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Ensuring Fair Trial In Workplace Harassment Cases: A Doctrinal Analysis Under Pakistan's Protection Against Harassment Of Women At The Workplace Act, 2010

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ABSTRACT

The legal landscape of Pakistan is multi fold and provides various categories of legal instruments dealing with the basic rights of the people including right to fair trial. Thus, ensuring a fair trial is a crucial part of the justice system which should be upheld in all institutions and in all cases including cases of Workplace Harassment. The Protection against harassment of women at workplace Act 2010 is the primary statute on the subject and provides detailed procedure for dealing with the cases of workplace harassment. The Act was amended in 2022 through the 'Protection Against Harassment of Women at the Workplace (Amendment) Act 2022 ensuring that both parties to the suit are ensured the basic right to a fair trial. Denial of this right at any forum means justice is not served. The main hurdle in the maintenance of justice remains the under reporting and in most circumstances no reporting of the harassment cases despite availability of the appropriate forums. This Article is an effort to investigate through doctrinal research approach the hurdles and obstacles that hinder the reporting, fair procedure and consequently the transparent adjudication of the harassment cases. This article touches upon all relevant laws, provisions, judicial precedents and quasi-judicial forums available for addressing workplace harassment cases at government, semi-government and private entities. Furthermore, it evaluates how the case processes are carried out at all above mentioned forums and how transparent and fair they are. Additionally, following the evaluation, a relevant guide as to how the processes shall be carried out will be provided, which includes: fair treatment, following statutory mechanism, developing code of conduct and report mechanism so as to ensure a safe workplace environment.

Keywords: Workplace Harassment, Fair Trial, Procedural Fairness, Safe Workplace Environment, Statutory Mechanism, Justice System



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Introduction

Workplace harassment poses a serious threat to dignity, equality, and justice within professional environments, making procedural fairness a cornerstone of credible redressal mechanisms. In Pakistan, the Protection against Harassment of Women at the Workplace Act, 2010 was enacted to provide a legal framework for addressing harassment complaints; however, questions remain about whether the inquiry and appellate procedures under this law adequately ensure the principles of a fair trial. The concept of a fair trial rooted in the doctrines of natural justice, impartiality, and the right to be heard requires that both the complainant and the accused are treated equitably throughout the proceedings. This research undertakes a doctrinal analysis of Pakistan's 2010 Act to assess its alignment with fair trial guarantees, identify procedural and institutional shortcomings, and propose reforms aimed at enhancing justice, transparency, and confidence in workplace harassment adjudication processes. Allah says in Quran "Verily, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Verily, Allah is ever hearing and seeing." (The Quran, 4:58) The right to a fair trial is not only a part of the Universal Declaration of Human Rights (Article 10) (Nations, 1948), In 1948 it was affirmed by the American Declaration of the Rights and Duties of Man. Subsequently, it has been included as a key undertaking in the United Nations Draft Covenant on Civil and Political Rights and, at a regional level, in both the European Convention on Human Rights" and the Inter-American Draft Convention on Human Rights (Harris, 1967). Black's Law Dictionary explained the fair trial as: "Fair trial is a trial by an impartial and disinterested tribunal in accordance with regular procedures; esp., a criminal trial in which the defendant's constitutional and legal rights are respected" (Black's Law Dictionary, 9th ed, 2009).

The right to fair trial first found formal expression in Magna Carta in the statement: "No freeman shall be taken or imprisoned, or disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man; we will not deny or defer to any man either justice or right" (Magna Carta, 1215). The Constitution Pakistan also provides this liberty (Article 10-A) (Pakistan, 2010). In light of Article 10-A of the Constitution of Pakistan and Article 10 of the Universal Declaration of Human Rights, the right to a fair trial is crucial in upholding the basic civil liberties of every individual in Pakistan. The problem of ensuring a fair trial in workplace harassment cases arises from the tension between protecting victims from further harm, safeguarding the due process, and securing the rights of the accused. In Pakistan, while the Protection against Harassment of Women at the Workplace Act, 2010 establishes inquiry committees and appellate mechanisms, concerns persist regarding their impartiality, procedural transparency, and adherence to natural justice principles (Government of Pakistan, 2010; Khan & Ahmed, 2016). Inquiry committees often lack adequate legal training, leading to inconsistent evidentiary assessments and procedural irregularities that compromise fairness (Digital Rights Foundation, 2019). Moreover, fear of retaliation and social stigma discourage many complainants from reporting harassment, while accused individuals may face reputational damage even before the conclusion of inquiries (Iqbal, 2023). These challenges indicate that despite legislative progress, Pakistan's current framework requires stronger institutional safeguards, clearer procedural guidelines, and oversight mechanisms to ensure fair trial standards in workplace harassment adjudication.

The aim of this article is to critically examine whether Pakistan's Protection against



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Harassment of Women at the Workplace Act, 2010 effectively ensures fair trial guarantees in workplace harassment proceedings. By conducting a doctrinal analysis of the Act, relevant case law, and institutional practices, the study seeks to assess the extent to which principles of natural justice—such as impartiality, the right to be heard, and procedural transparency—are upheld. The article further aims to identify gaps in the existing legal framework and propose reforms to strengthen due process and enhance the credibility of workplace harassment adjudication mechanisms in Pakistan (Government of Pakistan, 2010; Khan & Ahmed, 2016).

Analyzing the Fair Trial and Workplace Harassment

The current legal use of fair trial incorporates the notion of a “regular procedure” or what is more commonly called “procedural fairness (Harris, 1967). Article 6 of the European Convention on Human Rights (“the Convention”) guarantees the right to a fair trial. It enshrines the principle of the rule of law, upon which a democratic society is built, and the paramount role of the judiciary in the administration of justice (Vitkauskas, D., & Dikov, G. (2012). Protecting the right to a fair trial under the European Convention on Human Rights. Council of Europe.) The right to fair trial is not a single dimensional right. In order for its full realization interests of the accused, Victim and society at large need to be balanced, without prejudice to one another (Hafeezullah Ishaq, 2014). A number of different terms have been used by policy-makers and researchers to label problematic interpersonal workplace situations (Einarsen 2000). It is common to distinguish between physical and psychological forms of harassment. Whereas the former describes aggressive acts of a direct physical nature, e.g., sexual harassment and even physical assault/violence, the latter refers to mistreatment of workers of a non-physical nature which in the scientific literature has been conceptualized with a range of labels such as abusive supervision (Tepper, 2007). According to a number of definitions the frequency at which a behaviour has occurred is used to determine whether the behaviour is harassment. Though few social definitions state that there must be more than a single incident in order to consider the incident as harassment, the majority of research definitions specifically indicate that behaviour must be repeated before it can be defined as harassment (Adams, 1992).

Workplace harassment and abuse, especially against women, occur with great frequency worldwide (Krieger et al., 2006). Estimates suggest that as many as 50% of U.S. women experience sexual harassment during their working lives (Das, 2009), but only a minority report it (Feldblum and Lipnic, 2016). In Pakistan, despite strong legal protection, justice for harassment victims remains difficult due to delays in court proceedings, lack of enforcement, and associated social stigma. Many victims avoid reporting harassment due to fear of retaliation, victim-blaming, and inefficiencies in the judicial system. Studies indicate that workplace abuse and stress are related to poorer mental health, including sleep disorders, depression, anxiety, post-traumatic stress disorder and symptoms, and psychological distress (Gunnarsdottir et al., 2006; Nabe-Nielsen et al., 2016). Due to inconsistencies and differences in definitions, operationalizations, and measurement methods (Nielsen, Matthiesen, & Einarsen, 2010), as well as cultural and geographical differences (Van de Vliert, Einarsen, & Nielsen, 2013), estimates of the prevalence of harassment varies from one study to another. But the term “sexual harassment” remained a constant subject of discourse and analysis in the area of gender discrimination (Wishnietsky, 1991).



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Protection against Sexual and Workplace Harassment in Pakistan

The right to a fair trial within regards to workplace harassment is a significant matter of discussion once we acknowledge the turmoil that victims of this hostile behavior have to face. The Constitution of the Islamic Republic of Pakistan, 1973 through Article 25 (1) mandates the equality of all citizens before the law, and section (2) of the same Article outlawed discrimination on the basis of gender. Despite this constitutionally guaranteed protection and equality it was nevertheless necessary that the Government of Pakistan carry out further legislation to provide women with protection from sexual harassment as well as enacting rules to ensure that women can attain independence as well as participate in the economy in a safe working environment that is free from intimidation, discrimination, abuse and gender stereotypes.

Keeping in view the Islamic principles and the religions practiced in Pakistan, with the prime focus on the protection of dignity of person, an amendment was made to Section 509(ii) of Pakistan Penal Code 1860. (PPC) has been amended vide Criminal Law (Amendment) Act, 2010 which criminalized the act of sexual harassment at work and public places. This amendment provides a very wide connotation by making harassment not only a civil wrong but also criminalizing it as an offence if committed at public places. Alongside this criminal provision a special legislation has been incorporated in the legal system of Pakistan titled “The Protection of Women against Sexual Harassment Act 2010 (hereinafter referred to as **PWASH Act**) providing the detailed provisions to counter sexual or workplace harassment by clearly defining the term Harassment and conferring exclusive jurisdiction to the Federal & Provincial Ombudspersons on protection against Harassment.

Under the Harassment Act, sexual harassment is also a penal action and penalties are in the form of disciplinary actions against the accused which include minor penalties such as censure, withholding of increment, compensation etc., and major penalties such as reduction in lower post, removal or dismissal from service, fines etc. These penalties are akin to penalties under “Efficiency and Discipline” rules of employees in an organization with a combination of fines. Therefore, the aim and scope of the Harassment Act cover formal sectors of the economy such as government organizations, corporations, companies, and firms where formal service structure is provided. However, informal sectors such as sole proprietorship, small business places such as restaurants, shops or women labourers and peasants in villages—which constitute a major chunk of the labour force in Pakistan practically cannot take any benefit of the legislation (Deeba, 2021).

Workplace / Sexual Harassment as Envisaged by Pakistani Researchers

Abdul Hadi in his article “Workplace Sexual Harassment and its Underreporting in Pakistan” (Hadi, 2018) pointed out that many women in Pakistan are reluctant to work outside their houses owing to the reasons of socio-culture norms and sexual harassment. His article laid out that victim often becomes the accused with their appearance, private life, and character likely to fall under intrusive scrutiny deterring women to report the incidents. Moreover, women are often deterred to report sexual harassment since they fear that reporting a colleague especially a supervisor or boss may result in the abrupt loss of her job.

“Suffering in Silence: The Resilience of Pakistan’s Female Journalists to Combat Sexual Harassment, Threats and Discrimination” (Jamil, 2020) an Article by Sadia Jamil focuses sexual harassment faced by journalists in Pakistan. She by adopting qualitative research methods highlighted the reasons why women journalists do not report sexual harassment in Pakistan. The article unpacks very apprehensive



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implications of sexual harassment, threats, and gender discrimination for the female journalists in Pakistan. “Sexual Harassment at Workplace in Pakistan - Issues and Remedies about the Global Issue at Managerial Sector” (Sadrudin, 2013) by Munir Moosa Sadrudin. The article tends to highlight the misuse of women at workplaces and sexual harassment in Pakistan and globally is a routine practice at many workplaces. The result of his research was that most of the respondents are aware of women rights but were unaware about The Protection Against Harassment of Women at the Workplace Act 2010. Yasmin, N in “A Study on Reporting of Sexual Harassment by Working Women in Lahore-Pakistan” (Yasmin, 2018) lays out the reporting behaviours of the victims and the type of responses they receive from other people, for example family, friends, and the authorities and organizations receiving such incidents. With the presence of harassment Act and laws to prevent Sexual Harassment, due to fear and veil response, still most women hesitate to report such incidents in order to protect themselves from retaliation, bias or power dynamics and destruction of the reputation of their families.

Forums addressing Harassment Cases in Pakistan

As per section 509 of PPC, for the offence of sexual harassment a normal course of action as that of a criminal case is to be initiated in trial court, then a first appeal will lie to Sessions Court. Since the offence is non-cognizable, compoundable with the permission of court (Schedule II of CrPC) and therefore bailable so in rare circumstances the second appeal in the High Court is maintainable and finally in the Supreme Court of Pakistan if the party to the suit is not satisfied. Under the provisions of PWASH Act, Organizational Standing Committees serve as Quasi-Judicial Forums in all Government, Non-Governmental, autonomous bodies, attached departments of Ministries & Divisions and all private entities.

The use of digital platforms to harass, threaten, or defame someone is termed as Cyber harassment. It includes Online stalking and repeated messages without consent, Blackmailing or threats using personal information, Non-consensual sharing of private images or videos, Hate speech, online defamation, or cyberbullying on social media. It has become a growing issue with the rise of social media and online communication. Prevention of Electronic Crimes Act (PECA), 2016, Section 21, 24 deal with the matter and special Cyber Crime Wing of FIA at Federal level deals with such complaints.

Barriers to the implementation of PWASH Act

There is a long list of obstacles, barriers, and hindrances affecting the implementation of PWASH Act generally and specifically. The relevant provisions of the PWASH Act make it mandatory upon all the above-mentioned organizations to display the Code of conduct under this special Law at all the prominent places within their premises along with the composition of the Inquiry Committee (one of the members must be female.) and the contact details of its members. A simple test that can clearly identify whether the provisions of PWASH Act are being complied with by any Organization or not is to randomly ask any employee about the PWASH Act and the Inquiry Committee constituted under its provisions at the same organization. This can be asked randomly from any three to four employees as a sample if they are unaware of any such Act, offences and redressal mechanism described therein then it can be stated that the mandatory requirements of the PWASH Act are not being complied with and consequently the administration of justice is thoroughly denied.

These Standing Anti-Harassment Committees even if are constituted at different departments or quasi-judicial forums under the statutory provisions, either the members



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are not appointed on merit (ie no female member in the Committee) or in case appointed their powers are curtailed by not providing them proper trainings, capacity building and brainstorming on the specialized area. Another contributing factor is that most of the Organizations do not have legal departments or legal experts as their employees who can understand the true spirit of the law and can decide the cases accordingly. Therefore, the members appointed with no legal background mostly do away with the cases with the patriarchal mindset without giving the victims the opportunity of being heard, or shifting the blame to the victim, demanding proofs without giving due regard to the victim's perspective in case of deficient direct evidences. In most of the organizations these Inquiry Committees are a mere formality as the organizations do not want the cases to be proceeded with as they believe the more the harassment cases are heard the more the organization's repute is damaged. They lack the understanding that an institute or organization is considered safer and reputed if it shows zero tolerance towards such cases and develop a culture of swift and quick disposal of cases on merit instead of delaying them unnecessarily or not addressing them at all, just to prevent the "so called damage" to their organizations' repute. All of the above factors contribute to vulnerability of the victims by denying them their basic right to fair trial and simultaneously promoting a culture of intrusion & intimidation leading to harassment which is a clear violation of the law.

The challenges mentioned above are very common in our society and irrespective of gender creating a suffocating environment for the victims, leaving them with no option but to remain silent and never dream of getting justice with a fear in mind as raising the matter would question their own integrity. Thereby making hostility, aggression, and use of nuisance power as a matter of routine for perpetrators and normalizing unsafe working environments in the country.

Workplace Harassment Addressed in the Judicial Decisions

Despite the passive approaches adopted by the quasi-judicial forums, the superior judiciary in Pakistan has shown a clear and right on the point approach by giving a strong message to the society that harassment even in its lowest form is not acceptable and the perpetrators can be let free to ruin the safe working environments. Below a few judgements of the superior courts are discussed where the judges have very meticulously elaborated the word harassment and its implications even in the slightest form.

NADIA NAZ and another---Petitioners Versus the President of Islamic Republic of Pakistan, Respondents

The Supreme Court observed "Intent and purpose behind the enactment of the Protection against Harassment of Women at the Workplace Act, 2010 ('the Act') was to address harassment at the workplace which is prompted on account of gender and was not limited to a sexual form of harassment.

Sexual harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a woman's right to public life, her right to dignity and most important, her basic right to be treated equal. Sexual harassment compromises these rights of a woman which entails being economically and financially independent and being able to make independent decision and more importantly to be considered as a productive member of society. In cases of harassment, the victim's perspective is relevant as against the notion of acceptable behaviour. Standard of a reasonable woman should be considered to determine whether there was harassment, which rendered the workplace



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hostile and all relevant factors should be viewed objectively and subjectively.

Muhammad Din Petitioner Versus Province of Punjab through Secretary, Population Welfare, Lahore, etc. Respondent(s)

In a recent judgement the Supreme Court of Pakistan observed “Sexual harassment is not about sex. It is about power.” sexual harassment is primarily understood as a power-based behavior, individuals at any level of a hierarchy can perpetrate harassment, particularly when supported by gendered or social reinforcements. A safe, harassment-free workplace is intrinsically linked to gender justice, which embodies the protection of human rights, ensuring equal access to opportunities and resources for all genders, and the elimination of discrimination, violence, and structural inequalities based on gender”.

Zainab Zahra Awan Vs Embrace IT (2024)

In the recent judgement pronounced by Federal Ombudsperson, in the above case, where the termination of a female employee during her maternity leave period was deemed unconstitutional and her termination was considered discriminatory. The judgement further stated, “constitution has made maternity leave for working women essential for safe motherhood as safe motherhood is the fundamental right of every woman and right to maternity leave should also have the same status”. The above judgements are just a glimpse from so many of others where the superior judiciary has dealt the crime of harassment very strictly by setting the precedent as a guideline for all the legislators, policy makers, judiciary, FOSPAH and the legal practitioners. So, whenever such crime is committed, a robust approach is adopted by the concerned forum and the perpetrator be strictly punished, after conducting all the due processes and ensuring fair trial to both the parties.

Conclusion and Recommendations

While Pakistan has made legislative progress in addressing workplace harassment, significant implementation gaps persist. Institutional apathy, lack of training, weak enforcement, and societal stigma continue to obstruct justice for victims. Ensuring the right to a fair trial in such cases requires systemic reform, greater accountability, and a cultural shift towards zero tolerance for harassment. Only then can Pakistan truly uphold its constitutional and international obligations to protect human dignity and equality at the workplace. Organizations and authorities must collaborate to enforce these laws effectively, ensuring justice through fair trial for victims and deterring future violations. Recommendations for Strengthening Implementation of the Protection Against Harassment of Women at the Workplace Act, 2010 are as follows:

The foremost reform required is to bring a systematic improvement by including digital spaces harassment and third-party perpetrators and strict confidentiality must be maintained to protect complainants from retaliation and strengthen penalties for retaliation against complainants.

Ensure clear appellate procedures for decisions by inquiry committees or other quasi-judicial forums and develop model rules and SOPs for consistent implementation across quasi-judicial bodies.

Ensure swift, streamlined, and confidential procedures so that the harassment cases should be resolved within 30 days at the departmental level.

Ensure swift, streamlined and Confidential Procedures so that the Harassment cases should be resolved within 30 days at the departmental level.

Enhance the Strength of Institutional Mechanisms by appointing dedicated focal



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persons within quasi-judicial bodies to handle harassment complaints under the Act, ensuring prompt case registration and facilitation and ensure diversity in inquiry committees, including adequate female representation to foster a safe environment for complainants.

Female employees should be educated about their rights and encouraged to report harassment without fear and ensure that procedural rules of quasi-judicial forums are revised to incorporate victim-sensitive mechanisms (e.g., in-camera proceedings, protection of identity, virtual hearings where necessary).

Mandate all quasi-judicial forums to submit annual reports on harassment cases handled, outcomes, and compliance challenges, to a central monitoring body such as the Ministry of Human Rights or FOSPAH and promote awareness of the Act through public information campaigns, particularly targeting rural and informal sector workers who often lack access to legal remedies.

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