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## Exploring the Workplace Harassment in Pakistan under Pakistani Laws

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### Abstract

*This research paper explores the workplace harassment laws, apparatus for implementation and shortcomings with the help of statutes and relevant case laws. Sexual harassment was recognized as a quasi-criminal offence in the Pakistani law in 2010 as since harassment at workplace is now recognized as a criminal offence in all of Pakistan, this research paper looks to examine whether the prevailing penal laws of the country are sufficient to prevent and punish any and all types of harassments at workplace and do it create necessary deterrence and ensures safe environment for women at workplace. What are the pediments that constitutional courts failed to ratify. One of the key and most important issues has been of retaliation. Which appellate courts failed to address as key point in their judgments. Second most important issue has been the definition of employer and employee, third being scope of harassment, last but not the least is jurisdiction. Although the law said it explicitly that any woman or man can lodge a complaint but limitation of the law is that only the concern woman who is an employee by definition in the law can file a complaint. This essentially means that a person who is not an employee in the eyes of this law shall have no remedy. Furthermore, the mere title of the legislation is suggestive that the law is specific for women. It effectively rules out men and non-binary persons. This research paper is for lawyers, human rights NGOs, working women and women in general so that they understand workplace sexual harassment law.*

**Keywords:** Workplace Sexual Harassment, Pakistani Law, Amendments Gender Equality

## Introduction

Pakistan is the first country in South Asia that enacted workplace sexual harassment as civil as well as a criminal offence, whereas many of the western countries have yet to declare it a criminal offence, which is why the approach resolving the offence differs greatly. The law in Pakistan came into effect in the year 2010, in words of the then prime minister of Pakistan Yousaf Raza Gilani, the objective of this law is to enable safe working environment for the women, provide level playing field, and to fulfill international obligations to UN conventions and convents. Under the above given aspiration the law was enacted with the name Prevention of Harassment Against Women Act 2010 which has seen amendments in the year 2014 and the year 2022. The latest amendments in the year 2022 that are being hailed as revolutionary were work of many intellectuals and especially Women's Action Forum, a Lahore based Women's rights organization working since 1980s.

It is important to recall that the original draft of the law was prepared under the public-private partnership, in 2002 the non-profit organization AASHA started policy work on Code of Conduct for Gender Justice on sexual harassment in collaboration with ILO officials and the government of Pakistan which also took private sector in scope of the draft. If we compare the definitions it appears that the most of the definition work on sexual harassment model is inspired by the basic model given by EEOC (Equal Employment Opportunity Commission).

Historically, whether it's Universal Declaration of Human Rights or any other international document such as UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) or ILO Convention 100/Convention 111 none of the original works speaks about sexual harassment as an offence. These documents carry the words exploitation and discrimination. The realization took place after the feminist movements, in that era, sexual harassment as a term came in 1970s, which is why there was no law specifically related to sexual harassment neither in the western countries nor in Pakistan.

The Constitution of Pakistan speaks of rights, equality, equal opportunities, non-discrimination etc. But there was no direct mention specifically defined which took sexual harassment as an offence. If we further explore Pakistan legal landscape, the Pakistan Penal Code (PPC) had a few sections that provided protection under specific conditions. It is important to mention that now section 509 has been substituted, which now includes definition of sexual harassment in it for the purposes of criminal indictment.

This study on anti-sexual harassment policies found no record reported in public sector, and merely a 2% in private sectors. This is why it maybe asserted in inference that sexual harassment as an offence had never been the focus of law makers or governments. It is also prudent to mention that sexual harassment is called mobbing in American law (state laws) and Bullying in English law (protection from harassment act 1997, Equality Law) when Pakistan deliberated on the issue it was plainly described as sexual harassment at the workplace, broadly of sexual nature along with elements as described in section 2(h) of this law and not as it is ordinarily understood or bear ordinary dictionary meaning. Furthermore, its scope was explained with the help of Article 14 of the constitution that it protects against harassment in all forms and manifestations as reads the ruling in Nadia Naz case, in recent amendment of 2022, the scope of definition has been broadened. furthermore, as stated above section 509 of the penal code was substituted with "insulting modesty or causing sexual harassment", for this "women ombudsman" was established with Punjab police for matters related with public and private spaces and ombudsperson office were established in lieu to legislation 'protection against harassment of women at workplace act 2010'. However, after the 18<sup>th</sup> Amendment in the Constitution of Pakistan, devolution of power took place, thereby, the provinces enacted their respective harassment laws they principally adopted the federal law, some amendments were carried out by provinces respectively Sindh has carried out no amendments thus

far. Moreover, the law required establishing ombudsperson offices which the provinces did on lines of federal ombudsperson office, all of these were established on their respect ombudsperson office Acts. So, now there are five laws that deal with harassment at workplace and ombudsperson offices with respective jurisdictions in their respectively provinces and federal territory, further the province of Punjab has passed rules that regulate how the procedure will be carried out by the competent authority.

The objective of the law is to create safe working environment for women, stipulate equal opportunities and requires all public and private organizations to establish Code of Conduct and an inquiry apparatus. According to this law, the organizations are responsible to setup inquiry committee with certain criteria, functions and powers as given in the law section 4, along with enact a code conduct, failing to do so is liable to pecuniary fine, so the law empowers and mandates the organizations to establish a code of conduct and as well as an inquiry committee in this regard.

The limitation in the interpretation of the word sexual harassment as discussed by the honourable judges of Supreme Court and High Court, Justice Mushir Alam and Justice Babar Sattar respectively is that harassment has been classified as sexual in nature.

Whereas black's law dictionary states, "Words, conduct or action (usually repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose. Harassment is actionable in some circumstances, as when a creditor uses threatening or abusive tactics to collect a debt."

So it is clear from the case laws that the judges have been reluctant in the interpretation of the word sexual harassment outside the scope of its definition defined in the section 2(h), despite admitting the same in the Nadia Naz case. However, this impediment was graciously looked into and scope of the definition of the harassment was greatly enhanced to any non-sexual act in the latest amendment of 2022.

Workplace harassment exists as evident by the experiences which disproportionately reflects in complaints, the types of workplace harassment is a matter of understanding regarding what constitutes as harassment, different countries have put up different standards for its interpretation and scope. For example ogling someone to make them uncomfortable is construed as harassment, to make someone aware of your presence. The damning account on workplace harassment in Pakistan is documented in the book, working with sharks by Dr Fauzia Saeed which details the types of harassment and scenarios in details.

In Pakistan Article 14 of the constitution of Pakistan protects against harassment in all forms and manifestations. Furthermore, insulting modesty or causing sexual harassment at workplace or public place etc., is a criminal offence under Section 509 of the Pakistan Penal Code, 1860.

In 2010 Pakistan introduced workplace harassment law in 2010 by the title protection against harassment of women at workplace act 2010. Henceforth, complaints of sexual harassment fell under the jurisdiction of this law. And Ombudsperson resumes the power of a civil court, the procedure to file a complaint is either through internal inquiry at the workplace as sanctioned and mandated by the Act, or the aggrieved may approach to the ombudsperson office with a complaint directly, which then may with consent of the complainant direct to the committee to conduct an inquiry on the allegation, if the aggrieved is unsatisfied with the outcome of the inquiry committee, they may approach the Ombudsman for remedy, which has jurisdiction to listen to complaints with regard to sexual harassment at work place and penalize according to prescribed penalties in workplace harassment Act. It was decided that even if the issue is settled between the parties with their consent, the aggrieved may still approach the ombudsperson office for relief. The agreement

between the parties doesn't bar one of them from approaching the ombudsperson office for relief. Furthermore, the appeal against the decision of ombudsman's decision will rest with the Governor of the relevant province or in case of federal ombudsman; it will go to the president of the country. The right of second appeal against the decision by the governor/president is with the High Courts of the relevant province/ICT. The final appeal will rest with the Supreme Court of Pakistan.

However, the SCP observed that the law is just a "cosmetic law" and has no practical significance when it comes to proving the allegation and women are left unprotected. This paper looks into the case laws to develop its understanding about workplace harassment, main shortcoming as maybe left or observed in these rulings, limitation on the scope of definition and suggests possible recommendations to improve the application of the law.

## Literature Review

Though there is severely limited literature available in public domain, we believe the following reasons, firstly the law mandates organizations to deal with the issue of harassment at first instance, which by all means doesn't require them to be made available to the public for review, secondly if the ombudsperson office is chosen as the first platform for inquiry, it too provides complete privacy to the complainant and the proceedings are kept private unless it's made public on the parties' request. This issue of respecting the privacy clearly makes it difficult to collect data on the workplace harassment. It is learned that since 2010 to 2020, only twenty six cases were reported through FIRs under section 509 as criminal offence. The data of the last ten years collected from the Federal Ombudsperson's office shows that out of the total 941 cases filed from all over Pakistan (including male or female), 703 cases were filed by females. Further, area wise breakup shows that that 297 cases in Islamabad, 280 cases in Punjab, 1 case in AJ&K, 6 cases in Baluchistan, 1 case in Fata, 31 cases in KPK, and 78 cases in Sindh 78 were filed. The year 2019 witnessed the highest number of cases in ten years, with 202 cases. And there is no data available at the institutional level.

However, a peak into the situation may be accessed through this Dawn News survey, "Sexual harassment in workplaces, what does the Dawn poll say", sample size of 300 women on workplace harassment found that 52% say they or their colleagues have approach internal inquiry committee, so it's safe to assert that the issue is being raised quite a lot, and since it remains undocumented and out of public domain, we are not in a position to analyze the type of complaints and their outcomes and unintended consequences of such complaints as 54% say that women should quit job when harassed or abused at the workplace, moreover only 17% of women who experience harassment approached the internal inquiry committee indicating a persistent hostile environment and lack of trust on the mechanism. So because of the principle of privacy, there is limited access to literature for review. Secondly, there have been adjudications at the ombudsperson level and they never make it to the appellate courts. So we have about less than 25 cases that were decided by the High Court and one in the supreme court of Pakistan, which we have reviewed in the scope of this law and its application. Moreover, the offence is compoundable with permission of the court, so it can be settled privately.

Secondly we have relied primarily on the data from primary sources such as the statues, case laws, AASHA's reports as primarily this organization is credited for its role in enactment of this law and lastly review of the legislation done in research papers namely, Combating the Harassment of Women at Workplace: An Analysis of Legislation in Pakistan, The Protection against Harassment of Women at the Workplace Act 2010: A Legislative Review and Protection of Women against Sexual Harassment-Social Barricades and Implementation of Laws in Pakistan. We shall further their work under the recent amendments that have been passed by the parliament in January 2022 where they have extended the scope of definitions, under previously decided cases, we shall examine whether the amendments have been sufficient or still lack liberal integrations by courts.

While in Indian law against sexual harassment, it is under the name Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which is quite similar to that of Pakistan's law in nature and scope and expects the organizations to ensure safe working environment for females.

### **Research Methodology**

The Research methodology used in this research paper is descriptive and evaluative. We have discussed the progress made thus far by this piece of legislation through case laws available to us. And made recommendations what further we can expect from the recent amendments and what room for improvement and interpretations may exist, which is why this research will primarily rely on statutes and case laws.

### **Protection against Sexual Harassment of Women at Workplace Act 2010**

There are total of less than 25 cases decided by the appellate courts on different issues concerning definitions of harassment, workplace and question of employer and employee relationship, and whether the scope of these definitions is sufficient to cover the practical situations under the law.

Some of the most important issues that were decided or left to be decided in case laws are:

- 1- Retaliation
- 2- Scope of Definitions
- 3- Relationship

Analyzing the case laws at the appellate courts, in which we find that the foremost consideration that this law lacks is how to deal with the question of retaliation. When a woman or a man files a complaint, and the concerned person, colleagues, authority or organization becomes hostile, it is observed in Maimona Rajab case that the witnesses turned hostile and extended no support to the complainant which resulted in no action against the accused in another case Iram Shahzadi vs GOP the complainant was suspended from her job in retaliation but the appellate court didn't take cognizance of it and recommended that the issue be taken up at appropriate form.

In yet another case which went to the Supreme Court Nadia Naz case which went up to the supreme court of Pakistan where they didn't consider the fact that her contract was terminated, not extended by the organization after she had filed a complaint, which clearly shows the hostile behavior not only of the accused but of the whole organization. The issue of retaliation keeps most women from filing complaints, they fear for their person, reputation, career and financial security.

In a different scenario of retaliation, Meera Shafi Vs Ali Zafar case, both the parties have filed counter defamation cases against each other, so much so FIRs at the Federal investigation agency (FIA) has also been filled against the witnesses of Meera Shafi, which clearly indicate intimidation of not only the complainant but also their witnesses.

In another scenario where the complainant had chosen inquiry committee as an appropriate form, but a compromise was reached but the harasser managed to initiate disciplinary inquiry against the victim as an act of retaliation, the victim thereafter moved application to reopen the inquiry, the accused/complainant in this case moved Islamabad high court against reopening of sexual harassment inquiry, the learned judge Babar Sattar gave a damning judgment against the complainant and dismissed the suit on ground that the compromise clearly indicated that the accused/complainant had admitted his fault. It is important to understand that the disciplinary inquiry against the victim was not considered as a retaliation or unattended vindictive consequence of the complaint, but the decision solely relied on the fact that the accused had admitted in

compromise document, should the court have taken cognizance of retaliation, what are the effective remedies for it? Another related issue is with respect to stay orders, retired Justice Yasmin Abbasey told dawn news that despite lacking jurisdiction the high court stopped proceedings. Therefore, hindering supportive environment for women.

Second most common issue seen as question of law has been the definitions, the interpretation of statute is limited by the definitions of the law provided in it, hence there find itself in a situation where they had to limit the scope of the definition according to the definition provided in the statute. For example in the Meera Shafi harassment case, the court was of the view that there is no formal employer and employee relationship of the independently contracting individuals, and nor does the law cover for the definition of the workplace in this scenario, hence on technical grounds the case of harassment was dismissed, it is however, at the time of writing this paper is still pending in appeal at the supreme court of Pakistan.

Third most important issue in another situation, where the complainant met at the office of accused for a project discussion, she was allegedly harassed however the court being limited by the definition of relationship failed to consider this as a formal relationship of employer and employee according to the definitions section. The judge decided that complainant does not fall under the definition of employee, hence the law doesn't apply on this situation as 'mere visitation of a woman to the office to discuss a project does not come under employment, complainant should be an employee of the said organization. Also that the Bar Council does not form part of the organization as defined in the Act'. The judgment referred the complainant to Bar Council Code of Conduct Act 1973 read with Islamabad legal practitioner and Bar Council Rules 2018 as appropriate laws to pursue her grievance.

After amendment in 2020, these case laws that there is legal gap in what is being experienced and what the definitions limits exist in the statute. There was a lot of hue and cry by the civil society and even the Supreme Court judgment in Nadia Naz case called it a "cosmetic law" with no real effect. Hence different Rights group advocated for amendment in the definitions of the law. And in January 2022 some very important amendments were notified, relevant to this paper are as following:

- The definition of complainant was made to be 'any person', it was previously perceived to be only for the concerned women employee but now has been expanded to any person seeking protection. Clause (e) of the Amendment Act.
- Now the definition of employer includes former employers as well against whom a complaint maybe lodged.
- The most debated and important definition amendment is regarding the "employee", from very traditional and limited definition, now it includes informal and formal of any nature employment, from domestic workers to unpaid apprentices or even home based workers. This not only expands the scope of who is an employee but also brings in the loop what is a workplace, with this definition it now includes virtual workplace as well.
- Definition of harassment has been expanded to include discrimination on basis of gender, which previously had to be sexual harassment in nature, now makes it hostile environment encompassing all sorts of discrimination on the basis of gender. This effectively changes the nature of the law, previously we have seen in case law where the court rejected the complainant regarding being sexually harassed, Babar Sattar to be quoted, that 'the complainant didn't fall in definition of the harassment for the purpose of Sec 2(h)', now this impediment is removed.
- Lastly but most important is retaliation, counterblasts clause (xi) or misuse of the defamation law, the amendment asks the ombudsperson or inquiry committee to take 'notice' of the retaliation. No further explanation is rendered.

## Conclusion

As it has been discussed that the most common issue is that women keep silent on it, although the recent amendment has suggested for the ombudsperson to take notice of counter-blasts i.e. defamation cases etc. Hence, it can be seen that it will still be an issue that the complainant has to deal with on their own at different appropriate platforms provided for it, this could mean pressure on the complainant to compromise or withdraw their application.

Secondly as the amendment only directs the inquiry committee or ombudsman to take notice of it, there again exists no mechanism, no explanation on part of jurisdiction whether the inquiry committee or the ombudsman is empowered to take any meaningful notice of it, the high court has previously given stay order where ombudsman directed to restore the employee, restricting and limiting its jurisdiction with directing to take the notice of such retaliations that hamper the cause of women, without giving the ombudsperson enough jurisdiction is a toothless jaw.

Reoccurrence of the issue of retaliation and courts not taking the issue into consideration is clearly indicative of the fact that there is limited interpretation and court doesn't take matters into its hands for which other platforms maybe availed. This however, leaves the complainant vulnerable and exposed to the same victimization against which she/he has come forth with the complaint. So it is prudent to take the issue as a whole and decide on it or at least take cognizance of it when deliberating for decision rather than to simply dismiss it. In nutshell the author of this paper does not see any considerable change with this amendment with regard to boosting confidence of the women in the judicial apparatus to ensure no retaliation.

On expanding the scope of definition of the harassment into any single instance of discrimination on the basis of gender has effectively changed the nature of the whole instrument. This calls in for deliberation on how the court will react to such cases where proof may be single incident with no tangible and documented evidence, furthermore, will the ombudsperson take only cases if non-tangible incidents or shall take into consideration and what are the corresponding accurate prescribed punishments for it in the Act that have remained the same as previously? This forces the author of this paper to ask, if changing the nature of this law was the right amendment?

Furthermore, the 'law alone does not guarantee the full protection of women's rights, especially when these laws operate in the context of a patriarchal social hierarchy and a weak rule of law. But they are essential for developing legal norms and obligations for the state to achieve honour and fulfilment.' This is why the State needs to change its attitude towards women related matters under this law; simply changing the law will not do the job.

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