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# A STUDY ON SEXUAL HARASSMENT OF WOMENS AT WORKPLACE IN INDIA

AUTHOR - KAAMINI.P, SCHOLAR FROM THE TAMILNADU DR AMBEDKAR LAW UNIVERSITY (SOEL)

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#### ABSTRACT

Sexual harassment in the workplace is one of the main difficulties that employees face. It negatively affects people of both genders, though prominently females. This study will mainly focusing the female employees and delve into understanding the effects of sexual harassment in the workplace has on their mental health and working performance of those affected. In addition, the study aims to further our understanding of the various forms of sexual harassment that occur in the workplace. The study will provide an understanding of how sexual harassment in workplace impacts both physical and mental health of female employees, and preventive measures against it. Hence, it may help in attaining knowledge that may help develop the programs against workplace sexual harassment. And this study also provide information about the cases and laws related to sexual harassment do womens at workplace.

Keywords: Sexual harassment, workplace, mental health, performance.

#### INTRODUCTION

<sup>530</sup>Sexual harassment is a tremendously important topic because of its prevalence and impact. In recent decades, there has been a significant prevalence of sexual harassment and gender discrimination across various professions. Workplace sexual harassment is defined by persistent and unwanted sexual conduct, which can take on verbal, physical, psychological, and visual forms. Such behaviors are frequently accompanied by acts of humiliation, insults, or threats that threaten the well-being of the victims. The repercussions of these incidents can be profound, leading to physical, psychological, and emotional distress, as well as challenges within the work environment. This may result in resignations, increased absenteeism, strained interpersonal relationships, counterproductive work behaviors, and a decrease in energy, work efficiency, creativity, and overall job satisfaction.

Sexual harassment in the workplace is a critical issue that affects countless women in India, undermining their rights and dignity in professional settings. Despite significant legal progress, particularly with the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, many women continue to face harassment, often feeling trapped and powerless. The problem not only disrupts careers but also perpetuates a culture of fear and silence, making it essential to address the roots of this pervasive issue. The legal framework established by the 2013 Act aims to provide a safe and supportive environment for women by outlining clear definitions of sexual harassment and mandating the formation of Internal Complaints Committees (ICCs) in organizations. However, the effectiveness of these measures is frequently hindered by inadequate implementation, lack of awareness, and resistance to change within many workplaces.

To create a truly safe workplace, it is vital for organizations to foster a culture of respect and accountability. This includes conducting regular training, promoting awareness, and ensuring robust reporting mechanisms that protect victims from retaliation. By addressing both the legal and cultural

<sup>530</sup> Aloka, J., 2009. Prevalence and management of sexual harassment at the workplace: The case of uganda prison



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dimensions of sexual harassment, India can move towards a more equitable professional landscape where women can work free from fear and harassment, contributing fully to society and the economy.

# **OBJECTIVES:**

- (1) To educate employees about what constitute sexual harassment.
- (2) To provide the suggestions that prevent the women from sexual harassment at workplace.
- (3) To examine the impacts of sexual harassment on womens physical and mental health.
- (4) To examine the case laws related to womens sexual harassment at workplace in India.
- (5) To examine the acts that prevent womens from sexual harassment at workplace.

# WHAT IS SEXUAL HARASSMENT?

> <sup>531</sup>Sexual harassment refers to unwelcome and inappropriate behaviour of a sexual nature that creates a hostile or intimidating environment. It can manifest in various forms, including:

1.Verbal Harassment: Inappropriate comments, jokes, or suggestions about a person's appearance or sexual conduct.

2. Physical Harassment: Unwanted touching, grabbing, or any other form of physical contact.

3.Non-Verbal Harassment: Indecent gestures, suggestive body language, or displaying sexually explicit materials.

4. Quid Pro Quo: Situations where submission to sexual advances is made a condition of employment or career advancement.

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace is a 'sexual harassment' which was defined in section 75 of BNS Act. It can be occur in various settings, including worplaces, educational institutions, and public spaces etc.

# WHAT CONSTITUTE SEXUAL HARASSMENT AT WORKPLACE?

(1) <sup>532</sup>Circumstances of promise (implied or explicit) of preferential treatment in employment;

- > Threat of detrimental treatment in employment,
- Threat about employment (present or future),
- Creating an intimidating or offensive or hostile work environment, or interference with work for the above,
- > Humiliating treatment that may affect the lady employee's health or safety
- Unwelcome sexually determined behaviour (whether directly or by implication) such as physical contact and advances,
- > Demand or request for sexual favours, sexually coloured remarks, showing pornography,
- > Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

(2) Sexual harassment can be quid pro quo harassment and hostile environment:

Quid pro quo Harassment often happens when a supervisor seeks a sexual favor in exchange for providing an employee with an employment-related advantage, such as a raise, promotion, or good job evaluation.

<sup>&</sup>lt;sup>531</sup> Aloka, J., 2009. Prevalence and management of sexual harassment at the workplace: The case of uganda prison

<sup>&</sup>lt;sup>532</sup> Service (Doctoral dissertation, Doctoral dissertation, Makerere University).



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- The hostile environment was acknowledged for the first time in the United States of America to sanction harassing behavior that created an intimidating, hostile, and unpleasant working environment but did not necessarily result in economic loss in reprisal for a sexual demand or proposal rejection. A hostile work environment involves discussing sexual behaviors, unnecessary touching, unsightly gestures, and vulgar insulting language.

# **KEY ELEMENTS OF WORKPALCE SEXUAL HARASSMENT**

Workplace sexual harassment is behaviour that is,

- Unwelcome
- Sexual in nature
- > A subjective nature
- Feels bad
- One sided
- Unwanted
- > Illegal
- Causes anger/sadness
- > Causes negative self-esteem.





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#### <sup>533</sup>IMPACTS OF SEXUAL HARASSMENT FOR WOMENS AT WORKPLACE

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<ul> <li><sup>534</sup>Decreased work performance</li> <li>Increased absenteeism, loss of pay</li> <li>Loss of promotional opportunities</li> <li>Retaliation from the respondents, colleagues/friends of the respondents</li> <li>Subjected to gossip and security at work</li> <li>Being publicly sexualized</li> <li>Depression</li> <li>Anxiety, panic attacks</li> <li>Traumatic stress</li> <li>Sleeplessness</li> <li>Shame, guilt, self-blame</li> <li>Difficult in concentrating</li> <li>Headaches</li> <li>Fatigue, loss of motivation</li> <li>Personal difficulties with time</li> <li>Being ostracized</li> <li>Having to relocate</li> <li>Job and career consequences</li> <li>Weakened support network</li> </ul>
<ul> <li>Loss of confidence and self-es</li> <li>Over all loss of trust in people</li> <li>Problems with intimacy</li> </ul>

 <sup>&</sup>lt;sup>533</sup> <u>https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10698737/</u>
 <sup>534</sup> Antecol and Cobb-Clark. (2006) The sexual harassment of female active-duty personnel: Effects on job satisfaction and intentions to remain in the military. Journal of Economic Behavior & Organization, 61(1), pp.



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ACT PASSED BY THE LEGISLATION RELATED TO SEXUAL HARASSMENT FOR WOMENT AT WORKPLACE:

<sup>535</sup>The Sexual HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION. PROHIBITION AND REDRESSAL) ACT, 2013, commonly referred to as the POSH Act, serves as a legal framework in India aimed at safeguarding women from harassment sexual in professional environments. On September 3, 2012, the Lok Sabha (India's lower house of parliament) passed it. On February 26, 2013, the Rajya Sabha (India's upper house of parliament) passed it. On April 23, 2013, the President gave his approval to the Bill.

The Act went into effect on December 9, 2013. This statute superseded the Supreme Court of India's Vishaka Guidelines for the Prevention of Sexual Harassment (POSH).

The provisions of the POSH Act extend to all women classified as employees, encompassing regular, temporary, ad hoc, domestic workers, contract laborers, probationers, trainees, and apprentices. This legislation is grounded in constitutional rights, including the right to life and liberty, the right to be free from discrimination, and the freedom to engage in any profession or trade.

Key features of the POSH Act include:

- Establishment of an Internal Complaints Committee: Employers are mandated to form an Internal Complaints Committee.
- Filing of complaints: Women are entitled to submit a written complaint regarding sexual harassment to either the Internal Committee or the Local Committee within three months of the incident.
- Inquiry process: The accused party is required to respond to the complaint within ten working days, and the

inquiry must be concluded within ninety days.

- Appeal process: Individuals may file an appeal against the committee's decision within ninety days.
- Measures against false allegations: Disciplinary actions may be imposed on complainants who submit false or malicious claims.

# HOW TO DEAL WITH SEXUAL HARASSMENT AT WORKPLACE?

Addressing Sexual Harassment in the Workplace: In India, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act, 2013) is the legislation that tackles the problem of sexual harassment in the workplace. It requires employers to set up Internal Committees (ICs) to manage complaints of sexual harassment. Moreover, employers are obligated to carry out frequent awareness training on sexual harassment for their employees to inform them about their rights and the procedures for reporting such incidents. The 2013 Act mandates that employers create a POSH Policy, which details the organization's dedication to preventing and dealing with sexual harassment in the workplace. The POSH Act, 2013 is a civil law, and the Internal Committees (ICs) have the authority of a civil court during the investigation. Parties involved in the case cannot be represented by a lawyer, and the burden of proof is based on a preponderance of evidence rather than proof beyond a reasonable doubt. And procedure that is to be followed by Internal Compliance Committee are as follow:

 $\triangleright$ Internal Compliance Comittees: The updated legislation mandates that companies with at least 10 workers establish a Internal Compliance Comittee' at every branch or office. Additionally, the government is required to create 'Local Internal Compliance Comittees' ("LCRBs") at the local district level to investigate complaints of sexual harassment against establishments where 'Internal Compliance the

<sup>&</sup>lt;sup>535</sup> Aggarwal A, Gupta M. *Sexual Harassment in the Workplace*, 3rd ed. Vancouver, BC: Butterworths (2000).



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Comittee' has not been set up due to the establishment having fewer than 10 employees, or if the complaint is directed at the employer. The Sexual Harassment Act details the formation of these boards, the procedure for filing complaints, and the timeline for conducting investigations.

- <sup>536</sup>Temporary Measures: The new law  $\triangleright$ grants the 'Internal Compliance Comittee' and 'Local Internal Compliance Comittee' the authority to suggest temporary measures to the employer, at the request of the affected employee, such as (i) reassignment of the affected individual to another workplace; or (ii) provision of additional leave to the affected individual for up to 3 months beyond their regular leave entitlements.
- Complaint **Submission** and Investigation: Any employee who has experienced sexual harassment within the last three months following the incident is encouraged to report it, in writing, to the Internal Compliance Comittee' or 'Local Internal Compliance Comittee'. The law permits female employees to seek mediation with the 'Internal Compliance Comittee' or 'Local Compliance Comittee' to Internal attempt to resolve the issue, although a financial settlement cannot be part of the mediation process.
- Should the mediation fail or if no mediation was sought, the 'Internal Compliance Comittee' or 'Local Internal Compliance Comittee' is tasked with conducting an investigation and must complete it within 90 days after receiving the complaint.
- Within 10 days following the completion of the investigation, the 'Internal Compliance Comittee' or 'Local Internal Compliance Comittee' is obligated to

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publish a report outlining its findings and recommendations.

The employer is required to implement the recommendations of the report within 60 days of its publication.

There are three possible outcomes:

a. The complaint is substantiated, and appropriate disciplinary action is taken as outlined in the organization's service rules, or if the harassment is severe, the organization is obligated to inform the relevant authorities to initiate legal proceedings under the Indian Penal Code, 1860, which includes provisions for sexual harassment crimes.

b. The complaint is not substantiated due to the complainant's inability to provide evidence, and if there is no malicious intent, the organization decides not to take any action.

c. The complaint is not substantiated, and the complaint was made with malicious intent, action can be taken against the complainant for misconduct under the organization's service rules.

An individual affected by the complaint has the right to appeal to a court or tribunal against the recommendations of the 'Internal Compliance Comittee' or 'Local Internal Compliance Comittee'. This appeal must be filed within 90 days from the date of the recommendation.

# **PROTECTION UNDER CONSTITUTION**

The supreme court rules and regulation have become the law of the nation under Art 141 of Indian Constitution . When a person is sexually harassed hie or her fundamental rights under Art 14 (Right to equality) and Art 15(1) [No discrimination against any citizens in matters related to employment] and it was violation of Art 16(1) Equal employment opportunity and also a violation of Art 19(1)(g) [Freedom to engage in any trade, business, or profession], violation of Art 21 [Right to live with dignity].

<sup>&</sup>lt;sup>536</sup> McDonald P. Workplace sexual harassment 30 years on: a review of the literature. *Int J Manag Rev.* (2012)



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PROTECTION UNDER BHARATIYA NYAYASANHITA, 2023

Under Sec 75 Of BNS, Whoever commits sexual harassment will be punished with imprisonment which may extend to one year or fine or with both. And it is a non-bailable offence .

# CASE LAWS RELATED TO SEXUAL HARASSMENT FOR WOMENS AT WORKPLACE

<sup>537</sup> VISHAKA and ORS Vs STATE OF

# RAJASTHAN

# FACT:

The Vishakha case is named after a nongovernmental (NGO) organization called Vishakha. The NGO works for women's rights in Rajasthan. Bhanwari Devi was working as a community worker to promote women's empowerment and development. She used to raise awareness about anti-dowry and child marriage campaigns. In 1992, she was gangraped by influential members of a rural village in Rajasthan after stopping a child marriage in a Gujjar family. Initially, due to a lack of evidence the accused were acquitted by the local court . Bhanwari Devi and others filed a writ petition with the Supreme Court of India under the Vishakha platform. The filed Public Interest Litigation (PIL) sought to address the issue of sexual harassment of women in the workplace. A three-judge bench of the Supreme Court addressed the case and issued Vishakha guidelines in 1997. The SC bench comprised Chief Justice Verma, Justice Sujata V. Manohar, and Justice B.N. Kripal.

# ISSUE

Whether sexual harassment at workplace is

violative of fundamental rights of womens under Art 14, 15, 19(1)(G), & 21.

# 538 VISHAKA CASE GUIDELINES

The court established a set of guidelines aimed at preventing sexual harassment in the workplace, referred to as the Vishakha Guidelines. The key provisions of these guidelines are outlined as follows:

- Employers, companies, and other responsible individuals in the workplace are obligated to prevent instances of sexual harassment.
- Sexual harassment encompasses: -Physical contact and advances -Requests for sexual favors - Comments of a sexual nature - The display of pornographic material - Any other unwelcome physical, verbal, or nonverbal conduct of a sexual character.
- These guidelines are applicable to all employers, regardless of whether they operate in the public or private sector.
- Employers are required to implement a comprehensive mechanism for addressing sexual offenses. It is essential to ensure that individuals who report harassment are not subjected to discrimination as a result of their complaints.
- It has been determined that incidents of sexual harassment in the workplace must be reported, documented, and communicated effectively.
- All acts of harassment will be addressed appropriately, which may include criminal prosecution and disciplinary action.
- Employers are mandated to establish a complaints committee to handle allegations of sexual harassment in a timely manner.
- The chairperson of this committee must be a woman, and at least half of its members should be female.
- Employers are responsible for educating employees about the Vishakha Guidelines. To mitigate any potential pressure from upper management, the involvement of a third party, such as a

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<sup>&</sup>lt;sup>537</sup> Sojo VE, Wood RE, Genat AE. Harmful workplace experiences and women's occupational well-being: a meta-analysis. *Psychol Women Q.* (2016) <sup>538</sup> <u>https://canary.testbook.com/ias-preparation/vishakha-case</u>



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non-governmental organization, is recommended.

- These guidelines serve as a framework for employers to prevent and address complaints of sexual harassment, thereby fostering a safe working environment for women.
- The Sexual Harassment of Women at Work (Prevention, Prohibition, and Redressal) Act, 2013 has since replaced these guidelines.

# JUDGEMENT

In 1997, the Supreme Court issued landmark guidelines for addressing complaints of sexual harassment. These guidelines, known as the "Vishaka Guidelines," were established in the Vishaka and others v State of Rajasthan case. The court emphasized their implementation until specific legislation addressed the issue. The judgment stressed the significance of international conventions and norms for interpreting gender equality and the right to work with human dignity under the Constitution. The guidelines aimed to provide safeguards against sexual harassment in Articles 14, 15, 19(1)(g), and 21 of the Constitution.

# <sup>539</sup> APPAREL EXPORT PROMOTION COUNCIL Vs A.K.CHOPRA

#### FACT

The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council it was alleged that on 12.8.1988, he tried to molest a woman employee of the Council, Miss X (name withheld by usi who was at the relevant, time working as a Clerk-cum- Typist. She was not competent or trained to take dictations. The respondent tried to sit clase to her and touch her despite her objectiorus and repeated his overtures. Miss X told the respondent that she would "leave the place if he contimaed to behave like that. The respondent did not stop. Though he went out from the Business Centre for a while, he again came back AND RESUMED HIS OBJECTIONABLE ACTS, THE WAPONDENT HAD TRIED TO MOLEST HER PHYSICALLY IN THE LIF ALSO WHILE COMING TO THE BASEMENT BUT SHE SAVED HERSELF BY PRESSING THE EMERGENCY BUTTON, WHICH MADE THE DOOR OF THE LIFT TO OPEN.

#### ISSUE

WHETHER PHYSICAL CONTACT IS NECESSARY TO CONSTITUTE SEXUAL HARASSMENT AT WORKPLACE?

WHETHER EMPLOYER LIABLE FOR SEXAUAL HARASSMENT BY THEIR EMPLOYEES?

#### JUDGEMENT

THIS CASE ESTABLISHED THAT EMPLOYERS ARE LIABLE FOR SEXUAL HARASSMENT BY THEIR EMPLOYEES, AND THAT THEY MUST TAKE PROACTIVE STEPS TO PREVENT AND ADDRESS SEXUAL HARASSMENT IN THE WORKPLACE.

<sup>540</sup>SOME OF CASES JUDGEMENT FOR REFERENCE

 THE INTERNAL COMPLAINTS COMMITTEE OF TATA CONSULTANCY SERVICES VS. TANUJA PRIYA BHAT

IN THIS CASE, THE BOMBAY HIGH COURT HELD THAT AN EMPLOYER MUST PROVIDE A SAFE WORKING ENVIRONMENT, FREE FROM SEXUAL HARASSMENT, AND THAT THE EMPLOYER IS RESPONSIBLE FOR ENSURING THAT THE INTERNAL COMPLAINTS COMMITTEE IS CONSTITUTED AND FUNCTIONS EFFECTIVELY.

POORNIMA ADVANI VS. UNION OF INDIA

THIS CASE HELD THAT THE POSH ACT APPLIES TO GOVERNMENT ORGANIZATIONS, AND THAT THE GOVERNMENT MUST ENSURE THAT ALL ITS OFFICES AND WORKPLACES HAVE INTERNAL COMPLAINTS COMMITTEES IN PLACE TO ADDRESS COMPLAINTS OF SEXUAL HARASSMENT.

• SANCHAYANI SHARMA VS. NATIONAL INSURANCE COMPANY LTD

IN THIS CASE, THE DELHI HIGH COURT HELD THAT SEXUAL HARASSMENT NEED NOT BE PHYSICAL IN NATURE AND CAN ALSO INCLUDE VERBAL OR NON-VERBAL CONDUCT, SUCH AS UNWELCOME ADVANCES, COMMENTS OR GESTURES.

MADHU VS. STATE OF KERALA

IN THIS CASE, THE SUPREME COURT HELD THAT SEXUAL HARASSMENT NEED NOT BE PROVED BEYOND REASONABLE

540 <u>https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2022.1082088/full</u>

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<sup>539</sup> 

https://www.researchgate.net/publication/354461580\_Sexual\_Harassment\_i n\_Workplace\_A\_Literature\_Review



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DOUBT AND CAN BE ESTABLISHED ON THE BASIS OF A PREPONDERANCE OF PROBABILITIES.

• ANJALI BHARDWAJ VS. UNION OF INDIA

THIS CASE DEALT WITH THE ISSUE OF SEXUAL HARASSMENT OF WOMEN IN GOVERNMENT DEPARTMENTS AND HELD THAT ALL GOVERNMENT DEPARTMENTS MUST SET UP INTERNAL COMPLAINTS COMMITTEES TO ADDRESS COMPLAINTS OF SEXUAL HARASSMENT.

• ICICI BANK VS. VINOD KUMAR

THIS CASE HELD THAT EMPLOYERS CANNOT ABSOLVE THEMSELVES OF LIABILITY FOR SEXUAL HARASSMENT BY CLAIMING THAT THE PERPETRATOR WAS NOT AN EMPLOYEE OF THE ORGANIZATION BUT A THIRD PARTY OR A CONTRACTOR.

• KAMALJEET KAUR VS. PUNJAB AND SIND BANK

IN THIS CASE, THE DELHI HIGH COURT HELD THAT THE EMPLOYER MUST ENSURE THAT THE INTERNAL COMPLAINTS COMMITTEE IS CONSTITUTED AND FUNCTIONS EFFECTIVELY, FAILING WHICH IT MAY BE HELD LIABLE FOR NEGLIGENCE.

• VINITA SRIVASTAVA VS. SAHARA INDIA REAL ESTATE CORPORATION LTD

THIS CASE EMPHASIZED THE NEED FOR EMPLOYERS TO ADOPT A ZERO-TOLERANCE POLICY TOWARDS SEXUAL HARASSMENT AT THE WORKPLACE AND TAKE EFFECTIVE STEPS TO PREVENT AND ADDRESS SUCH INCIDENTS.

# SUGGESTIONS

- DEVELOP MANDATORY TRAINING PROGRAMS FOR ALL EMPLOYEES TO RECOGNIZE AND PREVENT HARASSMENT.
- CREATE ACCESSIBLE AND CONFIDENTIAL CHANNELS FOR VICTIMS TO REPORT INCIDENTS SAFELY.
- PROMOTE A SUPPORTIVE CULTURE: FOSTER AN ENVIRONMENT THAT ENCOURAGES OPEN DISCUSSIONS ABOUT HARASSMENT AND SUPPORTS VICTIMS.
- CONDUCT REGULAR SURVEYS: PERIODICALLY ASSESS EMPLOYEE EXPERIENCES AND WORKPLACE CULTURE TO IDENTIFY ISSUES EARLY.
- ENFORCE ACCOUNTABILITY: ENSURE THAT ALL REPORTS ARE TAKEN SERIOUSLY AND THAT THERE ARE CONSISTENT CONSEQUENCES FOR OFFENDERS.

#### CONCLUSION

IN CONCLUSION, ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE IS CRUCIAL FOR FOSTERING A SAFE AND EQUITABLE ENVIRONMENT FOR WOMEN. BY IMPLEMENTING COMPREHENSIVE TRAINING, ESTABLISHING CLEAR REPORTING PROCEDURES, AND PROMOTING A SUPPORTIVE CULTURE, ORGANIZATIONS CAN SIGNIFICANTLY REDUCE INCIDENTS OF HARASSMENT. ONGOING ASSESSMENT AND ACCOUNTABILITY ARE ESSENTIAL TO ENSURE THAT POLICIES ARE EFFECTIVE AND THAT VICTIMS FEEL EMPOWERED TO COME FORWARD. ULTIMATELY, CREATING A RESPECTFUL WORKPLACE BENEFITS NOT ONLY FOR INDIVIDUALS BUT ALSO ENHANCES OVERALL ORGANIZATIONAL HEALTH AND PRODUCTIVITY.

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