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Combating the Harassment of Women at Workplace: An Analysis of Legislation in Pakistan

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Abstract

For a legal system to be successful it must include the three P's: security; promotion; and guarantee of basic rights. In both official and informal legal frameworks, these three Ps are enforced. In our patriarchal and gender-segregated society, the most well-known type of genderbased violence (GBV) occurs in the workplace. An unpleasant, destructive, and hostile working environment is created when harassment happens in the workplace. Because of this, she has a hard time securing a stable job and earning the respect of her peers. Women in Pakistan are uninformed of their human rights in situations of sexual assault, according to a recent poll. It was found that half of the women examined by the National Commission on Women's Status had been sexually harassed and were reluctant to come out with their experiences. Act of 2010 for the protection of women from harassment at work has been passed in Pakistani history to provide a safe working environment. Fundamental rights were invoked to provide constitutional safeguards. Unconventional employment arrangements, such as agricultural labour or household and homework jobs in Pakistan's socioeconomic culture. It is now possible to submit a criminal complaint or contact the Office of Ombudsperson even if you do not have a formal employment title according to legislation passed in 2010. Examine employment discrimination legislation's present condition and effectiveness in this article.

Keywords: act, harassment, Ombudsman, Pakistan, workplace

Harassment at the workplace is a universal emergent problem in every sector of the public and private nature. According to International Labour Organization Violence and Harassment Convention, 2019 (No. 190), Harassment is not confined only to physical abuse; it extends to various forms like deliberate overloading of work, embarrassing words, gestures, and awkward actions. Harassment at the workplace is defined as "Any unwarranted sexual advance, request for sexual favors either expressly or in writing or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment" ("the Protection against Harassment of Women at Work Place Act, 2010"). The definition noticeably indicates that verbal assault also amounts to harassment and is a criminal act.

According to "International Labour Organization Convention 111, 1958" on "Discrimination in Respect of Employment and Occupation," that harassment is a form of discrimination if it is based on one of the prohibited grounds of discrimination such as caste, creed, femininity, culture, age, sexual orientation, and religious preference. These bases of harassment can vary from one state to another and from one social context to another. Under the provisions of the Convention, Harassment at the workplace may take forms like; Physical Harassment, Verbal Harassment, Visual Harassment, Gestural Harassment, Written or graphic Harassment, and Psychological/emotional Harassment. The effects of harassment can be physical, emotional, and psychological. Harassment is under continuous mental stress and physically uncomfortable, which becomes a hurdle in performing her due role (Prevention, Prohibition and Redressal) Act, 2013).

According to Hersch (2017), the term "sexual harassment at work" was a fabricated one until the 1970s, when it was thrown out like a hot potato. People and nations throughout the globe were unaware of the seriousness of harassment as an act or of the repercussions that may result from it. In 1974-75, the term "sexual harassment" was invented and a landmark case, Carmita Wood vs. Boyce McDaniel, was decided in the United States of America. Carmita Wood, an employee of Cornell University, made a claim for unemployment benefits after resigning from her position because of abuse she suffered at the hands of her supervisor. Workplace sexual harassment was defined and its extent was set by worldwide standards by the Employment Opportunity Commission (EEOC) in 1980. While the EEOC has recognised sexual harassment as a societal ill, many other countries have embraced the same definition and breadth when it comes to sexual harassment.

Harassment mostly targets female juniors, migrant workers under the age of 35, and members of low-income households, according to the study. Harassment has a negative impact on both the harassed individual and the organisation. One hundred nations have been studied under international law to see whether there are specific legislation to promote women's rights, especially in situations of harassment. There are laws against workplace harassment in 78 countries. As an example, "Europe, America, Cambodia, China, Fiji, Malaysia, Mongolia, Thailand, Albania; Armenia, Azerbaijan; Bosnia, Herzegovina; Croatia, Lithuania, Macedonia, Romania, Russia, Mexico, France; Germany; Italy; South Korea, Poland; Portugal; Spain; Sweden; Switzerland; United Kingdom, Bangladesh; India; Pakistan; Sri Lanka, Angola; Benin, Burkina Faso; Congo; Ethiopia; Kenya; South Africa, Tanzania" are some examples. (Hersch, 2017).

In recognition of the significance of women's rights, the Pakistani government enacted legislation prohibiting harassment of women in the workplace. To address workplace harassment in Pakistan's patriarchal culture, Hadi (2018) proposes using socio-cultural variables as a shaping tool in addition to legislation. In the Asian area, 28 nations lack laws to protect women from sexual harassment and assault in the workplace, according to a UN Women poll done in Delhi. The countries of India, Pakistan, Nepal, Japan, China, and Bangladesh have enacted legislation and imposed punishments for sexual harassment in public places and at work. Many women are not aware of these rules and are hence unlikely to apply them, making it difficult for these laws to take hold (Keplinger, 2019). While harassment is an issue in Asia, it is also a problem around the world. American Title VII of the Civil Rights Act of 1964 (the "Me Too" and "Times Up" campaigns) have resulted in the most widespread social action that has bolstered working women's ability to speak up against sexual assault and harassment at their workplaces.

Literature Review

In their view, prior to The Act of 2010, Pakistan's legislative record on the protection of women's rights was mute on incidents of female harassment. Saeed and Hussain (2010) In this context, AASHA (Alliance Against Sexual Harassment) introduced "The Code of Conduct for Gender Justice" for the first time with the government of Pakistan People's Party. AASHA is working to establish legal protections for the expected outcomes of the aforementioned code. "Protection Against Harassment of Women at Workplace Act 2010" was the bill's name.

Harassment was not considered a crime before to 2010. After the enactment of the aforementioned Act, it was deemed criminal and designated an intolerable act for women. In order to safeguard the rights of women, President Ayub Khan established the Muslim Family Law Ordinance 1961. By introducing the Women Protection Act 2006 and the Code of Criminal

Procedure (Amendment) Ordinance 2006, President Musharraf emphasised the protection of women's rights (Noreen & Mussarat, 2013). Pro-women legislation was made possible by the 12th National Assembly, which served from 2002 to 2007. About 17 bills on inheritance, marriage with the Quran, citizenship entitlement rights and women's position were passed by female lawmakers. They demonstrated their power by pushing these bills around. However, there is no regulation that expressly addresses the issue of female harassment, which is a major source of worry in the workplace. Even Pakistan's Civil Service Laws fail to address the issue of female harassment in the workplace, according to a literature assessment (Hussain and Bhatti, 1997). Federal and provincial civil service laws are the subject of investigation. There is just one connotation in which the term "misconduct" is employed, and that is to say, taking advantage of another person's financial situation (ESTA Code, Compilation of Civil Services Legislation, 2016).

Before Independence (1757-1947) and After Independence (1947-present) are two distinct eras in the development of Pakistani labour legislation (1947-1969). In 1947, Pakistan received the Indian subcontinent's labour laws and put them into effect. A number of statutes, including the Industrial Disputes Act of 1926, the Trade Union Act of 1926, and the Factories Act of 1934, govern industrial employment. All sectors of industry were permitted to participate in trade union activities and employees had the ability to collectively negotiate and even go on strike as a result of these legislation. In 1960, the Trade Union (Amendment) Ordinance introduced the notion of mandatory recognition of trade unions by employers and included aspects of the preceding Act. Employers and employees were also involved in the unfair labour practises that were uncovered by the investigation. More businesses became public utilities under the Industrial Dispute Ordinance of 1959, and strikes were finally outlawed as a result of this

change in the law. Workers were forced to go from court to court for years because of the mandatory adjudication system. Labor laws were changed under the Yahaya Khan Regime to emphasise two points: that the trade union movement should remain factory-based and independent of party politicssecond .'s military dictatorship. The first decade of independence brought increasing manufacturing and employment, but it also introduced retrogressive labour regulations and a system of repression that is still in place. Right to trade unions and workers was greatly reduced and often suspended during Ayub Khan's period in power; In the latter years of Yahya Khan's rule, Pakistan was seeing rapid industrialisation, but labour laws had not advanced. Labor rights were included in the Pakistani constitution during Zulfiqar Ali Bhutto's rule (Articles 11, 17, 18, 25, 27, 37(e) and 38 of Pakistan's 1973 constitution).

Around 70 pieces of labour legislation exist in Pakistan, all aimed at protecting and enhancing worker value and dignity. In 1969, Pakistan's Parliament established the Industrial Relations Ordinance, which serves as a comprehensive document on worker rights. The Industrial Relations Act of 2012 gives unions a wide range of new rights and responsibilities (Iftikhar, 2017). There are numerous pieces of federal and provincial labour legislation in Pakistan, including "The Industrial and Commercial Employment (Standing orders Ordinance), 1968," "The Payment of Wages Act 1936," "The Apprenticeship Ordinance 1962" and "The Shops and Establishment Ordinance 1969," as well as "The NIRC (Procedure and Functions) Regulations, 1975." (Farani, 2013). A review of Pakistan's labour regulations finds that harassment is not addressed in any of the country's labour laws. Regarding the subject of harassment, everyone is keeping a tight lid on their mouths. There are no provisions in the Industrial Relations Ordinance (2012; enacted in 2012) that evaluate standards of bad conduct, unfair labour practises, or ancillary matters relating to the performance of employees and

employers that take into account acts of harassment of any kind, whether it occurs between coworkers or between coworkers and their employers.

Standing Orders, 1968's definition of "misconduct" does not include sexual harassment as a cause or an act of misconduct. Government employees are subject to Civil Service Laws, which govern their employment. Pakistan's parliament enacts laws regarding the employment of civil servants, such as the "Civil Servants Act, 1973," the "Removal from Service Ordinance, 2000," the "Service Tribunal Act, 1973," the "Government servants (Efficiency and Discipline) Rules, 1973," the "Government Servant Conduct Rules, 1964," the "Ex-Government Servants (Employment with Foreign Governments), Act, 1966," and the "Federal Public Nevertheless, none of them addressed the issue of sexual harassment in the workplace.

The International Labor Organization's Charter is deafeningly quiet on the subject. At its 48th session, it did approve the Employment Policy Convention of 1964 (No. 122) in which the member nations of the International Labor Organization proposed policies for the provision of a secure working environment for men in general and female workers in particular (Circular No. 543, 2004).

Research Methodology

The methodology of the research paper is descriptive-analytical. Pakistan is a patriarchal society where males and females are segregated in every sphere of life. In this regard, raising a voice against women's harassment is an important issue and requires meticulous methodological and ethical considerations. The research will analyze (will why) the provided laws to combat the problem of harassment at the workplace against women. Statutory enactments of Pakistan, available literature, scholarly articles, and library material are approached and considered for analyzing Laws.

Result and Discussion

(a)Legislative upholdness of Harasment as crime

After having through the literature view over the legislative texts for protecting the rights of working women, Constitutional guarantees, international conventions, and national legislations have not tackled the issue of harassment. "The Protection against Harassment of Women at Workplace Act 2010" is found only the text provided for the taking legal action in the event of sexual harassment against women at workplace both at federal and provincial levels in Pakistan. The Act, 2010 against harassment is proved as a haven for women. It comprises thirteen sections meant to protect working women (Section 1, the "Protection against Harassment of Women at Work Place Act, 2010"). Explanation of harassment is given in Schedule attached to this Act, 2010 whereby following actions would amount to causing harassment at the workplace;

- 1. Misuse of authority by an employer, management official, a director will come under harassment at the workplace.
- 2. Establish an environment of hostile nature by demanding favor of sexual nature from subordinate by the individual in the superior position.
- 3. Reprisal and pressurizing someone due to non-acceptance of the offer made by an employer will also amount to harassment [Section 2(h), "the Protection against Harassment of Women at Work Place Act, 2010"].

The definition clause contains the clarification of terms harassment, complainant, employer, employee, inquiry committee, organization, workplace, and Ombudsman. Section 3 of the Act, 2010 contains provisions regarding the constitution of the Inquiry Committee. Under the Act of, 2010 it is mandatory to form an inquiry committee to investigate harassment cases. The

committee must be composed of three members. It is also desired under the Act that one of them must be a woman. Members represent management, employee class, and one must be from outside to keep balance. It is also provided that if there is a complaint against any of the Inquiry Committee members, that member is replaced by another for that specific complaint (Section 3(3)). Sections 4 and 5 of the Act, 2010 provide for conducting an inquiry, powers, and committee functions. Under The Act, 2010, within three days of receiving a written complaint, the Inquiry Committee shall inform the accused about the allegations made against him. Accused is directed to submit his instance in defense within seven days of receipt of the charge sheet. Committee will also inform him that in his default, the committee has got the power to decide the matter ex-parte. A written statement is submitted by an accused within the prescribed time; then, it becomes the committee's liability to inquire into the matter by taking shreds of evidence from parties.

Under the Act, the 2010 committee has been empowered to conduct rules of procedure to regulate its plate form. There are certain limitations impose by The Act, 2010, i.e., the evidence, whether documentary or circumstantial, produced before the committee, must be kept confidential, and the complainant and the respondent may have the right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague. The committee has the power to make an order for the appearance of parties, produce evidence, and record the statements of witnesses. Committee will ensure the protection of the complainant or the witnesses and further keep a check that creates any hostile environment between a complainant and accused.

The Inquiry Committee shall reduce into writing its findings and the reasons within thirty days of application submission. The committee is abreast with recommending either entitle for

minor or significant punishment for accused to be proved guilty mentioned under section 4 of the Act, 2010. The inquiry committee is empowered to monitor the precise enforcement mechanisms of penalty recommended by the committee. An inquiry committee has the power to constitute a medical board or order for making social counseling for the complainant if required. The committee can refer the inquiry in hand to the Office of Ombudsman if it is found that allegations are frivolous and stale.

The Act, 2010 provides for the Ombudsman Office's role in being an appellate forum for addressing the issue of harassment at workplace, powers, and functions, establishment and qualification of Ombudsman at Federal and provincial levels. Concerned Governments will appoint an ombudsperson for four years (Section 6, 7, 8, 9, and 10). Under "President's Order No.1 of 1983," government will assign Wafaqi Mohtasib (Ombudsman) with immense powers and functions to provide speedy justice to citizens and make access to justice smooth (Section 3, Establishment of the Office of Wafaqai Mohtasib (Ombudsman) Order, 1983).

The provisions of Act, 2010 Office of Ombudsman could serve in two capacities: Direct Complaint lodge before Office of Ombudsman: An aggrieved can made complaint direct to the Office of Ombudsman in case of harassment at workplace. The Office of Ombudsman shall, within three days of receiving a complaint issue, summon the respondent for submission of his written statement within five days. In default to do so, Ombudsman has the power to proceed as ex-parte. Ombudsman can inquire into the matter and record its decision. An appeal can prefer by aggrieved to the Office of Ombudsman against the departmental inquiry committee's findings. The Act, 2010 contains the statutory remedy for selecting a decision to an upper forum for correction incapacity of an appeal. Hence aggrieved has the right to prefer a request to the Office of Ombudsman within thirty days of the inquiry committee's findings. Ombudsman has the

power to set aside, amend, confirm or reject the results of the inquiry committee (Section 8, the Protection against Harassment of Women at Work Place Act, 2010).

This Act describes the powers of the Ombudsman. Office of Ombudsman has all the powers of Civil Courts confer by Code of Civil Procedure, 1908(Act V of 1908), for disposing of the civil suit. The Office of Ombudsman is also vested with the powers to be exercised by Magistrate for awarding penalties under Code of Criminal Procedure, 1898. The Act, 2010 provides for the right of the second appeal to the aggrieved person. The President's second appeal against the Federal Ombudsman and Governors' decision in case of the Provincial Ombudsman within thirty days (Section 9). The Act imposes obligations upon the employers, management, and directors to ensure the execution of Harassment laws within the concerned workplace. It is further charged that copies of the Act must be displayed at the entrance points, so all the employees are well versed with the Act. The government also desired that this law be embodied in the Service Rules as the code of conduct that shall not violate (Section 11 and 12).

This Act also empowered the federal government to properly implement the Act by making supplementary Rules (Section 13).

"Code of Conduct for Protection against Harassment of women at the workplace, 2010."

The Schedule attached to the Act elaborates the two provisions contained in the Act, 2010. An employer must insert the provisions of Act 2010 in its code of conduct settled down for employees as guidelines to be followed compulsorily. An employer should treat the matter of harassment as a formal complaint and hold the inquiry. The employer shall make adjustments so that the respondent and the complainant do not have any interaction for official purposes during the investigation span (Schedule sections 2(c) and 11, Code of Conduct for Protection against Harassment of women at the workplace, 2010).

"Wafaqi Mohtasib (Ombudsman) Order, 1983, President's Order No. 1 of 1983."

Office of Ombudsman was established under "the Wafaqi Mohtasib (Ombudsman) Order, 1983, President's Order No. 1 of 1983", whereby it empowered to investigate in the matters where injustice is done based on Gender, caste, and religion for speedy justice. Office of Ombudsman is introduced as defender and custodian of fundamental rights of citizens. It is pertinent to mention that jurisdiction is not extended to deal with harassment cases specifically. Still, after the enactment of Act 2010, this noble Office is entrusted with dealing with matters of harassment against women at the workplace. "The Federal Ombudsman Institutional Reforms Act, 2013" Reforms are made to strengthen the institution of Ombudsman, scope and jurisdiction are formally extended to entertain the cases of harassment against women at workplace (The Federal Ombudsman Institutional Reforms Act, 2013).

Furthermore, the Office of Ombudsman's operation is made practical and authoritative by applying the Principle of sub-judice to proceedings pending before the Ombudsman forum.

Under this law, steps have been taken for appointing women as Ombudsman to provide substantial relief in cases of sexual harassment at the workplace. "Wafaqi mohtasib (investigation and disposal of complaints) Regulations, 2013" are the rules and regulations introduced and implemented by the Federal Ombudsman by exercising his authority to make rules for efficient, expeditious disposal of grievances of a citizen. Ombudsman has the power to review decisions passed by him within thirty days on the application filed by aggrieved. At provincial level Provincial Ombudsman Acts, i.e. 'Provincial Ombudsman (Mohtasib) Sindh, Secretariat,' 'Establishment of the Office of Ombudsman for the Province of Baluchistan Ordinance, 2001', "The Khyber Pakhtunkhwa Provincial ombudsman act, 2010 (Khyber

Pakhtunkhwa Act No. XIV of 2010)" and "The Punjab Office of the Ombudsman Act 1997, Act X of 1997" serve speedy justice in cases of harassment against women at jobs.

"Pakistan Penal Code (Act XLV of 1860) and Criminal Procedure Code, 1898."

The criminal Law of Pakistan contains provisions regarding female modesty and honor, but sexual harassment at the workplace was not addressed (Section 509, Pakistan Penal Code, 1860). Later on, amendments have been made whereby harassment at the workplace is specially incorporated in Pakistan Penal Code 1860 and Criminal Procedure Code, 1898, respectively (Section 509, Subs by Criminal (Amendment) Act 1 of 2010). It is pertinent to mention that harassment at the workplace is 1st time regarded as a criminal offense under the criminal justice system and is punishable with imprisonment, which may extend to three years or with a fine of up to five hundred thousand rupees or with both. The amendment is carried out to negate the social evil from society by declaring it a criminal offense. This amendment will not only make the workplace safer for women, but it will open up the ways for more women to pursue professional life with dignity and honor. The Criminal Code, Amendment of Schedule II, Act V of 1898 entries have been made to Schedule relating to Section 509 of Pakistan Penal Code, 1980 according to amendments made (Farani, (2012)).

(b) Judicial approach in form of Human rights cell

The Supreme Court of Pakistan established a cell for protecting and promoting the citizens of Pakistan's fundamental and guaranteed rights. The Supreme Court of Pakistan takes public interest litigations and sou moto notices(taking legal action at its own motion); directions are being implemented through the Cell. The Cell also considers the impacts of violations on the upcoming generations and social effects on society. It grants speedy and economic relief in matters relating to breaches of guaranteed Rights enumerated in the Constitution of Pakistan

1973. The Cell performs its role under the directions and support of the Hon'ble Chief Justice of Pakistan. It addresses the applications directly addressed to the Chief of Pakistan as a custodian of citizens' rights. The Cell has paved the way for so many statutory reforms on social concern issues; legislators took benefits from the Cell for impacts and subjects of legislation (Important Human Rights Cases, Supreme Court, 2017). The Cell proved to be engine of change in addressing human rights violations. According to annual report 2016-2017, Human Rights Cell, Applications received in HRC generally ranges from 2500 to 3000 per month. During 2017-2018, The Human Rights Cell disposed of 43263 applications.

Conclusion

It is concluded that since the inception of Pakistan, Pakistani women have lived in a world structured by strict social, cultural, religious, family, and tribal norms and customs. This discrimination in the shape of violence against women, honor killing, and acid attacks becomes a nationwide issue, cutting across all cultures, provinces, social, and age groups. Sexual harassment at the workplace is the leading form of Gender-based violence faced by working women today in Pakistan. Women empowerment has become the prime national policy of stakeholders of Pakistan. To address sexual harassment at the workplace, the protection against harassment of women at the workplace Act 2010 has been developed and implemented as significant initiatives in this regard. The Act 2010, along with other legislation, is in the field to combat female harassment; it is now a liability of the employer/management cadre to implement the Act 2010 in its true spirit. The Act 2010 should be taught in professional ethics to create awareness in public. The Victims of harassment should play their role by raising their voice in the cause. The article suggests healthy interventions to provide women training and think over

disturbing factors like harassment at the workplace. The best mechanism to eliminate sexual harassment in education, training, and prevention.

Harassment or Gender-based violence or Gender perspectives and priorities should be incorporated in curriculums to train the mind and for the sake of awareness. Employees should be provided with pre, in-service, and post-training to deal with such situations. Strict internal policies should be made by management to implement the Act, 2010 effectively. Legislators should look into the implementation criteria by keeping and introducing check and balance mechanisms. Civil society's role also matters as it is of great importance that the general public should not negate a female's personality as a dignified phenomenon. The Office of Ombudsman and Higher Judiciary should keep special focus on cases on female rights, and strict action should take against the wrongdoer. An analysis of the protection against Harassment of Women at the Workplace, Act 2010, reveals three main measures for combating harassment: an interdepartmental complaint system within the Department/Organization concerned. According to the said Act, it is the liability of employers/managers/directors to display the Act's copies, 2010 inconspicuous place of Organization/Department to provide a safe working environment to the females. The Act contains directions regarding the inquiry committee's constitution within every Organization/Department to investigate the truth of allegations of harassment. The Act enumerates the penalties for the wrongdoer as well. Statutory remedies of 1st and 2nd appeal are conferred by the said Act to the Office of Ombudsman and President of Pakistan/Governor of the concerned Province, respectively. The role of media can't be ignored; electronic media, the printing sector, and advertising agencies should create awareness among societies. Judiciary, especially trial courts, prosecutors, and forensic institutions, the police department can improve their faculties and facilities to investigate sexual assault and crimes. Conceptually LIVES

(Listen, Inquire, Validate, and Enhanced Safety) should be practiced in sexual abuse and harassment cases by Governmental institutions. Referral networks should be established, identify, adequately coordinated, and provided to the victims of harassment.

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