



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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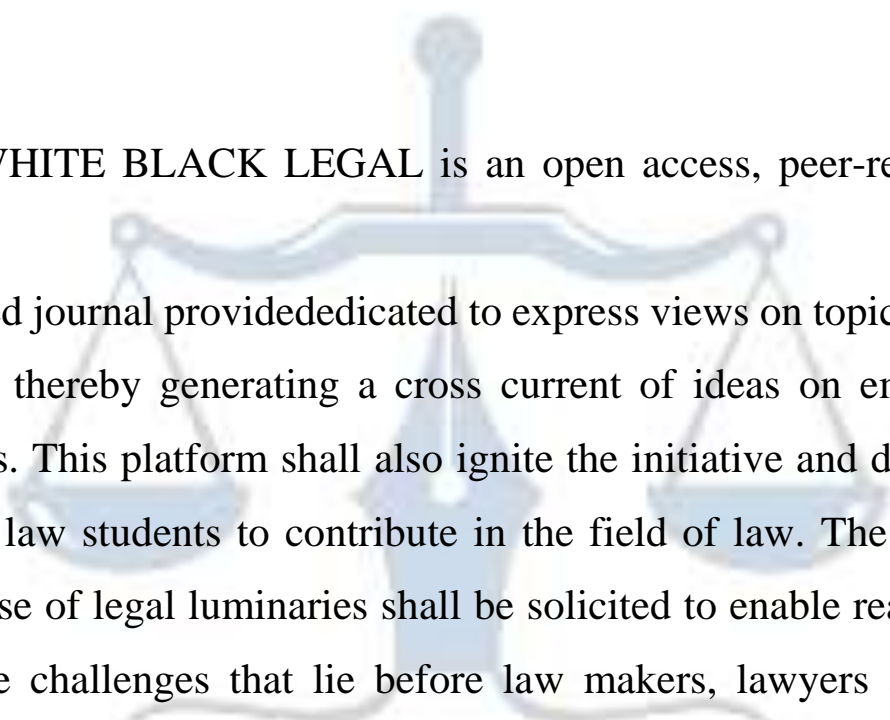
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With this thought, we hereby present to you

WORKPLACE HARASSMENT LEGISLATION: A MULTI-DIMENSIONAL APPROACH

AUTHORED BY- SHASHWAT VARDHAN

Abstract

Workplace harassment remains a significant concern across industries, disproportionately affecting marginalized groups, including women, racial minorities, LGBTQ+ individuals, and people with disabilities. This article examines workplace harassment legislation through an intersectional lens, exploring the unique challenges faced by these groups in seeking redress. By analyzing the legal frameworks in place, the research identifies the gaps and limitations in existing laws that often fail to address the compounded discrimination experienced by individuals at the intersection of multiple marginalized identities. The study highlights key findings, including the inadequacy of broad, one-size-fits-all policies in protecting the rights of those who face overlapping forms of discrimination. Furthermore, the research provides recommendations for reform, emphasizing the need for laws that are adaptable and nuanced enough to account for the diverse and intersecting experiences of harassment. A comprehensive, intersectional approach to workplace harassment legislation is essential for ensuring that all employees, regardless of their identity, are afforded equal protection and opportunities for justice.

Introduction

Workplace harassment is any unwelcome behavior or conduct in a professional setting that creates a hostile, intimidating, or abusive environment. This includes verbal abuse, physical intimidation, sexual harassment, and discriminatory treatment based on race, gender, sexuality, or other protected characteristics. While harassment can affect anyone, certain groups face disproportionate levels of discrimination and mistreatment, particularly when multiple marginalized identities intersect.

Intersectionality, a term coined by legal scholar Kimberlé Crenshaw, refers to the way various forms of inequality and discrimination interact and compound one another. It emphasizes that the experiences of discrimination faced by individuals cannot be understood in isolation from

one another, as they are shaped by the overlapping and interconnected aspects of their identities—such as race, gender, sexual orientation, ability, and socioeconomic status. The intersectional approach calls for an analysis of how these dimensions of identity interact in the context of systemic inequality.

The need for an intersectional approach to workplace harassment laws is critical. Traditional frameworks for addressing harassment often fail to consider the complex realities faced by marginalized groups. For instance, while legal protections may exist for women, racial minorities, or LGBTQ+ individuals, these protections may not adequately address the overlapping forms of discrimination experienced by someone who belongs to more than one marginalized group. A woman of color, for example, might experience harassment that is both racially and sexually discriminatory, yet traditional harassment laws may not fully recognize or provide remedies for these compounded forms of mistreatment.

Marginalized groups—such as women, LGBTQ+ individuals, racial/ethnic minorities, and people with disabilities—often encounter unique challenges when dealing with workplace harassment. Women, particularly women of color, frequently face both gender-based and racial discrimination, leading to higher instances of harassment and retaliation in the workplace. LGBTQ+ employees often experience harassment based on their sexual orientation or gender identity, with transgender individuals facing particularly high levels of violence and discrimination. People with disabilities may face harassment not only based on ableism but also compounded by other identities they hold. Racial and ethnic minorities, especially Black, Indigenous, and people of color (BIPOC), are often subjected to harassment rooted in both race and ethnicity, leading to further isolation and marginalization.

This article seeks to explore these challenges in-depth by examining existing workplace harassment laws through an intersectional lens. The objective is to assess how well current legislative frameworks address the specific needs of individuals from marginalized communities, and to propose reforms that ensure these laws are more inclusive, equitable, and effective. The scope of the article includes an analysis of key legal frameworks in various jurisdictions, a discussion of the intersectional challenges faced by marginalized groups, and recommendations for legal reforms that embrace intersectionality to create more inclusive and protective work environments.

Legal Framework

Workplace harassment laws are essential in protecting employees from discrimination and harassment in professional settings. In this section, we will analyze key workplace harassment laws from different jurisdictions, including India's Prevention of Sexual Harassment (POSH) Act, Title VII of the U.S. Civil Rights Act, and the UK's Equality Act. While these laws represent significant legal protections for employees, they have notable gaps, particularly in addressing the needs of marginalized groups, such as women, LGBTQ+ individuals, people with disabilities, and racial/ethnic minorities.

India's POSH Act: Prevention of Sexual Harassment of Women at Workplace Act (2013)

The POSH Act was introduced to create a safe working environment for women, addressing the issue of sexual harassment in the workplace. The law mandates that every organization with more than ten employees must establish a complaints committee to handle cases of sexual harassment. The law defines sexual harassment broadly, encompassing physical contact, sexual advances, inappropriate gestures, and offensive comments, among other forms.

However, while the POSH Act represents a progressive step in addressing sexual harassment, it has been criticized for its narrow focus on women and failure to address harassment faced by marginalized groups. The law focuses primarily on gender-based discrimination, leaving out the experiences of other vulnerable groups such as transgender individuals, LGBTQ+ employees, and men. Further, the law lacks provisions for intersectionality, meaning that women of color, disabled women, or women from low-income backgrounds may not receive the protection they need. For instance, a woman with a disability facing harassment may not have the necessary support, as the law fails to address the compounded nature of discrimination that occurs at the intersection of disability and gender.

Title VII of the Civil Rights Act of 1964 (United States)

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. Title VII has been foundational in providing legal protection against workplace harassment in the U.S., including sexual harassment, racial discrimination, and religious discrimination. It covers employees in the private sector, as well as state and local government employees.

While Title VII has been instrumental in addressing workplace harassment, it has several limitations in protecting marginalized groups. First, Title VII's focus on broad categories of discrimination, such as race, gender, and national origin, does not explicitly account for the intersectional experiences of individuals who face multiple, overlapping forms of discrimination. For example, Black women or Latina women who experience both racial and gender-based harassment may not be fully protected under Title VII because the law treats race and gender as separate categories. Additionally, LGBTQ+ employees, especially transgender individuals, often encounter harassment related to their sexual orientation or gender identity. While recent legal interpretations have expanded Title VII protections to include LGBTQ+ individuals, the law still lacks a comprehensive, intersectional framework to address the nuanced experiences of these individuals, particularly in cases where harassment occurs at the intersection of multiple marginalized identities.

Another limitation of Title VII is its requirement for employees to prove that the harassment was “severe or pervasive” enough to create a hostile work environment. This threshold can be difficult to meet for marginalized employees who may experience more subtle, everyday forms of harassment that still impact their mental health and overall workplace experience.

The UK Equality Act 2010

The UK's Equality Act 2010 consolidates and strengthens previous anti-discrimination laws, providing protection against discrimination and harassment based on nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Act also makes it unlawful for employees to harass others on the basis of these protected characteristics. It extends protections not only in the workplace but also in education, housing, and public services.

While the Equality Act provides broad protection for employees, its shortcomings are visible in relation to the intersectionality of discrimination. For instance, the Act offers protection from harassment based on individual characteristics but does not directly address the compounded effects of discrimination that result from the intersection of multiple characteristics. A Black, disabled, lesbian employee, for example, may experience harassment based on race, disability, and sexual orientation simultaneously, but the law does not explicitly recognize the complexity of these overlapping identities. Furthermore, the Act does not provide a clear, legal framework

for addressing intersectional harassment, leading to underreporting and the dismissal of cases where discrimination is not easily categorized into a single protected characteristic.

Additionally, although the Equality Act requires employers to take reasonable steps to prevent harassment, there are still gaps in the implementation and enforcement of this obligation. Many employees from marginalized groups report a lack of awareness, inadequate training, and ineffective reporting mechanisms in organizations, undermining the protections intended by the law.

Gaps and Limitations Across Jurisdictions

Across the three jurisdictions discussed—India, the United States, and the United Kingdom—several key gaps and limitations in workplace harassment laws can be identified, particularly concerning marginalized groups:

Lack of Intersectional Frameworks: One of the most significant gaps in existing workplace harassment laws is the failure to explicitly recognize and address intersectionality. While laws like Title VII and the Equality Act provide protection against discrimination based on certain protected characteristics, they do not account for the compounded experiences of individuals who belong to multiple marginalized groups. This is particularly true for racial minorities, women with disabilities, LGBTQ+ employees, and those who experience harassment based on more than one protected characteristic.

Inadequate Protection for LGBTQ+ Individuals: Although recent legal rulings in the U.S. have expanded the scope of Title VII to protect LGBTQ+ employees, the law still falls short in offering comprehensive protections for LGBTQ+ employees, particularly transgender individuals. Discrimination based on sexual orientation and gender identity remains pervasive, and current laws do not fully address the unique forms of harassment these individuals face.

Insufficient Support for Disabled Employees: Employees with disabilities often face harassment that is not adequately addressed by current laws. In many cases, harassment based on disability is compounded by other forms of discrimination, yet legal frameworks rarely take this into account. Additionally, disabled employees may encounter significant barriers to reporting harassment, such as a lack of accessible reporting systems or inadequate support from employers.

Cultural and Structural Barriers: In many countries, workplace harassment laws are not enforced effectively, particularly in workplaces with hierarchical or patriarchal structures. This is especially true in countries like India, where cultural and societal norms may make it difficult for victims of harassment to come forward, particularly if they are women or belong to lower social castes.

High Thresholds for Harassment: Many legal frameworks require employees to meet high thresholds to prove that harassment has occurred, which can be particularly difficult for marginalized groups. Subtle, everyday forms of harassment—such as microaggressions—often go unaddressed because they do not meet the "severe or pervasive" threshold set by laws like Title VII.

Intersectional Challenges

Marginalized groups—particularly those who experience overlapping forms of discrimination—face compounded challenges when it comes to workplace harassment. Harassment is rarely experienced in isolation from one's identity; rather, it is influenced by a combination of race, gender, sexuality, disability, and socio-economic status. These factors do not simply add up in a linear fashion but intersect in complex ways, creating unique and multifaceted experiences of discrimination and harassment. This section explores the intersectional challenges faced by these groups, analyzing the compounded effects of these overlapping identities and how they influence individuals' experiences of harassment and access to justice.

Compounded Challenges Faced by Marginalized Groups Race and Gender

For women of color, the experience of workplace harassment is shaped by both gender and race. Women of color often encounter racism and sexism simultaneously, a phenomenon known as "intersectional oppression." In addition to facing gender-based harassment, they may also encounter racial microaggressions, stereotyping, and biases that are rooted in their ethnicity. For example, Black women may be subjected to hypersexualized harassment due to racial stereotypes about their bodies, while Asian women may face dismissive attitudes or be stereotyped as "docile" or "submissive" in the workplace. This compounded discrimination can significantly affect their mental and emotional well-being, as well as their professional advancement.

One study found that Black women in the workplace experience sexual harassment at higher rates than their white counterparts, often accompanied by racialized discrimination, but are less likely to report it due to fears of being disbelieved or retaliated against. Additionally, the racial and gendered nature of the harassment can often go unrecognized by colleagues and management, as the harassment may be framed as “cultural” or “personal preference” rather than a violation of workplace rights.

Sexual Orientation and Gender Identity

LGBTQ+ individuals face harassment not only because of their sexual orientation but also due to their gender identity and expression. Transgender individuals, in particular, experience heightened levels of harassment due to the visibility of their gender transition, as well as biases against their non-conforming gender expression. A study conducted in the U.S. found that 59% of transgender employees experienced workplace harassment, compared to 43% of LGBTQ+ individuals who were not transgender.

Lesbian, gay, and bisexual individuals, while not always subjected to the same physical harassment as transgender individuals, still face discrimination rooted in their sexual orientation. Gay men, for example, may be subjected to homophobic harassment that questions their masculinity or sexual practices, while lesbians may face gendered assumptions about their sexuality and experience sexist harassment in addition to homophobia.

For transgender individuals, the challenges are further compounded. Transgender people often face a unique set of challenges that involve misgendering, lack of acceptance from colleagues, and the threat of violence. The intersection of gender identity with other factors, such as race or class, makes the experience even more difficult. For example, transgender women of color may experience harassment not only for their gender identity but also due to racial and ethnic biases, leading to compounded marginalization and a heightened risk of workplace violence.

Disability and Harassment

People with disabilities face significant barriers when it comes to workplace harassment. The harassment directed toward them often stems from ableism—the discrimination and prejudice against people with disabilities. Disabled employees may encounter physical harassment or bullying because of their mobility aids or visible impairments, or they may experience discrimination based on assumptions about their capabilities.

Moreover, individuals with multiple marginalized identities, such as disabled women or disabled LGBTQ+ individuals, face compounded harassment. For example, a disabled woman may encounter sexist harassment on top of ableism, leading to greater vulnerability and isolation in the workplace. In some cases, harassment may be justified by coworkers or supervisors as a result of perceived “helplessness” or “vulnerability,” which further stigmatizes disabled individuals.

A study of workplace harassment among employees with disabilities in the U.S. revealed that 53% of disabled workers experienced bullying or harassment, compared to 33% of their non-disabled counterparts. The unique nature of disability harassment, coupled with societal stereotypes, often leads to underreporting. Disabled workers may be hesitant to report harassment due to fears that they will not be taken seriously or that their complaints will be ignored, which often prevents them from accessing justice.

Socio-Economic Status and Workplace Harassment

Socio-economic status (SES) significantly impacts individuals' vulnerability to workplace harassment. Lower-income workers, particularly those in non-unionized, low-wage, or precarious employment, may be more susceptible to exploitation and harassment. Workers from lower socio-economic backgrounds often have less job security, limited access to legal resources, and fewer options for leaving a toxic work environment. These economic constraints can prevent them from reporting harassment, as they fear retaliation or losing their livelihood.

In addition to these structural challenges, lower-income individuals often face other forms of harassment related to their social class. For example, workers in low-wage sectors, such as service industries or manufacturing, may experience harassment based on their perceived social status, leading to further stigmatization. In these settings, individuals who are racial minorities or women may face additional discrimination based on their combined socio-economic and identity markers.

Case Studies Illustrating Intersectional Harassment

Case Study 1: Sexual Harassment in the Tech Industry (USA)

A prominent case in the U.S. tech industry involved a Latina woman who faced sexual harassment at her workplace, including inappropriate comments and physical advances from a supervisor. In addition to the sexual harassment, she also experienced racial discrimination.

Her colleagues often dismissed her contributions, attributing her ideas to others, and some made derogatory comments about her ethnic background. The compounded nature of the harassment she experienced made it difficult for her to report the incidents. She feared that her complaints would be perceived as “cultural” misunderstandings or that she would be blamed for bringing up issues of race and gender in a predominantly white, male-dominated industry.

Her case highlights how the intersection of race and gender can amplify the experience of harassment, particularly in industries where women of color are underrepresented. Despite her efforts to seek justice, the company's internal investigation failed to address the intersectional nature of the harassment, ultimately resulting in her resignation. This case illustrates how institutional biases and cultural norms within industries can prevent marginalized employees from seeking redress.

Case Study 2: Transgender Employees in the Healthcare Sector (UK)

In the UK, a transgender employee working in the healthcare sector faced frequent misgendering, verbal abuse, and physical threats from colleagues. Her experience was made more difficult by her race and class, as she belonged to an ethnic minority group and was from a lower socio-economic background. Despite reporting the harassment to her HR department, the employer failed to take adequate action, citing the challenges of managing the harassment of transgender individuals. Additionally, her low socio-economic status meant that she could not afford to leave her job, leaving her trapped in an abusive work environment.

This case exemplifies how the intersection of gender identity, race, and socio-economic status can increase vulnerability to harassment and how inadequate legal protections and employer biases can prevent marginalized individuals from accessing justice. The systemic failure to address the compounded forms of discrimination in her case highlights the need for laws that address intersectionality in a meaningful way.

Workplace Cultures and Systemic Barriers

Workplace cultures, often shaped by gendered, racial, and ableist norms, play a significant role in perpetuating harassment and discrimination. Biases in enforcement mechanisms further exacerbate the challenges faced by marginalized employees. Workplace cultures that tolerate or normalize harassment, such as “locker room talk” or “boys' club” mentalities, often perpetuate an environment where harassment is ignored or dismissed. Furthermore, systemic

barriers, including inadequate reporting mechanisms, lack of accountability, and resistance to diversity and inclusion initiatives, create an environment where marginalized groups feel powerless and unsupported.

Biases in enforcement mechanisms, both at the organizational and legal levels, further complicate the ability of marginalized groups to seek justice. Studies have shown that individuals from marginalized groups are less likely to have their complaints taken seriously, and are often blamed for the harassment they experience. These biases are deeply ingrained in both the workplace and the legal system, often resulting in underreporting, inadequate investigations, and a lack of meaningful consequences for perpetrators.

Effectiveness of Workplace Harassment Laws

The success of workplace harassment laws in providing justice and protection for marginalized groups remains a critical issue. Despite significant legal advancements in various jurisdictions, many marginalized groups still face substantial barriers to justice when seeking protection from harassment. The effectiveness of these laws is often undermined by gaps in implementation, including lack of awareness, institutional biases, and inadequate reporting mechanisms. In this section, we will evaluate the success of existing laws, examine the challenges in their implementation, and explore best practices from different jurisdictions.

Evaluating the Effectiveness of Existing Laws

Workplace harassment laws have undoubtedly made strides in providing legal protection and recourse for victims of harassment. Laws such as India's Prevention of Sexual Harassment (POSH) Act, Title VII of the U.S. Civil Rights Act, and the UK's Equality Act have been instrumental in raising awareness about workplace harassment and creating legal frameworks for victims to seek justice. However, their success in protecting marginalized groups—especially those at the intersection of multiple forms of discrimination—has been limited by various challenges.

India's POSH Act

In India, the Prevention of Sexual Harassment (POSH) Act has been a landmark in providing protection against sexual harassment at the workplace. The Act requires employers to establish Internal Complaints Committees (ICCs) to handle complaints of sexual harassment and

mandates the creation of a safe and respectful workplace environment for women. The law was designed to provide women with a legal framework for addressing sexual harassment and ensuring that complaints were heard and acted upon.

While the POSH Act has led to some significant improvements in addressing sexual harassment, it has limitations that hinder its overall effectiveness, particularly for marginalized women. For one, the law is often seen as narrowly focused on gender, leaving out other marginalized groups, including LGBTQ+ individuals, men, and persons with disabilities. The law's focus on women's experiences with sexual harassment can lead to a lack of recognition and protection for those who face harassment based on multiple marginalized identities.

Moreover, the POSH Act is often poorly implemented in many organizations. Small and medium-sized enterprises (SMEs) may not have the resources to set up functioning ICCs or may fail to comply with the legal requirements, which leads to gaps in protection. Additionally, there is a lack of awareness about the law, especially in rural or informal sectors, where workers are less likely to have access to the resources necessary to file complaints. This lack of awareness and poor implementation results in underreporting and limited recourse for many individuals who suffer from harassment.

Title VII of the Civil Rights Act (USA)

Title VII of the Civil Rights Act of 1964 has been a cornerstone of anti-discrimination law in the United States, protecting employees from discrimination and harassment on the basis of race, color, religion, sex, and national origin. Title VII has been instrumental in providing a legal avenue for victims of workplace harassment to seek redress, and its scope has been expanded to include protection for LGBTQ+ employees in recent years.

Despite these advancements, Title VII's effectiveness in protecting marginalized groups has been hampered by several factors. One of the key issues is the high threshold required for harassment to be considered illegal. Employees must demonstrate that the harassment is "severe or pervasive" enough to create a hostile work environment, which can be difficult for victims of microaggressions or more subtle forms of harassment to prove. This limitation disproportionately affects marginalized groups, such as racial minorities, LGBTQ+ individuals, and people with disabilities, whose experiences of harassment may be more subtle but still impactful on their mental health and well-being.

Furthermore, institutional biases within organizations and the legal system often undermine the effectiveness of Title VII. Studies show that Black women and other women of color face significant barriers when seeking redress for harassment, as their complaints are less likely to be taken seriously, or they are blamed for the harassment they experience. The legal process can be lengthy and arduous, which deters many individuals, particularly those from marginalized backgrounds, from pursuing claims. As a result, Title VII, while a critical tool for combating workplace discrimination, has not fully lived up to its potential in providing justice for marginalized groups.

The UK Equality Act 2010

The UK's Equality Act 2010 consolidated and strengthened anti-discrimination laws, providing protection against harassment based on nine protected characteristics. The Act is a comprehensive piece of legislation that aims to address both direct and indirect discrimination, as well as harassment in the workplace. It has been successful in offering legal recourse for victims of harassment and promoting awareness of discrimination issues.

However, similar to the other legal frameworks discussed, the Equality Act has significant gaps in its effectiveness, particularly for marginalized individuals at the intersection of multiple forms of discrimination. While the Act provides protection for a wide range of characteristics, it does not fully address the compounded nature of discrimination that results from the intersection of multiple characteristics, such as race, gender, and disability. For example, a Black disabled woman may face distinct forms of harassment that are not adequately covered under the law, leading to challenges in seeking justice.

Gaps in Implementation

Despite the legal protections provided by these laws, several gaps in their implementation persist, particularly when it comes to protecting marginalized groups.

Lack of Awareness and Education

A major barrier to the effectiveness of workplace harassment laws is the lack of awareness among both employees and employers about their rights and obligations under these laws. In many jurisdictions, employees are not adequately informed about what constitutes harassment, how to report it, or where to seek help. This lack of awareness is particularly prevalent in low-

wage or informal sectors, where workers may not have access to the same resources as those in more formal, higher-paying industries. Without proper education and awareness, individuals are less likely to recognize harassment, report it, or pursue legal action.

For marginalized groups, this lack of awareness is compounded by additional barriers, such as language barriers, cultural norms, and limited access to legal support. Women of color, LGBTQ+ employees, and disabled individuals may be especially vulnerable to harassment, yet may not know that they are entitled to protection under the law or may lack the confidence to report incidents due to fear of retaliation or discrimination.

Institutional Biases and Resistance

Institutional biases play a significant role in undermining the effectiveness of workplace harassment laws. In many organizations, especially those with predominantly white, male, or able-bodied leadership, there is a reluctance to recognize or address harassment, particularly when it involves marginalized groups. These biases can manifest in various ways, from dismissing complaints to failing to take meaningful action in response to incidents of harassment.

The legal system itself is not immune to biases, and marginalized individuals often face additional challenges when attempting to access justice. For example, victims from racial or ethnic minority backgrounds may find that their experiences of harassment are trivialized or dismissed, or that they are subjected to a higher level of scrutiny or skepticism than their white counterparts. These biases contribute to the underreporting of harassment and the failure to hold perpetrators accountable.

Inadequate Reporting Mechanisms

The effectiveness of workplace harassment laws is further compromised by inadequate reporting mechanisms. In many organizations, the reporting process is cumbersome, intimidating, or ineffective. Victims of harassment may face barriers such as lack of confidentiality, fear of retaliation, or lack of trust in the system. In cases where employees do report harassment, investigations are often delayed, or the outcome is inconclusive. This discourages individuals from coming forward, especially if they feel that their complaints will not be taken seriously or that the process will not lead to meaningful change.

In some cases, the reporting mechanism itself may be biased or fail to accommodate the needs of marginalized employees. For example, a worker with a disability may struggle to access the appropriate channels for reporting harassment, or an LGBTQ+ employee may fear that their concerns will be dismissed or ignored due to their sexual orientation or gender identity.

Recommendations and Way Forward

To address the gaps in workplace harassment laws, reforms should include extending legal protections to all marginalized groups, with a focus on race, gender, disability, sexual orientation, and socio-economic status. Laws must recognize intersectionality and provide inclusive protections.

Workplaces should implement mandatory training on unconscious bias, microaggressions, and harassment prevention, ensuring employees are equipped to identify and address harassment. Stronger accountability mechanisms, including accessible reporting channels and timely investigations, are crucial to ensure justice for victims.

Global standards should be established to promote an intersectional approach, guiding policies across borders and encouraging multinational companies to lead by example. Creating inclusive cultures and supporting marginalized employees through training and resource groups will further prevent harassment and foster respect.

Conclusion

Workplace harassment laws have made progress, but marginalized groups continue to face compounded challenges due to the lack of an intersectional approach. This article highlights the need for reforms that recognize the unique experiences of discrimination based on race, gender, disability, sexual orientation, and socio-economic status. An intersectional lens is essential for ensuring that all individuals are adequately protected and supported.

To improve effectiveness, workplace harassment laws must include comprehensive training, accessible reporting systems, and stronger accountability mechanisms. By fostering inclusive workplace cultures and adopting global standards, we can ensure better protection for vulnerable workers. Ultimately, an intersectional approach is crucial for creating safe, equitable, and respectful workplaces for everyone.

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