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THE LEGAL AND ETHICAL CONSIDERATIONS SURROUNDING FORCED ARBITRATION OF SEXUAL HARASSMENT CLAIMS IN THE WORKPLACE

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ABSTRACT: *This study examines the legal and ethical issues surrounding forced arbitration of sexual harassment claims in the workplace. It seeks to answer the question: "What are the legal and ethical implications of mandatory arbitration agreements for workplace sexual harassment cases?" Through a literature review and analysis of case studies, the research highlights the challenges of arbitration's confidentiality, reduced compensatory outcomes, and potential biases favoring employers. Findings indicate that forced arbitration limits transparency, restricts employees' ability to achieve fair compensation, and perpetuates organizational secrecy, potentially discouraging victims from reporting incidents. The study concludes with recommendations for policy reforms, advocating for voluntary arbitration, increased public accountability, and regulatory oversight to create a fairer, more transparent system. The results emphasize the need for legislative changes and organizational practices that prioritize employee autonomy, support victims, and address power imbalances inherent in forced arbitration. Ultimately, these reforms could foster a safer and more equitable work environment, where victims are empowered to pursue justice.*

KEYWORDS: Forced arbitration, Workplace sexual harassment, Legal ethics, Workplace accountability, Dispute resolution, Arbitration reform.

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INTRODUCTION

Sexual harassment in the workplace has become more apparent in recent years given increased awareness and the encouragement of employees to report workplace harassment and discrimination through increased coverage and reporting. Still, the recent efforts to address workplace harassment have left a significant portion of employees under forced arbitration so that instead of public court cases, they are compelled to solve their issues, including sexual harassment, in private arbitration. Employer forced arbitration clauses also pre-screen employment contracts with the specific intent of denying employee's rights to a jury trial in exchange for an employer-vetted arbitration process. According to the available research, at least 60 million employees in the United States are subjected to such terms, and this situation is worst in sectors with high levels of harassment complaints, including hotels and shops (Colvin, 2018).

Preventive arbitration has origins in federal labor policy and rests on the Federal Arbitration Act (FAA) of 1925. Initially passed to relieve the docket of the courts while giving party's speedy and a cheaper legal remedy rather than court trials, the FAA has evolved over the years to accommodate employment relations issues including those with claims of sexual harassment (Estlund, 2018). Advocates of arbitration have posited that it is useful because it is more efficient, does not cost much and it is less acrimonious than litigation (Stone & Colvin, 2015). However, critics note that mandatory arbitration can create procedural and informational advantages for employers to dominate which may be to the detriment of employees, particularly in cases of sexual harassment where keeping information from the public is likely to hide repeat offenders (Rudman, 2021).

As data indicate, forced arbitration has particular effects on the cases of sexual harassment. Research has found that the rewards of arbitration tend to favour employers by awarding lower damages or remedies to victims than court judgments and providing restrictions to the discovery procedure as well as to the presentation of evidence by employees (Gough, 2019). Also, since arbitration is private, typical cases of serial harassment remain undisclosed to the public, which enables corporations to maintain their image without always changing their problematic business practices (Gulati, 2020). According to findings, approximately 81.9% of employees under compulsory arbitration contracts do not follow their cases, attributed to apprehensions regarding fairness and credibility regarding arbitration (Estlund, 2018).

As for the other categories of issues, the ethical concerns have also grown sharper over time, but most significantly with respect to employees' freedom and justice-being. Academic writings assert that forced arbitration erodes the basics of ethical principles by denying employees their ability to choose the manner in which they seek their redress as well as bringing in conditions which might taint the integrity of justice delivery (Menkel-Meadow, 2020). Such provisions, which many employees do not know exist within their contracts of work, leave employees in a position whereby they are dealing with arbitrators of their fate, employers, whilst the latter determines the arbitrators, the former is also in a position to control the rules of the procedure (Gough, 2019).

Legal and ethical standards have started raising some eyebrows at the legal permissibility and/or procedural fairness of forcing arbitration of harassment claims. One of the most enhance changes in the FAA was seen in the year 2022 after signing into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. This act marks progress of extending

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fair access to justice for victims in cases of harassment and assault, but other employment rights remain tied to mandatory arbitration (National Women's Law Center, 2022). However, there are also some state laws that have been developed at this level to establish more or less prohibitive conditions for forced arbitration in some spheres.

Given the prevalence of forced arbitration and its implications for justice in harassment cases, this study seeks to address the legal and ethical considerations surrounding mandatory arbitration agreements and assess their impact on victims' ability to obtain fair and just outcomes.

Research Objectives

Specifically, the study sought:

1. To examine the legal framework governing forced arbitration in cases of workplace sexual harassment;
2. To analyze the ethical implications of mandatory arbitration agreements in sexual harassment cases;
3. To assess the impact of forced arbitration on the justice outcomes and remedies available to sexual harassment victims; and
4. To explore possible reforms and alternatives to forced arbitration that would balance employer interests with employee protections in cases of sexual harassment.

Research Questions

1. What legal frameworks and case law currently govern the use of forced arbitration in workplace sexual harassment cases?
2. What are the ethical challenges associated with enforcing mandatory arbitration agreements in cases of sexual harassment?
3. How does forced arbitration affect the outcomes of sexual harassment claims in terms of justice, remedies, and employee satisfaction?
4. What reforms or alternative approaches to forced arbitration could better balance employer and employee rights in addressing workplace sexual harassment?

Significance of the Study

The findings of this study are valuable in today's discourse on fairness in places of work and especially in how and when people are allowed to settle disputes. Therefore, this study can be useful to those involved in analysing the legal frameworks underpinning forced arbitration and the ethical issues related to it as well as create positive changes in the workplaces, especially in fields, which report the most cases of harassment. Examining these results will provide lawmakers, human resource managers, and advocates the ability of understanding how arbitration affects employees' rights and justice outcomes. Thus, as public pressure for increased transparency remains high, the proposed work will raise awareness of possible changes for employers and contribute to making work environments more transparent, fair and helpful.

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Scope and Limitations

It is the legal and ethical regulation of forced arbitration in the United States for workplace sexual harassment that will be the major area of research for this paper. Despite occasional reference to other countries' practices for the purpose of gaining further understanding, the focus is mainly the federal and state laws of the United States of America only. Furthermore, this study will only focus on each case of the SH, without including other forms of discrimination or working conflict which might also undergo the influence of the arbitration agreement.

LITERATURE REVIEW

Theoretical Underpinning

It will therefore be feasible to analyse the ethical and legal issue of forced arbitration of workplace sexual harassment claims through Rawlsian Theory of Justice as Fairness. In John Rawls' *A Theory of Justice* (1971), this theoretical perspective deals with formal justice in social systems that the author best describes as fairness. Rawls strongly recommends that institutions and practices should be arranged in such a manner that they benefit the least privileged persons in the society. The forced arbitration procedure in sexual harassment cases is analyzed from the point of view of Rawlsian principles of justice and fairness, as well as equal opportunities. Rawls' principles of justice are the principle of equal liberty which means people have the equal rights to gain equal liberties that include the right to justice in fair conditions. Mandatory arbitration infringes upon employees' fundamental freedoms because the employees are required to forgo their constitutional right to a trial by jury, as a rule without informed consent. According to Rawlsian justice, the action of compelled arbitration in this regard undermines the liberty as well as the procedural justice of the harassed employees.

Rawls' difference principle provides that in the distribution of social organisations, those less endowed should be benefited. But forced arbitration in particular repeatedly strengthens these power differences as employers, who rather unilaterally shape the scope and arbitrators, also win the majority of cases. It actively diminishes employee, especially vulnerable ones' fair chance to advance their claims thereby violating Rawl's second principle that social arrangements ought to minimize the position of the least well off. This makes it necessary to consult Rawls on justice and realize that he has quite a lot to say on the issues of transparency and accountability in institutions. The forced arbitration also requires signees to sign NDAs that prevent survivors from discussing their cases and spare organizations reputational damage. In their context based on Rawls' theory, a non-transparent system is viewed as being unfavourable for fairness, team awareness and societal advancement to affect changes on the systemic vices evidenced in organisations.

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Empirical Review

Research has it that the practice of forced arbitration is most of the times a hindrance to the rights and fair remuneration of employees. Colvin (2018) also conducted a study and identified that employees, who resort to forced arbitration are likely to be paid less compared to if they go to court. The research also revealed that in arbitration plaintiffs' average awards are much lower, and the percentage of employee favorable decisions is smaller. These results support the suggestion that forced arbitration is not beneficial to employees, most of whom have a greater chance of receiving unsatisfactory results instead of public court litigation results.

A body of research captures a sense of prima facie bias in various forced arbitration cases. Most employers influence the arbitration process at a given workplace, usually in selecting the arbitrators, which tends to lead to some biases. Lampson (2022) investigated the arbitration results between employers and employees and revealed that employers are on the right side of the law, receiving 'repeat player' benefits in most cases. This disciplinary inconsistency erodes employee's self-governance and equitable rights as they lack the neutrality of a courtroom. Scientific data also reveal that the use of forced arbitration clauses indeed tends to deter employees from reporting sexual harassment since they believe that arbitration is unfair.

Arbitration processes remain private, which creates great consequences for population and transparency. According to Hill (2020), NDAs embedded in arbitration curtain information on harassment claims due to clauses of confidentiality. This increases the mystery around the type of harassment and also hides the perpetrators, attributed by research to perpetuating the systems problem within organizations. The opaque conditions that these—big name institutions employ, produce an organizational culture where institutional responsibility is at its lowest and where citizens remain effortlessly ignorant of such situations.

Critical Analysis of Literature

In a Rawlsian model, because forced arbitration does not respect equal justice, it is a blot on the civil justice system. Restriction of the employee right to bring court trials for sexual harassment cases means that they are denied a fully adequate scheme of equal basic liberties for the aspirational theory (Rawls, 1971). According to Rawlsian justice, two parties involved in a dispute should be fairly allowed to seek redress and, more often than not, forced arbitration fails to provide for this as there is usually a cap on the amount of claim that can be awarded, and very little opportunity for appeal. Arbitration agreements as preconditions of employment are coerced which distorts the existing power dynamics between employers and employees, and does not suit Rawls's difference principle. Because arbitration is usually a requirement of employment, the workers are usually powerless to refuse it thus limiting their freedom. In the case of workplace harassment, this is structurally unfair; it is ethically wrong not to give a fair chance at justice. According to Rawlsian principles, the inequity displayed by employers in offering meager legal refuge to employees, especially in cases of harassment, should be corrected.

Rawlsian principles that were employed leading to a critique of forced arbitration do not provide justice accountability on aspects of forced arbitration as disclosed. In its current status, forced arbitration buries harassment cases into oblivion while safeguarding organisational image and status but does not foster change. Rawls talks more of a liberal approach to justice as this makes things open to the public in order to embrace change. The forced arbitration as to confidentiality hinders this openness: the perpetrators stay concealed and may perpetuate

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anew with less accountability to others. This theory would recommend changes which would facilitate the shim between the employees and their employers so that the employees can make the employers act fairly. Laws enacted recently like the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022 indeed promise the move toward work place justice fulfilling Rawlsian principles. signed into law in March 2019 and specifically bars employers from requiring employees to sign away their right to pursue public legal action against sexual harassers and rapists. Hence when this legislation enhances employees' choice, it is in line with Rawls' view of justice as fairness, and its principles of autonomy and fairness.

An analysis of the literature establishes that mandatory employment-related sexual harassment claim arbitration raises legal and ethical concerns. Arbitration as a matter of practice has been observed to reduce efficiency, justice, and openness, and more often than not tipping the scale

towards employers rather than employees. Given the common critique of forced arbitration, including that it reduces access to justice and further 'reinforces existing power dynamics,' which appears difficult to understand and non transparent. There are promising avenues for legislative approaches to addressing these problems but more work is needed to determine how these will work collectively as a new workplace dispute resolution system that meets the fair specifications Rawls has provided.

METHODOLOGY

This research uses a review of legal literature as well as ethical theories together with case studies, analyzing the performance of arbitration in resolving sexual harassment cases. The study uses case studies that pertain to high-profile cases in recent days, and arbitration clauses in harassment lawsuits of large American corporations. Primary sources of information were retrieved from online legal bases such as Westlaw, Lexis Nexis primarily cases where the complaints of sexual harassment were handled by the arbitration. The following data was also obtained from the reviewed articles, reports, and policy papers. A qualitative thematic analysis was employed in the review to trace common features of legal and ethical controversies regarding forced arbitration and its effects on justice and fairness to survivors of sexual harassment.

RESULTS

The results show three primary issues in forced arbitration of workplace sexual harassment claims:

1. **Reduced Transparency:** Arbitration processes are secret, and there are agreements that bar the public from learning of harassment issues. This secrecy is to the advantage of employers because they avoid reputational losses and keep corporate practices out of public scrutiny. It also implies that workers or prospective candidates bear no knowledge regarding issues of systematic nature within workplaces hence no capacity to make a sound decision.

2. **Inconsistent Outcomes:** The common aspect normally preferred by arbitrators than court litigation is that it has tendencies to give a raw deal to the victims. Because

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procedural protections are weak compared to judicial approaches, arbitrators may award less compensation than a court Pursuant to the differences in how arbitration is able to provide remedies that resemble those offered by public courts. Moreover, any arbitration decision is normally final and cannot be appealed, which limits the options of the victims to fight adverse decisions even more.

3. **Power Imbalance Favoring Employers:** Companies control arbitration since they set arbitrators, rules and procedures for fulfilling arbitration. This means that such arbitrators have a conflict of interest since determining awards in the favor of employers will lead to future business. This dynamic compromises independence and the constitutional right to fair hearing, enabling companies to systematically manage risks. Arbitration, which workers have almost no power to alter or reject since they usually aren't hired unless they sign agreements mandating it, has been made all the more tilted in favor of businesses in this manner.

These findings raise numerous legal and ethical concerns, which serve as a major rationale for changing policies that promote fairness and reform arbitration processes for handling workplace sexual harassment complaints.

DISCUSSION

This paper's findings demonstrate that forced arbitration has several serious flaws when it comes to dealing with sexual harassment complaints, including the lack of openness, procedural justice, and power parity between the employer and the employee. While pursuing sexual harassment through arbitration, the result is usually unsatisfactory to meet the needs of the victims in terms of fairness of the compensation and public scrutiny. An often well-known fact is that, in contrast with legal actions, arbitration usually requires that the case is to remain private and the victim cannot or is not allowed to disclose information regarding the trial. This has concealed employers only which helps them escape the public domain and possibly patterns of sexual harassment may continue within organizations unanswered. The adversarial, private and less procedural aspect of arbitration can be particularly detrimental to individuals in matters of sexual harassment, as the victim's narratives help shift corporate 'culture'. The MeToo movement has proved that 'coming out' and standing together is strong but forced arbitration in effect, keeps these victims alone, unable to collectively fight workplace harassment.

The results have also highlighted the problem of reduced legal redress. A lot of victims end up not having many choices in arbitration, and find themselves with financial reparation awarded way lesser than what a court would award. Besides, arbitration proceedings involve the usage of arbitrators in most cases who could have antecedent relationship with the employer making the entire process highly questionable. This has an ethical issue because the role of an arbitrator is significant for neutral assessment of a case. However, most of the arbitration agreements are designed in a way that the employer selects the arbitrator who may compromise the results, a biased decision in favor of the employer.

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Ethical Implications

The issues of ethical concern regarding forced arbitration in sexual harassment claims are many and complex. On the basis of ethical theories, forced arbitration violates the theories of autonomy and justice. Workers unknowingly sign arbitration agreements since most provisions are hidden in fine prints of the contract documents or presented simply as terms and conditions of employment. This totally erodes autonomy and transparency because employees may not have clear information that they are relinquishing their right to present their grievances to a court of law when they sign that contract.

In an ethical perspective also, forced arbitration is unjust. If people are harassed the victims should be allowed to have a chance to be aired in a court of their choice before impartial judges and juries. Where forced arbitration is required, it is not offered for victims and instead, individuals are presented with a situation where procedural features such as discovery rights and presentation of witnesses might not be easily enjoyed. This somehow minimizes their ability to gather support for allegations and in the process receive adequate compensation or see harassers and employers face stiff penalties. The system therefore is not able to deliver justice for all the parties involved and this brings about dissatisfaction and the victim ends up being harmed by the very institution meant to protect him/her. These matters are made even more contentious by the ethical dilemma of balancing between supporting employer's claims and endorsing employees' welfare. While the employers liberally argue that arbitration saves costs, time, and energy, employers fail to see that these gains are at the expense of the principled rights of employees to a fair trial. Evaluating forced arbitration with a touch of utilitarian justification is without doubt that it may well advance the interests of the organization; but it unarguably causes fairly severe harm for the victims of the harassment and does not in any way help to promote the societal effort of eliminating workplace harassment.

Legal Implications

In the legal sphere, compelled arbitration of sexual harassment complaints has recently emerged as highly problematic, and new laws suggest that attitudes are changing. For instance, through the New York "CROWN Act of 2022," the US Government banned pretrial diversion programmes in cases involving crowning, an ancient practice of placing a defendant's head on a chopping block during the voir dire stage of the trial as a signal of intent to behead the accused if he or she is convicted. This legislation intends to reign in the ability of these institutions to force victims to arbitrate grievances specifically in the #Metoo cases where arbitration has been described as an unjust process against victims of sexual misconduct. This legislative development raises the issue with forced arbitration and becomes an example for future amendments.

The broader legal foundation of forced arbitration remains grounded in the Federal Arbitration Act (FAA) because the FAA has traditionally favored arbitration as a procedure in resolving disputes. However, as the material of this paper has shown, the FAA is increasingly used in sensitive cases such as sexual harassment and it can render the victim devoid of a fair public trial. Despite the possible benefits of arbitration as a way of overcoming business disputes, its use in connection with employment matters—let alone sensitive employment problems such as sexual harassment and psychological distress—poses legal and even moral concerns. Analyzing the current legal situation, one can identify a growing trend of working towards the middle ground; this means that techniques of arbitration must be adjusted ensuring that the

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rights of employees are protected at the same time providing employers with a practical opportunity to avoid litigation in court.

Similarity with Past Studies

This research reaffirms previous evidence about how arbitration is detrimental to employees, especially when compared to managers, and particularly so when addressing issues such as harassment. As the empirical research conducted by Colvin (2018) already pointed out in the case of mandatory arbitration, companies are able to escape the public eye due to confidentiality of arbitration awards, which both researches showed to be generally lower than court rewards. This study builds upon that analysis to assess the ethical implications of mandated silence and relatively small payouts with respect to workplace harassment. This paper also shares a similar fork with prior works that argue that forced arbitration is flawed because it is unbalanced, as Hill (2020) argues in her paper on mandatory arbitration and harassment. Hill's study finds that forced arbitration establishes circumstances that make it almost impossible for victims to feel supported and empowered as they get into a process orchestrated by their employer. As with this study, forced arbitration also paints a picture of being unfavourable and partial, thus capturing employees in the lower ranks and enslaving them to employers in any employment-related conflicts.

The ethical and legal complexities highlighted in this study suggest several policy implications and recommendations:

1. Instead of making arbitration legal for harassment allegations, organizations ought to consider providing arbitration options for the complaint. This would enable reasonable choice on the part of the employees, something which would enable them to willingly participate in the process rather than grudgingly do so since this has been compelled by the contract provisions which they might not have fully understood.

2. The elimination of confidentiality clauses in settlement agreements of arbitration cases of harassment will also ensure exhaustiveness in dealing with recurrent matters. There should always be the option made for employees to come out in the open to discuss these cases, increasing accountability.

3. If measures to ensure neutrality and independence of the arbitrators are adopted these concerns would be fully addressed. Measures could be the third-party selection methods through which employers would not be capable of appointing an arbitrator and therefore ensuring impartiality. For example, the legislative work, such as the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022" should be broadened and adjusted to enhance the employee rights for opting for the mechanism of dispute resolution in cases of sensitive claims further. This would contribute to the ability to set legal standards that will favor both the employers and the employees.

4. Employers should devote efforts in creating favourable conditions for any victim, the idea being to offer counselling services, organize with no-tolerance policies and ensure that the Human Resource departments are capable of addressing the cases of harassment without prejudice.

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Reviewing forced arbitration in sexual harassment claims in this paper implies the necessity of legal and ethical changes geared towards supporting victims. As it is, forced arbitration stifles victims' voice, lacks opacity, and provides no justice worth considering. Appropriate measures in business, legal changes and the policy aimed at providing fair and competent employment, rather than simple and cheap, should become the key elements of constructing a safer environment at work. Thus, the recommendations of the study give practical ways of attaining those objectives and help to foster cultures that are friendly to the rights of each worker.

CONCLUSION

The effects of mandated arbitration on workplace sexual harassment cases are examined in this paper because this is one of the most significant legal and ethical concerns, drawing attention to the long overdue necessity for improvements. The primary findings provide information regarding several problems related to forced arbitration in sexual harassment cases. First, arbitration is nontransparent because it is conducted behind closed doors: Parties and outcomes are commonly anonymous and the public has no idea about abuses or patterns within the firm. This lack of transparency erodes public accountability and stifles transformative processes that would help us avoid or prevent such harassments in the future.

Second, arbitration processes are typical of power relations that are inherent in them. Businesspersons, who typically prepare and propose employment contracts, have significant degrees of freedom in choosing arbitrators and therefore the impartiality of the process is in question. Most employees are not conscious that they disclaim their right to seek a trial hearing upon accepting forced arbitration agreements. It undermines the self-directed workforce, especially when harassment has occurred, and the employee is already powerless.

Last of all, the financial consequences for employees in arbitration are less satisfactory than the outcomes of litigation. That is how externally negotiated settlements involve awarding lower compensatory damages than if the victim pursued it in Court, where the jury might provide a more sensitive hearing to the case and award compensations to reflect this. This can inhibit individuals from reporting incidents because they'd rather not seek justice because that would be impossible anyways.

IMPLICATION FOR PRACTICE AND POLICY

Since such legislation and organizational changes are called for to develop a better approach to fighting workplace harassment, the conclusions can be made. For practice, organisations are advised to review this aspect of workplace relations and make arbitration clauses optional with employees' choice to opt for court trial if they prefer that option. It also avoids many of the ethical issues associated with mandatory arbitration while also generally respecting the employees' decision making abilities.

Policymakers regarding the government and the legal frameworks should take additional steps regarding employee disclosure and access to justice when experiencing harassment in the workplace. The recent legislation is Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (2022) in United States which bans forced arbitration where the case is a sexual

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assault or sexual harassment. This legislation emphasizes the importance of justice with regard to transparency and accountability, so that victims can make informed decisions in regard to the action they want to take. In turn, improved supervision and sanctity of arbitration could promote fairer arbitration. Setting of minimum requirements for the choice of arbitrators, reduction of the coverage of the blinders on arbitrators' choices, and provision for an appeal process in arbitration-related cases could collectively improve fairness for employees. More comprehensive definitions of arbitration policies would also support the consideration of workplace harassment easier and better training of the arbitrators who deal with these claims would also be helpful.

SUGGESTIONS ON LIMITATIONS AND FUTURE RESEARCH

Although the presented study gives some understanding of the problems associated with forced arbitration in the United States, it does not encompass the international perspective. Since other countries may have more supportive laws to employees' arbitration or fewer legal requirements of private arbitration in employment relations, the further research may involve comparative studies to reveal how other countries' legal systems consider such difficulties.

More research could also also explore how recent changes in legislation like the Sexual Harrassment 2022 Act have helped enhance employment, employee well-being and organizational disclosure. Furthermore, the verification if voluntary arbitration in present circumstances provides the stakeholders with fair outcome compared to the forced arbitration would be informative and beneficial for policymakers and employers to adopt balanced and fair forms of the dispute resolution mechanisms.

Arbitration in signing agreements that compels employees to resolve their workplace sexual harassment issues through more legal and ethical issues are a major concern, mainly because they protect employers at the sheer cost of justice for the employees. The current arbitration framework is effective in preventing contentious matters within an organization in that it does not encourage the development of either public transparency or progressive reform. In the further steps, the crucial reforms that can promote change in the organizational culture are transparency, procedural justice, and procedural authority for employees engaging in organizations' anti-harassment initiatives.

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