SEXUAL HARASSMENT IN THE WORKPLACE: A PROPORTIONAL EXAMINATION OF RELEVANT LEGISLATION, WITH COMPARISONS TO TWO MAJOR ASIAN COUNTRIES: INDIA AND PAKISTAN

Johar Wajahat
Assistant Professor, Department of Law, Shaheed Benazir Bhutto University for Women Peshawar
joharabulhassan555@gmail.com

Rafia Naz Ali
Assistant Professor, Department of Shariah & Law, Islamia College University Peshawar
rafia@icp.edu.pk

Mohammad Jan
Assistant Professor, Department of Shariah & Law, Islamia College University Peshawar
jan@ic.edu.pk

ABSTRACT
Pakistan and India consider sexual harassment a negation of basic rights. Both countries have ratified the CEDAW and their relevant laws on sexual harassment are aligned with the 19th ILO recommendation. Both Pakistani and Indian laws rely on committees to investigate allegations of workplace harassment and formulated strategies along with principles to deal with sexual harassment at the workplace. The Pakistani formulation of committee, legal structure, and relief clauses vary from that of Indian law. Indian law empowers inquiry committees with the supremacies of a civil court. However, Pakistani law has a distinct institution, i.e., the Office of Ombudsman, imbedded with the authority of both a civil and a high court. The Inquiry Committee does not have the powers of a civil court to exclusively determine the issue at hand. The Inquiry committee works under the laws and regulations of the department concerned. Furthermore, Indian law is silent on the imposition of a penalty, as opposed to Pakistani harassment law. Rights of appeal are guaranteed under Pakistani law, while the India Act, 2013 is silent on provisions of forums. Keeping in view studies related to harassment laws, one can say that Inquiry Committees would defeat the very purpose of the Acts of both countries. Initial inquiries by inquiry committees are mostly tainted with injustice. Implementation entails conceptual clarification, indulgent consideration, and construction of the laws by the panel of the Inquiry Committee, mostly not proficient in law. Members on panels of inquiry committees’ effect pro and cons in controversy. This partiality at their end is not addressed under both Acts, hence necessitated reforms in the enacted laws of both states.

Keywords Harassment at workplace Acts, Asian Countries, Redressal, Inquiry Committees, Legal actions and Legal articles

INTRODUCTION
Working women's effective performance and governance potentials are kept in the shadows of doubts and negation of their due rights in society as a result of sexual harassment at work. Harassment is primarily acknowledged as a distinct form of discrimination by the feminist movement in western nations. The word "sexual harassment" was conceived in the middle of the 19th century by Catherine MacKinnon, a legal scholar from the United States of America. Sapiro (2018) Research in hand discovers the ways in which the anti-sexual harassment laws in two major South Asian countries have been conceptualized, sanitized, and addressed efficiently at work. Additionally, women's activation in the labour force is a pivotal display of social fairness, gender equivalence, and economic growth in general. In Asian countries, women's participation is comparatively less than that of men. One of the foremost causes is identified as an unsafe and influential working environment for women. The South Asia region has a low-rated record in addressing the issue of gender equality. According to Amartya Sen, globally 100 million women have been misplaced, the majority of whom are from Asia (sen, 2019).
South Asia has high levels of gender discrimination and inequalities in terms of gender biasness, with 28% female participation in the region's economic sphere (John, 2016). Although in India and Pakistan, formalization has occurred, yet women's participation in the informal and formal sectors is deteriorating. Actually, a contrary inclination of 'de-feminization' is evident in the practice of diminishing workforce involvement of women. Within enactment, there is an upsurge in insecure work environments as most communal sanctuary and labor laws have no application to the informal sector. In South Asia, in the formal segment where chances of suppression of rights are supposed to be smaller, even then women's participation phenomena are experienced to be low. This is because the unpaid domestic chores which women are expected to accomplish within the domiciliary continue to remain their primary concern as 'women'. If someone recognizes her worth by participating in the country's economic life, she is kept at a secondary level. Questions have been raised regarding the role of diffidence or harassment at the workplace as the sole reason for non-participation of females and women's heritage in domestic chores can't be addressed as both co-relate and co exists (Bularzik, 1983).

Sexual harassment in India and Pakistan is measured as a barrier by societal regulators. In order to curb the social evil of harassment at the workplace, Pakistan in 2010 proved as a state within South Asia to have enacted a harassment law. Earlier to this, Sri Lanka won the credit back in 1995, when by harassment got the status of a crime by amending its penal regulations. Other Asian countries, such as Nepal, Afghanistan, and India, have endorsed harassment laws and made provisions to deal with this communal and felonious action of workplace harassment. The rest of the Asian states, i.e., Bangladesh and Bhutan, have not legislated any laws to address the evil of harassment. Keeping in view the globalization of the world within this technological era, one can presume that necessity would arise to legislate on the issue of harassment.

The focus of the research in hand will be on the involvement and impact of women’s protagonists in India and Pakistan in intellectualising and endorsing the harassment rules and principles. Further study of both enactments would be abreast with the knowledge of the role of the Inquiry Committee, redirection mechanisms and legal aid provided under the clauses with reference to differentiate and identify the areas for improvement.

**Workplace Harassment Legislation in Pakistan and India**

In Pakistan, women Harassment is a grimace fact, as per datum of the annual report 2003 by the National Commission on the Status of Women Employment, enumerates round about 50% of the females employed in the civic sector are purported to have been exposed to sensual physical abuse (breaking the silence, 2013). AASHA well known non-governmental organization played a key role in raising the issue of harassment to be addressed legally in Pakistan. Under flagship of (AASHA) in 2001, basic proper steps were taken to deal with this evil legally by inviting the governmental institutions to become carrier of message to concerned quarters. They also involved general public, educational institutes, labor organizations, private segments and official establishments. Untiring efforts were demonstrated in form of amendment in penal clauses and enactment of “Protection against Harassment of Women at Workplace Act, 2010” by the Parliament in 2010. By virtue of this landmark legislation, allied with establishment of Federal Ombudsman on Harassment at workplace, women have been legally shattered under the law against all forms of harassments.

**Comparison of harassment legislations in Pakistan & India**

The heritage of activism of women in the subcontinent against the realm of the British Empire is evident and can easily be sketched for independence. The fact was exposed and came to be recognised in the late 70’s with allegations of westernization. In the twin countries, women’s exertions confronted a lot of challenges. In India, Dalit, other reluctant caste, and Muslim women have accused the feminist movement of elitism, which they attribute to the feminist activists' upper-caste and upper-class backgrounds. In Pakistan, the movement is labelled as nonspiritual by westernised activists who challenge Islamic fundamentalism and Islamic feminists who detect themselves within Islam and propose an exclusive feminist evaluation of Islam without giving up their Muslim sacred distinctiveness

In a well-known petition, where harassment at the workplace was taken into consideration, the Apex Court of India gave guidelines relating to sustainable relief. In the historical case, the petitioner was involved in a women’s development programme and, on account of her job description, strived hard to constrain child wedlock/abuse happening in a family of upper caste in her native village. Primarily, the respondent cautioned her for her actions. On her refusal, she was subjected to violence coupled with
Sexual harassment in the workplace......

gang-rape. Petitioner filed the case which resulted in the case being decided in favour of respondent by extending the justification that upper caste fellows can’t be involved in such activities with fellows from lower caste. An appeal has been forwarded to the apex court for justice. The Supreme Court in a landmark case delivered a guiding principle to address physical harassment regardless of the nature, status, and position of parties. The decision was owned by the name of Vishaka Guidelines against Sexual Harassment at the Workplace and has been characterised by relevant enactment as binding force because adjudication fills the gap legally (Kapur, 2013). Initially proposed as a first step toward enacting legislation on the subject (Geetha, 2012).

During 2000-2003, various bills were presented, discussed, and pondered upon, but no final legislation was taken on the issue in hand. The bill was shortlisted whereby it contained protection, participation, and promotion of working females, which was later on re-examined whereby it dropped all penal provisions enclosed in the prior draft, respectively, in 2005 & 2007. In 2010, a bill was presented but rejected infamously as harassment was treated as a civil wrong rather than an offence, which is against the Vishaka guidelines (Eapen2010). The Constitution of India ensures basic freedoms and rights to women. In the light of Articles 15(1), 15(3), 21 and 21A, a state is obliged to make laws for women’s rights.

Pakistan and India, legislated laws on anti-sexual harassment according to the international standards (19th recommendation of CEDAW). It is pertinent to mention that workplace harassment has been defined under both legislation in the same context. Elementarily, there is no drastic variance that has been notified in both enactments in terms of scope and explaining the acts amounting to sexual harassment. Basic concepts of exercising sexual harassment and leading to an advancing hostile working environment are enumerated in the same context, i.e., enactments under analysis extend identified forms of harassment. Pakistani law extends legal protection in the event of harassment to both women and men, but the same has been missing in Indian law on harassment. It provides legal assistance if a female has been harassed by exempting the males (Section 2(e), PASHW).

Perusal of the Indian harassment Act, 2013 reveals that the scope of the workplace has been kept in vast and multifarious dimensions, while under the provisions of the Pakistani law of harassment, 2010, the scope of the workplace is vastly reduced. The workplace under Pakistani law is confined to restricted areas and scope. Both legislations provide for the constitution of departmental committees on a mandatory basis to entertain, monitor, implement, and recommend the penalty, but differ in terms of types, numbers, and quasi-judicial empowerment. Under Indian Harassment law, committees for formal and informal sector employees are constituted under the domain of public and private sectors and named as the Internal Committee and Local Committee, respectively (section 2(g-iv), SHW, 2013). In both types of inquiry forums, the statute hasn’t extended any limits as to determining the number of its members. Disparately under the Pakistani Harassment enactment, only one inquiry forum has been constituted by the organization, irrespective of whether it comprises formal or informal sector employees, with a restricted number of members. Further, it has been made mandatory that a woman must be on the panel of the inquiry committee.

The Pakistani Harassment Law makes no specific provisions for workers employed for domestic purposes or chores, whereas Indian harassment law provides legal assistance to domestic or self-employed workers. According to Indian statute, internal and local committees must be chaired by women, whereas the same issue has been addressed under Pakistani harassment law without imposing any gender restrictions on who can become chairman of a committee. Mostly, membership of both committees is acquired by people famed for their women’s causes and repute in society. As per survey analysis, Chakravarti, an educationist, has accorded that societal uneven & discriminatory practices/customs have been transmitted since antiquity till date, whereas legal issues are coined by social norms (kumar, 2010). The membership of the inquiry committee on social grounds is missing under the Pakistan Harassment Act, 2010. The Pakistani Harassment law provided for the establishment of the Office of Ombudsman to entertain harassment cases at the workplace with wide judicial powers. In this context, the Federal Ombudsmen Institutional Reforms Act, 2013 was passed in order to expeditiously and efficiently provide good governance (FOIRA, 2013) to complainants. According to Pakistani law, a complainant has two options: either to lodge a complaint at the Office of the Ombudsman or to forward the complaint to the departmental inquiry committee (PASHW 2010). In terms of powers and functions, Indian law empowers committees with civil court powers, whereas in Pakistan, the inquiry committee is the only medium for collecting facts and figures of complaints.
without delegating any civil court powers (PASHW 2010, 5). The Ombudsman has been empowered to approach any venue, summons, production of documents, etc. Furthermore, the Act of 2010, empowered the Ombudsman to penalise those who violate the High Court's orders. Further, complainants harmed by the Ombudsman's decision may approach the Governor or President, as the nature of jurisdiction requires. Other than the Inquiry Committee or Local Committee, Indian harassment law is silent on the establishment of such specified forums (SHW 2013). The time limit for lodging a complaint of harassment under the Indian Act is within three months of the incident. The same has been extended for women suffering from legal disability owing to age or health constraints. Under Indian Law of Harassment, verbal complaints are also considered if they are reduced to writing (Chapter IV, SHW).

In the Perusal of Pakistan Law of Harassment, it has been revealed that no such time frame has been fixed for lodging the complaint. While the inquiry committee has been bounded to cognizance the issue and the respondent to make defence well within the stated time frames, non-submission of written replication resulted in an ex parte decision (PASHW 2010, 4). Conciliation is one of the distinguishing features of the Indian Harassment Act, 2013; before conducting an inquiry, the Internal Committee/Local Committee offers conciliation between complainant and respondent. Minutes of conciliation proceedings along with reasons and recommendations so reached are required to be recorded and forwarded to concerned quarters for compliance. The Pakistani law of harassment settlement through a mechanism of conciliation is missing from the hierarchy of provided forums. Failure to conciliation resulted in the complaint being investigated by both the internal and local committees in accordance with the rules and regulations of employment if the complainant is an employee and being forwarded to the police station or court for trial, in the case of a domestic employee, later for investigation under Indian Harassment law. Further, if the respondent failed to comply with the settlement of conciliation, the complainant woman may approach the police for literal compliance. The internal committee will investigate, giving both the complainant and the respondent opportunities to clarify their positions, and will complete the investigation within 90 days. An internal committee will record the findings and communicate the same to parties. It is a well-known fact that Indian law does not provide for any penalties if found guilty.

The provisions are directive in nature as they only require the organisation to be directed to abide by rules and regulations as enumerated with the imposition of a fine on the wrong doer (SHW 2013). The sum may be categorical based on the nature of the complaint along with the criteria stated by the act itself (SHW 2013, 15). Perusal of the Indian Harassment Act, 2013, it has been revealed that the law is silent on the penal actions against respondents. Although the same was part of earlier draughts of the bill on harassment in 2005 and 2007 respectively, the same has been removed by legislating the Act in hand (Section 12, BOH -2007). Many scholars and Justice Verma's committee report criticised this lacuna, yet it needs a particularly sensitive lens to modify the same. It is pertinent to mention that Pakistan's harassment law clearly provides for two forms of penalties, i.e., civil and criminal, of minor and major nature, at length, along with compensation in the form of damages to the complainant. The penalties in the Act range from minor to severe. The Inquiry Committee not only recommends a penalty but also monitors its implementation.

The Pakistani law of harassment provides a legal remedy of appellate jurisdiction via the Office of Ombudsman or District Court to the aggrieved person within thirty days. The Office of Ombudsman has been entrusted with judicial powers to entertain the cause in both original and appellate jurisdiction free of costs. This office has been established for the expeditious disposal of harassment cases conclusively. The Office of Ombudsman under the Act 2010 has been exclusively empowered with the powers of civil and criminal courts, additionally with the powers of the High Court in this regard, to entertain the cause with proper particulars. The perusal of the Indian Harassment Act reveals that an appeal can be preferred from the decision of committees to a tribunal or court as the service rules provided for or law of land proceeds generally (SHW, 2013-18).

It is a peculiarity of Pakistani law of harassment that it provides medical assistance to the complainant if facing any mental distress or trauma. Such facilitation is missing in Indian law of harassment (PASHW 2010, 4). In many cases, women are hesitant to file complaints because they cannot prove their case, and they are also terrified that their identities will be revealed, and they will be blamed and shamed. Keeping in mind these social constraints The Pakistani Harassment Act, 2010 provides social and legal protection to petitioners and witnesses against any type of adversarial retort.
Furthermore, it has been ensured that proceedings are kept secret and confidential. The Act, 2010 extends the post-consequences and protections to the complainant and witnesses (PASHW 2010, 5). However, the Indian Harassment Act, 2013 is silent speculator towards posting concerns against complainants. The same flaw has been criticised on the basis of human nature as being regressive (Naina Kapur, 2013). Besides that, the law ensures the confidentiality of complaints and procedure thereon. Publication of the same is held illegal and dealt with according to service rules of misconduct. Under both statutes, employers are held liable for the display of harassment acts at their place of employment, making arrangements for employee awareness and ensuring a conducive working environment. In comparison to Pakistani harassment law, Indian law provides for aggressive actions against employers who fail to comply with the Act, 2013 and are unable to submit complete data in their annual report, as submitted by committees concerned (SHW, Chapter VIII).

CONCLUSION AND SUGGESTIONS

The analysis of both legislations reveals that laws are drafted, but implementation at both ends is not filling the gap that needs to be filled to ensure the dignity of women at work. Under both Acts, employers are held responsible for a harassment-free workplace. Confidentiality of complaints is ensured in both Acts. Despite all possible avenues, harassment at the workplace is a phenomenon that exists owing to a lack of certain guarantees, i.e., social, cultural, and ethical. Women, as free agents, are frequently unable to present evidence in their favour, or societal threats prevent them from pursuing matters for legal assistance under acts. It is the liability of the state to ensure female participation in all walks of life with the provision of guaranteed rights. Hence, suggestions are put forward for the utilisation and installation of scientific appliances and gadgets at the workplace to prove the cause.

The same proposed practise has been made mandatory for employers under the Acts. Social transformation of cultural norms to take into consideration harassment is possible by arranging training, awareness and mentoring sessions to enhance the confidence of women to raise their voice against harassment. When it comes to the composition of inquiry committees, both Acts identify in terms of composition, spacing domain, and redressal mechanisms, but there are significant differences in terms of procedures and the exercise of powers and functions of committees in both countries. It is hereby suggested that the government of Pakistan should also empower the inquiry committee with supplementary powers for conducting inquiries into causes ahead of just initiating the complaint. This would enhance its role. Further gender discrimination under Indian Harassment should be eliminated because, as in Pakistan, both males and females have the right to file a harassment complaint.

As far as the efficacy of committees of both Acts is concerned, it has been discovered that under the Indian Act, 2013 members are from society on a generality basis, while the membership under Pakistan law has been purely from organisations concerned with the mandatory provision of availability of women on panel. It has been suggested that for ensuring true justice free from doubts via inquiry, it is worth mentioning that members must have legal training, experience of sensitivity to women's issues or be well versed with legal know-how. It is further recommended that both countries should specify the criteria for the members of both committees in order to facilitate the expeditious disposal of causes without having to face teething problems by inquiry committees in entertaining complaints at their initial stage. It is necessary that members of inquiry committees have an insightful perception of public concerns and allied facts, so transformative hierarchies will enhance the role of inquiry committees. As far as cognizance of harassment is concerned, the Indian Act, 2013 only relies on the award of compensation with allocated criteria while the same has been recommended and apprehended with penalties like the Pakistan Act, 2010. Pakistan's law of harassment distinctly particularises the penalties into minor and major, keeping in view the nature of the case warns.

Pakistan's Law of Harassment also provides for the office of Ombudsman for either original or appellate jurisdictions. The role of the Office of Ombudsman in combating the cause of harassment is incomparable, as entrusted to keep an eagle eye on the harassment issue at work with a proper reporting system, complaint system, and awareness camp and with other unrivalled features as well under the sole head without charging any fee. Further, the right of second appeal has been conferred under the Act, 2010 whereby the Office of the President is empowered to entertain the same. On the contrary, Indian harassment law is lacking such an institutional facility empowered with appellate jurisdiction. Their conventional legal system will take up the matter in appellate jurisdiction if the situation so warrants. It is worth appreciating that the Indian Act, 2013 bounds the Committees to submit an annual
report to the concerned authorities. Further directions are issued to the employers for the submission of filed cases in their annual report. This clause should be imbedded in Pakistan's legal system to address the issue of harassment at the workplace.

Perusal of both enactments reveals that although Asian society endeavours for the protection of women's rights at the workplace, yet rooms are left to be filled with societal change in terms of social, cultural, and moral norms to accept gender equivalence, egalitarianism, and the pivotal role of women in the economic sphere of the nation’s prosperity. Governmental sustainable policies should be adopted in the true implementation of law, and ease of access to the concerned parties should be ensured in this context. Management having fewer or no harassment issues at the workplace should be awarded with incentives from the government in order to encourage the check and balance character of employers. Given the cultural and social contexts of both Asian countries, it is worth noting that sustenance and ethical support from family, colleagues, and society should be increased in raising a voice against this heinous action. Curriculums in educational institutions should include harassment education. The role of electronic and print media can’t be repudiated. Public awareness advertisements, talk shows, seminars, and policies should be adopted.

REFERENCES


Bina S. Economic and Political Weekly3170-3177; https://www.epw.in/author/bina-srinivasan


Sexual harassment in the workplace......

https://www.researchgate.net/publication/288305635_Culture_State_and_girls_Aneducational_perspective retrieved on 5.5.2022


