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A Systematic Review of Maldivian National Laws to Combat Workplace Bullying

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ABSTRACT *Bullying has been identified as a leading workplace stressor because of its debilitating effects on individual employees, groups of employees, and organizations. A vast literature explores the nature and consequences of workplace bullying and demonstrates the need for the protection of employees in the workplace, such as through laws and policies. While some organizations include policies on workplace bullying and some laws can be applied to address workplace bullying, few seem to use these mechanisms to seek redress. Hence, this systematic review evaluates the complaint procedures, protection, prevention, and effectiveness of the current laws and policies on workplace bullying within the Maldivian context. The paper then discusses why seeking legal recourse from bullying rarely occurs through the legal system. A systematic analysis supplemented with five semi-structured interviews of key informants (members of the employment tribunal, lawyers, court judge, and registrar) was carried out to obtain an in-depth understanding of the current situation in the Maldives. The analyses reveal that the Maldivian legal system has many gaps that result in little or no protection from bullying in the workplace. The current legislative and regulatory framework does not adequately recognise the power that employers have over employees in certain types of bullying, and it mainly focuses on the protection from and prevention of “bullying” in the form of sexual harassment in the workplace. The Maldivian Constitution, which guarantees fundamental rights and freedoms to all persons in Chapter II (Arts. 16-69), is vague when it comes to addressing bullying. This study acknowledges that workplace bullying policies are only one range of interventions for addressing bullying. Other methods of prevention are required to deal with bullying in workplaces.*

Keywords: Workplace bullying, Laws, Policies, Protection and Prevention

Introduction

Bullying can affect anyone in any job regardless of what task they perform, what kind of people they work with, or what industry they are a part of (Askew, Schluter, & Dick, 2013). It undermines the victim’s deepest sense of self. Thus, it negatively impacts victims’ mental and social health and arguably undermines their pride and self-esteem (Cassidy et al., 2014; Cynthia Mary, 2018; Devi Akella & Jordan, 2014). However, bullying is often concealed and goes unrecognised until it becomes so unbearable for the targets that they can no longer work and face

further harassment (Caponecchia, & Wyatt, 2011).

Since the 1990s, research on workplace bullying has expanded (McDonald et al., 2015). Namie and Namie (2013) point out that bullying goes unreported within the workplace for two reasons. Firstly, workplace bullying is not clearly defined, making it difficult to identify when bullying has occurred. Employers and human resource professionals, let alone those nationally tasked with protecting workers, do not seem to understand what constitutes bullying as illustrated by Matsson and Jordan (2021) with respect to Sweden. Secondly, many countries, including the Maldives, have limited legislation regarding workplace bullying. This leaves targeted employees without adequate legal redress despite copious evidence demonstrating the detrimental impacts of unhealthy work settings. According to Cowan (2011, 2012), bullying in the US is considered a low priority due to the lack of a clear policy on how to handle it when it is not illegal (unlike sexual or racial harassment, which is specifically protected against). Additionally, HR personnel seem perplexed by the variety of terms used to characterize behaviours that are synonymous with bullying (Thirlwall, 2015). Bullying at times concealed due to the vague manner in which it is interpreted.. For instance, in India, reporting workplace bullying is often perceived as unprofessional due to prevailing workplace norms, leading to underreporting and a lack of acknowledgement. (D’Cruz, 2012; D’Cruz & Noronha, 2010). In a similar vein, Bishop, Korczynski, and Cohen (2005) observed that managers in a UK organization take the side of customers, and fault employees when they face threats of violence from customers in the workplace, which has led to underreporting and subsequent invisibility of bullying.

Despite this, some countries are creating new workplace bullying laws and codes of behaviour to safeguard the rights of all parties. For example, consider the Code of Practice, which was developed in compliance with the Safety, Health, and Welfare at Work Act of 2005 and is intended to address and prevent bullying for both employers and employees in Irish workplaces. Targets of bullying appear to have easier access to remedies in countries such as Spain and Chile where the Civil Code (Germany) or tort law (United States, Australia) serve as the main legal pathways, even in the absence of anti-bullying legislation. These nations have a constitutional guarantee of workers’ rights to dignity (Saunders et al., 2007). The oldest and only regulatory framework that has been the focus of an earlier investigation into its efficacy is the Swedish one (Hoel, 2009), which refers to “Victimisation at Work,” which clearly emphasizes the employer’s responsibility for carrying out preventive measures and, to support such an approach, a set of general guidelines. Further, it creates a duty for employers to swiftly investigate, mediate, and counter any instances of bullying as well as implement preventative organizational measures against workplace bullying (Swedish Legislation, 2014). Furthermore, there seems to be support from the public for anti-bullying laws as bullying harms both the target and the wider organization (Ferris, 2004). According to the Workplace Bullying Report published by the Workplace Bullying Institute in 2014, 93% of businesses are in favour of the implementation of workplace bullying laws such as the Healthy Workplace Bill. The lack of laws on workplace bullying leaves victims without appropriate legal remedies (McDonald et al., 2015; see also Cynthia Mary, 2018). The latter will be the focus of this paper.

Bullying is an escalating process through which the bullied individual, who has lesser power in the context, is subjected to a series of negative social behaviours

(Björkqvist et al., 1992; Einarsen, 2000; Einarsen et al. 2011; Leymann, 1990b; Zapf and Gross, 2001). In the beginning, bullying behaviour is indirect and discrete in nature and at later stages, it becomes more direct and aggressive (Björkqvist et al., 1992), physically, or psychologically (Einarsen et al., 2011). If, on the other hand, the incident is a one-time occurrence or if the parties involved are of roughly equal power, the dispute cannot be classified as bullying; rather this would be identified as a conflict (Einarsen et al. 2011). Thus, as Einarsen et al. (2011) state, “bullying at work means harassing, offending, or socially excluding someone or negatively affecting someone’s work. For the label of bullying to be applied to a particular activity, interaction, or process, the bullying behaviour must occur repeatedly and regularly (e.g., weekly) and over a period of time (e.g., about six months)” (p. 22).

Power imbalances are important to understand workplace bullying since the processes through which bullying occurs and how it should be addressed are determined by these dynamics (Caponecchia, & Wyatt, 2011). Power is not just the capability to influence others but the potential to influence others (Caponecchia, & Wyatt, 2011) and power differences between victims and perpetrators are a defining characteristic of bullying (Leymann, 1990). Despite this, limited research explores the bullying process and explains the power within it (Frazier, Tix, and Barron, 2004; Ireland and Webb, 2007).

A recent study on workplace bullying in the tourism industry of the Maldives (Leeza & Kumar, 2023), shows that the preponderance of victims of bullying did not seek help either from their department, human resources, union, or any other office or service. Explanations from victims, indicate that the power supervisors hold within organizations and loopholes in employment law leave them with little confidence in protection within the process. Hence, this paper aims to explore the legal framework used to address workplace bullying in the Maldives, to understand why employees rarely seem to use these policies and procedures (potential legal options) for workplace bullying claims, and to examine the effectiveness of such policies and procedures.

Methodology

A systematic analysis supplemented with semi-structured interviews of key informants was carried out to provide an in-depth understanding of the current situation in the Maldives. The researchers planned their investigation and data gathering in a manner that both protects the anonymity of both institutions and individuals and does not infringe on the rights of participants (see Creswell, 2011). A systematic analysis (beginning with the Maldivian Constitution, or “Qaanoon Asaasee,” and the Employment Act of 2008) was carried out to gain a clear understanding of the current situation regarding the legal recourses accessible to bullying victims in the Maldives since there is no specific legislature on bullying.

In addition, key informants, i.e., members of the Employment Tribunal, lawyers, a judge, and a former Registrar/administrator of the Civil Court, were interviewed. For key informant participants to grant informed consent to participate in the project, they were first briefed through email about the study. Upon receiving permission, participants were interviewed face-to-face. Interviews were open-ended and lasted 45 minutes to an hour. The recordings were then transcribed verbatim. The results were then classified and grouped according to common

themes (Kiger & Varpio, 2020). Privacy and confidentiality were maintained in the storage and use of data throughout the duration of this research.

Review of the Legal System in the Maldives

Background

The Maldives law is a confluence of its many influences. As a British colony in the Nineteen Century, the legal system is based on a written constitution and English Common Law. As Islam is the state religion, Islamic Law is also integrated into the legal system. The Government of the Maldives, based on a multi-party presidential political system, consists of three powers; that is, the Executive, the Judiciary, and the Parliament, who work independently, resembling an American-style separation of powers (Suood, 2014). Bills are submitted through ruling parties and private bills are submitted by individual members of the Parliament. Article 92 of the Constitution provides that a bill passed by the People's Majlis (Parliament), shall become law when ratified by the President. Such laws shall come into force when they are published in the Government Gazette, or on such later date following publication as stipulated in the statute. In addition, there are various statutory bodies set up as per the Constitution and laws of the Maldives.

The Maldives did not have any written laws until the proclamation of the first written constitution on December, 22, 1932 (Amin, 1951). The first piece of legislation enacted by the Parliament was called Ahkaam Aamma, or the Public Administration Act, and was aimed to create various government departments with specified mandates (Suood, 2014). Within nine months, Parliament passed more than 40 pieces of legislation covering subject matters relevant to the day-to-day lives of people. However, the Maldivian society was not used to tight regulation, causing hardship and confusion to the public (Suood, 2014). Since then, seven Constitutions have been created in the years 1932, 1942, 1953, 1954, 1968, 1997, and 2008 in the Maldives (Ibrahim & Karim; 2013).

In 1994, the 'Employment Regulation' was formed by the President's Office, which published all relevant policies and proclamations in a single volume. These 'Regulations' became the fundamental cornerstone of regulations pertaining to the employer-employee relationship and include provisions regarding a range of procedures including hiring, terminating, promoting. The Employment Regulations mainly focuses on government or public service appointments; regulations specific to the private sector were also enacted under the direct authority of the President. These private sector regulations were made possible through provisions under the current Constitution, which allows Presidential proclamations to carry the force of law. Overall, these regulations provided minimum standards for employment agreements, which specified minimum age, working hours, training, medical treatment, and protection when injuries are sustained at work. Over the years, many proclamations and policies were established and announced by the Public Service Division of the President's Office (Suood, 2014).

In 2008, a few months before the current Constitution of came into effect, the Employment Act came into force, which was a more systematically developed set of

provisions, unlike the Employment Regulations and the presidential proclamations relevant to the private sector. In addition, in 2013, the government ratified the eight fundamental International Labor Organization (ILO) Conventions dealing with four categories of fundamental principles and rights at work. This includes the Forced Labor Convention, 1930 (No. 29), the Abolition of Forced Labor Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labor Convention, 1999 (No. 182; Ministry of Foreign Affairs; 2020). Thus, the twenty-first century has resulted in several legislatures that are specifically designed to regulate the employer-employee relationship and provide protections to working people.

Laws, Policies, and General Precautions for Preventing Workplace Bullying

In the Maldives, there are no explicit laws or regulations that address bullying at work. Additionally, none of the legislation provides any specific provisions regarding workplace bullying. However, there are clauses in the Constitution, legislation, and treaties that the Maldives has ratified that can guard against workplace bullying. These are the notable articles:

The Constitution of the Maldives

Article 17 of the Constitution of the Maldives, “everyone is entitled to rights and freedoms without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinions, property, birth or another status, or native land,” applies equally to citizens and non-citizens. While Article 20 of the Constitution legally guarantees individuals equality, Article 21, guarantees the right to life, liberty, and security, Article 23 (c) guarantees reasonable measures by the state for the provision of good standards of healthcare, both physical and mental, and Article 25(a) abolishes slavery, servitude, or the performance of forced labour. Perhaps most directly relevant is Article 37(b), which reads: “Everyone is entitled to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion.” These provisions of the constitution would make bullying unlawful.

Law No: 2/2008 (Employment Act)

The Maldives Employment Act provides the fundamental principles of employment, the rights and duties of employers and employees, creates the Labour Relations Authority and Employment Tribunal to uphold these rights and makes provisions for any other employment-related issues (Article 1 (a)) to be handled by these entities. Article 3 states that no person shall be compelled or forced into employment. “Forced employment” means any services or labour obtained from a person under threat of punishment, undue influence, or intimidation; in other words, it excludes any services or labour performed of the individual’s own volition.

Additionally, Article 4(a) prohibits discrimination based on several categories (race, age, disability, social standing, religion, political beliefs and affiliations, gender, or marital status and family commitments) in the way work is allocated or rewarded. It also states that discrimination in training, work conditions, dismissals, or grievance handling is illegal. Therefore, as bullying targets individuals or groups of individuals and subjects those to unfair work practices, Article 4 can be used to address bullying. The Employment Tribunal does not classify workplace bullying in its classification of complaints, since there is no regulation that addresses it by name. But considering Article 2(b) of this Act, organizations have the option to add unique regulations addressing workplace bullying: *“This Act does not prevent the entering into of any agreements between the employer and the employee which guarantees the rights specified in this Act to a greater extent than provided herein”*.

Article 2(c), conversely, clarifies that an organization may not have policies that are inconsistent with the act, and therefore provides a space to challenge work policies that are unfair: *“Any provision of any regulation or employment agreement which prevents or impedes the receipt of any rights or benefits, conferred by this Act on an employee shall be void”*.

Other provisions also have implications to bullying. Article 15(a) clarifies work conditions and unacceptable unfair work practices that could constitute bullying: *“every employer shall provide each employee with a written job description detailing the duties and scope of employment”*. Also, imposing disciplinary measures on employees has been specified in Article 19(a) to 19(d), *“Where the employee does not conform to work ethics, the employer has the power to impose appropriate and reasonable disciplinary measures. Article (b) defines “disciplinary measures”*: ranging from (1) counselling; (2) caution in writing; (3) suspension from employment for a period not exceeding 14 days; and (4) demotion. Thus, although no explicit mention of bullying is found in the act, many of its provisions would make at least some forms of bullying illegal.

Law No: 16/2014 (Prevention of Sexual Abuse and Harassment Act)

As specified in its name, this Act focuses on sexual abuse and harassment. It clarifies what sexual abuse and harassment are and the responsibilities of different entities in ensuring that such harassment and abuse do not occur in organisations. In this Act, *“sexual abuse and harassment”* means a sexual act committed by another against or in relation to a person without the former person’s consent. Further, when the victim infers, comprehends, understands, or interprets a sexual intent from the speech, words, writings, drawings, image, sound, act, movement, look, or any other act of a person who performs such an act, the act deems it to be a sexual act against a person for the purposes of Article 2(a).

In summary, this statute defines *“harassment”* as abuse, does not specify bullying, and focuses mainly on protection from and prevention of sexual harassment in the workplace. Further, because the statute is clear and precise, that the perpetrator may not appeal against the decision of the committee in the court or tribunal reserving jurisdiction, since it provides strength to the victim. However, the Law

gives equal rights to appeal to both the perpetrator and the victim.

Law No: 17/2014 (Sexual Offence Act)

The purpose of this Act is to “provide for the sexual offences in the Maldives and the procedures relating to those offences’ (Law No: 17/2014; Sexual Offence Act). It aims to facilitate legal processes relating to sexual offences, and determine what constitutes sexual offences, including definitions of consent, and associated penalties for perpetrators and compensation for victims. It also prescribes preventive actions and a procedure to make information on offenders public. Therefore, this act also leaves out non-sexual offences at workplaces, such as bullying.

Law No: 17/2014 (Sexual Offence Act)

The goal of this Act is eloquently stated in its name. “Achieve gender equality in the Maldives, policies to prohibit discrimination based on gender in the Maldives, and the duties and responsibilities of State institutions and other relevant parties to achieve gender equality in the Maldives” (Law No: 18/2016; Gender Equality Act). Further, Article 18 of this Act stipulates that all government agencies and private organizations should take adequate steps to achieve the following objectives: abolish all systemic discrimination caused by established systems with unequal practices; promote equal opportunities for men and women; and promote notions and ideas of gender equality to eliminate undesired preconceptions against a certain gender.

In addition, Article 19 (a to d) guarantees equal opportunity, through (a) eliminating weaknesses or difficulties caused by inequality between men and women, (b) reducing the negative effects of inequality between men and women, (c) facilitating the special needs of a particular gender to achieve ease of attainment of services, and (d) evaluating the degree of participation of each gender in public life and public services and taking appropriate steps to balance such participation. Furthermore, it is appropriate to interpret Article 2(d) of this Act, “to protect human dignity,” to incorporate the indignity of bullying; yet the connection is broad and tenuous to be unambiguously appropriate to address workplace bullying.

Law No: 7/2012 (Public Health Protection Act), Law No: 13/2015 (Health Care Professional Act) and Law No: 29/2015 (Health Service Act)

Law No: 7/2012 (Public Health Protection Act) Law No: 13/2015 (Health Care Professional Act) and Law No: 29/15 (Health Services Act) ensure a good standard of healthcare for the population, protection from hazardous agents for health by prevention, and providing appropriate care of a reasonable quality. All these Acts have a “General Guideline on Workplace Standard,” which can be applied as anti-bullying clauses. Therefore, this Act has enforced anti-bullying clauses to protect victims from physical injuries but lacks protection from psychological injuries and power differences caused within the workplace.

International Conventions)

The Maldives, having adopted the Universal Declaration of Human Rights (UDHR), must abide by the articles 5, 7, and 23. Article 5 reads “*No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment*”. Article 7 reads “*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*”. Article 23(1) reads, “*Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment*” while Article 23(3) reads, “*Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*”

Therefore, there are several legal provisions to address bullying, even if they are not explicitly targeting it. Next, we explore the structures created in the Maldives to implement these provisions.

Affiliating Authorities, Complaints, Appeal, and Closure regarding Workplace Bullying

Although no specific mention of workplace bullying is found in the law, there are three external bodies (the Labour Relations Authority, the Employment Tribunal, and the Civil Court) that will accept a complaint. They differ, however, in terms of who may file a complaint and what processes are applicable.

The Labour Relations Authority (LRA)

The LRA was established under Article 77 of the Employment Act. The functions of the LRA are to observe compliance with the Act and implementation of all necessary ‘administrative measures’ required to secure compliance and ensure awareness of the Act’s provisions, provide technical information and advice to employers and employees, inform the Minister of issues that arise because of gaps in the provisions of the Act, and issue regulations governing employer and employee relations (Law No 2/2008; Employment Act).

The Employment Tribunal

The Employment Tribunal of the Maldives was established in December 2008 pursuant to the Employment Act. The aim is to provide an efficient and timely solution to the cases submitted in relation to the conflict between employees and employers in the work environment (Employment Tribunal, 2020). According to Article 29 of the Act, in view of a complaint, the Employment Tribunal has the power to issue orders requiring the reinstatement of the employee to the post they occupied or a similar without prejudice and with appropriate compensation. The Employment Tribunal has full powers to review and deliberate on any matters related to the Employment Act or any other law if no contravention exists of the

Act itself or agreements between the employer and employee.

Civil Court

The Civil Court has jurisdiction over all civil issues, except for family conflicts, those subject to territorial restrictions set out in Article 69 of the Law No.22/2010 (Judicature Act of the Maldives), and any other law-enforced exclusions (Soodh, 2014).

High Court

All decisions rendered by lower Courts are appealable to the High Court, while those of the High Court are appealed to the Supreme Court by a party dissatisfied with the outcome. According to the Law No.22/2010 (Judicature Act of the Maldives), in the absence of a statutory exception, the High Court will hear appeals of all judgements and judgements from lower Courts and Tribunals (Articles 31(a) and (b)). A case's outcome before the High Court will also be based on the evidence and defences presented in lower courts (Article 32a). Additionally, the High Court has the authority to rule on cases that have been presented by parties to the dispute and deemed by the Tribunal to be in violation of the Constitution, a statute, or a regulation established by a Law (Article 39). The Chief Judge of the High Court will investigate any complaints submitted by parties regarding cases being heard in the High Court and take necessary action in accordance with High Court rules (Article 40). However, as stated in Article 44(a), in accordance with Law No.22/2010 (Judicature Act of the Maldives) and the High Court regulation, if the High Court decides that a case submitted for appeal is one that does not come under the circumstances stated in Article 43 of this Act and cannot be adjudicated in the High Court, such a case can be appealed in the Supreme Court in accordance with this Act.

Supreme Court

The Supreme Court is the highest authority for the administration of justice in the Maldives and has the final authority in interpreting the Constitution, the law, or any other matter being adjudicated by a court of Law No.22/2010 (Judicature Act of the Maldives), Chapter 3, Article 27(a), and Article (b). The Supreme Court has the jurisdiction to enquire into any ruling made by the High Court on matters contesting a legal decision on grounds that it violated the Constitution or a law (Article 12). The Supreme Court will take up appeals that are submitted within 90 days of a High Court ruling (Article 12; see also Section 16 for details).

Procedures for Filing a Complaint Regarding Workplace Bullying

The law does not restrict any employee from bringing up the issue at work through internal complaint procedures, such as the creation of special committees to handle complaints and the creation of policies and SOPs. For instance, Law No. 16/2014 (the Prevention of Sexual Abuse and Harassment Act of the Maldives), which addresses sexual harassment cases, stipulates that investigations into complaints or allegations of sexual harassment must be carried out by a three-

member internal committee, comprised of at least one woman, and exempting the alleged perpetrator, that has been established by the respective human resources department. In any organization with more than 30 workers, a committee called the “Committee on Prevention of Sexual Abuse and Harassment” must be constituted for the purpose of looking into and acting upon complaints of sexual abuse and harassment. According to Article 17 of this Act, anybody has the right to register a complaint with the Tribunal for its failure to set up such a committee. Any sexual harassment complaints that arise outside of the committees listed in Article 17 of the Act can be filed with the Tribunal directly.

In addition, every employee and employer have the right to approach the LRA, the Employment Tribunal, or the Civil Court, unless the employment contract between the employee and the employer requires that complaints be first submitted to the internal committee. In these instances, if complainants are unsatisfied with the outcome, they may appeal to the LRA, the Tribunal, or the Court, irrespective of where the initial complaint was lodged. An alleged perpetrator is also given the opportunity to file a complaint at the Tribunal concerning the reasonableness of the disciplinary measures imposed. As such, all employers must keep records of written disciplinary measures taken against employees; employer HR policies must adequately describe acts that would qualify as gross misconduct, gross negligence, or fraud, and employees must be made aware of such policies (Employment Tribunal, 2021).

To ensure compliance with the Employment Act, the LRA is mandated to inspect workplaces from time to time. They are authorised to enter workplaces, question employees, and collect information about working conditions, salaries, and working hours. While the authority can identify victims of workplace bullying and support them, each employee has the right to file a complaint with the LRA at any time through a “Complaint Form”. Claimant information, employment information, and type of dispute are must-fills. The form specifically categorises disputes of wages and salaries, breaches of contract, overtime and allowances, working environment issues, leave, working hours, Ramadhan allowances, service charges, and others. The categorization of workplace bullying can be made in terms of working environment issues or even “other issues”. Further, the form requires details of the dispute to be submitted along with forms of state-issued identification and supporting documents. The complaint will be closed and filed if the claimant fails to respond or is not reachable by LRA within 14 days of submission. The case may be investigated again only upon the submission of a new complaint form. Further inquiry will be conducted by the Tribunal if the case is not settled at the LRA, and the LRA will update the complainant on the complaint’s progress. Consequently, if a complainant is dissatisfied with the outcome of the complaint, the Tribunal will accept an appeal.

Claims to the Tribunal are also submitted through a “Complaint Form” to the office of the Employment Tribunal which requires the complainant to furnish details regarding themselves, the alleged perpetrator, records of attempts to resolve the complaint elsewhere, details of the complaint, witnesses and supporting documents; if applying for an interim order, the applicant must also indicate the form of interim order, the reason for requesting it, consequences subjected to if the interim order is not issued. Claims are accepted from individuals or groups who collectively wish to file a complaint.

If bullying cases are referred to the Tribunal, the case must be heard even though it is not specifically recognized legally as ‘bullying’. Compliant forms must be submitted within six months of the occurrence or dispute, except in wage-related cases (where time limits are inapplicable), cases involving laws that specify alternate time limits, and cases the Tribunal accepts at its discretion where the time lapse is considered justifiable. The Employment Tribunal is expected to investigate any claims expeditiously while providing all parties with opportunities to refute other parties’ claims. Hearings of matters filed with the Tribunal must take place in the same room as the claimant, defendant, their solicitors, and any other people the Tribunal thinks necessary to be present (Article 88-4(a)). The Tribunal has the authority to question any individual and require the production of documents in accordance with the rule issued under Law No: 2/2008 (Employment Act), Article 10 (88-3). The rule passed under this Act specifies the process to be followed when someone refuses to appear before the Tribunal without a valid excuse.

In addition, according to the Employment Act, Civil Court protections pertain to employees in emergency response services, crews of marine vessels or aircraft, and those in senior management; employees working as imams or similar staff at mosques are also protected (see, for example, Case No: 214/HC-A/2104 (Ibrahim Hussein v. Civil Service Commission,)). If these categories of employees are victims of bullying and file a complaint, they may file a complaint in the Civil Court.

In summary, if an employer receives a complaint of bullying, harassment, or discrimination from an employee, they must make sure it is properly investigated. However, if an employee is not comfortable talking to their employer first (or anyone else in their organization) because of the type of behaviour (bullying, harassment, or discrimination) or because of their relationship with the alleged perpetrator, they will be able to go directly to affiliating authorities, such as an employment tribunal, LRA, or civil court, as explained above.

Procedure for Appeal and Closure of Workplace Bullying Cases

The decision of the Tribunal is binding unless overturned by an appellate court. Law No: 2/2008 (Employment Act), Article 88(b) allows the High Court to hear a case if an appeal is submitted within the stipulated time. Similarly, a person has the right to appeal the High Court ruling to the Supreme Court if they are dissatisfied with the outcome of the case.

Enforcing decisions according to Law No: 2/2008 (Employment Act), Article 88-1 (a) states that the Tribunal shall proactively check to see if the beneficiaries have complied with its judgements. Article 88-1(b) says that the Tribunal must transmit a decision to the appropriate court for enforcement if the receiver of the judgement fails to abide by it. The Court must then handle these matters as it would other sentence enforcement cases as it is the procedure that in all cases, except criminal cases, judgements shall be enforced by the Civil Court, whether in lower Courts or Courts of Appeal.

Thus, even if bullying is not explicitly mentioned, there are various procedures to deal with it. However, most administrative and legal choices that are now accessible to victims of workplace bullying were not created to solve problems of bullying, and as a result, are not always effective. The next Article discussed below focuses on the gaps in current laws, policies, and general prevention for workplace

bullying in the Maldives.

Gaps in Current Laws, Policies, and General Prevention for Workplace Bullying

Due to the inadequacies in the present laws, policies, and general prevention of workplace bullying in the Maldives, neither the tribunal nor the court is able to safeguard all of the complainants' rights because there is no express rule or regulation on workplace bullying in the country. In the subsections that follow, we explore this further.

Gap 1: Categorization Issue and Bullying Scope

The above provisions (*see Article on Current Laws, Policies, and General Principles of Prevention on Workplace Bullying; Article 72 of Law No: 2/2008 and Article 17 of the Constitution*) do not explicitly stipulate protection from bullying. According to Article 2 of Law No: 16/2014 (Prevention of Sexual Abuse and Harassment Act), "acts of sexual abuse and harassment" involve the following behaviours carried out against the victim of sexual harassment without their consent: (1) Whistling as a form of harassment; (2) Staring at a sexual organ in a way that will make the victim feel uneasy; (3) Touching any part of the body; (4) Hugging; (5) Remaining after a handshake and squeezing or tickling the hand; (6) Displaying images, drawings, or videos of sexual acts; (7) Making inappropriate jokes about body parts as a form of harassment; and (8) Direct or indirect statements that imply that obtaining a job, keeping a job, receiving raises, or receiving any other benefits owed to an employee will only be possible if a sexual desire is gratified or by consenting to acts of sexual abuse and harassment in exchange. No classification of other non-sexual acts (such as non-sexual bullying) can be seen from the Act. Furthermore, Law No: 17/2014 (Sexual Offences Act) provides detailed guidance on acts that constitute sexual harassment, yet there is no categorization of acts of other non-sexual nature, which members of the tribunal themselves categorize as discrimination, abuse, or harassment, according to a lawyer:

"Although there hasn't been a specific rule or act against bullying, there have been examples of it in the past. The majority of Tribunal members rely on historical precedent and judicial rulings, which are based on sexual harassment." Lawyer A

As a result of the lack of legal recognition of bullying or clarity in the identification of specific behaviours that constitute bullying, different authorities categorise bullying incidents differently. According to a former Civil Court Register/Administratorher.

"In general, amendments to the law have to be proposed to cover the scope of the definition of "bullying". To date, there is no definition of "bullying" in Maldivian laws. Amendments can be made to the Law No: 2/2008 (Employment Act) or Law No: 17/2014 (Sexual Offences Act)

The lack of a good definition is an issue faced in other countries as well as in the Maldives (Lawyer, A). Furthermore, the overlap in concepts of psychological harassment, bullying, mobbing, victimization and discriminatory harassment muddies the waters further. A member of the tribunal described the main issue they had encountered with regard to the workplace bullying cases as:

“Since there are no specific laws against bullying, cases of workplace bullying do not occur as frequently as cases of sexual harassment. As a result, it is best to classify each instance after it has been thoroughly investigated. For example, the classification may be considered sexual harassment or discrimination.”

Thus, specific reference to bullying in the existing legislature, along with other forms of harassment that may not be overtly sexual, would protect victims, who would then be able to see their experiences reflected in the Law. It would also provide them with greater power to protect themselves from harm.

Gap 2: Assurance of Protection: Power of Employer versus Employee in Fighting Cases

According to Hutchinson et al. (2010), workplace bullying may be characterized as a political strategy used to achieve personal or organizational goals. Thus, bullying at work results from power imbalances created by organizational culture and structures. For example, Law No: 16/2014 (Prevention of Sexual Abuse and Harassment Act), stipulates that the Committee on Prevention of Sexual Abuse and Harassment shall consist of three persons from senior management levels of the organization and that the chairperson of the Committee can decide on the other two members. As a result, management already has “power” and “say” inside the Committee; others, particularly those of lower power, may hesitate to approach them with complaints.

In addition, the Employment Tribunal’s Complaint Form can also dissuade victims from lodging a complaint. The claimant is required to submit witnesses’ full names, citizenship card numbers, contact information, and email addresses and an order would subsequently be sent to the address for the case to proceed. In the close-knit Maldivian community, where family and friend networks span across islands, victims may fear the social ramifications of furnishing this information. They may question whether their anonymity will be violated, whether their protection is guaranteed and whether it might jeopardize their employment (Healthy Workforce Institute, 2019; Leeza & Kumar, 2023). Finally, Article 8 of the Complaint Form may be daunting for complainants as it requires that they describe any steps taken to rectify the situation. The complainant may be reluctant to submit the form if they have taken no such steps and do not believe they have the power to do so, particularly when perpetrators of bullying may be from the highest levels of the organization (Leeza & Kumar, 2023).

Certain aspects of bullying are difficult to differentiate from one’s actual job description. Excessive workload, pressures, and inadequate support, that is designed to harass and bully, are work-related bullying behaviours that are in excess. Even if an organisation’s “employee code of conduct” may prohibit actions that push workers into excess, in such situations, bullying may be difficult to prove.

Former Civil Court Register/Administrator, expressed as:

“Since there are no specific laws against bullying, cases of workplace bullying do not occur as frequently as cases of sexual harassment. As a result, it is best to classify each instance after it has been thoroughly investigated. For example, the classification may be considered sexual harassment or discrimination.”

Therefore, it is challenging to implement policies when the bullying behaviour is so related to the job they are doing and therefore tough to differentiate. In such a situation, the perpetrator of bullying will, by definition, have more power than the victim. When bullying is simply a gradient, an excess, of what is the individual’s actual job, then the perpetrator, with more power, may have more say and result in a rejection of the behaviour as bullying.

Gap 3: Lack of Funding for Awareness and Training Issue

One of the objectives of the LRA is to offer technical information and advice necessary to employers and employees and to promote awareness with the goal of ensuring compliance with this Act and the regulations established hereunder Article 79 (2) of Law No: 2/2008 (Employment Act). Thus, it is mandatory for the mentioned affiliating authorities to conduct awareness training and provide funding for the elimination of workplace harassment, including bullying. However, according to a lawyer, this has not been implemented.

“Due to financial and staffing constraints, we are unable to provide training. However, we’re making an effort this year and have already suggested hiring additional employees and investing funds for training as well.” Member of the Tribunal

Through the interviews, it was determined that funding is a significant problem for all the authorities, particularly regarding programmes to enhance awareness. The authorities claim that owing to financial limitations, they are unable to organize even a one-day awareness session.

“We constantly have to direct people because they are unsure of what to do or where to find the right institutions to seek assistance. I think it’s important to receive the right instructions and information. Training and awareness sessions are a must.” Lawyer B

Policy Considerations

These gaps require an examination of potential policy considerations that may rectify the problem. They address the three gaps in the lack of specific treatment of bullying in legislation, the lack of recognition of the differential power between an employer and an employee that can make the submission of a complaint a difficult task, and the lack of awareness stemming from a lack of funding to increase awareness. Given below are some potential policy directions.

Recommendations for Gap 1:

Policy Considerations

The Law No: 16/2014 (Prevention of Sexual Abuse and Harassment Act) and the Regulations No: 2014/R-377 (Prevention of Sexual Abuse and Harassment) require employers to provide and maintain a workplace that is free of sexual abuse and harassment (sexual harassment) but lacks other non-sexual harassment such as non-sexual bullying, as already described. Thus, the legislation that constitutes Law No: 16/2014 (Prevention of Sexual Abuse and Harassment Act) can be expanded to include non-sexual abuse and harassment, which might encompass psychological or physical hostility at work. Further, provisions can also be made to provide detailed guidance on acts that constitute non-sexual harassment such as the sexual harassment coverage included in Law No: 17/2014 (Sexual Offences Act). The lack of awareness of the disease situation among healthcare providers and centralized provision of treatment affects treatment compliance and patients' trust in treatment. There is a need for regular training for medical practitioners and public health workers on the national guidelines and protocols for screening, reporting, and treatment using Directly Observed Treatment Short-course (DOTS). More engagement of the healthcare workers in improving the knowledge of the patients and community is necessary to achieve the target of zero Leprosy in 100 islands by 2023 target that the country has set.

Recommendation B: Introduce a “Code of Practice” for Workplace Bullying Resolution

Organisations may also be made to develop and implement codes of conduct and/or ethical standards that forbid and/or penalise bullying behaviour (Martin & LaVan, 2010). Thus, under the Employment Act and LRA, a regulation governing the implementation of the Code of Practice for Employers and Employees on the Prevention and Resolution of Sexual and Non-Sexual Harassment at Workplace Bullying may be implemented. The Code can address both the duties of employers and employees to stop bullying and what exactly counts as bullying. An example of bullying behaviour can be found in the Irish Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (2021). It lists specific acts that constitute bullying such as verbal abuse or insults; dissemination of malicious rumours, gossip, or innuendo; social exclusion or isolation within the work sphere, excessive monitoring of work and the withholding of information necessary for the proper performance of a person's job (p 9). The Negative Acts Questionnaire (NAQ; Einarsen and Raknes, 1997; Einarsen and Hoel, 2001) can be taken as a reference to guide the development of such a code of practice. To be effective, the Code of Practice must be simple to comprehend for all workers. It must have the public approval of senior management and should be disseminated using an effective and consistent plan of action that uses multiple modes of communication.

Recommendations for Gap 2:

Recommendation A: Identifying the Legal Protections

A clear method for how complaints of disruptive behaviour will be handled must be included in the ‘Codes of Practice’, and it should be transparent. The procedures listed can include handling situations internally (an informal decision by an accountable party) and, if not resolved, having a formal complaints procedure. Provisions for obtaining outside assistance should also be specified along with non-threatening internal and transparent mechanisms. The code of practice may also include a monitoring mechanism.

Recommendation B: Require Organizations to Implement ‘Anti-Bullying Guidelines’ in accordance with the “Code of Practice”

One effective technique to equalize the power of victims and perpetrators is to stipulate that organizations must implement “Anti-Bullying Guidelines” in line with the organization’s “Code of Practice.” The employer should consider the “Anti-Bullying Guidelines”, specifically acknowledging the detrimental effects of bullying on their employees and their organizations, prohibiting such behaviour, and taking decisive action against those who bully others in the workplace to create more engaging and satisfying workplaces. The employer should ensure that job descriptions are properly followed; organizations must clearly define the scope of jobs to specifically exclude bullying behaviour. Organizations must be expected to equip front-line leaders with the fundamental knowledge and abilities required for them to set expectations for behaviour to hold employees accountable to them (Healthy Workforce Institute, 2019) and create spaces in which staff at different grades can communicate their concerns safely and without being penalised, to get employees involved and empower them to reduce bullying behaviour and normalize a positive work culture. In addition, include a stipulation that protection should also be afforded to alleged perpetrators as they may also be victimised even though the literature indicates that such incidents are not common (Employment New Zealand, 2023).

Recommendation C: Engaging Pertinent Authorities to Ensure Fair Representation

To ensure protection against bullying and promote transparency, affiliated agencies such as the Human Rights Commission or other institutions may be included in the monitoring mechanism in accordance with the “Code of Practice”. This will allow the victims to get additional support from pertinent authorities.

Recommendations for Gap 3:

Recommendation: Continuing Education, Training and Supervision

Provide frequent training, knowledge, and resources to staff workers so they can recognize and handle disruptive behaviours. Discuss with them what makes a respectful, supportive, and professional work environment, and bring up the subject of professional behaviour often. Further, informing staff members of the policy against bullying, providing guidance on how to behave in accordance with its terms, providing training as needed to ensure compliance, assisting staff members as needed to resolve bullying incidents, and providing adequate and knowledgeable supervision of the workplace they must get ongoing instruction and training to stay on track.

Conclusion

According to the analysis, there are numerous gaps in the Maldivian legal system, which leaves workers with little to no protection against workplace bullying. The existing legal and regulatory framework primarily focuses on protecting employees from and preventing sexual harassment in the workplace. It does not sufficiently acknowledge the power that employers have over employees in some types of bullying. The present study confirms previous findings and contributes that workplace bullying laws shall be deemed as recommended. However, more research on this topic needs to be undertaken to understand it clearly. The research notes that workplace bullying policies are merely one type of bullying intervention. To address bullying in the workplace, more preventative measures are needed.

This research is limited to a limited group of people. However, to improve the research findings, it would be better to include samples from people who suffered bullying at the workplace. Since most of the administrative and legal options for those subjected to workplace bullying should be specifically tailored to meet relevant bullying cases, they should provide the most favourable outcomes. Consequently, targeted employees may remain in undesirable employment conditions if this is not the case.

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