeds to abuse her. Scalia argues that though the

439 Ibid
440 Ibid
woman submits to the employer’s sexual advances and gains an employment benefit, it is still actionable as sexual harassment. He maintained that the term *quid pro quo* should be retained in this type of harassment as it is consistent with the original definition. Mackinnon further identified a possible fourth form of *quid pro quo* which is that the woman refuses the sexual advances, receives a fair treatment and is never harassed again and she adds that this does not require any further discussion as there is ‘no harm in asking’. Scalia agrees with Mackinnon on this type that the *quid pro quo* threat is insignificant and thus does not warrant any suit.

The second type of sexual harassment as a condition of work rarely involves outright sexual demands but involves making a woman’s work conditions unbearable. This type of harassment sees the woman harassed simply because she is a woman and this can come in the form of touching, sexual jokes, sexual gestures and remarks without any benefit given or denied in respect of her job. The basis for this type of discrimination is that the harasser has made work conditions unbearable for the employee because of their sex and the law seeks to prohibit such actions which cause adverse job actions.

Gruber further categorised sexual harassment into eleven categories under three distinct forms: Verbal requests, Verbal comments and Nonverbal

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441 Scalia (1997)
442 MacKinnon, C. A. (1979) at pgs.32-33
443 Ibid at p.40
He argues that verbal requests come in form of sexual bribery, sexual advances, relational advances and subtle pressures. Sexual bribery involves a clear *quid pro quo* with the harasser usually in a position of power or holds vital information instrumental to the woman’s job and uses this as a threat of punishment or reward to request for sexual favours. In sexual advance cases, the harasser repeatedly asks for a sexual relationship usually with the use of intimate language or symbols. Gruber argues that the reason this is regarded as harassment is because of the repeated nature of the demands and that the harasser alters the balance of the relationship by exceeding the scope of the relationship in such a way that it is re-defined in his own interest. Relational advances are not normally sexual in nature but become harassment because of the repeated nature of the advances and this is often legitimised because of the cultural view of how men should display their sexual attraction to women. Gruber asserts that subtle advances or pressures are difficult to establish because direct remarks or requests are expected to be distinguishable from subtle ones which often are implied, masked in humour or the language used is carefully designed in such a way as to have a double meaning.

Gruber argues that in verbal comments, the harasser does not do this with an intention to have a relationship with the woman but to reveal his sexual interest to her or in an attempt to sexually humiliate her. Personal remarks comes in form of sexual jokes, teasing, remarks or sexual slurs targeted at a

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woman with the intention of finding out about her sexuality or degrading her. Subjective objectification involves making sexual remarks or holding a public discussions about a woman in her presence as though she was not there or making those remarks in form of a rumour while sexual categorical remarks involves making sexually degrading comments about women in general or about other women in the presence of a woman. Nonverbal displays which come in the form of sexual touching and sexual assault which Gruber argues involves the harasser persistently and forcefully touching the woman in a sexual manner or attempting to have sexual intercourse with her; sexual posturing which involves encroaching on the woman’s personal space in an attempt to have contact with her; and display of sexual materials which sexually degrade women.

The Employment Appeal Tribunal (EAT) sets out the essential characteristics of sexual harassment as “words or conduct which are unwelcome to the recipient and it is for the recipient themselves to decide what is acceptable to them and what they regard as offensive. A characteristic of sexual harassment is that it undermines the victim’s dignity at work. It creates an offensive or hostile environment for the victim and an arbitrary barrier to sexual equality in the workplace.”

446 See Reed & Anor v Stedman [1999] I.R.L.R. 299
3.4.2 Theories of Sexual Harassment

Sexual harassment is a social problem which has become institutionalised because of the control men have over women’s survival in the home, in schools and at work. Women are indeed vulnerable to sexual harassment at work because they need their income for survival and having few alternatives as a result of society’s male dominated structure have to tolerate sexual advances from their employers, managers, superiors and colleagues who are mostly men in positions of power to hire or fire them. In addition to this, women often fail to recognise sexual harassment as an abuse because society accepts that it is in a man’s nature to make unsolicited sexual advances towards women while women on their part (mostly in less developed countries) see it as a taboo to confront these ill natured/unsolicited advances due to the fact that complaints are more often than not addressed by punitive actions against them as a result of the employer deeming it fit to wield authority over female sexual subordination as a natural social hierarchical order necessary for the smooth flow of work processes.

Many feminist theorists have given various reasons for sexual harassment in the workplace. A leading theory is one postulated by Gutek which she termed “the sex-role spillover”. This she defined as the carryover of irrelevant or inappropriate gender based roles into work settings. She argues that sex role

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450 Ibid at p.1-2
spillover occurs when the sex ratio is skewed in either direction leading to male or female dominated work environments. Her view is that the reason behind this is that the sex of a person is conspicuous therefore people learn and enact gender roles from childhood. These roles retain powerful influences in a person’s life as well as affect how they interact with other genders in ways that are compatible with their learned roles.\textsuperscript{452} She affirms that when sex role spillover occurs, the work environment assumes the sex role of the majority sex. If the work environment is dominated by men, it will be difficult not to view women as women first before workers because their female characteristics are conspicuous in a male dominated job and it is expected of them to carry over their feminine attributes into the work environment such as serve as helpers in the organisations without the possibility of getting to the managerial positions.\textsuperscript{453} It is accepted that sexual harassment is more likely to occur in these circumstances where men are dominant rather than in job situations where women are dominant.\textsuperscript{454} Gutek argues that this occurs because sexuality is the basic characteristic of a male sex role which leads them to emphasize the sexual aspects of the female sex through sexual overtures and conquests.\textsuperscript{455} She affirms her concept of sexuality as a male sex role with her assertion that in a male-dominated environment which reflects male sex role, there is evidence of sexual harassment as men exhibit their sex-role of sex seeking and sexual aggression. They use their workplace as an opportunity to


\textsuperscript{453} Ibid

\textsuperscript{454} Ibid. See also Gutek, B. A. and B. Morasch (1982)

\textsuperscript{455} Ibid
interact with women found in these environments in a sexual manner.\textsuperscript{456} She also states that when sexuality is emphasized, men will view women as making sexual advances towards them even when this may not be the case leading women to become more sexually aware and thus make more sexual advances towards men than they would normally do in other circumstances.\textsuperscript{457}

Other theorists believe that sexual harassment occurs due to power imbalance at work and in society.\textsuperscript{458} There is a presumption that men hold the highest power in the organisations and they use these powers to harass their female subordinates.\textsuperscript{459} Benson and Thomas are of the view that experiences of sexual harassment of women in organisations often have elements of unequal power between the sexes.\textsuperscript{460} Since many women started participating in the labour market with male employers and supervisors, there is an increased contact between employers and female employees. In this light, Benson and Thomas are of the view that men's authority over female subordinates will coincide with a male's sexual attention towards her. They argued that these relationships of power and sexual interest bring about sexual harassment in organisations because men can use their authority to control their female subordinates by punishing or rewarding them directly. They can also use their authority to obscure their sexual intentions towards

\textsuperscript{456} Ibid
\textsuperscript{457} Ibid
\textsuperscript{459} Ibid
the women; and the women understand that a male employer’s authority is a tool which he can use to manipulate them. But where the employer has the ultimate power to hire and fire, his sexual overture is likely to be direct and clear.\textsuperscript{461} Men in these positions normally enjoy the advantage of having authority which they use to command sexual compliance over their female subordinates; and women are left to endure unwanted sexual attention from these men which they would not accept in normal circumstances should the authority be absent.\textsuperscript{462} This theory is in line with MacKinnon’s view that sexual harassment derives from power and masculinity and that sexual harassment is the mechanism through which male dominance and women subordination is maintained. She is of the view that sexual harassment has nothing to do with attraction but is as a result of men’s organisational power in the workplace, leading the employer to exercise his power over a woman’s economic survival and thus enforcing his sexual authority as a man to subject the woman to sexual harassment.

However Schultz is of the view that sexual harassment is as a result of the social structure of organisations whereby roles are structured to give the impression of masculine attributes as a requirement hence facilitating men to use their masculinity to undermine their female colleagues since they believe they fit better into these roles.\textsuperscript{463} She also points out that making a woman the object of sexual attention frequently acts as a tool to undermine their

\textsuperscript{461} Ibid
\textsuperscript{462} Ibid
\textsuperscript{463} Schultz, V. (1998) at p.1687
confidence as competent workers. This is further re-affirmed by Farley that sexual harassment is a tool for men to dominate women and put them where they believe is their rightful place leading to segregation of the job market by sex categorisation thereby putting women in low ranking and dead end jobs. Mackinnon confirms these views raised by Schultz and Farley arguing that most employers would rather not employ female applicants because the employment process is dominated by male managers who believe that females should be placed in their rightful positions which is outside the organisation as a result of sex role stereotypes which is an intrinsic part of the wider society. However, Basu argued that fusing sexual harassment with sex discrimination is an obstacle in dealing with sexual harassment at work. The practice in the 1960’s and 1970’s had been to establish sexual harassment by categorising it as sex discrimination. The reason for this was that in those periods, the focus of sexual harassment cases and discourse was on qui quo pro harassment and not on hostile environment. It was easier to establish sexual harassment using tort theories when the woman could prove that she was touched, grabbed or denied benefit but this was difficult to establish when the damages was of a psychological nature from sexual jokes directed at her and no physical injuries caused. Basu is of the view that it was right to treat hostile environment in those periods as workplace discrimination because it helped to establish that it was a wrong. However, he expressed that since this has been established that it will be wrong to continue to fuse it

464 Ibid
465 MacKinnon, C. A. (1979) at p.16
with sex discrimination rather it should be recognised as a wrong in its own right. He is of the opinion that there should be separate yet effective laws for sexual harassment and sex discrimination so that different categories of people in different situations can be protected under the law.

McLaughlin et al are of the view that the power-threat model is at the root of sexual harassment.\(^5\) They believe that women in power are more likely to face sexual harassment and discrimination more than other women. It is considered that women in authority threaten men’s superiority and challenge their dominant position. These women are then subjected to sexual harassment and discrimination in order to undermine their position. When women attain leadership positions, they are undermined by the stereotypical gender beliefs about their abilities and this makes them more susceptible to sexual harassment and discrimination. McLaughlin et al also accept that women in positions of authority are vilified through harassment when they try to assert their authority. In their opinion, it may seem that female supervisors are harassed more than other women because female supervisors would be more likely to report incidents of sexual harassment because they are more legally conscious and are aware of what amounts to sexual harassment and their rights due to trainings they attend in their position as supervisors.

Berdahl et al supporting the view that power-threat model is at the root of sexual harassment studied sexual harassment of men in the workplace.\textsuperscript{468} They were of the view that sexual harassment is about power and having the ability to influence and control other people in order to resolve conflict to one’s advantage. They believed that ‘negotiations of gender’ occurs where people try to interpret what they understand as appropriate behaviour for men and women which could be sexual or non-sexual and can exist both inside and outside of the organisation. They found that men would feel sexually harassed when they encounter behaviours which they believe challenges what they understand as the construction of masculinity or their male dominance. They were of the view that sexual harassment of women by men has plagued workplaces for centuries because men have always been at the helm of affairs. But as more women have entered into the labour market and have gained more power in the organisation, they are in a position to sexually harass men and they are found to do so. But this is rare because it is uncommon to find male employees with female supervisors and women lack the socio-historical and physical power held by male supervisors over female subordinates which makes it rare to find sexual harassment of men by women in the workplace.\textsuperscript{469} For women who make it to the positions of supervisors end up being harassed by their male subordinates because of men’s social power which overrides the organisational power of the female supervisor. Moreover, it is against societal norms and assigned gender role for women (or

\textsuperscript{469} Ibid
another man) to aggressively pursue a sexual relationship with men but when they do, men do not feel the same sense of dread women experience when they are sexually harassed rather men would enjoy it because they believed that they would have a good control over the harassing situation and could stop or change it when they wanted.\textsuperscript{470}

Berdahl et al in their survey identified three types of behaviour which could be classed as sexual harassment. The first is sexual coercion which they equate to quid pro quo harassment which they found to be legally and psychologically harassing. The second is unwanted sexual attention and the third is gender harassment, both found to be hostile environment behaviours and for these to qualify as legal harassment, they must be unwelcome, repetitive and to qualify as psychologically harassing, they must be stressful and threatening. They found that women experience behaviours which they class as sexual harassment differently from men because sexual harassment of women takes place in a society of pervasive male sexual violence where male physical power surpasses that of the woman. Social and physical powers are invoked when women receive unwanted sexual attention, powers not involved in the sexual pursuit of men by women.

The ability to control and change a situation, in other words, power is the difference between a behaviour which a man would perceive as sexual coercion and find harassing and a behaviour a woman would perceive as sexual coercion and find harassing. This lack of power is what makes women

\textsuperscript{470} \textit{Ibid}
experience high levels of anxiety and threat which men do not experience. In their study, Berdahl et al found that men who reported harassment, more of them have been harassed by other men which is in line with the power analysis as the root cause of harassment because men have more organisational, societal and physical power with which to harass other men than women do. They also found that men would be more bothered by unwanted sexual harassment and gender harassment more than sexual coercion. They identified three types of gender harassment – general lewd language, negative stereotyping of men and harassment for deviating from the male gender role. They also found that men experience sexual harassment from other men in the last two types of gender harassment which can be viewed as direct negotiations of gender in the workplace which they viewed as an evidence that sexual harassment emanates from negotiations of gender. The second type – negative stereotyping of men usually occurs where men deviate from the traditional role of men such as taking time off to look after the children; while the third type – harassment from deviating from the male gender role is used as a means of enforcing it.\footnote{Berdahl et al (1996) at 542}

Berdahl et al expressed that unwanted sexual attention received by men in the workplace merely challenges gender roles and undermines a man’s sense of masculinity and is not threatening as it would be for a woman if the situation was reversed. They expressed that focus on the sexual harassment of men disguises the gendered power issues which exists in sexual harassment. They found that behaviours which people generally describe as harassing are
behaviours which threaten their ability to have control over their situation and the extent to which a victim finds a situation threatening depends on the power differential between the harasser and the victim. They suggested based on this premise that similar harassing behaviours would have different meanings for men and women because of power differentials between the two genders. They were of the view that what women experience as sexual harassment will not be viewed the same way by men and the resulting consequences are not as harmful to men as they are to women.

Ladebo expressed that women are more likely than men to perceive behaviour as sexual harassment. He considers one of the models, the socio-cultural model presented by Dey, Korn and Sax which views sexual harassment as the enforcement of gender inequality role within the social system, and in patriarchal systems it is used as a tool of domination to keep women subordinated to men. According to Ige and Adeleke, any society organised along the patriarchal system tends to condone acts and practices that are discriminatory to women. Johnson is of the view that cultural factors play a major role in contributing to sexual harassment in traditional societies. In patriarchal societies like Nigeria, male sexual prowess and sexual virility are encouraged. Men are encouraged to pursue their sexual interest in a woman in an aggressive manner while the same behaviour in

474 Johnson K. (2010) Sexual Harassment in the Workplace: A Case Study of Nigeria Gender and Behaviour Vol.8 No 1
women is stigmatized and devalued. Women are therefore conditioned to accept men’s aggressiveness as normal. Ige and Adeleke are of the view that in patriarchal societies, sexual harassment is used as an instrument to preserve men’s traditional dominance over women. African culture prescribes that women should be passive about sex and their sexual urges should only be a means to an end to love, intimacy and pregnancy. Culture therefore discourages women from making decisions about their choice of sexual partners or identifying themselves as being sexually active or aggressive. On the other hand men are expected to have strong sex drive and greater need for sex which culture encourages by providing an enabling environment that allows them to have many wives and concubines as part of custom and tradition. When sexual harassment occurs at work, culture is used as a tool to intimidate women and prevent them from reporting it for fear of stigmatisation because sexually related issues are discouraged from being discussed in public.

In line with Ladebo, Gutek believes that men and women differ in their assessment of sexual harassment, with men less likely than women to think that sexual harassment is a problem and women defining it more broadly than men. She is of the view that a person’s gender affects their perception of sexual harassment but that the effect of gender on perception is small and may only occur when the harassing behaviour is mild, vague or ambiguous.

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475 Ibid
476 Ige and Adeleke (2012)
She asserts that if there are variations in behaviour or ambiguous circumstances under which such behaviour occurs, perception will be affected. Therefore if there is no clear definition given as to what amounts to sexual harassment, it cannot be differentiated from other legal behaviours. In addition to gender, Zimbroff believes that culture is another factor that contributes to perception of sexual harassment. She is of the view that defining sexual harassment in a multicultural society can become complex and controversial because values and beliefs are culturally derived and they act as norms that determine the appropriateness of certain behaviours and feelings. Different people from different cultural backgrounds are expected to perceive various workplace conduct differently and respond to them differently. As sexual harassment is defined as an unwelcomed behaviour, cultural factors and differences will influence what kinds of conduct and the extent the victim will find such conduct unwelcomed as well as how the victim will respond to such conduct or demonstrate its unacceptability. Zimbroff believes that in patriarchal and hierarchical societies where women are subordinate to men and where the culture encourages men to make sexual advances towards women, sexual advances in such societies would not be viewed as sexual harassment but instead it would be looked upon as a normal innocent romantic gesture. In other words, individuals from patriarchal societies will find sexual advances as less harmful, non-abusive and non-discriminatory.

479 Ibid
3.4.3 Attitude towards Sexual Harassment

Sexual harassment has been found to be more likely to occur in an organisation which appears to tolerate sexual behaviours because some men who are predisposed to sexually harass women will do so where the social norms permit such behaviour. Samuels found that where an organisation has a prevailing culture of being overly sexualized in form of workers making sexual jokes or flirting, female employees may find it difficult not to participate for fear of exclusion by colleagues or accusation of being boring which could impact negatively on work relations and career opportunities. However, participating in such culture could be precarious for the female employee because she could be viewed as participating in the sexualized work culture thereby any sexual behaviour towards her would be viewed as her bringing it upon herself and would not deserve to be protected. Samuels believes that when a workplace is overly sexualized, it would be difficult to determine if a conduct is welcomed or if the victim has succumbed to the pressures to participate in the sexualized conduct.

There is a strong awareness of sexual harassment in the United Kingdom and the United States providing extensive legislation to check and prevent its occurrence. However, most women do not report their experiences of sexual harassment because a majority of the women who are harassed and

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traumatised by the experience and do not consider it to be sexual harassment.\textsuperscript{483} Some victims fail to report harassment because they believe that reporting it will not help change the situation and may worsen the situation.\textsuperscript{484} Most women, who find themselves in this situation, view the harasser as ‘trouble’ and must devise ways to manage the trouble.\textsuperscript{485} Others fear that if they report it, there might be adverse consequences against them such as disbelief by the management and colleagues and retaliation in the form of demotions, salary cuts or dismissal.\textsuperscript{486} In traditional societies, women do not report sexual harassment because of fear that they would be blamed for it which could damage their reputation and it is considered a taboo for women to engage in sexual discussions because women who disclose their sexual inappropriateness would be deemed to have brought shame upon their families.\textsuperscript{487} Majority of victims in Nigeria have been found not to report their experiences to authorities but have the tendency to hide their predicament and suffer in silence.\textsuperscript{488} To avoid being labelled, women use different approaches to prevent sexual harassment from occurring or escalating. One of such approaches would be to ignore the harassment either by making light of the situation or by going along with it as a form of joke or by totally avoiding the harasser or situations where the harassment might occur.\textsuperscript{489} Some women communicate to their harasser about their displeasure in the

\textsuperscript{483} Ibid; see also Welsh, S. (1999)
\textsuperscript{485} Benson, D. and G. Thomson (1982)
\textsuperscript{486} Welsh, S. (1999)
\textsuperscript{487} Johnson K. (2010)
\textsuperscript{488} F.F. Akinfala and T. Komolafe (2017)
\textsuperscript{489} Ibid; see also Benson, D. and G. Thomson (1982)
unwanted sexual advances and Benson and Thomas found that in most cases this approach was effective. In some cases where the women communicate to the harasser, they are very assertive in their approach and this occurs where the harassment is severe, or the harasser is not a supervisor or employer or the organisation has procedures and policies to prevent sexual harassment from occurring at the workplace.490

According to McDonald et al, powerful individuals who harass their subordinates may use strategies such as “the outrage management model” to dampen outrage to their behaviours which others may find offensive.491 “The Outrage Management Model” was developed by McDonald et al using Sharp’s492 political jiu-jitsu a process he used in his research on nonviolent action. Sharp observed that when protesters are brutally attacked during a nonviolent protest, they receive greater support from third parties thereby using the opponent’s energy against them. McDonald et al applied this framework in sexual harassment cases using their model. These strategies include cover up where harassers carry out their offensive acts away from witnesses and rarely reveal their actions while the victims keep quiet about it because of shame or fear. The second strategy is known as devaluation of the target of sexual harassment by using derogatory labelling for her, criticising her work or accusing her of incompetence. The victim could be subjected to scrutiny and any mistakes she makes will be capitalised on to

justify the harasser’s position. The victims are often blamed for the harassment that they deserved it because they brought it on themselves. The third strategy is *reinterpretation* which involves the harasser denying their acts by stating that their comments or actions have been misinterpreted or misunderstood and minimising the seriousness of the actions or blaming others. The fourth strategy she terms *official channels* which involves claims by respondents that appropriate procedure has been followed and justice achieved through a grievance process thereby reducing outrage. Due to the slow process of using the official channels which involves reporting to senior officials, grievance process and appeals, the immediacy or urgency of the problem is lost in the process and third party observers would then believe that justice may have been achieved, but this is seldom the case. In some cases, the official channels may look effective if the harasser is a low level official who does not have the support of the organisational elites and he would be put through the process and punished accordingly. But if the harasser is a powerful official with the support of the organisational elites, they tend to get away with their actions as the process will be delayed and eventually forgotten about. The final strategy is *intimidation and bribery* which involves threats of poor references, unwelcome job assignments or dismissal.

Schneider et al are of the view that sexual harassment at work could cause decreased morale, decreased job satisfaction, increased absenteeism, job
loss and impacts on relationship with co-workers. Sexual harassment impacts negatively on women’s psychological well being and employees who make complaints about sexual harassment are not necessarily over sensitive people. Sexual harassment can also lower organisational commitment and cause physical and mental ill health and symptoms of post traumatic stress disorder. Akinfala F.F. and Komolafe T found that the occurrence of sexual harassment causes victims to withdraw from the organisation and will have the tendency to blame the organisation for the harassment for failing to implement its anti-harassment policies.

Samuels is of the view that the law has not made any real attempt to challenge the overly masculinist ethics at work but leaves it up to the victim which could be difficult due to the power imbalance that exists. Samuels believes that to effectively deal with sexual harassment, it should not be treated as a messy personal experience between the parties but should be viewed in the context of women’s role in a patriarchal society with power imbalance. Superson believes that the law should regard sexual harassment as a group harm and any conduct which reflects the attitude that the woman is inferior because of her sex or treated as sexual beings should be viewed as sexual harassment. If this is so, a victim’s reaction would not be decisive in determining sexual harassment instead the burden would be shifted away from the woman and she does not have to prove that the conduct was

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unwelcomed or that she had provoked the conduct. This view however has been criticised by Grouch. She is of the view that some behaviour which is innocent such as traditional courtship where a man initiates a relationship with a woman could be viewed as sexual harassment because such initiation could be seen as treating women as inferior if men are regarded as dominant in sexual matters.  

Some authors and judges have suggested some solutions for employers to adopt in order to eliminate or reduce sexual harassment in the workplace. Snyder et al are of the view that to eliminate sexual harassment in the workplace, the employers should start by identifying factors that cause sexual harassment at work. In their study, they identified that employees who characterise their workplace as being less productive with poor time management and lower quality relations between the employees and management were more at risk of having problems of sexual harassment in the workplace. They suggested that employers should develop strategies to alter organisational behaviours such as stronger relationships should be developed between employees and management and that this will act as a shield against the effects of disorganisation which brings about sexual harassment. Snyder et al were also of the view that in developing these


498 Snyder J., Scherer H. and B. Fisher (2012) Social Organisation and Social Ties: Their effects on Sexual Harassment Victimisation in the Workplace Work No42 at 137-150 at 146
strategies, it will also have the effect of the employers addressing the issue of gender imbalance in the organisation because altering the relationships as suggested, it may prove to offset the influence of male dominated workplaces. In addition to this view, they believed that altered relationship could result in a workplace where sexual harassment is frowned upon and will no longer be tolerated and will be punished.

Bell et al in proffering a solution to the elimination of sexual harassment at work used a health based method of preventing chronic health problems known as preventive management approach which is based on practice of public health and preventive medicine applied to prevent chronic health problems. They classified sexual harassment in organisation as a dysfunctional, counterproductive behaviour which they equated to a chronic health problem which deserves the use of the preventive management approach to curb. In their opinion, a preventive management approach point of intervention would be before the problem develops. They presented a case of primary prevention which addresses the root cause of organisational health problems thus preventing the development of the problem. In using this approach, the employers will identify the precursor and early warning signs of sexual harassment in the organisation before it develops and becomes a problem for the organisation. They believe this is the best method to adopt because sexual harassment is an expensive problem for any organisation and the cost of preventing it is thirty one times less than the cost of permitting it.

such as psychological effects on employees, absenteeism, lawsuit and damages awarded to victims as well as the psychological impact it has on other employees who witness it. They maintain that when employers use this method, they would use the warning signs to prevent the occurrence of sexual harassment or in a case where it had started, reduce its intensity on the victim or the duration of the adverse effect.

Some of the solution which Bell et al offered as a preventive management approach to curbing sexual harassment were education, training and strong policies against sexual harassment.\textsuperscript{500} They also believe that organisational culture such as defining a range of acceptable behaviour within an organisation and changing the attitudes of persons with tendency to harass can serve to restrict the occurrence of sexual harassment in the organisation. They believe that strong organisational culture of intolerance can be created through top management commitment, zero tolerance sexual harassment policy, harassment free notification to applicants and new recruit, regular organisational assessments and regular directed training. In their opinion, employers should adopt these methods as they would aid in eliminating the problem of sexual harassment in the workplace and the high costs it creates for the organisation even when their countries do not have laws against sexual harassment.

\textsuperscript{500} Ibid
CHAPTER FOUR
RESEARCH METHODOLOGY

This chapter looks at the research methodology used for this study and how it has guided data collection, analysis and development of theory. Research methodology has been referred to as the scientific way of studying how research is done. The steps and logic which a researcher adopts to answer his research questions are studied. The researcher is expected to understand the assumptions behind different research techniques and the basis of their application in order to design the appropriate methodology for his research. The logic behind the method chosen is analysed to offer an explanation why a particular method is chosen over others so that results derived are capable of being evaluated by the researcher or by others.

This research seeks to examine the occurrence of sex discrimination and sexual harassment of female employees in Nigeria and the legal remedies available to them. Particular issues which are considered are to what extent the occurrence of the sexual discrimination and sexual harassment is detrimental to female workers and the sufficiency of the legal remedies to prevent them. The research seeks to ask what legal remedies women have when they have suffered sex discrimination and sexual harassment and what policy reforms may be considered necessary to prevent sex discrimination and sexual harassment and bridge the gap in the labour Law.

502 Ibid at 8
This chapter will present the research methodology and research design, explain the sample selection method and the method used in data collection as well as the method used in data analysis.

4.1 Theoretical Consideration

Most research designs are grouped under a qualitative and quantitative research paradigm. Quantitative research has been referred to as the most scientific way of carrying out research and is used to test the validity of an existing theory in order to explain the phenomenon that is being researched. The process of such research is rigid and standardised; there are laid down rules and procedures which must be followed in carrying out a quantitative research.\(^{503}\) Findings derived from quantitative research are usually unbiased, neutral and objective and this is achieved through the use of control groups in experiments and statistical manipulation.\(^ {504}\) In contrast to quantitative research, qualitative research is used to develop new theories from observations in order to understand a social phenomenon. The structure of such research is not as rigid as that of quantitative research and it is mostly in the form of words and not statistical. According to Chui, research findings in qualitative research are usually biased by the researcher's personal values and experiences.\(^ {505}\)

\(^{503}\) Wing Hong Chui “Quantitative Legal Research”. Research methods for law edited by M. McConville and W. H. Chui, Edinburgh Univ Pr. 2007

\(^{504}\) Ibid at 48

\(^{505}\) Ibid at 48
A school of thought holds the view that there is a middle ground between these two paradigms which has been called the mixed method research paradigm but this has not been accepted as a formal paradigm. In order to determine which research design to be adopted for this study, a review of both quantitative and qualitative paradigms will be carried out examining closely the distinctions between the two designs. The major differences between quantitative and qualitative research paradigms are their relationship between theory and research, epistemological considerations and ontological considerations.

4.1.1 Theory and Research

In quantitative research, the relationship between theory and research is called deductive theory (deductivism). The researcher starts the research from an existing theory from which he deduces a hypothesis and collects data in order to test the hypothesis which is then transformed into operational terms used to validate or extend the theory.\(^{506}\) In qualitative research, theory is the outcome of the research, in other words the research is used to generate theory by studying a social phenomenon. This process is called inductive theory (inductivism) where the researcher gathers data from observations from which he draws inferences from his observations.\(^{507}\)


\(^{507}\) Ibid at 12
4.1.2 Epistemological Considerations

Epistemology is the theory of knowledge which deals with the nature, scope and sources of knowledge. In quantitative research, epistemology is referred to as positivism. Positivism is an epistemological position which requires the study of social reality with the same method and principles used in the natural sciences.\textsuperscript{508} In using this approach in research, quantitative research is systematic, sceptical, objective, value free and generalisable.\textsuperscript{509}

In qualitative research, the epistemology is referred to as interpretivism. Interpretivism is an epistemological position which requires the study of social reality with respect to the differences between individuals as against the natural order.\textsuperscript{510} The knowledge generated by the researcher is through observations of the social reality and interpretation of his observations from his point of view. The knowledge generated using this method is not generalisable because the social reality is studied from the researcher’s observations which could differ from the observations of another researcher from a different social background. This school of thought is of the view that social sciences should not be studied with the same method as natural sciences because of individual distinctiveness and the researcher analyzes and interprets social phenomena in order to generate a theory.

\textsuperscript{508} Ibid at 18
4.1.3 Ontological Considerations

Ontology is a branch of philosophy which deals with the study of the nature of existence and reality. The quantitative ontology is referred to as objectivism. Objectivism is an ontological position which requires that social entities be studied from an objective position because it views social phenomena as external to individuals. This school of thought is of the view that social entities are external to the social actors and have their own reality; and in studying them, researchers should use objective reasoning by applying a standard procedure to build their views about relationship between the individuals and the social world. Qualitative ontology is referred to as constructionism. This is an ontological position which is of the view that social reality should be constructed from the point of view of the social actors. Researchers believe that a social phenomenon is produced through social interaction and it is in a constant state of revision. This school of thought opposes the position of objectivism that social actors have no role in fashioning their reality.

4.1.4 Justification for Research Paradigm

Based on the above theoretical considerations outlining the framework for both the qualitative and quantitative research paradigm, it can be argued that the methodological basis of this study is strongly aligned to the qualitative

512 Ibid
research paradigm. This study will follow a process of subject observation in order to interpret data and constructively propose a theoretical basis to understand the context under review. Therefore the relationship between theory and research for this study is inductive, the epistemology is interpretive and the ontology is constructionist.

Under the qualitative paradigm, observations are not generalisable. The main theoretical underpinning of this study is Acker's theory of gendered organisations where she states that in a gendered organisation both male and female genders enjoy different advantages as well as disadvantages derived from their gender identity within the context of the organisation. In view of the fact that social observations are not generalisable, it is difficult to accept Acker's view as a theory from the point of view of deductivism and positivism. This study is therefore seeking to establish further evidence to support or criticise Acker's view on the basis of an observation from a previously untested context. Acker's views will therefore form a background focal point as the full inductive process is carried out in the context under study.

4.2 Research Design

De Vaus defined research design as the structure of an enquiry which is logical in nature rather than logistical. He argued that the importance of a research design is to reduce the risk of arriving at wrong causal inferences from data gathered. Research design refers to the way the research is

structured and a good research design needs to be structured in a way that
the evidence gathered is consistent with the theory or explanation presented
and that the evidence allows for a different explanation or most logical
conclusion to be derived.\textsuperscript{514} De Vaus stated that the purpose of a research
design is to enable the researcher to answer the research questions as clearly
as possible. There are three major types of legal research namely doctrinal
research, socio-legal method (otherwise known as empirical legal research)
and international and comparative legal research.

\textbf{4.2.1 Doctrinal Research}

Doctrinal research deals with the formulation of legal doctrines through the
analysis of legal rules as well as the study of legal texts. Doctrinal research is
concerned with the discovery and development of legal doctrines.\textsuperscript{515} It has
been defined as a form of research which asks what the law is in a particular
area by collecting and analysing case law, primary and secondary sources of
law from a historical perspective.\textsuperscript{516} According to Chynoweth, the research
methods used in legal research and that used in natural and social research
are fundamentally different. He is of the view that there is an epistemological
difference between doctrinal research used in legal research and quantitative
and qualitative research used in the natural and social sciences. He states
that empirical data collection which informs research in the qualitative method

\begin{footnotes}
\textsuperscript{514} Ibid
\textsuperscript{516} Dobinson, I. and F. Johns “Qualitative Legal Research”. Research methods for law edited by M.
McConville and W. H. Chui, Edinburgh Univ Pr. 2007 at p.19
\end{footnotes}
and tests theories in the quantitative method is totally non-existent in doctrinal research. In other words, doctrinal research is unaffected by the empirical world but is purely normative in character to describe the law and how it applies.\textsuperscript{517}

However, Dobinson and Johns have argued that despite the fact that law has a systematic approach which can be documented and duplicated to determine results which seems quantitative in nature, that doctrinal research is qualitative in nature because law is not predicable and involves selecting and analysing legislation and case law as well as understanding the social context in which they occur to derive an interpretation.\textsuperscript{518}

\textbf{4.2.2 Socio-Legal Method}

There is no single accepted definition of the socio-legal method or socio-legal studies which is mainly due to the fact that there are different interpretations of the scope and nature of this method.\textsuperscript{519} However, Harries\textsuperscript{520} and Tamanaha\textsuperscript{521} define socio-legal studies as the study of law and legal institutions from the perspectives of the social sciences; while Salter and Mason define it as "a branch of legal studies that are distinguished from doctrinal research through the deployment of one or more research

\begin{thebibliography}{99}
\bibitem{Dobinson} Dobinson, I. and F. Johns “Qualitative Legal Research”. \textit{Research methods for law} at pgs. 22 and 32
\end{thebibliography}
methodologies drawn largely but not exclusively from the social sciences”. The absence of a precise and single definition has not, however, hindered any growth in this area. This area has continued to grow due to the criticisms and deficiencies identified in the use of traditional doctrinal method in the study of law. Banakar is of the view that socio-legal studies emerged due to the criticisms faced by doctrinal studies which presents law in a narrow context and the legal system as a body of rules that can be studied in isolation of the broader society by interpreting legal texts and precedents and affirming the authority of legal resources, disobedience to which would be punished. The view largely held by socio-legal scholars is that doctrinal studies is an inadequate and incapable means of carrying out practicable legal research because the function of doctrinal studies is to describe legal rules and principles without focusing on its practical application and social impact on the society that it is intended to govern. This method is restrictive and contrary to the method employed by academics in the pursuit of knowledge. In order to advance the quest for the pursuit of knowledge in the field of law, more academic lawyers have turned to social science methods and social theory which are based on the context of enquiry and adopted some of its socio-cultural method and social impact in the study of law and the legal system.

A common feature which socio-legal scholars agree socio-legal studies have is that it studies law in action which is beyond the scope of doctrinal research.

This approach seeks to know how legal rules are implemented and to what extent and circumstances they function in practice and how legal institutions use them to achieve its aims.\textsuperscript{525} This method highlights the disparity between law in books and law in action because it employs an empirical method of enquiry by gathering data using the appropriate social science research method such as interviews and questionnaires in order to determine if legal rules are as functional as they have been intended.\textsuperscript{526}

The social-legal method has also been used to examine the impact and social effects of legal rules on the behaviour of legal officials as well as the people whose actions are being regulated by those rules. The method also seeks to study law and legal institutions in order to understand the social nature of law, its functions and its impact on society. It aims to study the link between the functions of law and the realisation of public policies by considering how government’s policies on the application and enforcement of law affect different people in the society. It achieves this by establishing the differences between the law in books with what actually happens in practice.\textsuperscript{527}

\textbf{4.2.3 Comparative Legal Research}

Comparative Legal Research also known as comparative law involves studying the legal systems of other countries with a view to identifying difficulties and critically observing one’s own legal system and offering future

\textsuperscript{525} Salter, M. and J. Mason (2007). Writing law dissertations: an introduction and guide to the conduct of legal research at p.126
\textsuperscript{526} Ibid at 130
\textsuperscript{527} Ibid at pgs 131, 156 and 159
development in order to benefit the observer’s legal system.\textsuperscript{528} In carrying out comparative law, legal texts, jurisprudence and legal doctrines of foreign laws are studied in order to create an understanding of the cultural and social characters of the law and provide an insight into the way law works in different cultures. Jansen describes it as a method used to analyse the differences and similarities between different cultural and social phenomena.\textsuperscript{529} He proposes that in order to carry out comparative research, the researcher must first understand and describe the foreign phenomenon which he wants to study before formulating a system of differences and similarities which would form the basis of the investigation. Dannemann argued that Mill's\textsuperscript{530} ‘method of agreement’ and ‘method of difference’ is used to test similarities and differences through a process of elimination to determine what cause or effect certain legal rules or institutions will have on different legal systems.\textsuperscript{531} Dannemann proposes that in order to determine what effect a legal rule will have on a certain legal system, it will be beneficial for the comparative lawyer to study another legal system which has already applied the rule and determine what causal link the rule has, and its effect on the legal system by comparing the situation before and after the rule was introduced. He affirmed that comparative law eases or confirms any fears about the adverse effects a new law might have.

\textsuperscript{531} Ibid
Jansen identified problems normally encountered by comparative lawyers. For a comparative lawyer to succeed, he must be culturally fluent in the foreign legal language which he wants to study in order to understand and describe the foreign law. This poses a problem for the comparative lawyer because a legal system is normally based on the moral and cultural background of the society, created by the norms of the society and can only be explained from a historical perspective. Dannemann maintained that one disadvantage of comparative law is that the legal system which is rooted in historical, social and culture of the society is too broad to allow for a realistic conclusion of the effect a legal rule will have outside its natural environment.

4.2.4 Justification for Research Design

A socio-legal method with elements of doctrinal research and comparative legal research are adopted for this study. The justification for the use of these research designs have been recognized by many researchers as detailed above. This study intends to look into a social problem which is the discriminatory treatment of female employees in Nigeria and to proffer legal solutions or otherwise to tackle the problem. Traditionally, law is studied by looking at statutes and case law (doctrinal method) but is unconcerned if such laws are effective in achieving the aims of that particular law. Socio-legal research provides insight into how the law works by studying the law and legal institutions from the perspective of the social sciences which is based on the context of enquiry and aids in understanding the laws better and in effect understand society better. The essence of adopting this method is to carry out
an empirical investigation to understand if the available laws and legal remedies in Nigeria against sex discrimination and sexual harassment are effective or sufficient to eliminate them from the workplace. In using this method, the knowledge gained through the empirical investigation will be used to determine if laws are the appropriate instrument to check the occurrence of sex discrimination and sexual harassment or if there are other remedies that could be proposed to protect women. An element of doctrinal research adopted proposes to collect and analyse case laws, primary and secondary sources of law to understand what the law is and how it is applied in Nigeria and the UK in the areas of sex discrimination and sexual harassment. An element of comparative legal research is also adopted with the view to studying the UK’s sex discrimination and sexual harassment laws to understand and identify their benefits with a view of identifying the difficulties in the Nigerian legal system and proffering future developments which will benefit workers in Nigeria.

4.3 Research Method

Research method is referred to as the techniques used in carrying out research. They are the tools the researcher adopts in gathering data such as questionnaires, interviews, focus groups etc. It also involves the analytical tools used in creating a link between the data gathered and the phenomenon under investigation as well as to check the accuracy of the results derived.

532 Kothari, C. (1990) Research Methodology, Methods and Techniques
533 Ibid
To achieve the aim of this research, data will be collected using questionnaires.

4.3.1 Questionnaire Design

Questionnaires are survey designs used by researchers to collect data from respondents. These are mainly self-administered or postal questionnaires and some researchers would include structured interviews administered face to face or on the phone under this term. Questionnaires have the advantage of eliminating interviewer effect such as gender, ethnicity and social background of the interviewer which might bias the respondents’ answers. Bryman and Bell however state that in using a questionnaire, the interviewer will not have an opportunity to probe a respondent further to elaborate on an answer they have given. But this type of data collection proves to be cost effective because it is cheap to process and it is cheaper to administer especially where the respondents are geographically dispersed as it ensures that the respondents are reached.

The questionnaire was designed on a Microsoft Excel sheet which required respondents to download the questionnaire, fill it out, save and send back either to their colleagues who forwarded them back to the researcher or they could send it back directly to the researcher. The research explored the use of postal questionnaire but due to the unreliability of the postal system in Nigeria,

534 See Oppenheim, A. N. (1992). Questionnaire design, interviewing and attitude measurement, Pinter Pub Ltd.
536 Ibid at 241 and Oppenheim, A. N. (1992). Questionnaire design, interviewing and attitude measurement at p.102
the questionnaires were sent by emails to respondents who answered and returned them by emails. The method was successful to a degree because the researcher had a database of the respondents email and was able to prompt them to answer and return the questionnaire. Some participants found the process of using email questionnaires which required downloading, filing, saving and sending back too cumbersome because they had busy lives and jobs. This led the researcher to design the same questionnaire using an online tool which required the respondents to click on a link sent to them by email which opens up the questionnaire and they fill it out online using their smart phones or devices. This was successful because it made it extremely easy for the respondents to participate by reducing the time spent on filling out an email questionnaire to as little as 7 minutes required for filling out an online questionnaire. It was also convenient for the researcher as the questionnaires were sent back directly to her online database as soon as the respondents clicked on the send button. These methods were used due to limited finances and lack of funding and this was the best way to achieve results. They proved successful and cost effective because a wide range of people could be reached within minutes without any costs involved. Reminders were also sent without incurring costs.

4.3.2 Method of Data Sampling

4.3.2.1. Primary Data

The study focuses on the Nigerian banking industry for the purpose of data collection because it is one of the most organised employers of domestic
graduate labour. It is important that the banking sector as an employer of graduate labour is studied because the research is studying sex discrimination against female employees and how sex discrimination stops women from getting to the top management positions. It is necessary that a sector that hires graduates is studied because only female graduates have the potential of getting to the top management roles. There are twenty-seven registered banks in Nigeria and branches ranging from as little as 12 branches and up to 610 branches with estimated average of 5 to 500 people working in a branch depending on the size of the bank, and it is estimated that about half of the workers are women. Employees in the industry cut across a representative spectrum of Nigerian identity in terms of gender, religion, ethnic and geographical spread as most Nigerian banks have a nation wide outreach and employ across multiple educational disciplines.

The primary data collection was conducted using questionnaires. A total of 300 questionnaires were sent out for the main study and only 103 questionnaires were returned fully completed. The research population was chosen from ten banks out of twenty-seven registered banks in Nigeria. The method of selection employed was a snowball sampling through previous contacts in the banks who introduced their colleagues that worked in the same bank as well as other banks. Snowball sampling also known as chain-referral sampling is a non-probability sampling method employed when a researcher wishes to access respondents through contact information
provided by other respondents. This method is repetitive because it involves primary data sources nominating potential primary data sources who in turn nominate others to be interviewed which evolve into a snowball effect. According to Noy, this method is the most widely used in qualitative research through which respondents and new participants are accessed or as a means of accessing social groups when other avenues have been used up.

The method is also employed when other means of accessing information are not feasible and it is especially effective in accessing hidden populations. Browne found that where the phenomenon under study is sensitive or threatening, the population would be hidden because either their lifestyle or specific faction if exposed would result to discrimination, harassment or even violence to them. In addition to this, sexual issues are normally considered private and outside the realm of public research and it would be difficult to have access to participants. To obtain participants for such studies, individuals’ social networks are often employed in order to access hard to reach and sensitive populations. Snowball sampling being a non-probability sampling method, can be viewed as being biased when selecting participants on the basis of social networks because those outside the participating social networks are excluded. However it can be difficult to establish sampling frames when carrying out research in the area of sexuality and this makes the use of social network in recruiting participants an advantage because it will

538 Ibid
540 Ibid
include those often ignored in studies which rely on random sampling in a cost effective and timely manner as well as increasing the likelihood that the identified participants would be willing to talk to the researcher or give their responses. In the present research, first contacts were established through friends and relatives who worked in the banks. These contacts were approached and asked to participate in the research and to also introduce their colleagues who they believed would be willing to participate in the research. Questionnaires were sent to these participants who in turn forwarded copies to their colleagues who expressed willingness to participate in the research.

4.3.2.2 Secondary Data

Secondary data has been defined as data collected by others and not specifically for the research question at hand. It can be used either as a substitute to or complementary to the primary data. Cowton is of the view that secondary data has its advantages in terms of cost as it is less expensive to collect and overcome the difficulties of collecting primary data. However, he highlighted some disadvantages of using secondary data such as loss of control by the researcher over the generation of the data which will require more effort to understand the nature of the data and they have been assembled. There is also a danger that the researcher might misuse the data

such as drawing unwarranted conclusions if he does not understand the underlying method used.

Two sources of secondary data were used for this study. The first was data from banks to show the number of men and women at the top management positions. The data was generated by the researcher by assessing the websites of various banks in Nigeria which showed the banks management teams. Data was collected from 16 banks of the management executives of the banks. Of the 16 banks surveyed, there were 115 top management executives. 23.5% of them were women while 76.5% of them were men. Of these top management executives, 18.7% of women made up the Chairperson of the Board while 81.3% were men. The Chief Executive Officers of all 16 banks were men. Two of the banks did not have any woman at the top management executive post.

The second secondary data was obtained from the National Bureau of Statistics which covers the civil service. The data from the civil service sector was used to check if the phenomenon under investigation can also be observed in the public sector in order to collaborate and strengthen the data from the banking sector (a private sector). This was necessary to show that sex discrimination is not restricted to the private sector therefore it is a phenomenon which may be generalised. The report from the civil service shows that men represented 70.3% of the labour force participation while women represented 64.5%. It showed that the senior positions in the civil

service which comprised of Governors, Deputy Governors, Speakers, Commissioners, Director-General, Special Advisers, Board Chairperson and Local Government Area chairperson, 65.5% of the positions were occupied by men while 35.5% of them were occupied by women. There were 36 positions for the post of Governor and all 36 positions were occupied by men and not a single position occupied by a woman. The report also showed that in the National Parliament 93.6% of the seats were occupied by men while the remaining 6.4% of the seats were occupied by women. The statistics further showed that female judges in Nigeria were below 28% and in general were under represented in high-ranking government administrators with decision making powers.

4.3.3 Data Analysis

The questionnaire was grouped into four sections: personal details, sex discrimination, sexual harassment and employer liability. The respondents were required to express their views on the questions posed by selecting a number between 1 and 5 on a five point Likert scale method. Number 1 shows that the respondent strongly disagreed, 2 shows that the respondent disagreed, 3 shows that the respondent was neutral on the subject, 4 shows that the respondent agrees and 5 shows that the respondent strongly agreed. The points have been used in this manner so that a high point indicates a more positive attitude while a low point indicates a negative attitude.

The data collected was analysed using XLSTAT statistical software to compute the Principal Component Analysis (PCA) for the dataset. PCA is an
exploratory data analysis method used in analysing a multivariate data, compressing the data to capture it’s essence without losing information. It extracts important information from a dataset and expresses it as a set of orthogonal variables called principal components. One of the objectives of the PCA is to visualise and quantify relations between many variables and proximities among statistical units. It also looks at the correlation between a component and a variable estimating the information they share.\textsuperscript{544} Another objective of PCA is to pinpoint and discard unnecessary questions from the dataset.

The XLSTAT software was used to derive the mean and standard deviation of the responses. It was also used to find the correlation of the data collected. The mean output measured the broad perception of the respondents on each of the questions posed while the correlation matrix showed how the variables relate to each other. Religion was used as a supplementary variable to determine its effect on sex discrimination and sexual harassment.

\textbf{4.3.4 Ethical Considerations}

The main ethical issue involved in this study was interviewing human subjects on sensitive issues and the main ethical consideration was to protect the identity of the respondents. There was a letter of introduction attached to the questionnaires assuring the respondents that their identity would be protected and they could not be identified from their responses to the questionnaires to

\textsuperscript{544} See Abdi H. and L. Williams (2010). \textit{Principal Component Analysis} Wiley Interdisciplinary Reviews: Computational Statistics, 2
ensure full participation. However, there were no problems encountered in employing respondents to participate as respondents (both male and female) were willing to give their full participation. This is because they believed that discrimination against their gender has gone on for so long and they were willing to help in the study if it promised of any future hope of the government ensuring the protection of their rights. Both men and women were surveyed because the researcher believes that both parties (women as victims and men as perpetrators) should be given a fair chance to give their opinion on the issues pertaining to sex discrimination; and men should also be allowed to defend themselves in line with the principles of natural justice.

4.4 Pilot Study

Bryman and Bell\textsuperscript{545} and Oppenheim\textsuperscript{546} are of the view that a pilot study should be conducted before the survey because a pilot study ensures that the survey questions and the research instruments work as intended and will be used to eliminate any possible problems that will occur during the main study.

4.4.1 Data Collection

In carrying out the pilot study, a questionnaire was developed and distributed to the respondents selected for the survey to seek their views on their willingness to participate in research seeking to examine the occurrence of sex discrimination and sexual harassment in the banking sector in Nigeria and

\textsuperscript{545} Bryman, A. and E. Bell (2007). Business research methods at p.273
\textsuperscript{546} Oppenheim, A. N. (1992). Questionnaire design, interviewing and attitude measurement at p.47
exploring possible reforms which would aid in eliminating these problems. The pilot study was built around the following themes: occurrence of sex discrimination, sexual harassment in and out of the organisation while carrying out the employers business, employers' liability in sexual harassment and pregnancy and maternity rights. The study showed that respondents were willing to participate in the main study and sixty questionnaires were distributed to six organisations and twenty-eight questionnaires were returned fully answered. The questionnaires were hand delivered by walking into the banking hall and handing out the questionnaires to the respondents who had agreed to participate and later went back for collection. This method proved successful because some of the questionnaires were answered since the researcher prompted the respondents days before the agreed collection date.

The responses were encouraging because the respondents were willing to answer the questions but criticised the length of the questions as they were too busy to answer all the sections required, which caused the researcher to narrow down the questions to the barest minimum for the main study.

4.4.2 Analysis of Questionnaire

Forty-one structured questions were asked in the questionnaire in order to seek views on issues surrounding sex discrimination and sexual harassment at work. The questions were grouped into four sections: sex discrimination, sexual harassment, employer liability and pregnancy and maternity rights. Pregnancy and maternity rights was removed in its entirety from the study in order to narrow down the research and concentrate more on sex
discrimination and sexual harassment at work. The PCA tool used in the main study discarded the section on employer liability by not correlating any of the questions. This section was also removed and the study narrowed down to sex discrimination and sexual harassment. In the analysis, the section on sex discrimination was further divided into two sub sections Ai and Aii. Ai contains questions 1 to 5 intention of which was to measure belief of male superiority over females and Aii contains questions 6 to 15 which measured sex discrimination at work.

The analysis was carried out in four stages. In the first stage, the data was put into an excel sheet in its raw form with the respondents answers. Questions 4, 11, 14, 17, 20, 26, 27, 28 and 29 were reverse coded in order to reduce response bias and they were reverse scored before the analysis was carried out. An average value for each question was calculated to represent a total for that question. In addition to this, averages for both male and female respondents were also calculated to represent a total for male and female respondents.

In the second stage, the responses were grouped from strongly agree to strongly disagree and the percentages were calculated to indicate what percentage of the respondents strongly agreed, agreed, were neutral, disagreed and strongly disagreed to a question. The respondents were further split into male and female groups and the percentages were calculated to indicate their level of agreement to a question.

In the third stage, the questions were grouped and split into sections. Likert
scale measurement is a summative scale; therefore the responses have been summed up to get a mean value of each measurement. The total sum and averages for the sections were calculated for each respondent; the averages were rounded up for the SPSS analysis.

The fourth stage of the analysis involved inputting the data in SPSS and calculating the frequency and cross-tabulation. The majority of the respondents were males representing 57.1% while 42.9% were females. The age group of the respondents range from 21-25 up to 45 and above. The majority of the respondents were in the age group 26-30 representing 50% of all the respondents.

On the view that the male gender is superior to the female gender, 25% of the respondents disagreed all of which were women, 53% of the respondents were neutral on the subject; and 21.4% of the respondents out of which 7.1% are women agreed that the male gender is superior to the female gender.

On the occurrence of sex discrimination at work, 10.7% of female and 25% of male giving a total of 35.7% are of the view that there is no sex discrimination at work, 60.7% of the respondents were neutral and 3.6% of which all were females agreed that there is sex discrimination at work. 17.9% of respondents strongly agree that sexual harassment occurs at work, 71.4% of respondents were neutral on the subject, 7.1% of the respondents disagree and 3.6% of the respondents all of which are women strongly disagree that sexual harassment occurs at work.
This chapter has discussed the choice of qualitative research paradigm as a suitable research methodology for this study. The paradigm has been developed to explain the phenomenon under study: the sex discrimination and sexual harassment of female workers in Nigerian labour market. The chapter has explained in detail the data collection phases – sampling, data analyses and ethical considerations as well as the research design – socio-legal studies, doctrinal studies and comparative study. The results of the data will be discussed and analysed in the next chapter to help answer the research question.
CHAPTER FIVE

RESULTS AND DISCUSSION

The purpose of this chapter is to outline and analyze the results of the data on the occurrence of sex discrimination and sexual harassment at work in Nigeria and determine the appropriate instruments to address the problems based on the lessons learnt from the laws and policies that have been implemented in the UK. As discussed in previous chapters, sex discrimination and sexual harassment are social problems which mainly affect women as a result of gender stereotypes that place men in dominant and superior positions over women. It is believed that these stereotypes are transferred into work settings with men dominating the top hierarchy of the organisations. For the possibility of addressing sex discrimination and sexual harassment in the workplace, practices which reinforce gender stereotypes in society first need to be eliminated otherwise any measures set up to tackle these issues at work will be in futility. Recommendations which will be proposed as an outcome of this chapter will be discussed further in chapter six.

The results of the survey were analysed using XLSTAT. To answer the research questions, the chapter will be divided into two parts: part 1 where the results of the survey and existing laws on sex discrimination will be analysed and part 2 where the results of the survey and existing laws on sexual harassment will be analysed. This aims on the one hand to evaluate the extent to which these two issues constitute problems at the work place and on
the other hand to check whether legislation is the appropriate instrument to monitor and control their occurrence.

A questionnaire was designed to seek the views of respondents on the subject matter. The questionnaire was prepared using an excel spread sheet requiring respondents to click on a checkbox provided and an online questionnaire was subsequently developed to make it easier for respondents to answer. Data such as age, gender, religion and marital status of respondents were collected. Twenty eight structured questions grouped into two sections – sex discrimination and sexual harassment were asked in the questionnaire to seek views on issues surrounding sex discrimination and sexual harassment at work. Three hundred questionnaires were sent out and one hundred and forty nine were returned, forty six out of the returned questionnaires were either incomplete or unreadable. One hundred and three questionnaires were returned fully answered. With 103 returned useable questionnaires out of 300 questionnaires, the response rate was 34.3%. With a response rate of 34.3% and allowing a 10% margin of error, 103 respondents is a significant sample of the population (bank workers in Nigeria).

Respondents were selected from bank employees because the banks are one of the organized employers of graduate labour in the country with a wide outreach employing across multiple educational disciplines. The workers cut across a range of Nigerian identity in terms of gender, religion, ethnic and geographical spread. There were fifty three women and fifty men surveyed making a total of one hundred and three. Of the female respondents, 39
were Christians and 14 were Muslims while 37 of the male respondents were Christians and 13 were Muslims. 22 of the female respondents were single and 31 married while 21 of the male respondents were single and 29 were married. Of the female respondents, 19 of them were under 30 years old, 30 female respondents were between 30 and 39 years, 2 were between 40 and 49 years and 2 were 50 years and above. Of the male respondents, 15 of them were under 30 years old, 32 were aged between 30 and 39 years, 2 were between 40 and 49 years and 1 respondent was 50 years and above. The sample of this study is therefore not only significant but also representative of the population under investigation.

A likert scale measurement was used to measure responses which ranged from 1 for strongly disagree to 5 for strongly agree. For this analysis, with the scale of measurement from 1 to 5 with 3 being neutral, results with a mean value of 3 or less will signify that respondents did not perceive that there is sex discrimination or sexual harassment and results with a mean value from 3 to 5 will signify that respondents perceived that there is sex discrimination or sexual harassment and the degree or extent of the problem will be measured on a scale of 3 to 5. If the answer is closer to 3 than it is to 5, the perception of the level of sex discrimination or sexual harassment will be considered low and if the answer is closer to 5 than it is to 3, then the perception of the level of sex discrimination or sexual harassment will be considered high. The level of discrimination will be represented on three scales: from 3 to 3.7 means that the perception of the level of discrimination is low, from 3.7 to 4.5 means that the perception of the level of discrimination is medium and from 4.5 to 5
means that the perception of the level of discrimination is high.

Principal Component Analysis (PCA) was adopted for this study. To interpret the results, a computation of the correlations between the original data and each principal component (pc) was carried out. The first two principal components pc1 and pc2 were used in this analysis from the original 5 principal components because these are the principal components that have the maximum number of correlated questions. Interpretation of the principal components is based on the variable that has the strongest correlation between them within each component.

Table 1 below contains questions correlated for women and men with respect to principal component 1.

<table>
<thead>
<tr>
<th>Category</th>
<th>Question</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Correlation</td>
<td>PC1</td>
</tr>
<tr>
<td>Sex discrimination</td>
<td>Q4</td>
<td>Yes</td>
<td>0.22</td>
</tr>
<tr>
<td></td>
<td>Q6</td>
<td>Yes</td>
<td>0.16</td>
</tr>
<tr>
<td></td>
<td>Q7</td>
<td>Yes</td>
<td>0.23</td>
</tr>
<tr>
<td></td>
<td>Q9</td>
<td>Yes</td>
<td>0.41</td>
</tr>
<tr>
<td></td>
<td>Q10</td>
<td>No</td>
<td>0.02</td>
</tr>
<tr>
<td></td>
<td>Q12</td>
<td>Yes</td>
<td>0.32</td>
</tr>
<tr>
<td></td>
<td>Q13</td>
<td>No</td>
<td>0.14</td>
</tr>
<tr>
<td></td>
<td>Q15</td>
<td>No</td>
<td>0.09</td>
</tr>
<tr>
<td>Sexual harassment</td>
<td>Q16</td>
<td>Yes</td>
<td>0.30</td>
</tr>
<tr>
<td></td>
<td>Q17</td>
<td>Yes</td>
<td>0.16</td>
</tr>
<tr>
<td></td>
<td>Q18</td>
<td>Yes</td>
<td>0.15</td>
</tr>
<tr>
<td></td>
<td>Q19</td>
<td>Yes</td>
<td>0.15</td>
</tr>
<tr>
<td></td>
<td>Q21</td>
<td>Yes</td>
<td>0.24</td>
</tr>
<tr>
<td></td>
<td>Q22</td>
<td>No</td>
<td>0.16</td>
</tr>
<tr>
<td></td>
<td>Q24</td>
<td>No</td>
<td>0.02</td>
</tr>
<tr>
<td></td>
<td>Q26</td>
<td>No</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>Q28</td>
<td>No</td>
<td>0.00</td>
</tr>
</tbody>
</table>
For sex discrimination, the first principal component is strongly correlated with five of the original data for women on the one hand and with four of the original data for men on the other hand. This suggests that the correlated questions vary together, hence if one variable increases, the variable for the other questions will increase. The question the principal component correlates most strongly on, that is the question that has the highest value on the principal component, is a measure of that variable. In other words, pc1 is a measure for question 9 for women and question 13 for men. The mean value highlighted in bold shows that there is a slight disagreement between the sexes on those questions. Regarding sex discrimination, there is a disagreement between men and women in most of the questions while in sexual harassment, men and women have similar responses, therefore they agree to the questions.

Table 2 contains questions correlated for women and men with respect to principal component 2.
## Table 2

### Questions correlated for men and women with respect to PC2

<table>
<thead>
<tr>
<th>Category</th>
<th>Question</th>
<th>Women</th>
<th></th>
<th></th>
<th>Men</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Correlation</td>
<td>PC2</td>
<td>Mean</td>
<td>Correlation</td>
<td>PC2</td>
</tr>
<tr>
<td></td>
<td>Q5</td>
<td>No</td>
<td>0.12</td>
<td>4.04</td>
<td>Yes</td>
<td>0.19</td>
<td>4.45</td>
</tr>
<tr>
<td></td>
<td>Q6</td>
<td>No</td>
<td>0.16</td>
<td>3.00</td>
<td>Yes</td>
<td>0.18</td>
<td>2.10</td>
</tr>
<tr>
<td></td>
<td>Q7</td>
<td>No</td>
<td>0.07</td>
<td>3.18</td>
<td>Yes</td>
<td>0.34</td>
<td>2.63</td>
</tr>
<tr>
<td></td>
<td>Q8</td>
<td>Yes</td>
<td>0.20</td>
<td>2.55</td>
<td>No</td>
<td>0.18</td>
<td>2.74</td>
</tr>
<tr>
<td></td>
<td>Q9</td>
<td>No</td>
<td>0.06</td>
<td>3.00</td>
<td>Yes</td>
<td>0.17</td>
<td>1.98</td>
</tr>
<tr>
<td>Sex discrimination</td>
<td>Q5</td>
<td>No</td>
<td>0.12</td>
<td>4.04</td>
<td>Yes</td>
<td>0.19</td>
<td>4.45</td>
</tr>
<tr>
<td></td>
<td>Q6</td>
<td>No</td>
<td>0.16</td>
<td>3.00</td>
<td>Yes</td>
<td>0.18</td>
<td>2.10</td>
</tr>
<tr>
<td></td>
<td>Q7</td>
<td>No</td>
<td>0.07</td>
<td>3.18</td>
<td>Yes</td>
<td>0.34</td>
<td>2.63</td>
</tr>
<tr>
<td></td>
<td>Q8</td>
<td>Yes</td>
<td>0.20</td>
<td>2.55</td>
<td>No</td>
<td>0.18</td>
<td>2.74</td>
</tr>
<tr>
<td></td>
<td>Q9</td>
<td>No</td>
<td>0.06</td>
<td>3.00</td>
<td>Yes</td>
<td>0.17</td>
<td>1.98</td>
</tr>
<tr>
<td>Sexual harassment</td>
<td>Q16</td>
<td>No</td>
<td>0.00</td>
<td>4.02</td>
<td>Yes</td>
<td>0.60</td>
<td>3.63</td>
</tr>
<tr>
<td></td>
<td>Q18</td>
<td>No</td>
<td>0.09</td>
<td>3.00</td>
<td>Yes</td>
<td>0.43</td>
<td>3.04</td>
</tr>
<tr>
<td></td>
<td>Q19</td>
<td>No</td>
<td>0.00</td>
<td>3.92</td>
<td>Yes</td>
<td>0.51</td>
<td>3.98</td>
</tr>
<tr>
<td></td>
<td>Q20</td>
<td>Yes</td>
<td>0.32</td>
<td>3.02</td>
<td>No</td>
<td>0.03</td>
<td>3.06</td>
</tr>
<tr>
<td></td>
<td>Q22</td>
<td>No</td>
<td>0.01</td>
<td>3.92</td>
<td>Yes</td>
<td>0.28</td>
<td>3.37</td>
</tr>
<tr>
<td></td>
<td>Q25</td>
<td>Yes</td>
<td>0.31</td>
<td>3.96</td>
<td>No</td>
<td>0.03</td>
<td>4.22</td>
</tr>
<tr>
<td></td>
<td>Q26</td>
<td>Yes</td>
<td>0.40</td>
<td>4.29</td>
<td>No</td>
<td>0.02</td>
<td>4.22</td>
</tr>
<tr>
<td></td>
<td>Q27</td>
<td>Yes</td>
<td>0.44</td>
<td>3.75</td>
<td>No</td>
<td>0.00</td>
<td>3.80</td>
</tr>
<tr>
<td></td>
<td>Q28</td>
<td>Yes</td>
<td>0.39</td>
<td>3.18</td>
<td>No</td>
<td>0.12</td>
<td>3.51</td>
</tr>
</tbody>
</table>

The second principal component is only correlated on one question for women and on four questions for men. The correlated questions under this component are also correlated for women in respect to pc1. The discussion of the results under this component will only be carried out for men since it has the highest number of correlated questions.

Table 3 contains questions that are not correlated for any of the sexes with respect to the first and second principal components.
Table 3

Questions not correlated for any of the sexes with respect to PC1 and PC2

<table>
<thead>
<tr>
<th>Question</th>
<th>Women Mean</th>
<th>Men Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>2.18</td>
<td>3.08</td>
</tr>
<tr>
<td>Q2</td>
<td>3.24</td>
<td>3.37</td>
</tr>
<tr>
<td>Q3</td>
<td>1.86</td>
<td>1.96</td>
</tr>
<tr>
<td>Q11</td>
<td>4.10</td>
<td>3.63</td>
</tr>
<tr>
<td>Q14</td>
<td>4.06</td>
<td>3.67</td>
</tr>
</tbody>
</table>

These questions are not correlated because they are not directly related to issues of sex discrimination and sexual harassment in the place of work. The PCA tool was able to identify these questions and did not show any correlation between most of the questions. These are general questions intentionally used as control questions. They were used to test and understand the general mindset of the respondents as their mindset will affect the answers they give. It can be deduced from the result that the answers given by the respondents are reliable. The answers to the control questions are consistent with the answers given on the questions and are not extreme on the scales of the mean value like 1 or 5 but in line with answers given between 2 and 4.

Part 1: Sex Discrimination

Under this part, the results of the primary data on sex discrimination will be analysed and existing laws and policies in the UK will be considered to determine if legislation is the appropriate instrument to address the problems in the workplace in Nigeria. The analysis of the primary data will be carried out
alongside the secondary data to evaluate the extent to which sex discrimination constitutes a problem at work. Subsequently, laws and policies implemented in the UK will be discussed to determine if they have been effective in addressing the problems in the UK and a consideration will be given to them to check whether they are appropriate to address the problems in Nigeria.

5.1. Research Question 1: To What Extent is Sex Discrimination Detrimental to Female Workers in the Nigerian Labour Market?

Extant literature reveals that gender is a tool used by society to classify and establish social differences between men and women and ascribe different roles and responsibilities to them.547 This tool is further used as a mechanism to create domination of men over women and when transferred into work settings causes organisations to be organised and structured along the lines of gender to favour and represent the interest of men.548 It was revealed that organisational practices and structure are the root cause of sex discrimination at work. This is because jobs are evaluated in an abstract manner without taking into consideration external influences such as childbirth and childcare for the purposes of assessing the job’s characteristics and hierarchy when setting up the management systems. Acker believes that since women are

primarily responsible for childbirth and childcare, the organisational processes will restrict them from fitting into certain roles or attaining certain positions within the organisation, thereby leaving men more suited to the roles. As a result of the difficulty women face in separating work life from family life, they are unable to progress in their career and therefore are restricted from attaining senior management roles within the organisations due to the time spent on and the high responsibilities attached to such roles.

Extant literature also revealed that apart from gender, culture, religion and patriarchy are additional tools employed to discriminate against women in Nigeria. Religion and culture are used as instruments to maintain women’s subordination to men in traditional African societies while patriarchy is a means of justifying such stratification of power between the two genders. On this premise, the hypothesis is that sex discrimination in Nigeria will be very high because religion, culture and patriarchy, as social factors like gender, are expected to be transferred into work settings and used as mechanisms to further restrict women from attaining senior management levels in organisations. The secondary data collected shows that few women are found in senior management roles within the organisations and according to extant literature this suggests that there is sex discrimination at work in Nigeria. However, the results of the primary data show that the perception of the occurrence of sex discrimination at work in Nigeria is low. The researcher will argue that despite the expectation of high sex discrimination as a result of

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549 Acker (1990)
550 Uchem (2001); Makama (2013)
religion, culture and patriarchy, these social factors are the reasons why workers’ perception of sex discrimination is low. The results of the survey will be discussed below to further understand how culture, religion and patriarchy influences workers perception of sex discrimination at work.

5.1.1 Female Responses

The purpose of the data collected under this theme (questions 1 to 15) is firstly to establish the existence of sex discrimination at work in Nigeria and secondly to understand the extent to which it is detrimental to female workers. Table 4 below shows the mean value and standard deviation of the data collected under this theme.

<table>
<thead>
<tr>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q5</th>
<th>Q6</th>
<th>Q7</th>
<th>Q8</th>
<th>Q9</th>
<th>Q10</th>
<th>Q11</th>
<th>Q12</th>
<th>Q13</th>
<th>Q14</th>
<th>Q15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Std.Dev</td>
<td>1.260</td>
<td>1.176</td>
<td>0.895</td>
<td>1.156</td>
<td>1.038</td>
<td>1.058</td>
<td>1.108</td>
<td>1.154</td>
<td>1.342</td>
<td>1.100</td>
<td>1.005</td>
<td>1.175</td>
<td>1.005</td>
<td>1.066</td>
</tr>
</tbody>
</table>

In table 5 below, with respect to the first Principal Component (PC1), five questions (4, 6, 7, 9 and 12) out of the fifteen collected under this theme are correlated for women.
Table 5

Questions correlated for women with respect to PC1

<table>
<thead>
<tr>
<th>Category</th>
<th>Question</th>
<th>Women</th>
<th>Correlation</th>
<th>PC1</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex discrimination</td>
<td>Q4</td>
<td>Yes</td>
<td>0.22</td>
<td>3.06</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q6</td>
<td>Yes</td>
<td>0.16</td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q7</td>
<td>Yes</td>
<td>0.23</td>
<td>3.18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q9</td>
<td>Yes</td>
<td>0.41</td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q12</td>
<td>Yes</td>
<td>0.32</td>
<td>3.02</td>
<td></td>
</tr>
</tbody>
</table>

This means that these questions have a mutual relationship and since the questions are correlated, the respondents are expected to answer the five questions in a similar way. The mean responses given by women on the correlated questions range from 3 to 3.176 and on the scale of discrimination (from 3 to 5) defined earlier in this chapter; this signifies a low perception of sex discrimination by women. Since extant literature suggests that sex discrimination against women will result in few women working in senior management positions, the low perception of discrimination found amongst female workers in Nigeria would suggest that there is a near gender balance at the top of the organisational hierarchy. However, the secondary data shows that in the banking sector, of the 115 top management executives of 16 banks surveyed, 23.5% of them are women while 76.5% of them are men. The chairperson positions of these banks are made up of 81.3% of men and 18.7% of women. The Chief Executive Officers of all 16 banks are men and 2 of the banks have only men at the senior management teams. In line with the data for the banks is the data from the National Bureau of Statistics which covers the civil service sector. The civil service sector shows a similar trend as that of the banking sector with 65.5% of men and 35.5% of women in top
senior positions and only men were found occupying all 36 positions of the posts of Heads in the various civil service sectors.\textsuperscript{551}

The statistics presented shows a gender imbalance at the top of the organisational hierarchy, why then do women have a low perception of sex discrimination at work? Could it be that Nigerian women have accepted their subordinate positions or they are simply not interested in senior management roles?

\textit{5.1.1.1 Explanatory Factors}

As highlighted in section 5.1, the researcher argues that religion, culture and patriarchy are factors which contribute to the low perception of sex discrimination found amongst workers in Nigeria despite an expectation of a high perception of sex discrimination. Under this section, the researcher will show how these social factors mitigate the effects of discriminatory practices and alters perception of workers of the existence of sex discrimination at work.

\textit{Culture as a Mediating Factor in the Perception of Sex Discrimination}

Culture has been defined as the totality of the way of life of a given society.\textsuperscript{552} Nigeria as a traditional society has many cultural beliefs and practices which

\textsuperscript{551} Data generated by researcher by assessing the websites of various banks in Nigeria
\textsuperscript{552} Abara C.J. (2012). Inequality and Discrimination in Nigerian Tradition and Religion as Negative Factors Affecting Gender A Paper presented at the Federation of International Human Rights Museums on 8\textsuperscript{th}-10\textsuperscript{th} October 2012
are discriminatory against women such as the tradition that sees men as the heads in the families and in society and accords them benefits while restricting women. According to Gherardi and Poggio, studying the historical and cultural experiences of a society would explain how gender is constructed and reproduced in organisations.\textsuperscript{553} In other words, understanding the Nigerian culture will explain why women have a low perception of sex discrimination at work despite a low number of them making it to the top of the organisations.

The Nigerian cultural system has designed and organized the society on the basis of gender which prescribes that men are heads of the families. Women are subordinate to men and they must respect and obey their leadership. Roles have been created based on this division with men responsible for the financial upkeep of the family and women responsible for taking care of the children and the domestic work. However, women could also work outside the home to provide financial support for their husbands. Evidence of this can be deduced from the survey results in questions 3 to 5. Question 3 asks whether women should stay at home to look after the family while men go out to work to provide for the family. The result shows that women disagreed to the question with a mean value of 1.863. Question 4 asks whether women should have paid jobs outside the home and provide for the home on an equal basis as men. The result shows that women were neutral on the question with a mean value of 3.059. Question 5 asks whether men should be the main provider for the family while women support them. The result shows that

\textsuperscript{553} Gherardi and Poggio (2001)
women agreed with the question with a mean value of 4.039. Looking at these three questions closely, one can conclude that women believe that they should go out to work but not to provide on an equal basis as a man but only to support their husbands in providing for the family. In other words, the financial responsibility of the family lies with the man while a woman supports when she can. Therefore, since she is not primarily responsible for the financial upkeep of the home, her responsibility lies in taking care of the children and the domestic work. The researcher argues that as a result of this culture, women in Nigeria have a low perception of sex discrimination at work because they accept that their primary responsibility is to look after the children and the home and therefore make the choice to avoid senior management roles which will interfere with and divert their attention from their primary responsibility. This position is contrary to Acker’s assertion that the structure of the organisation restricts women from attaining senior management positions.\textsuperscript{554} Despite the fact that it is a different cultural context, the researcher’s finding is in line with Hakim’s preference theory in which she asserts that women choose adaptive lifestyles to enable them combine their work-life with their family-life.\textsuperscript{555}

The assertion that women in Nigeria make the choice to avoid senior management roles is also contrary to the prevalent view in western societies that childcare is a major factor that restricts women from rising to the top of the organisation. In Nigeria, an average middle-class home employs at least

\textsuperscript{554} Acker (1998)
\textsuperscript{555} Hakim (2006)
one and up to three live-in nannies popularly known as ‘house-helps’ who assist them to look after the children and take care of the responsibilities at home. These house helps are paid meager salaries ranging from N5000 to N15000 a month (£14 - £40)\(^\text{556}\) and with the salary of an entry level officer in a bank ranging from N110,000 to N250,000 a month (£308 - £700) to an executive director ranging from N3,000,000 to N3,500,000 a month (£8400 - £9800),\(^\text{557}\) an average middle-class family can afford to employ as many house-helps as they want.\(^\text{558}\) Many of the Nigerian women in the population under investigation are therefore not burdened with childcare and family responsibilities because they have the services of a house-help to assist in taking care of the children and the home. They therefore do not have to make a choice between rising to the top of the organisation in pursuit of their career aspirations and having a family. One would argue that they simply decide not to go for senior management roles because it would affect what they believe is their primary responsibility. This is confirmed in item 15 of the survey results where women did not agree that they have to abandon family life in order to succeed in their career.

According to Uchem, culture is used as an instrument of subjugation, intimidation and ensuring compliance from women and therefore women who put their secondary responsibility of financial gains over their primary responsibility of looking after the children are criticized.\(^\text{559}\) An example of this

\(^{559}\) Uchem (2001)
was seen in April 2015 where a married couple with four children employed a nanny to look after the children to enable the mother return to work after having a baby. While the couple was away at work, the nanny kidnapped three of their children for a ransom. The mother was heavily criticized and blamed on social media for the kidnap of the children and one of the many criticisms she received was that she had neglected and abdicated her role of looking after the family to the nanny and instead had gone after financial and material gains. Culture therefore is used to make women comply with their ascribed societal role of taking care of the children as well as the home.

Culture can also have an effect on women in the way they perceive themselves which can affect the types of jobs they apply for. Since society has ascribed the responsibility of taking care of the children and the home to women and does not expect much from them in terms of career prospects, this may affect women’s self-esteem and confidence. As a result of lack of confidence and no career aspirations, women may not aspire to apply for top management roles within organisations but instead resign their fate to accept their roles as primary caregivers. This will result in gender gaps in senior management roles. Azmat and Ferrer found that low career aspirations in women causes gender gaps in performance which creates gender gaps in employment. In their study of gender gap in performance among associate lawyers in the United States, they found that the major difference in gender gaps in performance between men and women was as a result of individual’s

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career aspiration which has a strong positive effect on the performance put in by the individual in his or her job. Family-related commitments such as being married and having children had little effect in the low performance output that was found in women. Azmat and Ferrer found that 60% of men in law firms had higher aspirations to become an equity partner compared to 32% of women. Because women had less career aspirations than men, they had less incentive to contribute effort into their performance and this affects their future earnings in form of gender pay gaps and employment. Azmat and Ferrer believed that social values and career aspirations formed earlier on in life may have an impact on performance gap and gender gaps in aspirations. Ashby and Schoon confirmed in their study that boys may have higher aspirations than girls and found that teenage boys irrespective of their family backgrounds placed more importance on being challenged in a job and aimed high in their aspirations; while only girls from strong family backgrounds aimed higher than boys. The researcher therefore believes that as a result of culture, which expects women to be the primary caregiver at home, they have less career aspirations for themselves other than to get married to a man who can provide for her; be good wives and mothers; take care of their children; and maybe hold a low level job to support their husbands financially and not aspire to get to senior management levels in the organisation. This assertion is in line with Hakim’s view that women avoid senior management roles and prefer to go for lower grade jobs with lower earnings and little responsibilities

562 Azmat and Ferrer (2015), Sax et al. (2002)
563 Azmat and Ferrer (2015)
564 Ibid
because these roles can be organised on a part time basis to enable them combine it with their family-life.\textsuperscript{566} In the Nigerian context, culture therefore is the unequal extraneous factor which Chan asserts has an impact on women’s employment decisions that are not truly independent of their private lives.\textsuperscript{567}

\textit{Patriarchy as a Mediating Factor in the Perception of Sex Discrimination}

Patriarchy is a system of male authority which oppresses women through its social, political and economic institutions.\textsuperscript{568} Patriarchy contributes to the low perception of sex discrimination at work because of the patriarchal system of stratification that ascribes power to men as leaders in society and heads in the families. The patriarchal system in Nigeria provides material advantages to men in terms of inheritance rights, ability to own landed property, male preference and an ability to secure a loan all of which economically empowers a man. On the other hand patriarchy denies women these rights which in turn deprives them of resources and makes them economically dependent on men. This patriarchal system normalizes the fact that men are leaders in the homes and society and therefore there will be a tendency that anywhere a man is seen in a position of power and leadership, it will be viewed as normal. In view of the fact that historically Nigeria is a patriarchal system where men are seen as the head of the families, men and women will unconsciously accept that organisations should naturally be headed by a man. Therefore

\textsuperscript{566} Hakim (2006)  
\textsuperscript{567} Chan (2013)  
\textsuperscript{568} Makama (2013)
where more men than women are found in top management positions, it is viewed as normal and not discriminatory.

Patriarchy therefore makes women accept the societal role of leadership that is ascribed to men. This will discourage women from competing with men over leadership roles because society expects men to lead and as a result cause gender gaps in senior management roles. Azmat and Petrongolo believe that gender differences in preferences and psychological attributes may offer an explanation for persisting gender gaps. They adopted an experimental approach to review advances in economics of gender to understand the recurrent questions on gender gaps in the labour market. They found that differences in preferences and psychological attributes could offer an explanation into gender gaps in participation in the labour market, the type of job chosen and the performance in those jobs. They found that gender differences in preferences towards risk and competition have the potential to shape gaps in earning through job sorting. Experiments by other scholars showed that men are more risk-prone and thrive in competitive environments more than women while women are more risk-averse than men. Men were found to dominate in high risk sector jobs and these jobs with high related risks are typically rewarded with higher mean earnings. These high-risk jobs are usually developed in highly competitive environments and as a result of this, the tendency that more men are found in such jobs is very high. They also confirmed that the difference in gender pay gap may be as a result of

569 Azmat, G., & Petrongolo, B. (2014). Gender and the labor market: What have we learned from field and lab experiments?. Labour Economics, 30, 32-40.
570 Ibid
men and women bargaining salary differently with women avoiding competitive negotiation. Though it is not understood how gender preferences are formed, Azmat and Pentrogolo analysed some experiments to understand the influence of nature and nurture on gender behaviour to determine if they have any influence on labour market successes. They found that nature may have an impact on gender behaviour which could affect how well men and women fare in the labour market. Interestingly other studies suggest that gender preferences could be as a result of environmental factors. It was found that attitudes towards competition may not be driven by biological differences but by nurture. An experiment conducted by Booth and Nolen showed that girls from a single sex school had similar risk preferences and competitive preferences similar to boys while girls in mixed schools were risk averse and did not have competitive preferences similar to boys. In other words, men and women differ in their choices as a result of an innate preference or because their innate preferences are modified by pressure to conform to gender stereotype. In line with this, the researcher believes that boys will be more competitive because of the way society encourages them during play to be assertive and take risks, while girls will be less competitive because of the way society discourages them from taking risks. In addition, gender gap in senior management positions in Nigeria and women’s labour choices can be attributed to women having less career aspirations and being less competitive than men as a result of social norms which discourage women

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571 Azmat G. and B. Pentrogolo (2014)
from taking on leadership positions but to be the main home provider. This assertion is in line with Hakim that gender gap in employment is as a result of work orientations and labour market behaviour between men and women.\textsuperscript{574} Nigerian social norms that discourage women from taking on leadership positions may explain why women have a low perception of sex discrimination at work, when in fact there are more men in positions of power as well as men heading all the organisations both in the civil service and the banking sector.

\textit{Religion as a Mediating Factor in the Perception of Sex Discrimination}

Nigeria is a religious society with the majority of the population either Christians or Muslims and the rest who do not belong to any of these two groups practice African Traditional Religion which is predominantly controlled by culture. Understanding how religion is used as an instrument of control within the home and society would explain why women have a low perception of sex discrimination at work despite a low number of them making it to the top of the organisation.

An average Nigerian believes strongly in and is influenced by their religious doctrines. The Christian and Islamic doctrines hold that God created men to be leaders in the families and in society and as a result of this women are expected to be subordinate to men and submit to the leadership of their husbands. These doctrines have been used as an instrument to subjugate

\textsuperscript{574} Hakim (2006)
and control the lives of women and girls by placing restrictions on them and justifying it as God’s intentions. Ephesians 5: 22-24 says “Wives, submit yourselves to your own husbands as you do to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything.” This Bible verse justifies the male headship model that exists in Nigeria and requires that women should be submissive to their husbands. Therefore upon marriage, a man automatically assumes a leadership role over his wife and family and the wife is expected to submit to this leadership.

Verses from the Bible and the Qur’an have been used to perpetuate and maintain the oppression and control of women by men. The Christian religion forbids women from assuming leadership roles in the churches evidence of which can be seen in the teachings of Saint Paul in 1 Corinthians 14:34-35 that ‘Women should remain silent in the churches. They are not allowed to speak, but must be in submission, as the law says. If they want to inquire about something, they should ask their own husbands at home: for it is disgraceful for a woman to speak in Church’ and 1Timothy 2:12 says that ‘I do not permit a woman to teach or to assume authority over a man: she must be quiet’. Likewise, according to the Qur’an, Muslim women are forbidden from holding leadership positions and are not allowed to work in close proximity with men unless it is necessary. Al-Nisa 4:34 says, ‘Men are the protectors and maintainers of women, because Allaah has made one of them to excel the other…’ And it was indicated by the Hadeeth of Abu Bakrah who said that
the Prophet said ‘no people who appoint a woman as their leader will ever prosper’. The reason behind this is that for a person to be in a leadership position or government, they are required to engage with men in meetings which women are not allowed to do. Another reason for prohibiting women in leadership and government positions in the Islamic religion is that these positions require perfect wisdom, reason and alertness and it is believed that one woman in herself is incapable of having such qualities without the corroboration of another woman but a man is capable of having such qualities because his testimony has been made equal to that of two women. These verses from the Bible and the Qur’an are used to justify the automatic leadership role conferred on a man over his wife upon marriage as well as restrict women from being leaders in their homes and society.

Individuals are indoctrinated with these religious views through socialization and education to accept them as natural and a divine order from God which they apply in their daily lives. Boys grow up to believe that God has ordained them as the head of the family who must lead and guide their families and girls grow up to believe that upon marriage they must submit to their husbands’ leadership and guidance. To ensure marriages are preserved, girls are therefore raised and trained to be good and virtuous wives and to learn to submit to their husbands. Religion thereby becomes a means of social control within the home. In accordance with these beliefs, a woman accepts that her husband’s primary responsibility as the head of the family is to go out to work to provide financially for the upkeep of the family, while she, according to

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575 Reported by al-Bukhaari 13/53 translation, see https://islamqa.info/en/3285
Genesis 2:18, is to be her husband’s helper and support him in providing for the home. This supports the assertion that many women in Nigeria will not go for senior management roles because she only needs to earn enough to support her husband who is the main provider and therefore does not need such high salaried jobs leaving her time to focus on her primary responsibility in line with Titus 2:5 which says “to be self-controlled and pure, to be busy at home, to be kind, and to be subject to their husbands, so that no one will malign the word of God” and Proverbs 31:15 which says “She gets up while it is still night; she provides food for her family and portions for her female servants.”

In summary, on the basis of the preceding analysis, the researcher argues that organisational structure and processes are not factors restricting women in Nigeria from attaining senior management roles in organisations but, rather many women avoid such roles in order to be good wives and mothers and ensure that the children are properly taken care of. However, though women were found to have a low perception of sex discrimination at work, this does not necessarily mean that sex discrimination is low. The secondary data shows evidence of discrimination with a low number of women found at the senior management positions but the influence of religion, culture and patriarchy has made women accept and believe that they should not aspire for senior management roles as their responsibilities lie elsewhere. As a result of this, surveying women in Nigeria may not be the best approach to studying the actual degree of sex discrimination given that these contextual factors (culture, religion and patriarchy) make them to accept their situation. In a
nutshell, if the system discriminates against women and conditions them from birth to accept their situation, they will not agree that they are victims of discrimination.

5.1.2 Male Responses

Having looked at the survey results from female respondents, a consideration will be given to male responses. The idea behind this consideration is based on the principle of natural justice of ‘audi alteram partem’ which means ‘let the other side be heard’. There is no doubt that sex discrimination exists in societies and organisations, evidence of which is in the vast literature written on the subject matter. Men at the helm of affairs have been accused of perpetuating it by the way they have organized and structured societies and organisations. The researcher considers it reasonable to give men a fair chance to express their opinion on the issue and to understand their perception on the issues of sex discrimination. The table below shows the mean value and standard deviation of the data collected under this theme for men.

<table>
<thead>
<tr>
<th>Question</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Q5</th>
<th>Q6</th>
<th>Q7</th>
<th>Q8</th>
<th>Q9</th>
<th>Q10</th>
<th>Q11</th>
<th>Q12</th>
<th>Q13</th>
<th>Q14</th>
<th>Q15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Std. Dev.</td>
<td>1.426</td>
<td>1.302</td>
<td>0.957</td>
<td>1.149</td>
<td>0.818</td>
<td>1.026</td>
<td>1.236</td>
<td>1.221</td>
<td>0.924</td>
<td>1.342</td>
<td>0.883</td>
<td>0.935</td>
<td>1.060</td>
<td>1.231</td>
<td>1.358</td>
</tr>
</tbody>
</table>

Extant literature found that society uses biological differences in men and women to reinforce the importance of gender and the differences which exist such as physical strength associated with the male body as a mechanism
to create domination of men over women.\textsuperscript{576} For the subordination of women to be effective, society makes this appear natural rather than a product of culture or manipulation brought about by human decisions.\textsuperscript{577} Subordination of women was achieved by the way the institution of the state was set up with men at the highest power and with the authority to establish and control the state and its resources. This authority is used to decide which category a person belongs to which has the effect of placing people in one of two groups with the subsequent effect of belonging to the dominant group with power or to the inferior group without power and be subjected to unfavourable treatment.\textsuperscript{578} Gender when transferred into work setting is used to reinforce and maintain the subordination of women. The organisation makes a distinction between ‘production’ and ‘reproduction’ and places the responsibility of production of wealth (which is viewed as very important) with men, while reproduction is placed with women. The responsibility of production, which is viewed as less important and wealth consuming, is kept outside the scope of the organisation and this further reinforces gender.\textsuperscript{579} In other words, men set up organisational structures in a way that it will favour them and represent their interests. It is logical to say that if men set up organisations to represent their interests and in a manner they believe is best for effective management of such organisations, they would be inclined to disagree that their system is ineffective without concrete evidence. On this

\textsuperscript{576} Alesina et al. (2013)  
\textsuperscript{577} West and Zimmerman (1987)  
\textsuperscript{578} Franke (1995)  
\textsuperscript{579} Acker (1998)
presumption, the researcher’s postulate is that men will not agree that sex discrimination exists in organisations.

With respect to the First Principal Component, table 7 shows that four questions (10, 12, 13 and 15) out of the fifteen asked under this theme are correlated for men.

Table 7

<table>
<thead>
<tr>
<th>Category</th>
<th>Question</th>
<th>Men</th>
<th>Correlation</th>
<th>PC1</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex discrimination</td>
<td>Q10</td>
<td>Yes</td>
<td>0.33</td>
<td>2.90</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q12</td>
<td>Yes</td>
<td>0.51</td>
<td><strong>2.04</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q13</td>
<td>Yes</td>
<td>0.52</td>
<td>1.96</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q15</td>
<td>Yes</td>
<td>0.22</td>
<td>2.22</td>
<td></td>
</tr>
</tbody>
</table>

The mean responses to these questions range from 1.959 to 2.898 which means that men disagreed with the questions. Women’s responses to these questions range from 2.0 to 3.02 which signify that they broadly disagree with the questions to the exception of question 12 with a mean response of 3.02 and 2.04 for men. In other words, men and women disagreed to questions 10, 13 and 15, and because they gave similar answers it suggests that the answers to the questions are reliable and are not gender biased. However, there is a difference of opinion between the two sexes on question 12 and to understand the reason behind this gap, this question will be analysed against question 13 which is similar to it. Question 12 says ‘Women are deliberately placed in lower ranking jobs because organisations think they have less capabilities’, women agreed with this question while men disagreed and
question 13 says ‘Women are deliberately placed in lower ranking jobs because they cannot comply with the challenges of more senior positions’, both men and women disagreed. The inference from the answers is that women believe that the reason they are placed in low ranking jobs is not because they cannot comply with the challenges of a more senior positions but that the organisations do not believe that they have the capability to occupy those positions. Since men are responsible for setting up organisational structures, women are therefore alleging that men do not let them occupy senior management roles. However, men disagreed with the two questions. In other words, men do not accept the allegation that they deny women the opportunity to occupy senior management positions despite the fact that the secondary data statistics show that few women are found in senior management roles. What could be the reason for the divergence in the viewpoint of men and women?

**5.1.2.1 Explanatory Factors**

The researcher argues that men deny responsibility for placing few women in senior management roles in organisations because they do not believe that they are accountable for the social order within organisations. There is symmetry between organisations and society; and the location of the female gender in organisations will be at par with the location of the female gender in society. Men therefore may not see anything wrong with women not occupying senior management roles, hence the low perception of sex discrimination found in the results. Women on the other hand claim that men are responsible for their choice of avoiding these roles as a result of social
norms which expect them to be subordinate to men and consider their home and children their primary responsibility. Religion and culture have also been used as tools to condition men to accept their dominant and superior roles over women and as a result they will not view gender stereotypical behaviours as discriminatory.

Islamic and Christian religions teach superiority of men and inferiority of women. In addition to the Islamic texts cited previously which supports man’s superiority over women, other texts in the Qur’an that supports this are the Qur’an in Sura 2:228 which says – “…Wives have the same rights as husbands have on them in accordance to the generally known principles. Of course, men are a degree above them in status…” Sahih Bukari 6:301 also says – “[Muhammad] said, ‘Is not the evidence of two women equal to the witness of one man?’ They replied in the affirmative. He said, ‘This is the deficiency in her intelligence.’” Christianity also emphasizes man’s superiority and authority over women which she is not to question because God created women to be men’s helpers. Genesis 2:18 says - “It is not good for the man to be alone. I will make a helper suitable for him”, and man was seen in Genesis 2:23 assuming his authority over woman by naming her – “The man said, ‘This is now bone of my bones and flesh of my flesh; she shall be called ‘woman,’ for she was taken out of man.’” This authority of man over woman was further reinforced in Genesis 3:16 ‘…Your desire will be for your husband, and he will rule over you.” These religious texts that suggest that man was created first and woman from his ribs, are used to teach men’s superiority and women’s inferiority and to reinforce men’s authority as leaders
in society and the homes. A study conducted by Christian Aid in Nigeria found religion to be a major factor in defining the responsibilities of men in the family and society and it also found that leadership has been associated with men though it is believed that women are capable of leading but only in a support role or when men are absent.  

Through socialization in societies, boys grow up to be indoctrinated with these religious views accepting them as normal and will not see it as wrong, assuming their leadership roles to the exclusion of women.

5.1.2.2 Men as Victims of Gender Stereotypes

As discussed earlier, women are mainly the victims of sex discrimination as a result of gender stereotypes in society. However, men are also affected by gender stereotypes because of societal norms which expect boys to be strong, tough and in control. These are qualities which are described as masculine qualities, which they must conform to otherwise they will be bullied and denigrated. The Nigerian society expects men to be the head and main provider for the family irrespective of whether they have leadership qualities or the ability to provide. Swami et al. (2008) believe that in Western societies, men experience considerable social pressures to exhibit dominant qualities such as being independent, strong and competitive while rejecting weak qualities such as anxiety and insecurities. They were of the view that there


is a link between the construction of masculinity as expected by society and the high rate of suicidal behaviours found in men compared to the construction of femininity and the rate of suicide in women. They are of the view that the construction of masculinities is believed to be one of the most important factors influencing the way men contemplate and enact suicide and analyzing masculine identity will offer a tool to understanding the excess in male suicides. This shows that men as well as women are victims of societal pressures and norms which may manifest in different ways. Further research therefore is needed to understand how gender roles affect men in Nigeria and the impact it has on them at work.

In table 8 below with respect to the Second Principal Component, questions 5, 6, 7 and 9 out of the fifteen questions collected under this theme are correlated for men.

<table>
<thead>
<tr>
<th>Questions correlated for men with respect to PC2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category</strong></td>
</tr>
<tr>
<td>Sex discrimination</td>
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</tbody>
</table>

The mean responses to these questions range from 1.98 to 4.45. Apart from question 5 where men agreed with women, they disagreed on the other three questions while women agreed on them. With a mean value of 4.45 for men and 4.04 for women, question 5 is not gender biased and with the answer
being reliable, we can conclude that in Nigeria men are expected to be the main provider for the family while women support them. There is a difference of opinion between the two sexes in questions 6 – women are treated less favourably than men in the place of work, question 7 – organisations may be deliberately structured to function in favour of men and question 9 – women are expected by their male colleagues to be subordinate in the place of work just like their wives at home. Women were neutral on questions 6 and 9 and agreed on question 7 while men disagreed on all three questions.

The result shows that women are of the view that organisations are designed to function in favour of men while men did not agree. As earlier discussed, for the reason that men are responsible for setting up organisation and societies, they are not expected to see the inequity in the way it has been set up especially if it is in their interest and to maintain their authority over women. As women venture outside of their societal pre-assigned roles in pursuit of other obligations, they would have to bear the consequences of their actions and any negative effect occasioned by their actions will not be viewed as detrimental to them. Religion however does not have any influence on women’s perception to these questions because they are the victims of the unfair treatment but nevertheless obey them as they are a divine order from God. It is clear that women know that they are treated unfairly but are unable to recognise this treatment as sex discrimination which is not surprising because the Nigerian Constitution does not define sex discrimination.
5.2. Research Question 2: Is Legislation the appropriate instrument to check the occurrence of sex discrimination of female workers in Nigeria?

In this section, the laws and policies implemented in the UK to check the occurrence of sex discrimination at work will be examined to assess if they have been able to meet their objectives of addressing the problems sex discrimination constitutes at work. If laws and policies have been able to address the problems in the UK, a consideration will be given to adopting and modifying them to suit the Nigerian context and as a means of monitoring and controlling the occurrence of sex discrimination at work in Nigeria. As discussed in previous chapters, women were highly subjected to sex discrimination because it was believed that they were irrational beings who could not participate in public life and were therefore restricted to domestic life. Biological differences which exist between men and women were used as mechanisms to create domination of men over women. Acker maintained that society relied on the differences in gender to portray men as the stronger beings and women as weak and as a result have placed men in top positions as head of families and at work and women in charge of childcare and home responsibilities. This gender inequality when transferred into work discriminates against women by creating restrictions which prevents them from taking on certain responsibilities at work because organisational

582 Acker (1990); West and Zimmerman (1987)
583 Acker (1992)
structures and work processes are organised in such a way that it hinders women’s progress as primary caregivers but favors men who are not burdened by child responsibilities. Acker suggests that this is achieved in the abstract manner jobs are evaluated making it easier for a man with a wife at home taking care of the children and domestic responsibilities to better fit into the role than for a woman who combines her job with her family responsibilities to fit in.\textsuperscript{584} Gherardi and Poggio were of the opinion that a man or a woman can attain any level in an organisation if they are ready to shed outside responsibilities that affect work such as childcare which in their opinion would only affect a man in relation to his job but for a woman it would mean a choice between family life and her job.\textsuperscript{585} This is believed to be the reason behind gender gaps in employment and senior management positions because women do make the choice to stay home and look after the children.

An attempt was made to alleviate women’s plight through various laws making discrimination unlawful. The Sex Discrimination Act and subsequently the Equality Act were enacted to remove direct and indirect discrimination on the grounds of sex. Extant literature suggests that despite the anti-discrimination laws, women continue to be discriminated against in the work place. It is suggested that inequality between women and men at work is as a result of childcare and domestic responsibilities which act as an obstacle to women’s participation in work and career progression.\textsuperscript{586} The dominant view is that the low number of women found at senior management positions is evidence of

\textsuperscript{584} Acker (1990)  
\textsuperscript{585} Gherardi and Poggio (2001)  
\textsuperscript{586} Acker (1990), Gherardi and Poggio (2001), Sax et al. (2002), Straub (2007), Azmat (2015)
discrimination because the structure of the organisation, its practices and processes restrict women from attaining top positions due to their childcare and domestic responsibilities.

Studies have shown evidence to suggest that when there is a strong female representation at the board and top management of companies, there is a positive impact on performance.\textsuperscript{587} The economy and society therefore loses out if women do not participate in the labour market. Since the enactment of the first anti-discrimination law, there has been a significant increase in the number of women who entered into the labour market. Data from the Office for National Statistics UK (ONS) shows that the number of women in the labour market has increased from 53\% in 1971 prior to the Sex Discrimination Act to 67\% in 2013.\textsuperscript{588} The report indicated that this increase could be down to the impact of the various laws enacted over the years to help women into work which has also seen an increase in the number of mothers entering into the labour market. The data implied that women with young children find it difficult to participate in the labour market due to childcare responsibilities which do not affect men; although there has been an increase in the amount of time spent by fathers on childcare.\textsuperscript{589} This confirms extant literature that childcare and home responsibilities restrict women from participating effectively in the labour market because women are primarily responsible for

\begin{flushright}
\textsuperscript{588} Women in the Labour Market 2013 Office for the National Statistics
\end{flushright}
taking care of the children. This is further confirmed by the data which shows that there are more female graduates qualified with strong degrees than there are male graduates but that more men are found working in professional occupations with higher levels of pay than women. The data further shows that of the top 10% earners, men and women are evenly split at ages 16 to 24 and at ages 25 to 29. But as they grow older, the number of women tends to decrease which has been found to coincide with the ages when women start having children. In a study commissioned by the government to review gender diversity on the boards of listed companies, Lord Davies of Abersoch identified the reason for this drop as lack of access to flexible working arrangement, difficulties in achieving work-life balance or disillusionment at lack of career progression. A similar trend is found on corporate boards with very few women making it to the board. Only 5.5% of women make up the Executive Directorship of FTSE 100; and of the 20.7% of all board positions 4.2% of women make up the executive positions at the largest European companies. Women also made up 12.5% of members at the corporate boards in 2010 an increase from 9.4% in 2004. Lord Davies suggested that many women are ready to serve on corporate boards but complex barriers stand in their way. Some of such barriers are being overlooked for development opportunities, different ways of mentoring which gave men an edge over women, low number of successful female role models, informal networks in board appointments and lack of transparency around selection criteria. He was of the view that the low number of women

on boards is in part a symptom of low numbers emerging at the top of the management structure and the under-representation of women in senior management positions. Some countries such as Norway, Spain and Italy introduced a quota system to bring the number of women on the board up but the European Commission rejected imposing this on Member States because they believe that board appointments should be made on the basis of business needs, skills and ability.

From the foregoing discussion, it is apparent that there has been an improvement in the number of women participating in the labour market and the number making it to senior management positions. This improvement has been attributed to the various laws and policies such as the Equality Act 2010, the Work and Families Act 2006, Shared Parental Leave Regulation 2014 and Statutory Guidance which promotes equality and improves other work-life balance and family-friendly measures. These measures and laws will be discussed to highlight their objectives and achievements as well as their limitations where appropriate. The discussion will be set out in two main groups: awareness – which will focus on guidance issued by government intended to focus on school children for early intervention in changing cultural stereotypes; and policies – which will focus on the legislation to ascertain if the objectives of the laws have been achieved.

5.2.1. Awareness

A number of Statutory Documents have been issued by the government to challenge cultural expectations and promote equality between men and
women by targeting gender stereotypes. Smith expressed that gender stereotype reinforces the continued disparities between men and women and that many of the conventions around masculinity and femininity are behind the continued patterns of discrimination.\textsuperscript{591} Gender stereotype has been found to have short term and long term effects such as bullying, negative feelings about oneself, confidence issues and achievements in life. The UK government supports schools and other agencies to tackle gender stereotype through education and training in relation to subject choices and programs designed to improve access to various careers and apprenticeship to under-represented sections of society.\textsuperscript{592} The government also has commitment to increase the number of girls in STEM subjects (Science, Technology, Engineering and Mathematics) and to help them develop to their full potential in career choices as well as improve gender balance in those jobs where women are under-represented. There are also educational programs which equip women to participate in decision making at all levels. The government also has regulatory controls against the media which challenges portrayal of gender stereotype or casting women in a negative manner.\textsuperscript{593} This is a major move for the government to focus attention at the roots of gender stereotype

\textsuperscript{591} Smith S. (2014) Limitations to Equality: Gender Stereotypes and Social Change Juncture 21:2, 144 - 150. Examples of gender stereotypes highlighted by Smith are: vast majority of domestic work provided by women; use of gendered slurs and rape threats to silence women; masculinity and authoritative speech; and men associated with adventure, danger and bravery.

\textsuperscript{592} UK’s Seventh Periodic Report United Nations Convention on the Elimination of all forms of Discrimination Against Women June 2011

\textsuperscript{593} The government exercises this control through the Office of Communications (a Statutory Body) who has contracted the responsibility for maintaining broadcast advertising standards to Advertising Standards Agency.
and discrimination by targeting the root of discrimination through educating children and changing their conception about gender.\textsuperscript{594}

No data was found to suggest that targeting gender stereotypes at an early age has had an effect on challenging cultural expectations and promoting equality later in life. However, life course theorists believe that a person’s characteristics are formed early in life and his environment play an important role in shaping his behaviour. According to Baunach, inequalities which are established early in life could set the stage for later inequalities by introducing and instilling on the child patterns of oppression and domination which they come to accept as normal.\textsuperscript{595} In addition to this, Shoon believes that early life experiences in the family and school shapes an individual’s self-concepts and choices and if government wants to eliminate inequalities, focus should be on the discriminatory practices before pre-school and younger ages when children develop their ability of self-concepts, academic and career interests.\textsuperscript{596} Smith believes that the solution to the problem is through education and consciousness-raising to make men and women aware of the social conventions that cause gender inequality.\textsuperscript{597} Though no direct link has been found to suggest that targeting gender stereotypes at an early age eliminates inequality at a later age, the applicability of the measure of using education at an early age to change cultural expectations adopted by the UK

\textsuperscript{594} Ibid
\textsuperscript{595} Baunach (2001)
\textsuperscript{596} Shoon (2015)
\textsuperscript{597} Smith (2014)
government will be considered in the Nigerian context to determine its chances of success in tackling gender stereotypes in Nigeria.

The survey results show that in Nigeria, men as the heads of the families are expected to be the main financial provider for the family while women support them. This tradition is practiced in individuals’ homes and the idea of a male headship and provider is instilled in a child from an early age through culture and religion which they grow up to accept as normal. These beliefs and social norms influence a woman’s idea about the role of her husband within the home and therefore her expectation will be to get married to a man who will provide for her and her children financially while she looks after the family and support her husband. Her perception of societal expectations of her will consequently influence her choice of career, her career goals and aspirations. This will lead her to make choices in terms of her career to accommodate her primary responsibility of looking after the children and the home and therefore will not aspire for a top senior management role which will divert her attention from her primary role. However, in recent times with the Nigerian society changing, more girls are getting educated and aspiring to advance in their careers but societal norms still expect them to maintain their primary responsibility of looking after the children and in charge of the domestic responsibilities. In addition to this, the Nigerian society is also changing from the traditional man, wife and children with some women finding themselves thrust into the role of breadwinners in their homes through divorces, single parenthood and widowhood, the society needs to change how it raises the girl child in order to survive in the modern world. A woman who has been raised
with the idea of a male breadwinner with hardly any career aspirations would find it difficult to meet the demands of raising a family on her own. To achieve this, stereotypes about gender needs to change and women empowered to take ownership of their lives and given the tools to survive in the current economic climate.

In previous sections, religion was found to be a tool used to maintain men’s dominance over women and some verses in the Bible and Qur’an were used to teach superiority of men. Religious leaders should be made to understand the true meaning of equality which is treating everyone with fairness and respect they deserve as human beings and recognise their individual needs irrespective of their gender. Equality does not mean that a man is brought down to a misconceived inferiority status of a woman or that a woman is raised to a misconceived superiority status of a man. An emphasis should be laid on the long term benefits for families and society such as mutual respect within the homes which in the long run will see children raised in healthy environments and boys and girls given equal opportunities to economically empower themselves which would see an end to poverty. Preaching equality of men and women does not go against religious doctrines because there are various Bible chapters which also teach equality of men and women such as Galatians 3:26-28 and Genesis 1:27 which says “So God created mankind in his own image, in the image of God he created them; male and female he created them” and Qur’an 3:195 says “…I never fail to reward any worker among you for any work you do, be you male or female - you are equal to one another…” If religious leaders make their members aware of the implications
of gender stereotypes; the ills of certain discriminatory culture such as early marriages, inheritance rights and widowhood practices and their harm to society; their members will be influenced to renounce such practices. When these are impressed upon children, there is a likelihood that they will grow up to form a new concept of who they are, and their self-worth as individuals will not be based on gender stereotypes. The government should encourage religious leaders to help eliminate gender stereotypes by teaching their members to abandon practices that encourage it. According to Stuckelberger to achieve sustainable human development, and to close the gender gap in a sustainable and long lasting way, all women at all ages need to be empowered at every point in time.\(^{598}\)

In addition to the above, Schoon believes that focus should be on the discriminatory practices before pre-school and younger ages when children develop their ability of self-concepts, academic and career interests.\(^{599}\) To ensure a long lasting effect of these changes on children, the Nigerian government should make a statutory guidance targeted at schools to develop a comprehensive curriculum designed to remove gender stereotypes from education and educational materials but teach children that career choices is not dependent on their gender. This guidance should also be used to encourage parents of all children irrespective of their gender to raise their children in a non-gender biased way.

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598 Stuckelberger (2010)
599 Schoon (2015)
5.2.2. Policies

Women have always been considered the primary caregivers at home which have been found to discriminate against them at work. Their role as primary caregivers deny them the same opportunities as men to progress in their career as a result of the organisational processes and structures that exclude external influences such as childcare in job evaluation. Currently in Nigeria, *section 42 of the Nigerian Constitution* is the only law that deals with discrimination. The law states that no person should, either expressly or in practical application of any law in force or any executive or administrative action of the government, be subjected to restrictions or disabilities by reason of their sex. The law is ineffective in protecting citizens against discrimination because it only provides protection against discriminatory executive or administrative actions of the government but not against individuals, private organisations or workplace policies and practices. In addition to this, the law does not provide protection against discrimination to non-citizens who have been victims of discrimination. *Section 54 of the Labour Act cap 198, Laws of the Federation of Nigeria* makes a provision for 12 weeks maternity leave with maternity pay not less than 50% of the salaries paid by employers. There is currently no provision for paternity leave in the Labour Act but Lagos and Enugu states have taken the initiative and made provisions for 2 weeks and 3 weeks paternity leave respectively.600 Nigeria does not have any other family-

friendly provisions like flexible working or shared parental leave policies available to help couples achieve work and family life balance.

In the UK, the government has established laws and policies to help address the issues of sex discrimination at work and to close the gender gap in pay and employment. When the laws were introduced, the government believed that laws and policies would cause a change in conception of cultural stereotypes that women are the primary caregiver and shift focus from women and influence fathers to participate fully in the upbringing of their children. The government believed that if this was achieved, women would have the same opportunities as men within the organisation to rise to senior management roles and bridge the gender gap within these roles and in the labour market in general. As mentioned earlier, the laws enacted to help give women equal opportunities are the Equality Act 2010, the Work and Families Act 2006 and Shared Parental Leave Regulation 2014.

The Equality Act 2010 is the key legislation in gender equality issues. It was enacted to eliminate all forms of discrimination directly or indirectly against women. The Act requires public bodies when exercising their functions to have due regard to the need to eliminate unlawful sex discrimination and harassment as well as promote equality of opportunities between men and women.\textsuperscript{601} It also permits employers to use positive measures to remove the disadvantage experienced by women and to reduce under-representation and meet particular needs if they are proportionate means of achieving a

\textsuperscript{601} United Nations Convention on the Elimination of All Forms of Discrimination Against Women
United Kingdom’s Seventh Periodic Report June 2011
legitimate aim. The Equality Act is supplemented by other legislation to help remove inequality and achieve a work-life balance for parents. The Work and Families Act 2006 was enacted to promote family-friendly policies to help parents achieve a balance between work and family responsibilities. The Act extends maternity leave to 52 weeks and maternity pay to 9 months as well as provide for fathers to take 2 weeks of paternity leave and up to 26 weeks additional paternity leave paid at the same rate as the statutory maternity pay at £139.58 or 90% of the average weekly earnings whichever is lower. The Act also introduced flexible working where parents have a right to request for it and an employer is required to consider it but can refuse if there is a clear business reason. The Shared Parental Leave Regulation 2014 was enacted to give parents the options of sharing their parental leave with their spouses to look after their newborn and enable either parent go back to work. The Regulation allows a mother after her mandatory maternity leave decide to end the leave and share the remaining with the father however they decide so that he can stay home to look after the baby while the mother returns to work if she wishes. Shared parental leave is currently paid at a rate of £139.58 or 90% of the average weekly earnings whichever is lower. These laws have seen an increase in the level of female participation in the labour market and have created a choice for parents to meet their work and domestic responsibilities and give women chances of progressing in their career.

Despite the polices to ensure equal treatment of women and family-friendly measures such as flexi time, shorter working hours, job sharing and special

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602 Women in the Labour Market 2013 Office for the National Statistics
maternity leave arrangements implemented in the UK to help increase the number of women in the labour force, the number of women in higher levels in corporations still remain low. Smith is of the view that the law has failed in changing normative culture and ending discriminatory practices because the law focuses on equal rights which obscure assumptions about gender that informs social practices and contributes to the systemic discrimination of women.\textsuperscript{603} Dickens believes that the failure is as a result of the law reducing penalties arising from the unequal division of labour market work and domestic work by bringing about the interaction of the domestic sphere with the labour market.\textsuperscript{604} She is of the view that measures targeted at women reinforces the belief that they are the primary caregivers with less commitment to the labour market than men thereby making women the problem and leaving gendered distribution of labour unchallenged. Straub found that European women believe that the disproportionate responsibility women bear in raising the children and looking after the family are the factors that restrict them from advancing in their careers.\textsuperscript{605} Based on this assumption, it should be expected that work-life balance practices and policies designed to remove gender based structural barriers to women’s advancement and maintain a balance between family and work demands should promote women’s career advancement.\textsuperscript{606}

\textsuperscript{603} Smith S. (2014)
\textsuperscript{604} Dickens L. (2007). The Road is Long: Thirty Years of Equality Legislation in Britain British Journal of Industrial Relations 45:3, 0007-1080 pp. 463-494
\textsuperscript{606} Ibid. Straub
Straub found that European companies implement numerous work-life balance practices to overcome structural disadvantages for female employees and that these measures help companies achieve good work ethics and motivation, reduce absenteeism, increase staff turn-over rates, increase employee satisfaction with work and family as well as help women meet their career goals and manage their lives. Aside from the positive impact on organisations and personal lives of employees, Straub found that these family-friendly measures had no significant impact on women’s career advancement into senior management roles. The researcher considers that the family-friendly measures will certainly make it easier for women in Nigeria who wish to get to senior management roles balance their work and family commitments but they are not expected to have any impact on their ability to advance into top senior management roles. Removing structural barriers and maintaining a balance between family and work will not have any impact on gender gaps in senior management roles in Nigeria because, as discussed in section 5.1.1.1, many Nigerian women make the choice not to go for senior management positions as they believe that it will affect their ability to take proper care of their families. In addition to this, organisational structural barriers that affect childcare are not the reason women in Nigeria are not advancing into senior management roles because they have the services of ‘house helps’ who look after their children and their homes while they are at work and therefore do not have the constraints European women have with childcare. Furthermore, the survey results showed that Nigerian women do not have to abandon family life in order to succeed in their career. Therefore laws or family-friendly measures will not have any impact on women’s
career advancement in Nigeria but would only free up more time for them to spend at home with their children because for them, their restriction has been religiously and culturally indoctrinated which they have accepted as normal.

There is evidence to suggest that in the UK, some women like their Nigerian counterparts make a choice not to go for senior management positions because it will have an adverse impact on their ability to care for their children. The researcher believes that the laws, policies and family-friendly measures currently in place are sufficient to assist women who wish to advance in their career and to break down structural barriers to their progress.

The data from the ONS UK showed that in early career stages, there are no gender gaps between young men and women which suggest that employers do not discriminate against them on the basis of their gender. But as these young men and women grow older and start having families, the number of women in employment starts to decrease as a result of them starting to have children.\(^{607}\) The gender gap in employment starts at this stage and continues to widen and remains so up to management levels which Lord Davies stated in his report that the under-representation of women in senior management positions on boards of companies is in part a symptom of low numbers emerging at the top of the management structure.\(^{608}\)

Contrary to the view that it is the unfair responsibility women bear in raising children that restricts them from advancing in their career, the researcher submits that at this point women make a choice to avoid roles with high

\(^{607}\) Women in the Labour Market 2013 Office for the National Statistics

\(^{608}\) Davies, E. (2011)
responsibilities and instead go for jobs with lesser responsibilities which would not interfere with their ability to take care of their children. With the enactment of the Shared Parental Leave Regulation, Smith’s criticism that the laws targeted at women reinforces beliefs that women are the primary caregivers with less commitment to the labour market does not hold true any longer. This is because the Regulation removes focus on women as the primary caregivers by giving couples the opportunity to decide between themselves how to share the responsibility of raising their children and who returns to work. A woman who wishes to advance in her career can agree with her partner for the partner to stay back and care for the baby while she returns to work, but many women make the choice to stay back and look after their children. A study conducted in 2015 found that about 1% of men have been reported to take the shared parental leave and 55% of mothers said they did not want to share their leave but would prefer to stay home with their babies.\textsuperscript{609} It may seem that women tend to choose to stay back and care for their babies as a result of natural closeness between them and their babies during pregnancy. Kinsley and Lambert carried out a scientific study that indicates that hormonal fluctuations that occur during pregnancy regulates and motivates females towards caring for their offspring.\textsuperscript{610}

There could be other possible reasons why only 1% of men are taking the shared parental leave. Possible suggestions could be that there may be a

\textsuperscript{609} The Guardian Newspaper online 5/04/2016
https://www.theguardian.com/money/2016/apr/05/shared-parental-leave-slow-take-up-fathers-paternity assessed on 14/02/2017

social stigma associated with men taking the leave or that the payment associated with the leave is quite low. Atkinson advanced various reasons why fathers in the UK may not be taking shared parental leave. Some of the reasons are unlike the Nordic countries, the Shared Parental Leave Regulation does not make provisions for fathers in the UK to have a period of shared parental leave specifically reserved for them, they need the consent of their spouses to take the leave and the remuneration attached to the leave is very low. He found that high take-up rates for shared parental leave is high in the Nordic countries (Sweden, Norway and Iceland) because a certain percentage of the leave is reserved for fathers and attracts a high compensation; and the leave is non-transferable to their spouses which will be lost if not used. This will certainly increase take-up rates of the leave by fathers because they would not want to lose a paid leave. Atkinson was of the view that with fathers now being accepted as legitimate care-givers, they may feel it is acceptable to take a short period of leave after birth to take care of the baby, but would be reluctant to take a longer period and become the primary care-giver. A Norwegian study found that fathers who combined their work commitments with childcare did not achieve truly committed fathering because they believed that work commitments took priority over childcare. Over time however, with a change in conceptions and attitudes about the role of a woman as the primary care-giver, many fathers may be committed in taking an active part in looking after their children. It has been found that more

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612 Ibid
fathers now move from a secondary care-giver role into shared care-giver role and they maintain a high level of involvement in taking care of the children when they are older.\textsuperscript{613} Norman et al. also found that only a small proportion of fathers are primary care-givers when the child is an infant (nine months) and a majority of them transition into a shared care-giver role.\textsuperscript{614} Men in Nigeria may not make use of this leave because of the societal perceptions about the role of men and women in Nigeria and the social stigma associated with men looking after the children or doing domestic chores. However, as conceptions are changing in the UK and more men are taking active part in sharing in the care of the children, men in Nigeria may also take active part in taking care of their children if the social stigma attached to men looking after children is removed and the role of women in society change.

It is evident from the foregoing discussion that in the UK, laws and family-friendly policies will not close the gender gap in senior management roles but will have a positive impact on the organisations and workers in terms of supporting workers to achieve satisfaction and balance in their family life and work life. Laws and policies are not expected to bridge the gender gaps in senior management roles because these roles attract high remunerations and are developed in highly competitive and high risk environments which require that workers put in all their effort and time to achieve the objectives of the organisations. Some organisations and businesses will not compromise on


\textsuperscript{614} Ibid
the people they employ for such senior management roles because their
primary responsibility is to make profits and remain in business for their
shareholders. Because of the time and effort required to achieve the demands
of an organisation and its shareholders, family-friendly measures cannot help
an individual who has to share his or her time outside of work because their
time and effort are needed to meet the demands of the business. Childbirth
and childcare are facts of life which may affect the caregiver’s career (whether
the man or the woman decides to stay back from work to care for their babies)
by delaying their upward mobility in their career aspirations. In many cases,
the primary caregivers are usually women who stay back from work to care for
their babies after birth. Time taken out to care for a child will definitely affect
the primary caregiver’s career progression by delaying her upward mobility in
her career when compared to her peers who did not take time off to raise a
family. The researcher believes that women who wish to advance into senior
management roles can achieve their ambition quicker and easier with the
family-friendly policies available than they would have if there were no policies
in place.

To make it easier for women to advance into senior management roles, all
parties involved – government, organisations and workers need to collaborate
in order to achieve it. Though organisations exist to make profit for their
shareholders, the government should encourage them to take the needs of
their workers into consideration and restructure the hours spent on site and
allow some jobs to be carried out remotely in order to accommodate mothers
or caregivers. In combination with the family-friendly policies, the government
should explore and focus on putting in place measures to help women and assure them that time taken off to care for their children will not affect their career progression. If these assurances are given, women will be more at peace to take time off to have children and care for them. These assurances may also influence women who wish to get into senior management roles to consider having children earlier on in their careers and make use of the family-friendly policies to balance their family and work commitments while the children are young which they can do working in low and middle management jobs. As the children get older and the women progress in their careers towards senior management roles, they will be more inclined to leave their children for long periods of time to attend to the responsibilities of senior management roles. This will ensure that women have it all - enjoy being mothers at an early age in their careers when they can manage the stresses of motherhood with work commitments and enjoy pursuing their career aspirations. On the other hand, the government in collaboration with organisations should also explore how to encourage men to make use of family friendly policies to balance work and family commitments so that they may share equally in the upbringing of their children and enjoy the joys of fatherhood. The government should also be committed to changing perceptions that workers who seek flexible work arrangements lack commitment to work so that more men will be encouraged to go for flexible work without fear of being penalized. Vandello et al. found that both men and women valued work flexibility and work-life balance equally but differed in

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their intention to actually seek such arrangement upon entering the workforce with men having lower intentions than women.\textsuperscript{616}

In conclusion, going by the analysis above, laws and policies are not expected to have any major impact in addressing sex discrimination in Nigeria without first addressing ingrained ideas in women about their role in society and the use of the three social factors – religion, culture and patriarchy as means of making women conform to gender stereotypes. The first step to addressing sex discrimination in Nigeria will be to educate and make individuals aware of how social norms and gender stereotypes affect their decisions and lifestyle choices and the ills caused by stereotypes. Subsequent to education and awareness, laws and policies will then be needed to help address the remaining persistent effects and harms caused as a result of the stereotypes.

**Part 2: Sexual Harassment**

In this part, the results of the primary data on sexual harassment will be analysed to evaluate the extent to which sexual harassment constitutes a problem at work and existing laws and policies in the UK will be considered to determine if legislation is the appropriate instrument to address the problems in the workplace in Nigeria. Subsequently, laws and policies implemented in the UK will be discussed to assess if they have been effective in addressing the problems in the UK and a consideration will be given to them to check whether they are appropriate to address the problems in Nigeria.

\textsuperscript{616} Ibid
5.3. Research Question 3: To What Extent is Sexual Harassment Detrimental to Female Workers in the Nigeria Labour Market?

Extant literature reveals that sexual harassment is a social problem which mainly affects the female gender and has become institutionalised because of the control and power men have over women’s survival at home and in the workplace.\textsuperscript{617} It was established that more men are found in positions of power within the organisation as a result sex discrimination which restricts women from holding senior management positions. It was revealed that the perception of sexual harassment varies from one society to another because it will be viewed and interpreted differently across different societies based on the prevalent culture or the legal consciousness of the society.\textsuperscript{618} Sexual harassment is broadly viewed as an unwanted conduct of a sexual nature which has the effect of violating one’s dignity and creating a hostile and humiliating environment. Gutek found that men and women assess the precarious nature of sexual harassment differently, with men less likely than women to think sexual harassment is a problem.\textsuperscript{619} She identified that gender does not have a great influence on one’s definition of sexual harassment but may likely have an impact where the sexually harassing behaviour is mild or ambiguous with women defining it more broadly and more inclusively than

\textsuperscript{617} MacKinnon (1979); Bimrose (2004)
\textsuperscript{618} Uggen and Blackstone (2004); Zimbroff (2007)
men. Zimbroff identified culture, race, religion and ethnicity as factors which can influence a victim’s perception of sexual harassment. Gutek submitted that variations in behaviour and the circumstances in which the inappropriate behaviour occurred can affect the way sexual harassment is assessed by the different genders and that if there is no clear separation between legal behaviours and harassing behaviours, it would be difficult to identify sexual harassment. In other words, if there are no clear policies or laws which defines and identifies what constitutes sexual harassment, sexually harassing behaviours can go unrecognized.

The predominant theory propounded as the root cause of sexual harassment at work is the unequal organisational power which exists between men and women at work. This theory holds that sexual harassment occurs when a male superior’s power coincides with his sexual interest in a female subordinate and the power is utilized to command sexual compliance from the female subordinate. The male superior could use his authority to obscure his sexual intentions towards the female subordinate but where the employer has the ultimate power to hire and fire, his sexual interest is likely to be clear and direct and the female subordinate is left to endure the unwanted sexual attention. Extant literature further reveals that culture plays a major role in contributing to sexual harassment in Nigeria and is also used as a tool to influence women to accept certain sexual behaviours as normal. According

\[620\] Zimbroff (2007)
\[621\] MacKinnon (1979), Benson and Thomas (1982), Berdahl et al. (1996), Welsh (1999), McDonald (2012)
\[622\] Johnson (2010)
to Johnson, the Nigerian society encourages boys and men to be aggressive in pursuit of their sexual virility and sexual prowess and on the other hand condition girls and women to believe they are sexual beings and inferior and therefore raise them to be subservient to men. In patriarchal societies like Nigeria, sexual harassment is used as a tool to maintain domination of men over women and for fear of victim shaming, women endure sexual harassment in silence because it is considered a taboo for women to discuss sexual inappropriate behaviours in public.623

The secondary data shows that at the senior management level in organisations in Nigeria, women are in the minority with the majority of men with power at the top of the organisational pyramid. With various research covered on the subject in Nigeria and elsewhere, the hypothesis is that sexual harassment exists in Nigeria. However, the question this thesis seeks to answer is ‘to what extent is sexual harassment detrimental to female workers?’ To answer this question, a different approach will be adopted from what was used in the last part. The primary data shows that men and women answered similarly to the survey questions under this theme which means that they have the same perception on the issues of sexual harassment at work as can be seen in tables 9 and 10 which shows the mean value and standard deviation of female responses and male responses.

623 Ige and Adeleke (2012)
As a result of men and women having similar responses, the survey results will be considered together rather than separating them according to the responses given by each gender. The table below shows the mean value and standard deviation of both male and female responses together.

The purpose of the data collected under this theme (questions 16 to 28) is to confirm if sexual harassment is a problem in Nigeria and to understand the extent of the problem. In table 12 below, with respect to the first principal component, five questions (16, 19, 21, 22 and 23) out of the thirteen questions under this theme are correlated for both genders.
### Table 12

<table>
<thead>
<tr>
<th>Category</th>
<th>Question</th>
<th>Correlation</th>
<th>PC1</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual harassment</td>
<td>Q16</td>
<td>Yes</td>
<td>0.382</td>
<td>3.802</td>
</tr>
<tr>
<td></td>
<td>Q19</td>
<td>Yes</td>
<td>0.277</td>
<td>3.921</td>
</tr>
<tr>
<td></td>
<td>Q21</td>
<td>Yes</td>
<td>0.278</td>
<td>2.574</td>
</tr>
<tr>
<td></td>
<td>Q22</td>
<td>Yes</td>
<td>0.200</td>
<td>3.624</td>
</tr>
<tr>
<td></td>
<td>Q23</td>
<td>Yes</td>
<td>0.258</td>
<td>2.653</td>
</tr>
</tbody>
</table>

The mean value for the responses is 3.554 and on the scale of discrimination, defined earlier in this chapter, this signifies a perception of low level of sexual harassment. This is contrary to the expectation of high level of sexual harassment as a result of more men at the top of the organisational hierarchy and the social norms that encourage men to aggressively pursue women. What could be the reason for the low perception of sexual harassment found amongst workers?

### 5.3.1 Explanatory Factors

As discussed in the previous section, culture, race, religion and ethnicity are factors which can influence a victim’s perception of sexual harassment. In this section, the researcher will show how culture and patriarchy act as mediating factors in the perception of sexual harassment at work amongst workers in Nigeria.
5.3.1.1 The Role of Culture and Patriarchy as mediating Factors in the Perception of Sexual Harassment

As discussed in chapter three, culture is a tool of subjugation which society invokes as a means of intimidation, submission and ensuring compliance when women attempt to stand up for themselves or resist domination,\textsuperscript{624} while patriarchy is used as a means of justifying the stratification of society according to gender and marginalization of women that occurs in all spheres of life,\textsuperscript{625} In line with Gherardi and Poggio’s views, understanding the Nigerian culture will explain why workers have a low perception of sexual harassment at work,\textsuperscript{626}

The researcher argues that culture and the patriarchal system in Nigeria contributes to the low perception of sexual harassment found amongst workers. The cultural practice which encourages men to aggressively pursue their sexual interest in women can have the ability to alter a woman’s perception of what constitutes sexual harassment because individuals will see such aggressive behaviours as normal and will not consider sexual interests expressed in such manner as sexual harassment. This will also alter what society perceives as sexual harassment, how it will define it and behaviours it will consider as sexual harassment. This is in line with Uggen and Blackstone who believes that the definition of sexual harassment can vary based on the

\textsuperscript{624} Uchem (2001)
\textsuperscript{625} Makama (2013)
\textsuperscript{626} Gherardi and Poggio’s (2001)
cultural background of different societies.⁶²⁷ This confirms Zimbroff’s view that cultural beliefs and values can influence ones definition and tolerance of what constitutes sexual harassment as well as influence the extent a victim would find behaviour sexually harassing and the type of conduct or the intensity of the conduct which they would view as sexually harassing.⁶²⁸

Furthermore, the Nigerian culture encourages male sexual virility and prowess by providing an enabling environment which allows men to marry many wives and have as many concubines as they wish as part of custom and tradition and on the other hand forbids women from engaging in extra marital affairs. This may make men feel entitled to pursue women sexually in order to demonstrate their sexual virility without being vilified for doing so because they have the backing of the culture that encourages them to do as a way of showing their manliness. Nigerian culture further contributes to the low perception of sexual harassment by discouraging women from engaging in the discussion of sexual matters in public which would deter them from reporting sexual harassment for fear of humiliation. As a patriarchal society with power imbalance between men and women, the Nigerian society will condone conducts which are discriminatory towards women because the male power lies in the ability of men to control women within the homes, labour market and society and this will result in under identification and under reporting of sexual harassment.⁶²⁹

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⁶²⁷ Uggen and Blackstone (2004)
⁶²⁸ Zimbroff’s (2007)
5.3.1.2 Absence of Laws as a mediating Factor in the Perception of Sexual Harassment

The researcher further argues that lack of laws prohibiting sexual harassment at work is also an influence in the low perception of sexual harassment at work in Nigeria. Gutek submitted that if there is no clear and defined behaviour which constitutes sexual harassment, that sexual harassment could not be separated from other legal behaviours. As discussed in previous chapters, there is no law against sexual harassment in Nigeria, therefore there is no legal definition of what sexual harassment is and no clear definition of what types of behaviour constitutes sexual harassment. What might be perceived as sexual harassment in other societies such as a male’s aggressive pursuit of his sexual interest in a woman might not be perceived as sexual harassment in Nigeria. However, this does not necessary mean that women in these societies do not find such behaviours offensive but they lack terms to describe their experiences or are unaware that such behaviours are considered offensive and prohibited elsewhere. Samuels, interviewing a respondent for her study, found that the respondent took action against her employer after years of sexual harassment only after learning about sexual harassment in another jurisdiction and was able to put a name to the wrong she had endured for years. This shows that women do find such sexual acts, comments and jokes offensive but because they are not clearly defined in the legal system and prohibited, they are left to endure such behaviours.

Gutek (1995)
from the opposite sex. Lack of laws will make it difficult for people in such societies to identify sexual harassment therefore they will have a low perception of its occurrence which is line with Zimbroff’s assertion that lack of awareness of what constitutes sexual harassment and inconsistency of legislative enforcement or lack of legislation can contribute to non-reporting.\textsuperscript{632} On this basis, the researcher asserts that workers have a low perception of the occurrence of sexual harassment as a result of lack of laws defining and prohibiting it and women are left to endure it when it occurs.

The survey results show that women are willing to deal with sexual harassment through appropriate channels and will go as far as the courts to defend their rights when they have been sexually harassed. But in the absence of any laws defining or prohibiting such behaviours, the behaviour goes unnoticed and unreported. The results of the survey which shows willingness of women to deal with sexual harassment confirms Ige and Adeleke’s findings that 8 out of 10 victims report incidents of sexual harassment to the appropriate authority\textsuperscript{633} and contradicts Johnson that suggests that African women fail to report sexual harassment because the culture discourages them from discussing sexually related issues in public.\textsuperscript{634} Culture may contribute to women accepting sexually harassing behaviours as normal but does not prevent them from reporting it. However, contrary to Ige and Adeleke’s findings that women are stigmatized rather than the harasser punished the survey results show that women believe that they will be treated

\textsuperscript{632} Zimbroff (2007)  
\textsuperscript{633} Ige and Adeleke (2012)  
\textsuperscript{634} Johnson (2010)
fairly and with dignity if they report sexual harassment. The finding that women will report sexual harassment is only limited to formal work environments such as banks with organised work processes where managers and superiors do not have the power to hire or fire their subordinates without going through formalised processes. There is need for further research in smaller companies where there are less formalised work processes with employers having the ultimate power to hire and fire employees. This is because MacKinnon surmised that where an employer has the ultimate power to hire and fire, his sexual overtures is likely to be direct and clear and women tolerate it because the employer have control over their employment. In such instances, perception of sexual harassment is expected to be very high because the female subordinates would have no choice but to give in to the sexual demands of the male superior or be dismissed from their jobs.

From the above discussion, it is obvious that sexual harassment is a social problem in Nigeria which has been influenced by culture and patriarchy. Due to the absence of any laws defining and prohibiting its occurrence, workers are not aware of what amounts to sexual harassment and therefore have a low perception of its occurrence within the workplace and this does not mean that women are not affected by it and suffer the consequences of sexual harassment such as psychological trauma and physical and mental ill health.

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635 MacKinnon (1979)
5.4. Research Question 4: Is Legislation the appropriate instrument to check the occurrence of sexual harassment of female workers in Nigeria?

5.4.1. Statistics on Sexual Harassment

Extant literature suggests that women put up with sexual harassment at work because they need their income for survival and as a result have to bear the effects of sexual harassment such as psychological consequences which can cause decreased morale, decreased job satisfaction, increased absenteeism and affect relationship with co-workers. To address the issues of sexual harassment at work and provide women with a safe and conducive environment to work, the UK government has made a provision in the Equality Act 2010 which recognizes sexual harassment as a form of sex discrimination and prohibits its occurrence at work. For an employer to be liable, the Act requires that the harassing conduct is of a sexual nature which is unwanted by the worker and has an effect of violating the worker’s dignity or creating a humiliating or offensive environment. The harassment does not have to be related to the worker but could also be remarks made about other people which the worker finds offensive or violates her dignity. There is no official data available on the number of people who report sexual harassment in the UK or any data from which to deduce that the law has been able to achieve

636 Schneider et al. (1997)
637 https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/workplaceharassment accessed on 28/02/17
its objectives of eliminating or reducing the occurrence of sexual harassment at work since the first provision against sexual harassment in 2005. This can be attributed to the fact that victims of sexual harassment are reluctant to take action against it or share their experiences or acknowledge that what happened to them is sexual harassment because they had viewed certain acts which happened to others as more serious than theirs. Some women did not report it or use official channels to challenge it because they felt it had become so normalized in the workplace and has become a part of life that it would be pointless to challenge it. Others failed to report it for fear of being blamed for not standing up to the harasser but victim blaming fails to take into account the power dynamics of the workplace. In 2013 a survey of 1036 women, commissioned by the law firm Gordon Slater, found that 60% of women had experienced a sexual inappropriate behaviour from a male colleague in the workplace and only 27% of them were able to report to someone senior. It was also reported that 24% of the harassment cases were perpetrated by a superior and 5% of these victims lost their jobs while 1% were turned down for a promotion.

In 2016 a similar survey of 1,533 women, carried out by Trade Union Congress (TUC) found that 52% of women had experienced sexual harassment in the workplace and only 13% reported to the employer and of

those that reported, 16% said they were treated worse while 70% said nothing was done about it. The TUC survey found that 79% of women who were subjected to sexual harassment did not report it. Top barriers to reporting sexual harassment identified by the survey are fear that it would have a negative impact on victim’s working relationship with colleagues, victims would not be believed or taken seriously or they would be too embarrassed to report it. Zimbroff believes that lack of awareness of what constitutes sexual harassment, absence of women’s advocacy groups and lack of laws or inconsistency in its enforcement contributes to non-reporting of sexual harassment and women fear that they would be humiliated or there would be a threat to retaliate if they reported. Review of literature established that power is at the root of sexual harassment and according to the survey by Slater Gordon, 24% of the perpetrators were men in superior positions over the victims while TUC survey shows that 17% of the perpetrators had authority over the female worker. Hunt et al. believe that sexual harassment is more likely in situations where there are substantial power differences between men and women or it can be used to exclude women in careers where women have improved their careers to the status of their male counterparts.642

Currently in Nigeria, there is no provision against sexual harassment because it is considered a personal problem between the employer and his employees which they must resolve within themselves. The result of the primary data

shows workers are not afraid to stand up for themselves and will use any appropriate channels including the courts to deal with sexual harassment when it occurs. Therefore if laws are enacted to check the occurrence of sexual harassment at work in Nigeria, women will take recourse under such laws. Sexual harassment has been found to cause psychological trauma for the victims as well as exclude women from work. Based on this and the fact that women will seek recourse under a law prohibiting sexual harassment, laws will be recommended as a means of checking the occurrence of sexual harassment at work in Nigeria. However, UK laws will be reviewed in the Nigerian context taking into consideration the cultural, religious and patriarchal nature of the society to ensure that if applied appropriately it will have a positive impact in Nigeria.

5.4.2 Review of UK Laws

Section 26 of the Equality Act 2010 defines sexual harassment as an unwanted conduct related to the sex of the worker (sub-section 1) or of a sexual nature (sub-section 2) which has the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. An important trait of this law is that it is words or conducts which are unwelcomed to the recipient. Such words or conduct could be described as unwelcomed if the woman did not expressly invite it and she does not have to make it clear in advance to the perpetrator that the words or conduct is unwelcomed. The Employment Appeal Tribunal (EAT) in Reed and Bull Information Systems Ltd v Stedman (1999) IRLR 299

643 Reed and Bull Information Systems Ltd v Stedman (1999) IRLR 299
*Bull Information Systems Ltd v Stedman* expressed the view that the fact that a tribunal does not find an act unacceptable is not a basis for rejecting a claim but that the tribunal should be careful in breaking up a case into a series of specific incidents which on its face would appear innocent but when taken as a whole would be found to be unacceptable. This is because conduct which on their own would not be distasteful to a woman could become unacceptable once she has turned down an unwelcomed sexual interest from a man. The EAT expressed that the victim does not have to make a public fuss about her rejection of the word or conduct for the perpetrator to understand that such words or conduct is unwanted, but it will suffice if a reasonable person understood her reaction to amount to a rejection of the word or conduct. Conduct can also include inaction. This was the decision of the EAT in *Conteh v Parking Partners Ltd* where it agreed that if the conduct complained of is a failure to act (inaction), the victim has to show that the action was required and failure to do so contributed to the degrading and humiliating environment. The EAT also agreed that a single act of sexual harassment is enough to amount to detriment for the purposes of the Act provided that it was sufficiently serious. The EAT rejected the argument that a single act of harassing conduct should not be treated as unwanted because one cannot know what is unwanted until it has been rejected. The reason for this rejection is that the EAT surmised that men would regard this as a license to harass women as they would argue that each conduct was different from the last and they were testing to see if the conduct was unwanted. Notwithstanding this

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644 [2011] EqLR 332
argument, intention is irrelevant in sexual harassment cases, so if a reasonable person would find the conduct offensive, it would be deemed unwanted.\textsuperscript{645}

Another important attribute of sexual harassment in the UK is that the perception of sexual harassment is subjective rather than objective. In other words, the act will be viewed from the perspective of the victim rather than the perspective of the harasser and it is for the victim to decide whether they find the words or conduct offensive or not. According to the EAT in Reed’s case, a woman may appear unduly sensitive to what may be regarded as unexceptional behaviour, but it is up to each person to define their own level of acceptance. The EAT was of the view that the tribunal should bear in mind that the woman is dealing with a man in a more senior position who would likely deny that anything untoward happened and whose defense would be that the woman was being sensitive. As Benson and Thomas pointed out, experiences of sexual harassment of women in organisations often have elements of unequal power between the sexes. And due to this power imbalance, the man’s power over the woman’s employment will coincide with his sexual attention towards her, and he would use his power to command sexual compliance. He can also use this power to obscure his sexual intentions towards her\textsuperscript{646} and portray it as what it is not, such as claiming that the woman was being overly sensitive.

\textsuperscript{645} Insitu Cleaning CO Ltd v Heads [1995] IRLR 4
\textsuperscript{646} Benson, D. and G. Thomson (1982). “Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratification.”
The researcher argues that if women make use of this law, it will have an impact in eliminating sexual harassment and creating a safe and conducive environment for them to work. This is because the protection of the law is triggered where a conduct has an effect of creating an intimidating or hostile environment or the purpose of degrading or humiliating a worker. The law further protects a woman by virtue of sub-section 3(c) if she rejects or submits to such conduct to ensure she is not treated less favourably as a result. The researcher asserts that this law will be appropriate for recommendation for Nigeria however it will need some minor modifications because of the cultural and patriarchal nature of the Nigerian society. As discussed, Nigeria is a patriarchal society with a male dominated structure where boys and men are encouraged to pursue their sexual virility and prowess in an aggressive manner which is one of the reasons why perception of sexual harassment is low. In other words, in Nigeria a woman would not view it as sexual harassment where a man aggressively expresses his sexual interest in her because the society expects men to do so and women to see it as a natural way for a man to show his interest. Women therefore would be flattered by sexual advances from men because it reflects a romantic gesture from the man rather than an intention to harass or humiliate her. In addition to this, due to the patriarchal nature of the society, women in Nigeria are subordinate to men and as the culture conditions women to be passive, men are expected to make advances towards women which will be perceived as normal. For these reasons, it would be recommended that the laws should require that for a woman in Nigeria to take recourse under this law, they need to be unambiguous in expressing their lack of interest in the man’s sexual
advances by communication it to him clearly. To further ensure that an innocent gesture from a man is not penalized, the law should require that a woman has to in the first instance raise a formal or an informal grievance against the perpetrator before she is allowed to file a sexual harassment claim as this will ensure that the conduct is clearly communicated to the man as unwanted. If the law makes this a pre-condition to filing a sexual harassment case, sub-section 4 of the Equality Act will no longer be required as the perception of the victim, circumstances surrounding the case or whether it would be reasonable for the conduct to have the effect of humiliating or degrading her will become irrelevant because the woman would have made it clear through a grievance procedure that the conduct is unwanted.

5.5. Conclusion

Sex discrimination and sexual harassment have been found in literature to be social problems which affect women at work. Perception of sex discrimination and sexual harassment was found in this study to be low in Nigeria which has been attributed to the influence of these three social factors: religion, culture and patriarchy. These social factors have conditioned women to accept men’s superiority status as the head of the family and at work; and women as the home caregivers and their husband’s helpers. Men are expected to take the lead and pursue their sexual interest in women while women who expected to be passive and do not perceive such pursuit as sexual harassment.

Laws intended to eliminate sex discrimination in the UK such as Equality Act, Work and Families Act and Shared Parental Leave Regulation can be
adapted to the Nigerian situation in order to help mothers balance work and family lives to free up more time for them to better care for their children. These laws will not have any impact in Nigeria in closing the gender gap in senior management positions in Nigeria because some women do not go for such roles as they believe that the responsibilities attached to such roles will divert their attention from their primary responsibility of taking care of their children and the home. Making more laws in Nigeria would not be the solution because women do not think they have been discriminated against, but the existing law needs to be modified to better protect women. Before more laws can be recommended for Nigeria, the first step will be to increase people’s awareness on issues of sex discrimination and sexual stereotypes and how they impact on women’s lives and the need to empower women to take charge of their lives.

An analysis of the sexual harassment law in the UK revealed that the law can help reduce or eliminate the occurrence of sexual harassment at work if women utilized it. However, given there is no official data showing the achievement of this law, one cannot assert that it has had any impact in the UK. Moreover, women have been found not to report incidents of sexual harassment at work for various reasons. However, it is submitted that this law could have an impact in eliminating sexual harassment at work in Nigeria if it is modified taking into consideration the cultural and patriarchal nature of the Nigerian society.
CHAPTER SIX

CONCLUSION AND RECOMMENDATION

6.1 Introduction

This study set out to explore the extent sex discrimination and sexual harassment are detrimental to female workers in Nigeria as well as determine the appropriate instrument to address the problems and proffer viable solutions to protect women from such malice. The study also examined sex discrimination and sexual harassment laws and policies implemented in the UK to understand how effective they have been in addressing the problems in the UK and test their applicability in Nigeria. Sex discrimination and sexual harassment were identified as social problems which adversely affect women and to address these issues, the study answered four questions:

1. To what extent is sex discrimination detrimental to female workers in the Nigerian labour market?

2. Is legislation the appropriate instrument to check the occurrence of sex discrimination of female workers in Nigeria?

3. To what extent is sexual harassment detrimental to female workers in the Nigerian labour market?

4. Is legislation the appropriate instrument to check the occurrence of sexual harassment of female workers in Nigeria?
It was found that in Nigeria, sex discrimination is a problem to the female gender because of the way society is structured to favour and represent the interest of men. The Nigerian society relies on the differences in gender to ascribe different roles to the different genders with men as the head of the family, society and organisation and women as men’s helpers. Gender, culture, religion and patriarchy are tools employed in the Nigerian society to discriminate against women. These tools are used to restrict women from getting to the top of the organisations and holding senior management roles.

The study focused on the Nigerian banking sector because it is one of the organised employers of graduate labour with a wide outreach employing across multiple educational disciplines, gender, age groups and people from different geographical locations. The purpose of collecting data from this group was to ensure the data cut across a range of Nigerian identity and a cross section of the society, in order words, the data is a representative sample. The questionnaire was designed using an excel spreadsheet and were sent to the respondents through previous contacts in the banks. A total of 300 questionnaires were sent out and 103 questionnaires returned with a response rate of 40.6%. The data was analysed using Excel XLSTAT.

The methodology adopted for this study was a socio-legal method with elements of doctrinal research and comparative legal research. A socio-legal method was adopted because the research involved an empirical method of enquiry, using questionnaires to determine the effectiveness of existing laws in regulating social problems (sex discrimination and sexual harassment). Empirical methods such as data collection and analysis were also used to
understand the effect of these social problems on the lives of Nigerian women and the impact the existing laws have had on their lives. An element of doctrinal study was adopted because Nigerian and UK laws, legal rules and legal texts were analysed to understand the laws on sex discrimination and sexual harassment in both jurisdictions. An element of comparative legal research was adopted because UK laws were studied to identify advantages and the difficulties of the laws in order to learn lessons as a means of proposing solutions for Nigeria and avoiding mistakes made in the UK system.

Chapter 1 looked at the context of this study which is Nigeria and the problems faced by women as a result of sex discrimination and sexual harassment. It also looked at the Nigerian legal system and court hierarchy to show that the legal system is able to apply any laws that may be proposed as a result of this study. In chapter 2, various laws and cases on sex discrimination and sexual harassment in Nigeria and UK were discussed. The central aim of Chapter 2 was to present a historical analysis of Nigeria and UK sex discrimination and sexual harassment laws as well as analyse the current position of the law and how these laws are interpreted and applied by judges to eliminate the problems. In chapter 3, academic literature was reviewed showing the link between gender stereotypes and sex discrimination and sexual harassment. The chapter identified how differences in biological sex is used to categorize individuals and create gender which is used as a tool to establish social differences between men and women as well as subjugate women to men. In addition to this, Nigerian society uses culture, religion and patriarchy as added tools to subjugate women to men. These differences in
men and women have been used as a justification for placing men in superior positions and as heads in both families and work, while women are expected to be subordinate to them. Furthermore, sexual harassment was found to be primarily about men having power over their female subordinates. Chapter 4 looked at the research design and research methods adopted for the study. In chapter 5, the primary data was analysed and discussed in order to answer the research questions. It was found that perception of sex discrimination and sexual harassment in Nigeria is low as a result of the influence of culture, religion and patriarchy. UK policies on sex discrimination and sexual harassment were evaluated to determine if they achieved their objectives and these were considered in the Nigerian context to ascertain the applicability of these laws if they were adapted for Nigeria.

6.2 Empirical Findings

This section will be divided into two sub-sections, with the summary of the findings emerging from the study, to answering the research questions.

6.2.1 Sex Discrimination

Research Question 1

To what extent is sex discrimination detrimental to female workers in the Nigerian labour market?

As a patriarchal and traditional society, the existence of sex discrimination in Nigeria was expected to be high as a result of the influence of religion and
culture acting as a control mechanism to suppress women. However, the findings from this study show that the perception of sex discrimination is low. This low perception amongst women was found to be as a result of religion and culture which have been used to instil in women at an early age the idea of what their role and the expectation of them in society. The findings from this study substantiate scholars’ views that gender is a tool used by society to classify and establish social differences between men and women and ascribe responsibilities based on the differences. The study also confirms that in Nigeria, culture, religion and patriarchy are added tools used to further discriminate against the female gender. These classifications have given rise to gender stereotypes resulting in overgeneralization of women’s characteristics and abilities which creates inequality for women and this has been passed on for many generations. These gender stereotypes have been found to have an effect on how girls are raised and nurtured which affects their self confidence, aspirations and opportunities.

Girls are taught and raised to accept that their primary responsibility is to take care of their husbands, children and the home. Culture and religion were found to be instruments used to inculcate the belief in women that they are subordinate to their husbands (who are the heads of the family) and in their subordinate roles should be responsible for taking care of the children and the domestic work. If she must work outside of the home, it is to earn enough to support her husband financially. As a result of this, women have less aspirations for themselves, which in turn may cause lack of confidence. As a result, many women lack aspiration and will not therefore apply for senior
management positions because they do not believe that they should occupy such positions. Women therefore make the choice to avoid senior management roles as it will divert their attention from their primary responsibility and this causes gender gaps in senior management roles in organisations in Nigeria.

**Research Question 2**

*Is legislation the appropriate instrument to check the occurrence of sex discrimination of female workers in Nigeria?*

The study found that though sex discrimination exists in Nigeria, laws are not necessarily the first step to eliminating the problem. The study showed that culture and religion are tools used in Nigeria to maintain men’s domination over women and this idea is instilled in individuals from an early age which they grow up to accept as normal. This belief influences individuals’ ideas about the role of a woman within the home as the primary caregiver and her husband’s role as the financial provider. As a result of this, women choose to avoid senior management roles as it will divert their attention from their primary responsibility of taking care of the children and domestic work. Since this is a deep rooted conception within the minds of individuals, any laws made to force people to change their behaviour will be an affront to their beliefs which they will strongly oppose. Therefore, any laws which proposes equality of men and women in Nigeria (a religious society), will be viewed as anti-God because the laws will be contrary to God’s words that men are
leaders and women are subordinate to them.

However, though laws are not the first step to eliminating sex discrimination in Nigeria, it does not mean that laws are not needed. The study found that laws will still be needed after other measures such as education and awareness have been put in place and utilised. The study found that anti-discrimination laws and other policy measures had a positive impact in the UK and saw an increase in female participation including mothers in the labour market including mothers as well as a marginal increase in the number of women in senior management roles. Family-friendly measures and policies in place are adequate to bridge the gender gap and assist women who wish to get to senior management roles to do so with little restrictions because of childbirth and childcare. With education and awareness as a starting point in Nigeria, laws will eventually help in reducing sex discrimination and women getting to senior management roles.

6.2.2 Sexual Harassment

Research Question 3

To what extent is sexual harassment detrimental to female workers in the Nigerian labour market?

As a traditional society, it was expected that the existence of sexual harassment in Nigeria would be high as a result of the influence of patriarchy and culture acting as a control mechanism to suppress women. However, the findings from this study show that the perception of sexual harassment in
Nigeria is low. The low perception of sexual harassment found was as a result of the influence of culture, patriarchy and absence of laws prohibiting and penalizing its occurrence. The findings from this study substantiate scholars’ views that culture has an impact on the perception of sexual harassment. The Nigerian society encourages men to take the lead in pursuing their sexual interests in a woman while the tradition provides an enabling environment by allowing men to marry many wives and keep as many concubines as they wish. Individuals therefore see a man’s aggressive pursuit of his sexual interest as normal even where a woman clearly shows no interest. This can result in sexual harassment which is made worse by the fact that women are expected to be passive and not discuss sexual matters in public. In other words, where a man sexually harasses a woman, she is not expected to raise an issue about it. The findings from this study also confirms that a lack of laws prohibiting sexual harassment also contributed to the low perception of sexual harassment because where there is no clear and defined behaviour in any laid down laws classifying what constitutes sexual harassment, sexual harassment will go unrecognised and unpunished.

**Research Question 4**

*Is legislation the appropriate instrument to check the occurrence of sexual harassment of female workers in Nigeria?*

The study found that sexual harassment exists in Nigeria but there is no legislation to protect workers against it. Lack of laws was revealed to be one of the reasons why the perception of sexual harassment was low. The study
was unable to confirm that the laws available in the UK have been effective in protecting women from this problem because there is no official data to show how many women make use of the laws or if the law has been effective in achieving its objectives. Studies conducted by the law firm Slater Gordon and the TUC were considered and it was identified that women in the UK fail to report sexual harassment for reasons such as fear that reporting it will have a negative impact on their working relationship and their career or they would not be believed. The law was analysed to show that it will be effective if women sought protection under it.

The study showed that workers in Nigeria are willing to use any appropriate channel to deal with sexual harassment when it occurs. Since sexual harassment has been found to cause physical and psychological harms to victims, sexual harassment laws are therefore needed to protect workers in Nigeria. However, due to cultural differences between UK and Nigeria, there should be a pre-condition of raising a grievance procedure against a harasser before a claim can be brought under this law. This is to ensure that the harasser is given notice that the victim finds his behaviour offensive and precluded from relying on the culture that as a man he is making an innocent romantic gesture towards her.

**6.3 Limitations of Study**

Though this study has provided a perspective on sex discrimination and sexual harassment in the Nigerian context, it is not without its limitations. The first limitation is in the sampling population used. The study is limited to
Nigerian workers in the banking industry which means that a conclusion can only be drawn for people working in the banking sector and may not be generalized to other sectors. This notwithstanding, this study may be generalized to the public sector because data for the civil service was used which was comparable to the data used for the banking sector. To work in any bank in Nigeria, the minimum qualification is an HND or a Degree which means that the study did not consider and cannot be applied to the uneducated section in Nigeria. This study therefore cannot be generalized for the whole population. Furthermore, the low perception of sex discrimination and sexual harassment found in this study cannot be generalized to small scale companies where there are less formalised processes and managers may have the ultimate power to hire and fire. Future researchers may want to consider perception of sex discrimination and sexual harassment in such instances where managers may wield their power to command sexual compliance.

In addition to the above limitations, there were limited resources for the research which meant that a small sample from the banking sector was used and this may affect generalizing the study. Thus further research on a larger scale needs to be carried out to get a wider response from different sectors of the Nigerian society.

**6.4 Recommendation for Future Study**

This thesis studied the occurrence of sex discrimination and sexual harassment of female workers in the Nigerian Banking sector. Various factors
for this phenomenon were identified and how they affect women were discussed.

There is need for further research to understand how sex discrimination affects pregnant women and single mothers at work in Nigeria. It was discussed in the introduction to this thesis that private sector employers demand that their female employees sign a contract not to get pregnant within the first three years of their employment and single mothers are denied paid maternity leave as a result of their marital status. There is currently a provision for 12 weeks maternity leave for women and no provision for paternity leave. In addition to pregnancy, there is need for further research on maternity rights, paternity rights and flexible working granted and how they can help workers achieve work-life balance as well as get fathers involved in taking care of their babies to change the societal perceptions about the role of men and women in Nigeria and the social stigma associated with men looking after the children.

There is also need for further research in smaller companies where there are less organised or formalised work processes with employers having the ultimate power to hire and fire employees. In such instances, perception of sexual harassment is expected to be high because the female subordinates would have no choice but to give in to the sexual demands of the male superior or be dismissed from their jobs.

This study identified that women were assigned the role of caregiver in the family while men were assigned the role of financial provider. The study
focused on the impact of sex discrimination and gender roles on women. Future research may want to explore how gender roles and sex discrimination may affect the male gender in Nigeria and the impact it may have on them at work.

6.5 Contribution to knowledge

The theoretical framework for sex discrimination and sexual harassment was reviewed to understand the degree to which sex discrimination and sexual harassment are problems faced by female workers in Nigeria and measures which can be adopted to address the problems. The thesis found that sex categorization creates assignment of roles between the two genders with men in the dominant group who have been assigned the role of the head of the family and main provider and women in the subordinate group who have been assigned the role of the primary caregiver and their husbands' helpers.

The study made several contributions to knowledge. The first is that the study carried out an empirical study on the perception of sex discrimination of female workers in the banking industry in Nigeria and found that there is a low perception of sex discrimination amongst female workers as a result of the influences of culture, religion and patriarchy. These factors are used as tools to reinforce the importance of gender and to teach girls at a young age what their roles in society are, which they will subsequently grow up to accept as normal. These were found to have influenced women's perception about themselves as a wife and mother first; then her husband's helper. As a result of this, some women do not aspire to work in senior management roles
because it will divert their attention from their primary role. The outcome of this study calls for raising awareness and educating individuals on the ills of gender stereotypes as a first step to eliminating sex discrimination at work by targeting schools and religious institutions as means through which conceptions about stereotypes can be changed.

Another contribution to knowledge is that the study carried out an empirical study on the perception of sexual harassment of female workers in Nigeria. The study found that there was a low perception of sexual harassment at work in Nigeria and this is as a result of influence of culture and absence of laws which has an effect on how workers perceive what sexual harassment is. These were found to have a big impact on what women perceived to be sexual harassment because the Nigerian society expects a man to pursue his sexual interest in a woman aggressively. Without laws defining what conduct amounts to sexual harassment, women who would not normally accept certain behaviours from men would lack the words to describe such behaviour and hence may not consider them as sexual harassment. The study found that with appropriate modification to the present UK sexual harassment law, it may be sufficient to help address the problem in Nigeria.

Another contribution to knowledge is that this is the first time that PCA analysis was used to compute a data set for sex discrimination and sexual harassment studies. This tool was useful in this study because it was able to discard irrelevant data collected and correlated only the most important data in the dataset and analyzed for the study.
A major contribution made by this study is that the study surveyed men in Nigeria to understand men’s perception on the issues of sex discrimination and sexual harassment at work. Similar studies carried out in the past focused on women and how women perceive such problems. The idea behind surveying men is to give consideration to the principle of natural justice of ‘audi alteram partem’. This is to give men a chance to defend themselves as well as see things from their perspectives since they are accused as the main perpetrators of sex discrimination and sexual harassment. By surveying men, the study found that men have the same perception as women on issues of sexual harassment but disagreed that they were not responsible for the discrimination women faced in society. Examining men’s perception showed that like women, men were also victims of societal norms and gender stereotypes which manifested differently from the discrimination women faced and this opens up a new area of further research into how gender stereotypes affect men in Nigeria.

Another major contribution made by this study is that it examined UK sex discrimination laws to determine if it is sufficient to addressing sex discrimination at work and closing the gender gap in senior management roles. It found that there has been an improvement in the number of women entering into the labour market and senior management positions since the enactment of the first anti-discrimination law. Despite the laws in place, gender gaps in senior management still persist which was attributed to the laws failing to change normative culture and discriminatory practices and reducing penalties arising from unequal division of labour. The study however
found that some women in the UK make the choice to avoid senior management roles because it will have an impact on their ability to take proper care of their children. The study also found that with the laws and measures currently in place, women who wish to get into senior management roles can do so more easily by using the laws to minimise the restrictions caused by childcare issues.

Finally, the study used a comparative legal research to determine if UK sex discrimination and sexual harassment laws were appropriate for Nigeria and determine if they would help solve the problems caused by these social problems in Nigeria. It found that the laws in place to address sex discrimination in the UK will have a positive impact on Nigerian women in terms of balancing their family life with their work life but will not help in closing the gender gaps in senior management positions because organisational practices and processes do not restrict women in Nigeria from getting to senior management roles. This is one of the key contributions made by this study. It found that gender or organisational practices and processes do not restrict women in Nigeria from getting to senior management roles but that Nigerian women make a choice not to go for these roles in order to comply with stereotypical expectations of them and focus their attention on their societal ascribed primary responsibility of taking care of the children and the domestic responsibilities. This finding is inconsistent with the theory that gender is the barrier to female progression into senior management roles because of the differences in their work and family lives.
6.6 Using Legislation and Non-Policy Measures as a Means to Changing Conceptions and Attitudes

As discussed earlier in this study, gender, culture, religion and patriarchy are tools used to subordinate women in Nigeria. When these are transferred into work settings, they reinforce sex discrimination and sexual harassment of women at work. For sex discrimination and sexual harassment laws to have any effect at work, conceptions and attitudes of individuals in society first need to change and individuals understand the ills of these practices to women and society at large. A change in conceptions and attitudes can be achieved with both laws and non-policy measures.

6.6.1. Non-Policy Measures as Tools to Change Conceptions and Attitudes

This study found that gender, religion, culture and patriarchy were used as tools to create social differences and division of roles between men and women placing men in the dominant group with power and women in the inferior group. The creation of these differences have been maintained and passed down for many generations through socialisation of individuals from an early age. Through early age socialisation, gender roles and stereotypes became entrenched in individuals as normal and normalisation of these views therefore becomes a way of life with their accompanying consequences of gender discriminatory practices. According to life course theorists, these practices and inequalities which are established early in life set the stage for
adulthood inequalities which gets passed on for generations.

To eliminate sex discrimination and sexual harassment, non-policy measures need to be put in place to ensure a lasting change to attitudes and conceptions and this need to be reinforced by laws and policies which the state must enforce. This study identified education and awareness-raising as non-policy measures which can help eliminate sex discrimination by making individuals aware that gender and gender roles are socially constructed and fostered by culture and religion as well as educate individuals on the harmful effects of gender stereotypes. By raising awareness, individuals can understand the pervasiveness of gender bias and how it informs societal values and norms which society expects them to conform to. Through education and awareness-raising, the fallacies of gender stereotypes will be made visible as a mere societal creation to maintain a divide between the two social groups and as an act of injustice to get people to conform to certain standards or be punished for failing to do so. Awareness-raising can start as early as childhood through children’s literature which Ezenwa-Ohaeto believes will eradicate the negative patriarchal practices in the Nigerian culture because of the role children’s literature play in moulding their character.647

This study also identified that women are not the only victims of gender stereotypes. Men have also been found to be victims because they are also expected to conform to societal conceptions of masculinity which requires

them to be competitive, ambitious and self-seeking. They are also expected to be the main provider for their families and are therefore put under pressure to provide financial resources (whether they are capable or not) for the family. Because they are expected to be successful, to go to all lengths to work and provide for the family, they are deprived of joys of parenthood and intimate relationships with their partner. Where individuals are educated and made aware of social conventions that underpin gender roles and inequality, they will be empowered to pursue their collective interests as a family and express themselves freely without conforming to societal norms.

Another non-policy measure to eliminating sex discrimination is by empowering women to participate in public and economic life. The study showed that the participation of men and women in public sphere is beneficial to society and this needs to be encouraged so that both sexes can pursue their individual interests without societal pressures to conform to a set norm. If women are given equal opportunities to participate in public and economic life, it will lead to a balanced partnership between men and women in society. This will improve women’s social and economic status and their quality of life and that of their families; and for some this will mean an end to poverty. This will also provide economic benefit for society because women’s talent pool will be utilised in all sections of society. Women empowerment will also see a reduction to the consequences of gender stereotypes such as domestic violence, poverty, prostitution and child marriages. Women and girls should be encouraged to go into traditional male dominated fields of education and profession and boys and men should also be encouraged to enter into female
dominated environments which can help change conceptions about gender roles. Domestic responsibilities and childcare should not be viewed as a woman’s primary role and men should be encouraged to participate in these roles. On the other hand, financial responsibility for the home should not be viewed as a man’s primary role but women should be encouraged to participate in providing financial resources for the home. Couples should be encouraged to view marriage as a partnership of equals.

**6.6.2. Legislation as an Instrument of Change**

As attitude and conceptions towards gender and gender roles change, laws are needed to back it up and force change where behaviour persists. This study established that there are inadequate laws in Nigeria that ensures equal treatment of men and women at work. Various laws were found to discriminate against women and promote harmful discriminatory practices against the female gender. These harmful discriminatory practices restrict women and girls from making progress within society and they have been shown to be the result of gender stereotypes and societal norms passed down for many generations and in some cases maintained by the laws. To protect women and girls and ensure their progress within society, equal treatment under the law is necessary for them to realize their full potential and enjoy equal opportunities with men at home, in society and at work.

Government can utilize laws as an instrument to change attitudes and conceptions about gender by passing on messages that certain practices will no longer be tolerated and support women to achieve equality and have equal
opportunities at home and in society. To do this, the government first needs to review its discriminatory laws against women and abolish such laws and replace them with laws promoting women’s rights. Laws supporting equal rights and protecting women from sex discrimination and sexual harassment are necessary when trying to prevent sex discrimination and gender based violence because where laws are non-existent, it could be viewed as the government condoning such practices. Laws can also be used to change people’s mind sets by criminalizing behaviours such as gender based violence within the homes and society and this will act as a deterrent to perpetrators to engage in such acts and over time change individuals’ perceptions on such issues. In addition to laws, the government should ensure that barriers to assessing justice are removed by ensuring all agents to justice are adequately trained to understand the ills caused to society by gender stereotypes as well as understand the goals which the government seeks to achieve. Victims should also be encouraged to report such acts and with laws in place, they will be empowered to utilize the laws to bring a perpetrator to justice which will deter perpetrators from committing such injustices against women.

As attitudes and conceptions towards the female gender change, adequate employment laws and policies need to be formulated to remove restrictions which prevent women from getting into work and remaining in work such as employers policies that restrict women from getting pregnant when they want, denying single mothers paid maternity leave, requiring employees to spend long hours at work, inadequate paternity leave policies and no provisions for
part time or flexi work. Government should also formulate laws and policies that acknowledge workers as individuals first with a life and responsibilities outside of work which should be applied to all irrespective of gender or parental status. This should encourage employers to create a humane work place and a supportive environment for workers to balance their work and family life as well as achieve their full potential. This will open up opportunities for all workers to apply for jobs which suits their family needs.

The government should introduce quotas and affirmative actions as a temporary measure to bring up the number of qualified women in senior management positions who will act as role models for younger ones to aspire to get to such positions. Edwards and Zaretsky believe that temporary preferential treatment is needed to achieve equal employment opportunity for minorities and women; and that the injustice that may result in the use of such remedies is out weighed by the fact that it is the only way to break employment discrimination and open up all levels of jobs to minorities and women.\textsuperscript{648} Though this present study found that women make the choice to avoid senior management roles because it will divert their attention from looking after the children and domestic work; this does not mean that women are not qualified to occupy these positions. With quotas and preferential treatment in place, qualified women who are interested in going for such roles will have the chance to apply and occupy such roles while women who are not interested because they are looking after their children will not apply. In

addition, quotas and affirmative actions will insure against discrimination at the point of recruitment.

Incentives such as tax incentives may be introduced for employers who maintain policies that increase the number of women in work and have an equal representation of both genders in senior management positions. This may have an impact but is not expected to close the gender gap in senior management positions as was the case in Spain. Spain passed a gender equality law in 2007 obliging public companies to attain a minimum of 40% share of each sex on their boards and they will be given priority status in allocation of government contracts.\(^649\) The quota was not met with the percentage of women increasing from 9.5% in 2013 to 12.8% in 2014. The country failed to achieve its target because there was no penalty for non-compliance. Although the country failed to achieve the quota, there was a slight increase in the number of women on the board.\(^650\)

The government should also treat sexual harassment as a major public concern and not to be treated as private issues between the parties concerned. Laws should be properly formulated to prevent its occurrence and employers should be mandated to develop organisational policies and provide effective procedures for reporting and disciplining perpetrators in line with the laws prohibiting sexual harassment at work.

\(^{649}\) MSCI ESG Research: Governance Issue Report 2014 Survey of Women on Boards

\(^{650}\) Ibid. See also http://blogs.lse.ac.uk/businessreview/2016/09/30/quotas-have-led-to-more-women-on-corporate-boards-in-europe/
In spite of the discussion above, like the UK, enacting new laws or amending existing laws in Nigeria is not expected to totally eliminate sex discrimination and sexual harassment without other measures in place. The study identified that equality legislation in Britain was the basis for the advancement of gender equality between men and women. The equality law gave female employees a mechanism to seek relief when they have been victims of discrimination or sexual harassment. According to the final report of the Equalities Review, legislation and policies have in the past sixty years seen recognition of rights of various disadvantaged groups and have led to improvements to their chances in life and affording them greater chances of equality.\textsuperscript{651} The government enacted these laws to promote equality and improve the lives of working parents by helping them achieve a work-life balance and the laws saw an improvement in the number of women participating in the labour market. Despite the reforms over the years, sex discrimination and sexual harassment still persist in the UK. One of the reasons given for the failure of the law is that the discrimination law has an adversarial structure which is individualistic in nature and resolves discrimination on the basis of winner-takes-all, failing to focus on eliminating discrimination.\textsuperscript{652} Fredman expressed that the adversarial system is inappropriate for public and private interactions and advocates for a model of structural reform which will view a victim as a group where any prohibitions made will benefit all members of that group. She believes that this will encourage institutional litigators to bring such actions as a representative action because the outcome will benefit all women rather

\textsuperscript{652} See Fredman S. (2011) Discrimination Law 2\textsuperscript{nd} ed. Oxford University Press at p.279
than a particular individual. Fredman proposes that in the absence of a structural reform, the burden of adjudication should be lifted off the claimant and taken over by public interest litigators, representative or class actions and the burden of proof be shifted and litigation permitted without identifying the victim. Dickens believes that the lack of locus standi of the trade unions and equality commission makes collective enforcement of discrimination laws in Britain very weak and the provision of class action would allow for discrimination cases to be pursued without a victim being identified which would allow deep-seated practices to be challenged. Extending the locus standi would also help break barriers to assessing justice because the interests groups will take on the cost of pursuing justice such as court fees. This proved successful in Nigeria in 2009 when locus standi was extended to public interest groups or class of persons in the categories of applicants in the Human Rights Enforcement Procedure which saw cases which would not otherwise have been litigated upon for lack of locus standi brought to court.

6.7 Policy Recommendations

This study has shown that sex discrimination and sexual harassment are social problems in the Nigerian society which need the intervention of the government and other interest groups to change individuals’ attitudes and conceptions that reinforce gender stereotypes and maintain sex discrimination. These can be done through enactment of laws, education and

653 Fredman at 294
655 The Incorporated Trustees of Women Empowerment and Legal Aid Initiative v The Federal Government of Nigeria suit No: FHC/L/CS/1606/2014
awareness-raising to help eliminate sex discrimination and sexual harassment or at best reduce its occurrence especially in employment. The principles guiding the policy recommendations are:

1. The right not to be discriminated against on the basis of an individual’s sex which is a Human Right provision and enshrined in the Constitution of the Federal Republic of Nigeria.

2. Childbirth and childcare are realities of life which women have been found to be predominantly responsible for and these should be taken into consideration when jobs are created and requirements for them specified.

3. Men and women are intelligent beings who have rights to make decisions about their lives and the type of employment they wish to engage in without being forced to conform to societal expectations.

4. Sexual harassment has been proven to have a negative impact on women’s psychological and physical well being which in turn impacts negatively on society.

5. Everyone irrespective of their sex has a right to decide who they associate with or have a relationship with without being penalised for making such decisions.

There are ways in which sex discrimination and sexual harassment can be eliminated in employment. With this view in mind, four major policy recommendations are outlined for government, statutory bodies, employers
and non-governmental organizations:

**Recommendation for government**

Addressing gender discriminatory practices requires comprehensive legislation and enforcement mechanism and without adequate laws prohibiting these social problems, it will leave victims unprotected which may imply that the government is unconcerned about protecting its female citizens. A comprehensive anti-discrimination and sexual harassment law needs to be formulated to deal with issues of sex discrimination and sexual harassment and go further to protect against other types of discrimination and sexual violence.

1. No law was found prohibiting sexual harassment; and section 42 of Constitution has been found to be ineffective in eliminating sex discrimination. The study found that the perception of sex discrimination and sexual harassment was low as a result of lack of laws defining what constitutes the problems. The laws should have a definition of sex discrimination and sexual harassment, what behaviour constitutes sex discrimination and sexual harassment, how to bring an action against it, what remedies are available to victims and penalties against the perpetrators should be specified.

2. The law should prohibit sex discrimination and sexual harassment at work and make unlawful organisational policies and practices which have the effect of discriminating against women or putting them in a position where they are sexually harassed. Employers should be held liable for discrimination which
occurs in the course of the employees’ employment to ensure employers are serious about protecting workers’ rights and victims should be protected by law from being victimised for bringing an action against the employer.

3. Laws should be made to recognise that workers are people first with lives and responsibilities outside of work and employers mandated to have policies which will allow workers to balance their work lives with their domestic lives. Working times and holidays should be guaranteed by the law for the health and safety of employees as well as to help them balance their work and family lives.

4. The law should create a statutory body to monitor and implement the law. Provisions should be made in the law for interests groups and classes of persons as categories of applicants who can bring an action for violation of the law. As this method has proved successful in human rights litigation in Nigeria, if the burden of litigation is taken away from individuals, interest groups and class action will focus on eliminating discrimination and protecting women rather than ensuring individual success which does not eliminate discrimination.

5. The law should expressly prohibit all harmful cultural practices which discriminate against the female gender and heavy penalties set for those found breaking the law. All discriminatory laws against the female gender should also be abolished.

6. The government should recognise that learning begins at birth and continues throughout life and should make laws targeted at schools to
ensure that school staff are trained to understand the consequences of gender stereotypes and anti-discriminatory policies. Policies should be formulated to ban text books and teaching materials which emphasize gender roles and a corrective education curriculum developed to empower all children to be who they want to be and go into any profession they wish irrespective of their gender.

**Recommendations for statutory bodies**

1. The statutory body created should aim to eliminate discrimination by investigating cases of discrimination and sexual harassment and bringing actions against offending organisations and individuals. The courts should have power to make declarations against institutions and individuals to seize acts which are found discriminatory.

2. The statutory body should organise training programmes for organisations and employers to educate them on the ills of gender stereotyping and make them aware of how these form an unconscious bias in decisions made at work.

3. The statutory body should have a complaint mechanism and provide legal assistance to those who cannot afford to pay for legal costs.

**Recommendations for employers**

1. Employers should have comprehensive policies against sex discrimination and sexual harassment. The policies should define what constitutes such
behaviours, procedures for making complaints, the process of investigating such complaints and consequences for breach. The policies should also ensure that victims will not be victimized for reporting such behaviour. Mechanisms for monitoring and implementing the policies should be set up and all complaints taken seriously.

2. Employers need to develop gender equity policies which should guide recruitment and promotion of employees. Policies that promote flexible work should be developed and applied to all employees irrespective of their gender or parental status.

**Recommendations for non-governmental organizations**

1. Non-governmental organizations should be set up and financially supported by the government. They should assist women who have been victims of discrimination or sexual harassment to bring an action against perpetrators in order to protect their rights.

2. Non-governmental organizations should organise training programmes targeted at communities and religious organisations to educate them on the ills of gender stereotypes and their consequences such as domestic violence and poverty. Religious leaders should be targeted in particular because they have influential powers within their organisations which they can utilize in educating their members about the ills of discriminatory cultures and practices and encourage their members to change their behaviour both within and outside the home. Every parent wants the best for their children and parents
should be encouraged to ensure that their daughters remain in school as a means of ensuring her financial future.

3. Non-governmental organisation should also organise training programmes targeted at schools to educate school teachers and head teachers on how easy it is for children to learn gender stereotypical behaviour from the world around them and encourage teachers to teach children in gender neutral ways and avoid emphasising gender roles.

4. Women should be empowered through training programs to aspire to be financially independent and to participate in public and economic life. They should utilise opportunities created by the government such as quotas in government and corporate sectors to improve their economic status and quality of life and that of other women and girls in society.

6.8 Conclusion

This study set out to explore the extent sex discrimination and sexual harassment are problems to female workers in Nigeria and if legislation is the appropriate instrument to address their occurrence. The study identified that these problems exist in Nigeria and are wide spread in all areas of life in society. However, the study identified that workers had a low perception of the problems and this is as a result of the influence of religion, culture and patriarchy which is used to entrench in individuals the importance of gender and gender roles.

The results provide evidence that gender gaps in senior management position
in Nigeria is not as a result of organisational processes restricting women but because culture and religion impress on women the idea that they are the primary caregiver at home and women choose to care and nurture their young ones due to biological factors. Social factors and social norms were also identified as restrictions which may have contributed to women avoiding senior management roles because it has led women to believe that men are leaders and suited to the roles and women therefore lose confidence to compete with them.

The outcome of the study is a recommendation that laws and policies should be formulated to educate individuals on the ills of gender stereotypes and roles and that everyone should irrespective of their gender aspire to whatever role they wish to perform. Laws have been proposed to address gender issues and protect women from ills of discriminatory cultural practices.


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APPENDIX

1. Main study questionnaire

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<tr>
<th><strong>A</strong> PERSONAL DETAILS</th>
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<tbody>
<tr>
<td>1 What is your gender?</td>
<td>☐ Male ☐ Female</td>
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<td>2 What is your age range?</td>
<td>☐ Under 30 ☐ 30–39 ☐ 40–49 ☐ 50 and above</td>
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<td>3 What is your religion?</td>
<td>☐ Christianity ☐ Muslim ☐ Others</td>
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<td>4 What is your marital status?</td>
<td>☐ Married ☐ Unmarried</td>
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<td>5 Which town/city do you live in?</td>
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<td>6 Which state are you from?</td>
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<tr>
<th><strong>B</strong> SEX DISCRIMINATION</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Not sure</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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<td>1 The male gender is superior to the female gender</td>
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<td>2 Women should have different roles from men</td>
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<td>3</td>
<td>Women should stay at home to look after the family while men go out to work to provide for the family</td>
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<td>4</td>
<td>Women should have paid jobs outside the homes and provide for the home on an equal basis as men</td>
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<td>Men should be the main provider for the family while women support them</td>
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<td>6</td>
<td>Women are treated less favourably than men in the place of work</td>
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<td>7</td>
<td>Organisations may be deliberately structured to function in favour of men</td>
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<td>8</td>
<td>Job functions in the organisations are assigned according to gender capabilities</td>
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<td>9</td>
<td>Women are expected by their male colleagues to be subordinate in the place of work just like their wives at home</td>
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<td>It is a natural process for men to lead in organisations</td>
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<td>10</td>
<td>Women will make good leaders in organisations</td>
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<td>11</td>
<td>Women are deliberately placed in lower ranking jobs because organizations think they have less capabilities</td>
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<td>12</td>
<td>Women are deliberately placed in lower ranking jobs because they cannot comply with the challenges of more senior positions</td>
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<td>13</td>
<td>Women have to be as aggressive and competitive as men in order to succeed in their career</td>
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<td>14</td>
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15 In order to succeed in their careers (reach the same level as men), women must abandon family life such as marriage and child birth as this hinders career progression

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<tr>
<th></th>
<th>SEXUAL HARASSMENT</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Not sure</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
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<tr>
<td>16</td>
<td>Women are often subject to unsolicited sexual harassment at work by male colleagues</td>
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<td>17</td>
<td>Men are equally prone to unsolicited sexual harassment by female colleagues at work</td>
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<td>18</td>
<td>Women also face sexual harassment by other women</td>
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<td>19</td>
<td>Sexual harassment occurs because the harasser has power over the harassed as a result of seniority in the organizations hierarchy</td>
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<td>20</td>
<td>Sexual harassment occurs only because the harasser finds the harassed attractive and has nothing to do with seniority in the organization</td>
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<td>21</td>
<td>You will definitely lose your job if you reject sexual advances by a superior officer/colleague</td>
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<td>22</td>
<td>I know someone who has turned down a superior officer's sexual advances in the past</td>
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<td>23</td>
<td>I will be adversely affected if I report sexual harassment by a superior officer to the Human Resources Department</td>
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<td>24</td>
<td>I have a right not to be sexually harassed</td>
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<td>25</td>
<td>There is a law against sexual harassment</td>
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<td>26</td>
<td>I will use the appropriate channels provided by my organisation to deal with sexual harassment when it occurs</td>
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<td>27</td>
<td>I will go as far as the courts to deal with sexual harassment when it occurs</td>
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<td>28</td>
<td>I will be treated fairly and with dignity if I report sexual harassment</td>
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