US TOO? BULLYING, SEXUAL HARASSMENT AND OTHER GENDER-RELATED INTEGRITY ISSUES IN THE JUDICIARY

INTERNATIONAL BAR ASSOCIATION

Since the New York Times published allegations against Harvey Weinstein in October 2017, concerns about sexual harassment have swept through almost every sector. The legal profession, and the judiciary, have been no exception. In the past two years, there has been increasing recognition of the problem of bullying and sexual harassment in courts and other legal workplaces. In India, Judge Gautam Patel of the Bombay High Court recently stated that while sexual harassment within the profession "is not discussed, it happens everywhere." Similarly, U.S. Chief Justice John Roberts has publicly recognized that "the judicial branch is not immune [from sexual harassment issues]." Earlier this year, Justice Allsop of the Federal Court of Australia warned fellow judges that "whether we like it or not, many of us have been guilty at some point of being hurtful or rude or intimidating."

In May 2019, the International Bar Association published its landmark report on bullying and sexual harassment in the legal profession. The report detailed the results of a global survey of almost 7,000 legal professionals from 135 countries, the largest ever survey of this kind. The survey results provide empirical confirmation that bullying and sexual harassment is common in judicial workplaces, perpetrated both by and against judicial officers and employees. The survey found that almost half of female respondents working in the judiciary had been sexually harassed during their legal career. Bullying is even more common in judicial workplaces: affecting approximately one in four male respondents and three in four female respondents. Qualitative data also suggested that judges are often perpetrators of bullying and harassment. These findings have troubling implications for both judicial well-being and integrity, and community confidence in the judiciary.
PANEL: AL-SALWA 1

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THE INTERNATIONAL BAR ASSOCIATION (IBA)

The International Bar Association, established in 1947, is the world’s leading organization of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of over 80,000 individual lawyers and more than 190 bar associations and law societies spanning 170 countries.

The IBA Legal Policy & Research Unit undertakes research, develops and implements innovative strategies, projects and initiatives that are relevant to business and the rule of law, the global legal profession and the broader global community.
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Main Issues:
The session will explore the relationship between bullying, sexual harassment and related conduct in judicial workplaces and judicial integrity. It will also discuss potential solutions in the judicial sector and the legal profession more broadly.

Firstly, the session will examine the integrity implications of pervasive bullying and sexual harassment in the judiciary. This discussion will build on data from the IBA’s 2018 bullying and harassment survey. The session will explore the well-being implications of bullying and harassment for judges and judicial staff – noting that commentary on the Bangalore Principles recognises the relevance of physical and mental wellbeing to judicial competence and diligence (p.129). It will also consider the structural features that may contribute to high rates of bullying and sexual harassment in judicial workplaces. This discussion will engage with broader gender-related integrity issues – noting that unacceptable workplace behaviour impacted female respondents at significantly higher rates than their male colleagues.

The session will then turn to the cognate issue of bullying and sexual harassment perpetrated by judicial officers. A growing body of literature, as well as qualitative data from the IBA’s recent survey, has identified the troubling phenomenon of bullying and sexual harassment carried out by members of the bench. Australian research, for example, found that almost two thirds of barristers in the region of Victoria who responded to a wellbeing survey had experienced judicial bullying. This type of conduct has serious integrity implications. As recognised by the Bangalore Principles, the personal conduct of judges affects public confidence in the integrity and competence of the judicial system as a whole (p.83).

The session will conclude by considering the practical solutions available to judicial workplaces in addressing this issue, and the measures individual and institutional stakeholders can take to combat bullying and sexual harassment. As the legal profession confronts these pervasive phenomena worldwide, judiciaries need to be at the forefront of that movement.

Specific Questions and Discussion Points:
1. Are bullying and sexual harassment common in judicial workplaces?
3. What are the integrity implications of bullying and sexual harassment in the judiciary?
4. To what extent do these issues in the judiciary mirror the problem in the legal profession?
5. How can we expect the legal profession to improve if its role model for integrity and ethical standards, the judiciary, is just as bad?
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6. What can judicial sector stakeholders do to address these issues in the judiciary? What practical solutions are available? Are existing sanction/disciplinary models adequate?
7. What role can the judiciary play in leading wider positive change in the profession as a whole?
8. Is the independence of judiciaries a help or a hindrance in addressing bullying and sexual harassment?
9. Sextortion – should it be treated as a form of sexual harassment or a form of corruption? Does it matter?

Proposed Outcomes of the Session:
This session will be a frank discussion of bullying and harassment in the judiciary, and associated gender-related integrity issues. The session aims to achieve the following primary outcomes:

1. Greater empirically-informed awareness about these issues among judicial sector stakeholders;
2. Collective commitment that action is needed to address these issues, both as they manifest in the judiciary specifically and the legal profession more broadly;
3. The sharing of potential solutions and best practice standards; and
4. The forming of informal and formal networks of interested individuals wishing to become involved in addressing these issues.

The discussion will feed into the International Bar Association Legal Policy & Research Unit’s ongoing project on bullying and sexual harassment in the legal profession, informing the next stages of the research.