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Legal Understanding of *Quid Pro Quo* Sexual Harassment in Schools

Abstract

Paper highlights legal understanding of quid pro quo sexual harassment in schools. Quid pro quo sexual harassment implies abuse of authority or position to gain something sexual. A duty of care rests on teachers, Schools Governing Bodies and the Department of Education to provide and maintain safe schools that are free from all forms of victimisation and abuse. However, there seems to be an abuse of power by all those who are supposedly to protect learners in schools. Paper used an abuse of organisational power theory and conceptualisation framework as a lens used in analysing various forms of victimisation and abuse with an effort to provide a better understanding of behaviour that amounts to abuse. Paper concludes with guidelines for handling harassment and bullying in the school contexts.

Keywords: ridicule, bullying, abuse, sexual harassment, sexual violence, human rights, victimisation, duty of care, quid pro quo

Introduction

When looking at the international perspective, South Africa is not the only country experiencing sexual harassment in her schools. In one way or the other in many South African schools, teachers have sexually harassed or abused the learners in their care. This serious human rights violation is widespread and well known. Sexual violence by teachers against learners in South African schools is a serious human rights violation. Sexual violence by teachers against learners is a disquieting reality, impeding a learner's personal autonomy and right to education (Centre for Legal Studies, 2014).

Violence manifested itself into schools and learners became the victims of the circumstances. Bullying, harassment and other forms of victimisation and abuse are forms of violence that are widespread in schools and cause physical, harm but often also cause psychological, emotional, and mental harm to learners (De Wet, 2016). At times teachers are blamed as the perpetrators of sexual harassment on learners. Female learners are more likely to be vulnerable to sexual harassment from male teachers (UNESCO, 2015). Ngcobo et al. (2012) exposed that within schools male teachers are the perpetrators of sexual harassment directly or indirectly by promising better grades or marks, money or dating relationships. In a 2001 study by Human Rights Watch in South Africa, 37 rape survivors (7%) indicated that a school teacher or principal had raped them (Human Rights Watch, 2001). The report of the Human Rights Watch (2001) indicated that in some cases female learners agreed to satisfy teachers' sexual demands because of fear of being physically punished by teachers if they reject their advances.

According to Timmerman (2003) in countries like the United States of America, Netherland, Morocco and Surinam teachers are the perpetrators of sexual abuses by abusing their powers. Based on these international experiences South African government through her School Governing Bodies tried to ensure that school safety is guaranteed in schools by developing policies. If not properly governed schools may adopt unlawful school policies discriminating against learners in schools. For example, School Governing Bodies of two public high schools in the Free State Province (Harmony High School and Welkom High School) adopted pregnancy policies that required the exclusion of pregnant learners from attending the schools for a specific time (Prinsloo, 2016).

Method

A qualitative approach was employed in trying to understand the concept of *quid pro quo* sexual harassment in schools. Information was collected by means of a literature review and desk-top research.

Problem statement

There appeared to be an abuse of power by teachers on learners as a result of *quid pro quo*. *Quid pro quo* sexual harassment implies abuse of authority or position to gain something sexually (De Wet & Oosthuizen, 2010). It occurs when the victims felt that they had something to lose if they do not submit to sexual conduct. Effective teaching and learning is gradually undermined by a culture of school-based harassment and violence and this is an issue of national concern (Ncontsa & Shumba, 2013). For example, a 17 year old grade 11 learner of XXX Secondary School in KwaZulu, Natal Province, was seen in a video in different sex positions with the 45 year old teacher and the learner appeared to be pregnant on the footage. The young girl had admitted that she was in romantic relationship with the teacher.

Theoretical argument

Paper relied on the theory of abuse of organisational power as a lens in understanding victimisation and abuse in schools. Within organisations people have different levels of access to power positions (Timmerman, 2003). In schools principals have power over teachers and teachers have power over learners. Based on this hierarchical authority some teachers are tempted to propose love to learners. Kheswa (2014) is of the view that female students who date older men or “sugar daddies” stay in those relationships because they are characterised by money to pay for their fees and alleviate poverty and contribute to their social status.

Literature review

Sexual harassment

It is an unwelcome hostile or intimidating behaviour in particular speech or behaviour that is sexually aggressive or intimidating based on attributes such as race, gender, religion, age, colour, national origin, ancestry, disability, sexual

orientation, or gender identity (Resnick & Farrel, 2016). Sexual harassment can be explained as harassment that is sexual in nature, including unwelcome sexual attention and behaviour, sexual coercion or sexual bribery (De Wet, 2016).

Sexual violence

It is any sexual act or attempted sexual act using intimidation, threats or physical force. In schools this could include sexual harassment, assault, forced sex or rape, sexual abuse and sexualised touching of another's intimate parts or forcing any person to touch any person's intimate parts (Coetzee, 2012). Intimate parts include the mouth, primary genital area, groin, inner thighs, buttocks, breasts, as well as clothing covering these areas. Prinsloo (2006) found that many girls experienced violence in schools. They were raped, sexually abused, sexually harassed and assaulted by male learners and teachers. They were harassed by the possibility of unwanted pregnancies and emotional pressure, and were denied of their self-respect. Mason-Jones, De Koker, Eggers et al. (2016) view sexual violence as any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship. It can include humiliation, intimidation, physical and sexual violence such as slapping, beating, forced sex or other forms of coercion, and can result in severe injury and death. Chikwiri and Lemmer (2014) view sexual violence as violence or abuse by an adult or another child through any form of forced or unwanted sexual activity where there was no consent and is often associated with physical or psychological violence.

Safe schools

Safe schools are schools that are physically and psychologically safe and allow teachers, learners and non-teachers to work without fearing for their lives (Masitsa, 2011). A safe school is therefore seen as a place where teachers teach and learners learn, and non-teachers work in a warm and welcoming environment, free of intimidation and the fear of violence, ridicule, harassment and humiliation.

According to Kheswa (2014) another form of sexual harassment is *quid pro quo* harassment. *Quid pro quo* harassment usually takes place when a female learner is forced into having sex with her teacher(s) under the threat of failing a subject. Prinsloo (2006) asserted that *quid pro quo* harassment occur where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours. According to De Wet and Oosthuizen (2010) *quid pro quo* sexual harassment implied abuse of authority or position to gain something sexual. It occurs when the victim feels that s/he has something to lose if s/he does not submit to sexual conduct. It is alleged in studies that in some schools teachers give female learners whom they abuse sexually high marks, money particularly during school trips.

According to De Wet (2016) Gender-based harassment (as defined by the *Equality Act*, SA, 2000, Section 1) referred to unwelcome behaviour that is related to sex, gender, sexual orientation, pregnancy, virginity or marital status. Gender-based harassment encompasses generalised sexist statements and behaviours that convey insulting, degrading and/or sexist attitudes that undermine the status and

integrity of girls and women, or unreasonably deprive girls and women of opportunities afforded to boys and men. Sexually coercive men tend to view gender interactions as based on rules and scripts that are somewhat exploitative and sometimes ignored. In this regard, males could use force or aggression to get sex that might lead to rape (Kheswa, 2014). According to Ngcobo et al. (2012) sexual harassment was seen as 'normal' and difficult to challenge. Thus they chose not to act. This could also mean that females have internalised violence and accept it as normal. This is the reason why many cases of sexual assaults are not reported in schools.

A hostile sexual harassment may also create a hostile atmosphere in a school where learners' academic performance might be affected (De Wet & Oosthuizen, 2010). Sexual harassment in schools can also create a hostile, intimidating or offensive environment for the victims. Teachers by virtue of their profession and by law are obliged to maintain discipline in schools and to act *in loco parentis* in relation to the female learners (Masitsa, 2011). Teachers as trained professionals ought to refrain from harassing and intimidating learners. They are expected to care and maintained the safety of learners under their supervision and care. In Zimbabwe female students' poverty provides ideal pre-conditions for sexual bartering (Masitsa, 2011).

Different forms of harassment

Harassment is often power-based. De Wet (2016) came up with the following forms of abuse, namely: verbal; physical; nonverbal; emotional; relational; secondary; discriminatory; child abuse; and a hostile or unwelcoming environment abuses. Abuse and victimisation in schools can manifest itself in various forms. Here a brief explanation will be provided of the abuses that can be found in schools. Verbal bullying or harassment involves hurtful words and includes hurtful name-calling, persistent teasing, ridicule, taunts, gossip, threatening, vulgar language, remarks or jokes of a racist, homophobic, islamophobic, religiophobic, sexist or xenophobic nature, teasing someone about their disability, name-calling, sexual jokes, unwanted conversations of a sexual nature, whistling, crude comments (for example about body parts), spreading slanderous rumours about someone, hate speech and asking for or pressuring for sex.

The effects of sexual harassment and bullying on learners

The victims may suffer pain such as body injuries. De Wet (2013) is of the opinion that pain and suffering as injury to bodily integrity occur when sexual harassment results in physical injury and always in the case of sexual violence. Neetling et al. (2006) is also of the opinion that pain encompasses past and future physical and emotional pain. It has been found that the persistent and threatening nature of abusers' behaviours often cause deterioration in victims' quality of life. These behaviours can cause considerable mental health problems such as depression, anxiety, suicidal ideation, post-traumatic stress disorder and feelings of fear, terror, helplessness, distress, anger and distrust that often last many years after abusers had ostensibly disappeared (Korkodeilou, 2016). Adolescents seem to have higher risk of developing Post Traumatic Stress Disorders (PTSD) after violence victimisation compared with adults. Moreover, youth suffering from different types

of victimisation report more mental ill-health than youth suffering from repeated victimisations of the same type (Palm, Danielsson, Skalkidou, Olofsson & Högberg, 2016).

Psychological consequences of sexual harassment or violence are often more serious than the physical injuries (Field, Jeffries, Zoe & Lynch, 2016).

In contemporary China, both socio-cultural norms and current legislation encourage women to not to report marital rape; instead it should be viewed as a family's private matter that needs to be confined within the four walls of the home (Chi, 2016). This creates a vicious cycle of sexual abuse for the victims of rape in China. Teachers are expected to be able to protect learners from the harms of witnessing violence perpetrated against them as evidenced through Weisz and Wiersma's (2011) U.S. study showing a broad consensus that mothers should be held accountable for not protecting their children from witnessing their abuse even when they cannot stop their partners from abusing them (Morgan & Coombes, 2016).

Handling of sexual harassment in schools

Schools should have mechanism in place for handling the specific cases of sexual harassment. When the victim is a child, the cases should be referred to the statutory legal system and not be handled through the customary courts. In cases where a tangible proof can be submitted against offending teachers and principals the Department of Education with the authorities should take more concrete action, for example through immediate dismissal of the offender (Devon, Sayndee & Bøås, 2016).

- Establishment of a comprehensive communications strategy to educate the school community about sexual violence and sexual assault, as well as to raise awareness about school programs;
- Mandatory training programs to educate learners, teachers, and district office personnel about prevention and response to sexual violence;
- Establishment of services for individuals accused of sexual violence (Napolitano, 2014);
- “Ensure that learners are always alerted to the legislation and policies governing sexual violence in schools by teachers;
- Create a safe space where teachers can report colleagues without fear of their own reputations being damaged;
- Impose strict internal disciplinary measures for teachers who are perpetrators of sexual violence;
- Share the outcome of the disciplinary measures with teacher unions” (Centre for Legal Studies, 2014, p. 48).

Conclusion

Schools should educate all learners about all behaviours that constitute sexual violence, bullying and harassment. This would assist them to have the legal understanding of victimisation and abuse in schools. Teachers should act ‘in loco parentis’ (act in the place of a parent) in assisting learners in identifying all forms of victimisation and abuse in schools.

Teachers should understand their duty of care and to ensure that learners have the legal understanding and abuse that might occur to them while in schools.

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