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# DUE PROCESS VS. VICTIM JUSTICE: A CRITICAL ANALYSIS OF INSTITUTIONAL RESPONSE TO SEXUAL HARASSMENT ALLEGATIONS

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## ABSTRACT

This paper is an analysis of due process versus victim justice in institutional rapprochement to sexual harassment accusations. It discusses the way the law system and the concepts of ethics and the organisation policies interact in cases like that. The overriding issues discussed during the analysis pose the problem of prioritizing rights of an accused with the protection of victims. It takes into consideration the relevant legislations which include Title VII, Title IX and international regulations in order to find compliance and equity. Ethical and cultural obligations are also taken into account during the research, not in the form of law. The results indicate that successful coping with the criteria of procedural fairness, transparency, and the favourable environment are needed. The paper highlights the importance of proactive prevention, specific policies and ethical leadership as responses to prevalence of harassment, which is to be handled reasonably and with justice on both sides.

**Keywords:** Victim equity, Institutional reciprocation, Sexual hassle, Liability, Fairness

## INTRODUCTION

This piece of work is meant to critically look at the approach taken by the institutions when trying to balance due process and victim justice when handling a case of sexual harassment. It is vital to strike due process and victim justice in terms of credibility and fairness [1]. The research will examine the effect of these reactions in safeguarding the rights of the accused and the complainant. It will also evaluate institutional policies and action impacts on trust, accountability and perception to the population. This is aimed at making proposals on more balanced and efficient approaches [2].

## PURPOSE OF THE STUDY

Sexual harassment is a worldwide aspect which has been experiencing the problem across labour areas, schools and even the streets. Accusations usually lead to a situation of confusion of legal rights and ethical responsibilities [3]. Due process is used to accentuate the importance of fairness, impartiality, and being guarded against false charges. Victim justice is aimed at the legitimization of consultations, support, and

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promptness [4]. Social movements, media focus, and legal codes put pressure on the institutions to handle the cases successfully. There are policies and legislation which define protocols on investigation and resolution applied in most countries [5]. Nevertheless, the application is different and the conflict between due process and victim justice is still an issue.

## **IDENTIFICATION OF THE PROBLEM**

One of the problems is the lack of open, balanced and fairly applied policies. The other can be damaged by an excess focus on one. The insensitivity on the side of due process can discourage incidence reporting by the victims. Prioritizing justice to the victims and pursuing it without the evidence protection mechanisms can be dangerous as one might be falsely accused [6]. Institutions should thus develop mechanisms that will promote fairness as well as transparency and resolution within an acceptable time frame. The research is important since it resolves research gaps related to existing practices and points out the relevance of bipolar frameworks [7]. It will also be included in the policy debate on how to establish safe environments and at the same time safeguarding the rights of the parties involved.

In spite of legislation and institutional rules, the reactions to the reports of sexual harassment remain rather unstable and disputable. Investigations are delayed or even not launched in some institutions due to which accusations about negligence arise [8]. Other individuals are fast at it but fail in following due process which might lead to allegations of bias or injustice. This lack of consistency breeds distrust in the system and this may result in a damaged reputation. Victims might find themselves unprotected and their accused might find they have no right of defence [9]. One of the main shortcomings is that there are no open, fair and evenly enforced policies [10]. Critical analysis and evidence-based recommendations can add to this study with an aim of resolving these issues.

## **SIGNIFICANCE OF THE STUDY**

Due process is a legal concept that prescribes that justice takes place in the investigation and judgment process. It protects people against any unnecessary or unfair acts [11]. In sexual harassment, any form of due process puts an emphasis on established rules that involved a rigorous and impartial investigation should precede any conclusion. The due process grants protection to the accused but can be used to deny justice to victims in case it is not efficiently executed [12]. The opponents of this approach believe that too inflexible procedures can suppress prompt response by the institutions, especially in cases where emotional damage is serious. There will be the issue of seeking the right balance of responsiveness and fairness.

Victim justice is about the process of confirming what has happened to the victims and making swift corrective generations. This procedure should focus on the safety of the remaining person, respect the dignity and emotional well-being [13]. The movements like MeToo have solidified this way, as they brought about greater interest in what the victims of the violence might say [14]. Nevertheless, victim justice at times attracts criticism because it acquires procedural safeguards. Due process is not provided. There may be a

risk of reputational damage of the one accused [15]. The conflict between the suffering of the victims and fair treatment in the law is a big debate.

## CRITICAL ANALYSIS OF THE ISSUES

Institutions are the main concern in regard to the allegations. The author of this argument states that the policies that have the desired purpose have to be related to both legal determinations and moral responsibility [16]. Colleges, employers and other authorities are under immense pressure to respond in an open and fair manner. The loss of trust between victim and society occurs in case of failure by institutions to take drastic steps [17]. On the other hand, aggressive counter reactions that lack careful investigation can be in the form of complaints of biasness. This dual obligation is a complicated one and can only be balanced.

Not all different jurisdictions approach the due process and justice to the victim in the same manner. Title IX guidelines prescribe the procedures that educational institutions have to follow in the United States. The recent alterations to *Title IX* have tried to enhance the rights to due process without detracting the protections available to victims [18]. The United Kingdom has the *Equality Act 2010* as the legal framework to tackle the issues and employs an institutional interpretation [19]. Diversity on the law framework brings discontinuity in application. This contradiction so nourishes the polemic concerning institutional reactions.

Other researchers note that introducing due process too early may cause the re-traumatization of victims. It points out that this aspect of psychological distress can be compounded by repetitive questioning and extended delays in the solution [20]. Victims can take such processes to be prejudicial against the accused. A study implies that most of the survivors drop complaints as a result of fatigue in cases where proceedings are lengthy [21]. These results indicate that the institutions should create methods that safeguard the rights without subjecting their victims to undue burdens.

However, even as victim-centred approaches are deemed important, there are critics who urge against the need to ignore the principles of fair trial. The lack of justice that pre-judges a person on solely the accusation is a crime [22]. Examples of cases where the institutions jumped into conclusions without substantial evidence has led to the wrongful dismissal cases. This has an impact not only on the accused but also has the ability to compromise institutional credibility. Justice systems run into a risk of allowing judgment based on evidence to convert on the basis of perception unless due process is observed. It is thus necessary to have balanced protocols [23].

Some of the authors suggest the incorporation of the due process and victim justice into one. Trauma-informed investigations that incorporate the respect of other people where procedural fairness is observed [24]. These would comprise trained investigators, specific timetables and support systems of the concerned parties of the investigation. To bridge the gap, the idea of restorative justice holds a potential because it brings both the victim and the accused into the resolution procedures when it is needed [25]. Schools with

a hybrid approach also minimize the competition in court and a negative psychological impact on students according to the experiments [26].

Although a great amount of research has been conducted, weaknesses can still be found in the long-term effects of institutional responses. Most of the studies have concentrated more on short-term results leaving little about development over a long period of time. The importance of having cross-cultural research since the responses would differ according to societal norms and laws. Technology further increases the complexity. Online harassment is a new challenge to due process and justice to victims [27]. Next-generation frameworks are to be supplemented with digital evidence management, cross-national policy convergence, and consistent training of the decisionmakers [28]. The need to reconcile theory and practice is one of the most important aims of scholars and institutions.

The argument demonstrates that the two concepts of due process and victim justice play a critical role in the matter of sexual harassment allegation. The requirements of due process protect justice and fairness and guards against false accusations. Victim justice is concerned with support, validation and action in time on behalf of survivors [29]. Either way, there can be an imbalance that gives way to injustice. Institutions should come up with mechanisms that balance the rights of the accused and shield the victims against future victimization. Proportionate arrangement enhances credibility, fair play and belief.

One challenge the institutions have to deal with is the issue of reacting fast without affecting the quality of investigation. One has to have clearly explained, consistent and transparent policies. Moral responsibility should be possessed in addition to legal demands [30]. Evidence-based decision-making is to be joined with empathy and sensitivity. Organizations implementing this strategy have higher chances of obtaining the trust of the masses and the minimization of conflicts. The development of a system that incorporates victim support and legal protection is also essential to long term credibility [31].

Reactions to accusations are quite different in different systems of law and culture. This allows such deviation to impact the interpretation and implementation of due process and Victim justice [32]. In other societies, there are greater legal safeguards and in others, social pressure informs any results. The differences have to be taken into consideration by a global institution. The policies are to be changed to incorporate cultural norms without compromising equity or protection of the survivor. International education helps the world institutions to learn how to conduct their practices [33].

## ETHICAL IMPLICATION

The cases of sexual harassment demand a healthy balance between respect of the due process and the advocacy of the victim. Hostile work environments and quid pro quo harassment are identified in *Title VII of the U.S. Civil Rights Act (1964)* as being unlawful [34]. The mandate of institutions is to abide by this legal standard without neglecting the importance of timely and respectful assistance to the victims. The principles of the presumption of innocence should be preserved, and a detrimental effect of such false

accusations should be avoided by ethical systems [35]. Equitability towards both sides create confidence in the institutional procedures.

Specific acts like Title IX (education), laws that introduce special acts to regulate workplaces and applications occur at institutional levels. **Title IX** also requires schools to respond in an efficient and equitable way to any sexual harassment in the premises. Ethical implication comes about when the institutions advance the practice of minimum compliance instead of prevention. Such avoidance wastes requirements in the law and moral responsibility. The **Indian Vishakha Guidelines and the later 2013 Act** hold the employers responsible to ensure a safe workplace and outline the redressal mechanisms of grievance [36].

There is also the risk of the result that is purely compliance-based responses that will make ethics a box ticking situation. **Title VII** and **Title IX** training reviews indicate that compliance-oriented approach can be a predisposing factor to ethical fading, in which legal requirements hide moral judgment [37]. Ethical leadership is to be in addition to the law. Ethical behaviours within the institutions needs to be embedded into a culture, rather than enforced. This transition respects the law and rights of people who are exposed to harassment.

The federal direction on sexual misconduct is changing, which affects due process rights. The **2011 Dear Colleague** letter focused on the protection of the victim and critics alleged that it impaired due process against the accused [38]. The later Title IX amendment in the Trump regime restored some of the due process protections, including the use of cross-examination, and more explicit definition of the evidence levels.

The law usually demands privacy in harassment cases in order to safeguard people. There is a violation of privacy, which implies even more harm and legal liability. Ethical practices place certain requirements on safe management of evidence and confidentiality on personal information [39]. Courts believe that confidentiality is the essence of protecting dignity and retaliation. Institutions need to strike between openness and confidentiality in order to maintain both fairness and humane feelings.

It is the ethical duty of institutions to have transformed the culture which facilitates harassment. A court may do so in a legal precedent such as **Meritor Savings Bank v. Vinson** underlines that **Title VII** is also violated even without economic losses [40]. **Title IX Courts** identify schools that are deemed as liable where there is deliberate indifference [41]. To make progress morally, prevention of incidents is necessary. It should be instilled in institutions to have preventive training, ethical audits and accountability systems.

## CONCLUSION AND RECOMMENDATION

In the analysis, it has been noted that there is a necessary fair weighting between due process and victim justice in redressing the sexual harassment charges. The application of due process safeguards the rights of an accused and delivers evidence-based decisions. Victim justice ensures safety, backing and endorsement

to the victims. The two principles are necessary to institutional credibility. Otherwise, without balancing them, mistrust, lawsuits, and even lost prestige, may happen. Institutions should not be biased in the course of investigations and should not discriminate against any voice of a person.

The solution proposed to the institutions is to apply specific and coherent policies on sexual harassment cases. These ought to have clear time frames, objective investigation processes and confidentiality protections. Victims ought to be provided with counselling, offered the protection of retaliation and legal assistance. Staff training, investigator training and decision maker training should involve the training on both legal requirements and trauma informed care. Policy reviews need to be on a regular basis to maintain compliance with the best practices and current laws.

It is also anticipated that institutions become closely associated with the legal sector, advocacy organizations and community organizations. This has the potential of improving fairness and support of victims. Leaders should be ethical role models to help guide them on how to approach things and the policies that become enacted should be evenly applicable to every situation. Trust can be built among stakeholders through open communication regarding processes and the outcome which will respect the privacy of stakeholders. The best option and most sustainable is a balanced way that upholds the rights of individuals using an approach that enables the victims to get justice and the institution to uphold justice and integrity. This bipolar accentuation guarantees the level of legal norms and ethical responsibilities to be satisfied.

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