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Sexual Harassment At Workplace: Comparative Analysis Of Legislative Laws And Their Implementation In Pakistan, India, US, And UK

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ABSTRACT

The sexual harassment is considered as negation of basic human rights throughout the world. Almost every developing country is striving to adopt a mechanism to introduce such policies that align well with the wellbeing of human especially women. Globalization has significantly increased women participation in the workplace; however, it has raised concerns regarding the human rights violations particularly sexual harassment at workplace and gender discrimination. This research paper undertakes an overview of evolution of the concept of workplace harassment in cross jurisdictional manner thus aims to provide a comparative study of all the regional or local laws implemented in compliance with the international policies and laws for the protection of females against the harassment and gender based discrimination. It further entails global standards on protection against discrimination or harassment at workplace along with the comparative analysis of enforcement mechanism of the national legal frameworks in-lined with the international standards across Pakistan, India, United States and United Kingdom. By drawing the statutory provisions, judicial precedents and international obligations, with particular reference to Pakistan, this paper evaluates distinctive approach on the harassment laws encompassing various recommendations and suggestions in consideration of the loopholes in the enacted laws that necessitate the reforms.

Keywords: Sexual Harassment, Human Rights, Comparative Analysis, International Policies And Laws, Gender-Based Discriminations, National Laws, Recommendations

Introduction

Harassment at workplace has been a grim reality all-round the globe. The term sexual harassment at workplace was alien to the world before 1970's despite being considerate of hurdles faced especially by women in the course of employment. The pragmatic efforts are materialized as the legislative course in various countries. An increasing number of states have adopted sexual harassment legislation to curb the harmful workplace behavior but the driving force that initiated the step to introduce legislation on workplace harassment varies according to various states. It can be demonstrated through the difference in time frame of states in adopting these legislations or laws. Some countries have already developed policies and legislation to address it, some are in a struggling to get a specific legislation some are still denying the fact that this issue demands attention. This divergence demonstrate the fact that the international community is still in the progression towards the establishment of effective legal recourse on workplace harassment. Over the years, international human rights obligations and conventions developed to streamline the legal framework and



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enforcement mechanism in various jurisdictions and recent development, ILO Violence and Harassment Convention, 2019 (No. 190) where harassment definition is broadened by not just limiting it to the physical abuse but any awkward act, embarrassing word or gesture also amount to harassment, is a positive indication that harassment laws are not static but duly subjected to change as per the need of the time.

Along with the specific statutory redressal, Pakistan and India have constitutional safeguards too combating the worsened situations of human rights especially for women. The 1973 constitution have exhaustive provisions pertaining to the well-being of women especially the Principle of Policy contain guidelines to formulate future laws relation to the women. As far as Indian constitution is concerned, it includes Article 14, 15 and 21 which bring the POSH Act in conformity with these standards of fundamental rights of women. So, the human rights existed in the world were somehow giving the protection to every gender but the surge in the reported cases against the harassment particularly affecting women made it the need of the time to adopt a targeted legislation to combat such alarming situation.

So, this paper endeavors to disclose the striking divergence between the universal human rights standards and their actual implementation in Pakistan, India, US and UK despite being signatory to the similar international conventions about workplace harassment.

Historical evolution of the Concept

Workplace harassment is a prevalent problem across the globe that transcends geographical boundaries, economic systems and cultural norms. The nascence in the relevant legal discourse makes it difficult to define sexual harassment at workplace in an exhaustive manner. Primarily, harassment or specifically the word sexual harassment was coined by the feminist movement in 19th century. Although it had remained a concern since long ago, the original predominance to provide legal protection started after 1970's. Sexual harassment was introduced in United States under the helm of second wave feminists Catherine MacKinnon and Lin Farley. While the concept of sexual harassment was implicitly inscribed under Civil Right Act 1964, it was not until post 1970 era that legal scholarship and judicial interpretation began to explicitly characterize sexual harassment as a form of sex-based discrimination and affirming it unlawful under federal laws¹. Since these foundational advancements, the concept and the corresponding legal frameworks addressing sexual harassment have expanded internationally. When examined through a comparative legal framework the manner in which various jurisdictions have adopted and implemented sexual harassment legislation illustrates that substantive legal advancements in this area have occurred only after considerable temporal lag despite the widespread and longstanding acknowledgement of sexual harassment as a pervasive global issue. Considering the in-line efforts of various countries, in the decades following the establishment of Pakistan, it has formed several institutional bodies to combat gender inequalities and promote women's socio-legal empowerment. The Protection against Harassment against Women at Workplace Act 2010 marks the culmination and formal codification of decade's long efforts of state institutions along with civil society organizations². India has similarly undergone a protracted legislative process significantly marked by Vishaka guidelines and A.K.

¹ Carmita Wood vs. Boyce McDaniel, a landmark case that defined sexual harassment for the first time in 1975.

² AASHA's Code of Conduct for Gender Justice published in 2003 and later the definition was taken for the legislation passed in 2010 in Pakistan and National Commission on the Status of Women(NCSW)



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Chopra case³ led to the eventual enactment of Sexual Harassment of Women at the Workplace Act, 2013. These cases have made it abundantly clear that any employee who is sexually harassed, it directly counts to the violation of fundamental rights, and these cases have also made clear guidelines so that workers or employees do not face such things or such incidents. Despite a comprehensive legislative framework⁴ in US its scope remained ambiguous until clarified by US Supreme Court landmark judgment that expanded the jurisprudential understanding of workplace harassment inclusive of sex discrimination⁵. In the United Kingdom, workplace sexual harassment was first addressed under the Sex Discrimination Act 1975, though without a clear definition. This was clarified through the Employment Equality (Sex Discrimination) Regulations 2005⁶, influenced by EU law, and later consolidated under Section 26 of the Equality Act 2010, which formally prohibited sexual harassment in the workplace. Thus creation of legally and institutionally safe spaces for women that ensures equal access to all opportunities without undue barriers is the result of long deliberated efforts throughout the globe initiated by the feminist movement. Although sexual harassment has persisted as a ubiquitous concern over decades, the formal legislative interventions addressing this issue emerged after considerable delay as evident through statutory frameworks of various countries that existed in late twentieth century.

Scope of Workplace Harassment Laws

The comparative analysis of statutory frameworks demonstrates that the scope of definition of workplace harassment is quite similar for Pakistan and India as being south Asian countries. There appears to be no drastic variance in both enactments in terms of scope and explaining the text amounting to sexual harassment. Both legislative frameworks adopt a similar broad formulation, encompassing unwelcome physical, verbal and non-verbal conduct of sexual nature

While United States and UK have different interpretation to the definition of sexual harassment at workplace. In the United States, jurisprudence under the Civil Rights Act, 1964 (Title VII) has evolved to recognize two principle categories—quid pro quo harassment and hostile work environment—with the liability arising only when the conduct is severe and pervasive enough to alter the course of employment. This doctrinal framework was subsequently developed in *Faragher vs. City of Boca Raton*.⁷

Conversely, the United Kingdom's Equality Act 2010 (Section 26)⁸, applies a broader dignity based standard, defining harassment as unwanted conduct related to sex with the purpose to affect the dignity of a person creating an intimidating, hostile or offensive environment. Judicial pronouncement as in *Driskel vs Peninsula Business Services Ltd*⁹ underscores the importance of impact on the complainant's dignity rather than the degree of severity or pervasiveness of the conduct. The United Kingdom does not impose the threshold like the United States thus broadening the scope of actionable conduct. This scope of workplace harassment shows variance depending upon the different contributing factors that include historical trajectory, socio-cultural imperatives and jurisprudential traditions thus molding the perspective of harassment for every other state which is evident from the legislative frameworks.

³ <https://indiankanoon.org/doc/856194/>

⁴ Title VII of the Civil Rights Act of 1964

⁵ Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)

⁶ <https://www.legislation.gov.uk/ukxi/2005/2467/contents/made>

⁷ 524 U.S. 775, 1998

⁸ Section 26, Equality Act 2010 <<https://www.legislation.gov.uk/ukpga/2010/15/section/26>>

⁹ [2000] IRLR 151 (EAT)



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Legislative Definitions and their Comparison

As regards the legislative definitions of workplace harassment, it assumes varying dimensions across statutory frameworks of different jurisdictions, with each state prescribing its own definitional contours in the light of its socio-legal context and jurisprudential development.

Harassment:

In **Pakistan**, the Protection against Harassment of Women at Workplace Act, 2010 adopts a broad definition under section 2(h). It reads

“Any unwelcome sexual advance, request for sexual favors, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation 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 “or discrimination on the basis of gender.

According to **Indian** legislative Act, the Sexual Harassment of Women At Workplace (prevention, prohibition and redressal) Act 2013, the term sexual harassment under section 2(n) encompasses *unwelcome acts or behavior which may include physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

While the role of the **United States** as a pioneer state in defining sexual harassment and presenting harassment law is undeniable. It placed its reliance on judicial interpretation of the Civil Rights Act rather than the expressed statutory definition that was developed through subsequent decisions in different cases¹⁰. The two doctrinal categories established by the process extends its ambit to quid pro quo harassment and hostile work environment. In a landmark judgment *Rogers vs. EEOC* (CA5 1971)¹¹, it was the first case to disclose discriminatory work environments as a cause of action under the heading of Title VII of Civil Rights Acts thus establishing that actionable harassment must be sufficiently severe or pervasive so as to alter the terms, conditions or privileges of employment.

In contrast, **the United Kingdom** under section 26 of Equality Act 2010 adopts a dignity based standard defining harassment as unwanted conduct related to the sex with the purpose or effect of violating dignity or creating an intimidating, hostile or offensive environment without requiring proof of severity or pervasiveness.

Workplace

Perusal of the cross jurisdictional statutes reveals that the definition of workplace is explicitly the character of legislations of Pakistan and India. There is just employer-employee relationship that defines the boundary of any workplace in US and UK laws. The term workplace specifies the scope of protection afforded under the harassment laws.

In Pakistan, the 2010 Act provided with a restrictive definition of workplace that just included the organizations, institutions, or any place where the employer carried out the official duties, thereby, limiting it to the formal sector and excluding the informal

¹⁰ *Burlington Industries, Inc. v. Ellerth* (524 U.S. 742, 1998)

¹¹ <<https://www.law.cornell.edu/supremecourt/text/466/54>>



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workplaces. The 2022 amendment¹² marked a substantial expansion by significantly encompassing the informal or domestics sectors of employment¹³.

The POSH Act¹⁴ has provided with a diverse definition of workplace enclosing almost every aspect of workplace that is further revised under the head of various judgments. There are certain landmarks judgements expanding the scope of workplace to the virtual set of workplaces making the Act up to the advancing need of the time.

In 2021, the Rajasthan High Court, in the case of Sanjeev Mishra v. Disciplinary Authority and General Manager¹⁵, expanded the definition of workplace to include virtual workspaces. It would be inaccurate to interpret the phrase "virtual workspace to home". Therefore, if the legislature decides to include "home" within the scope of the workplace, it will provide relief for numerous employees. Therefore, this case has great significance as it reasserted the scope of the workplace and to which extent POSH Act is applicable.

The United States has relied on the employer relationship that include any setting where employer employee relations exist. US has counted on judicial construction under Title VII that expanded the workplace harassment liability beyond physical office, focusing on the nexus with the course of employment¹⁶.

The United Kingdom follows the same setting of employer-employee relation but has an expanded scope of workplace to be counted the after work or in social setting with the colleagues¹⁷.

Thus a clear divergence can be discerned in the legislative and jurisprudential approaches of these jurisdictions. Pakistan and India have opted for statutory, definition driven frameworks, wherein

workplace harassment is codified in precise legislative terms while United Kingdom and United States have adhered to the interpretive, principle based models that inhibits the workplace harassment within the broader ambit of anti-discrimination laws delineated through judicial exposition and doctrinal development. While south Asian jurisdictions emphasize statutory certainty and procedural redress, the Anglo-American systems reflect common law dynamics, balancing judicially articulated standards with broad principles of equality and non-discrimination. This comparative distinction illustrates fundamentally different normative commitments: one privileging perspective legislative safeguards, and the other relying on evolving jurisprudential standards to define and regulate workplace harassment.

Global Standards on Workplace Harassment

Global standards on workplace harassment emphasize that harassment is not just a personal and organizational issue rather a human rights violation and labor rights concern. Internationally, there are various conventions obligating the states to legislate for the women rights in order to adopt such policies which maintain gender equality and an impartial work environment free from discrimination on the basis of sex. So far the guidelines for the legislations on the subject are concerned, United Nation Organization and regional treaties serve as a spadework for various future legislations of different

¹² 2022 amendment of PAHWWA, 2010

https://fospah.gov.pk/SiteImage/Misc/files/PAHAW_amend_2022.pdf

¹³ Section2(n), PAHWWA 2022

¹⁴ Section2(o), POSH Act 2013

¹⁵ Sanjeev Mishra v. Disciplinary Authority and General Manager

<https://indiankanoon.org/doc/49655315/>

¹⁶ *Faragher v. City of Boca Raton* (1998)

¹⁷ *Chief Constable of the Lincolnshire Police v. Stubbs* (1999)



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states. The foundational international instrument, Universal Declaration of Human Rights (UDHR), 1948 underpins the recognition of workplace harassment as a violation of basic human rights. The General Assembly proclaims this UDHR as a common standard for all nations¹⁸ to promote recognition of inherent dignity, guarantees equality of all genders and freedom from discrimination that can be contravened when persons are subjected to harassment in their professional environment (Article 1, 2 and preamble)¹⁹. This demonstrates the consideration of workplace harassment as a violation of basic human rights under the head of UDHR. Similarly, the Convention on the Elimination of All Forms of Discrimination (CEDAW) was adopted on 18 December 1979. This International Bill of Rights for women was the culmination of more than thirty years of work by the United Nation Commission on the status of women and presented a descriptive definition of gender based discrimination along with the possible solutions to end this discrimination by the way of adoption of national policies. The preamble of CEDAW reflects its purpose to promote equality between men and women and construct an economic order inclusive of equality and justice. Indeed this convention proved to be a cornerstone for numerous national and international policies on women rights extending its ambit beyond different jurisprudential boundaries. The earliest existed body, International Labor Organization (ILO) played a positive role in devising fundamental principles to ensure equality (ILO's Decent Work Agenda)²⁰. ILO presented conventions and recommendations on the basis of these fundamental principles making equal work opportunities and eliminating gender based discrimination a certain aspect in the society. These principles started existing in late 90's out of which the significant one to materialize these efforts was presented in 1993 in a seminar at Manila under the auspices of ILO. The other concrete step which enjoins upon the states to initiate effective measures for the prevention of discrimination against women is the Beijing Declaration, 1995. The purpose of this declaration was to ensure equality in all spheres of society, to eliminate all forms of discrimination and violence against women (chapter 1) thus removing all obstacles to gender equality by the way of promoting women empowerment. Furthermore, the international convention pertaining to economic, social, and cultural rights of women (ICESCR, 1976) is another milestone regarding the women rights protection with the principles in accordance to the UN charter and UDHR. It was to recognize inherent dignity and equal and inalienable rights of all people.²¹

Enactment of Global Standards on Workplace Harassment through National Legislative Frameworks in Different Jurisdictions

Pakistan

The PAHWWA, 2010 serves as a principle law governing workplace harassment in Pakistan. The main purpose of this legislation was to create a working environment free from the elements of harassment, abuse or discrimination, where women are able to contribute towards the development of the country. This Act was subjected to the amendment extending the scope of definition, incorporating gender based discrimination

¹⁸ UDHR Preamble(Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society)

¹⁹ Article 1(All human beings are born free and equal in dignity and rights)

Article 2(Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status)

²⁰ ILO Decent Work Agenda < <https://www.ilo.org/topics-and-sectors/decent-work>> accessed on 3rd November 2020.

²¹ Article 7, ICESCR 1976



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and expanding coverage to diverse workplaces and groups inclusive of all genders. The whole understanding and interpretation of harassment was subjected to change when Justice Ayesha Malik extended her remarks in a landmark case that PAHWA, (2010) was “a cosmetic legislation that blinkered in its application.”²² This judgment not only widened the scope of harassment but also highlighted the importance of statement of purpose and objects in order to deduce the intent of law thus referring to the subsequent legislative commitments²³.

The Act and its subsequent amendment shows Pakistan’s international commitments that underpin protection from workplace harassment that span both UN-Human rights treaties and ILO Labor Standards. Pakistan acceded to CEDAW in 1996, later on that served as a groundwork for workplace protection laws on harassment in Pakistan. Pakistan is also signatory to ILO Conventions 100 (Equal Remuneration) and 111 (Discrimination in Employment and Occupation) on worker’s Rights that was ratified by in 1961. It laid the normative basis for addressing harassment as a form of workplace discrimination and inequality. ICESCR ratified in 2008, emphasized equality, dignity and non-discrimination, thereby compelling Pakistan to recognize workplace harassment as a human rights violation rather than just a disciplinary concern. These conventions and treaties were invoked directly during the Parliamentary debates on the Bill, an explicit indication of alignment to the international standards. The Supreme Court in Nadia Naz (2023)²⁴ case highlighted the Parliamentary debates demonstrating the enactments of international commitments and cited that the intent showed in Parliamentary debates was to give effect to Article 11 and 13 of CEDAW and ILO Conventions on worker’s rights (Convention No. 100 and 111). However, Pakistan has not yet ratified ILO Convention No. 190 on Violence and harassment (2019) though national dialogue has been held. Collectively, these ratifications catalyzed national legislations including PAHWWA, 2010.

Thus, this workplace Harassment Act and its subsequent reforms are direct reflection of Pakistan’s commitment to the international standards by in lining them with national legal system.

India

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013²⁵ was the first drafted legislation enacted by Indian Parliament with the primary objective to provide a safe, secure and dignified workplace environment. This Act was introduced in 2013 by aligning it with the international conventions and a direct response to judicial guiding principles laid down to address physical harassment regardless of nature, and position of parties. Initially proposed as a first step towards enacting legislation on the subject (Geetha, 2012). The court drawing heavily on international standards, mandated the state to enact specific legislation to address workplace harassment. The Posh Act, 2013 represents the legislative domestication of India’s international commitments, translating global norms on gender equality and non-discrimination. The international convention particularly CEDAW provided initial directions to draft a framework that was expressly recognized in 1993. In 1997, the Supreme Court explicitly invoked it to formulate the Vishaka Guidelines²⁶, holding that

²² <<https://www.dawn.com/news/1758399/sc-allows-womans-review-plea-against-harassment-ruling>>

²³ *Mehr Zulfiqar Ali Babu and others v. Government of Punjab and others (PLD 1997 SC 11)* and **Pepper (Inspector of Taxes) v. Hart (1993 SCMR 1019)**.

²⁴ *Nadia Naz v The President of Islamic Republic of Pakistan [2019] Civil Petition No. 4570.*

²⁵ Indian Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act 2013

²⁶ [(1997) 6 SCC 241, AIR 1997 SC 3011]



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ratified conventions must inform constitutional guarantees of equality and dignity. The Indian Act particularly acknowledges the protection against harassment and right to work with dignity are universally recognized human rights, safeguarded under international instruments. Expressly, the Indian Act cited ratification of CEDAW in 1993, thus reflecting its compliance with international obligations by institutionalizing mechanisms for prevention, prohibition and redress²⁷. The case of *Medha Kotwal Lele & Ors. v. Union of India & Ors.* was adjudicated by the Supreme Court of India in 2018. The case originated with a petition submitted by a few activists advocating for Women's Rights, headed by Medha Kotwal Lele. The Petition questioned the validity of the POSH Act. The Petitioners alleged that the POSH Act was inadequate in safeguarding women from sexual harassment in the workplace, and that it lacked proper redressal measures for victims of such misconduct in furtherance to this, they stated that the Act failed to sufficiently provide a redressal to the concerns about the involvement of third parties enabling sexual harassment, the need to safeguard against online harassment, and the requirement for gender-sensitization of its members of internal complaint committees. The Supreme Court dismissed the petitioners' claims, affirming the constitutionality of the POSH Act and its adequate safeguards for women against workplace sexual harassment. The Court also determined that the Act was consistent with India's international commitments under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The *Medha Kotwal Lele* case has great significance as it reasserted the crucial role of the POSH Act in safeguarding women from sexual harassment in the workplace and offered valuable insights into the practical implications and impacts of the Act. This is a landmark judgment in the ongoing battle against sexual harassment and all manifestations of gender-based violence in India.

United States of America

The United States framework derives primarily from judicial interpretation of the Civil Rights Act of 1964. This Act served as the first federal act that declared discrimination on the basis of race, color, religion and sex as illegal. Although United States was ahead of other countries in enacting such law, the judiciary was not willing to include sexual harassment as discrimination under said Act. However, the case that proved to be the turning point that extended the scope of sexual harassment was *Barnes vs Castle*²⁸. This case led to the creation of Equal Opportunities Commission in 1980²⁹ which proved to be an initial step towards the formulation of guidelines on sex based discrimination. As far as the ratification and direct influence of global conventions are concerned, the United States workplace harassment law is not product of international conventions rather it draws a normative influence to align domestic legislation with global human rights standards. The U.S has not ratified key conventions and treaties on workplace harassment limiting enforceability to just national discourse. It has signed but not ratified CEDAW thus putting sole reliance on domestic civil rights laws. Although United States lack formal binding effect of international conventions, the senate hearing underscores the normative weight of CEDAW where former U.S representative to United Nations commission on status of women quoted importance of it as a reinforcement to the United

²⁷ Zippel, Kathrin Susanne. "Policies against Sexual Harassment: Gender Equality Policies in Germany, the European Union, and the United States in Comparative Perspective," 2000.

²⁸ *Barnes V Castle* 561 F.2d 983[D.C. Cir 1977]

²⁹ Civil Rights Act of 1964, US EEOC, <<https://www.eeoc.gov/history/civil-rightsact-1964>>



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States commitment in eliminating violence against women thus demonstrating U.S policy alignment despite not being ratified.³⁰

United Kingdom

In United Kingdom, the Charter of Fundamental Rights of the European Union has made ample provisions for the prohibition of discriminatory treatment against women and had reinforced the stance through a series of directives dealing with the sexual harassment³¹. These directives obligate the state to bring the provisions onto indigenous statutes. However, the Equity Act, 2010 applies a broader dignity-based standard particularly Section 26. This statute, together with the Protection from Harassment Act 1997³² under which House of Lords in *Majrowski v. Guy's & St Thomas's NHS Trust* (2006)³³ affirmed employers' vicarious liability, provides both preventive and remedial protections. The recent reforms most notably the Worker Protection Act 2023³⁴, impose a proactive duty on employers to take reasonable steps to prevent sexual harassment. The United Kingdom approach is also consistent with its international commitments, particularly following the ratification of ILO Convention No. 190 in March 2022. These international instruments hold a direct and sustained influence on national laws. United Kingdom as a party to CEDAW and long standing member of ILO has incorporated many of these into its national legislative laws. The UK ratified CEDAW in 1986 and gave effective implementation to its recommendations that is reflected in the Equality Act, 2010 which consolidated protections against workplace harassment and discrimination thus showing compliance with international standards. Furthermore, the European Convention on Human Rights incorporated through Human Rights Act 1998, reinforced the dignity, non-discrimination and obligations to prevent any humiliating treatment. It provides guidance and reinforces legislation to prevent workplace sexual harassment under the head of EHRC Code of Practice³⁵ existed as amendment of Equality Act, 2010. These authoritative legal guides explicitly identify international inspiration behind the Act's provisions, signaling a constant effort to align UK law with global human rights obligations.

Comparative Analysis of Enforcement Mechanism and Remedies under Harassment Laws in Different Jurisdictions

The enforcement and remedial mechanism of workplace harassment laws demonstrate distinct procedural variations across Pakistan, India, U.S and UK. Each jurisdiction embodies a distinct procedural model shaped by its legal traditions while the core objective remains the same, ensuring safe, equitable and dignified workplaces. Considering these variation a subject of study, a detailed Comparative analysis is drawn on enforcement mechanism, prescribed time frame restriction, and gender specificity and the range of remedies available under various

³⁰ Hearing Before The Subcommittee On International Operations And Organizations, Human Rights, Democracy, And Global Women's Issues <<https://www.govinfo.gov/content/pkg/CHRG-113shrg93138/html/CHRG-113shrg93138.htm?>>

³¹ <<https://eur-lex.europa.eu/eli/dir/2006/54/oj/eng?>>

³² <https://www.legislation.gov.uk/ukpga/1997/40/pdfs/ukpga_19970040_en.pdf?>

³³ <<https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060712/majro.pdf?>>

³⁴ Worker Protection (Amendment of Equality Act 2010) Act 2023, an act to make provisions in relation to the duties of employers and the protection of workers under Equality Act 2010.

<<https://www.legislation.gov.uk/ukpga/2023/51/contents?>>

³⁵ EHRC Code of Practice, 2011 <<https://www.equalityhumanrights.com/equality/equality-act-2010/codes-practice?>>



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cross-jurisdictional legal frameworks to redress the prevailing issue to workplace harassment.

Initial Complaint Filing

The forums where initial complaint is filed vary to the extent of national legislature. In India and Pakistan, special committees were directed to be constituted under relevant Acts, namely the Inquiry Committee under PAHWAA Act 2010 and Internal Complaints Committee under POSH Act 2013. These committees serve as the functional body for preventing and addressing workplace harassment. In **Pakistan** complaint is lodged either before the Inquiry committee that is constituted under Section 3³⁶ of 2010 Act or directly before the Ombudsperson appointed under the section 7 of the Act. The ombudsperson is vested with quasi-judicial authority to summon, examine evidence and issue enforceable orders and further Ombudsperson's principal purpose elaborated in a case Saleem javed vs Federal Ombudsperson³⁷ was to ensure speedy and economical justice to the individuals. This dual-track mechanism ensures that redress is available both within institution and externally through an independent body to eliminate the institutional bias or inaction if any. Consequently, this Acts ensures that the remedial framework must not be restricted to organizations but is broadened to include an impartial statutory forum. In this regard the Federal Ombudsperson Institutional Reforms Act 2013 (FOIRA, 2013)³⁸ was passed in order to provide expeditious and effective good governance to the complainants. According to the **Indian Statute**, Internal and Local Complaints Committees are formulated under Section 4 of Act at establishment level and District level respectively. This model of introducing two committees demonstrates broader inclusivity extending protection at formal and informal workplaces distinguished on the basis of number of employers. This bifurcated structure helps to prevent jurisdictional lacunas at any sphere. The POSH Act empowers these committees to conduct inquiries with the power similar to those of civil courts under the head of Section 11. The recommendations of these committees hold a binding position over District Officer and Section 26 elaborates the penalties attracted in case of non-compliance to these recommendations thus highlighting the legal ground of Indian Act. In **United States of America**, the Equal Employment Opportunities Commission was established to enforce and implement laws aimed at preventing workplace discrimination along with promoting equal work opportunities for all individuals. The enforcement of 1964 Act is centralized through EEOC that serves as initial forum for complaints that was strengthened significantly in 1971³⁹ and 1998⁴⁰ as a result of landmark decisions. When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis. The notable aspect of this commission is the mediation and alternative dispute resolution that act as effective measure thus, ensures that the Commission remains an active and accessible resource for addressing and preventing workplace discrimination amicably. In **United Kingdom**, the workplace harassment claims fall under Equality Act, 2010. Unlike South-Asian jurisdictions, there are no internal committees instead there are other platforms providing redressal to the

³⁶ Section 3 of PAHWAA, 201

³⁷ [PLD 2016 Lahore 433]

³⁸ Federal Ombudsperson Institutional Reforms Act 2013

<<https://www.fospah.gov.pk/SiteImage/Downloads/FOIRA%202013.pdf>>

³⁹ **Griggs v. Duke Power Co.**

⁴⁰ **Burlington Industries, Inc. v. Ellerth**



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grievances of individuals. There is Employment Tribunal acting under Employment Tribunals Act 1996 that serves as principal adjudicatory body to whom a complaint is lodged under Section 26 of Equality Act 2010. The Equality and Human Rights Commission (EHRC) regulated by EHRC's Technical Guidelines on sexual harassment or harassment at workplace is a statutory body entrusted with promoting compliance with equality and anti-discriminatory laws. EHRC does not adjudicate on complaints rather plays a role in providing guidance and strategic litigation. There is Advisory, Conciliation and Arbitration Service (ACAS) providing mandatory conciliation under 1996 Act where victims go in first place before lodging a complaint. A recent advancement has been introduced as Worker Protection Act 2023 (Amendment of Equality Act 2010) which requires employers to take reasonable and proactive steps to prevent sexual harassment. This Act strengthens existing legal protection in UK because prior to this amendment there was no legal obligation on employers to take any such preventive measures.⁴¹

In the light of above discussed complaint filing procedure in different jurisdictions, it needs to be concluded that there is a common feature that prevails in India, US and UK Acts but not in Pakistan and that is conciliation. The conciliation mechanism proved to be quick and less adversarial to the parties ensured as statutory prerequisite prior to litigation in U.S.⁴². The structural variation of complaint mechanism shows Pakistan and India have stepped in advance to address workplace harassment by relying on committee based procedural mechanism working exclusively for this very specific cause thus preventing any procedural delays and reinforcing the legislative intent of providing prompt protection to the victim. By contrast, United Kingdom and United States rely on externalized enforcement structures. While the forums in these states provide robust oversight, the absence of institution specific complaint committees results in lengthier processes that can be adversarial in harassment cases. Thus, Pakistan and India's committee based reliance reflects more concerned approach.

Time Restriction for Filing Complaint

The time frame for filing a complaint vary in to a greater extent in Pakistan, India, U.S and UK. The difference may be attributed on the basis of various socio-legal parameters. **The 2010 Act of Pakistan** applies no restriction over filing a complaint in a certain time frame promising extended enforcement by giving due consideration to the social constraints and hurdles being faced by victims in reporting such cases of harassment. This notion giving a widened view to the workplace harassment act was declared in the judgment of Uzma Naveed Chaudhary vs Federation of Pakistan⁴³. The delay in filing a harassment complaint was declared insignificant due to the prevailing cultural settings and taboos that make it difficult for a women to stand against such incidents. Unlike Pakistan, **Indian Act 2013**⁴⁴ has mentioned a specific time to lodge a complaint. The complaint must be filed within three months from the date of last incident. The Act does allow the extension in the time but by marking satisfaction of complaints committee

⁴¹ EHRC publishes updated workplace sexual harassment guidance ahead of change to law
<<https://www.equalityhumanrights.com/media-centre/news/ehrc-publishes-updated-workplace-sexual-harassment-guidance-ahead-change-law>>

⁴² *Mach Mining, LLC v. EEOC* (2015)

⁴³ PLD 2022 SC 783

⁴⁴ Section 9 of POSH Act: Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident



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about delaying circumstances a necessary condition. If the committees get enough satisfied, extended period can be marked up to more three months collectively making it to six months. These statutory limitations are interpreted strictly by Indian Courts that even if IC (Internal Committee) and LC (Local Committee) have powers to grant extension in time for filing a complaint but they can't exceed three months⁴⁵. However, efforts are exerted in the form of a bill being introduced in the Parliament in 2024 to increase the time limit from three months to one year for filing of complaint thus demonstrating a concern over time limitation a halt to the justice. That bill is yet awaiting approval of Upper House of Parliament, Rajya Sabha⁴⁶.

Likewise in the **United States of America**, the time has been restricted to 180 days within which the incident has been happened. This time extend up to 300 days if local laws are there to prohibit similar acts. U.S laws allow simultaneous proceeding to move on same claim before mediation and EEOC thus leaving no redressal for time extension. There is a discrete bifurcation on the basis of claims made as complaint. In a judgment, Supreme Court held a restrictive approach for any complaint of discrimination while a flexible view was adopted for hostile work environment claims.⁴⁷

A three months less than a day approach prevails in the complaint system of **United Kingdom**. This limit is set to make a claim at Employment Tribunal (ET). This time frame gets paused, a stops the clock approach, when a party is directed to the early conciliation (ACAS) but for the six weeks. There is generally no discretion for ET to extend time for lodging a complaint but can be subjected extension if court find it just and equitable that happens exceptionally and in very rare circumstances. UK Law Commission has supported the claim that time frame must be extended up to six months as three months is inadequate length of time to bring a claim⁴⁸.

Appeal: A Grievance Redressal Mechanism

Appeal appears as a formal process to redress if complainant or accused are not satisfied with the decision of any authority or organization. This appeal mechanism occupies a prime place in enforcement of workplace harassment laws across various jurisdiction, highlighting the fact that decisions of tribunals, inquiry committees or courts are not immune from judicial scrutiny. While the mechanism differs across states but the objective to comply with domestic and international laws remains uniform.

The provisions of 2010 Act illustrate the duality of Ombudsperson Official capacity. The Office of Ombudsperson can either act upon the complaint directly lodged in the forum or can act as appellate forum addressing the aggrieved party claim against the findings of inquiry committee thus entertaining the cause in both original and appellate jurisdiction free of cost. The aggrieved person can bring the appeal within thirty days of inquiry committee's findings and the powers that vest with ombudsperson regarding the appeal include to set aside, amend, confirm or reject the inquiry committee findings.⁴⁹ This Act does not render ombudsperson free from accountability by granting a right of second appeal against the Federal Ombudsperson's decision to the President but within thirty

⁴⁵ Nirmal Kranti Chakraborti v Vaneeta Patnaik and Ors < <https://indiankanoon.org/doc/93386274/>>

⁴⁶ Amendment bill for increasing time limit to file a complaint under POSH Act < <https://law.asia/posh-complaint-time-limit/>>

⁴⁷ *National Railroad Passenger Corp. v. Morgan* (536 U.S. 101, 2002)
<<https://www.law.cornell.edu/supremecourt/text/536/101>>

⁴⁸ 4 Law Commission. 'Annual Report 2018-19'.

2019<https://assets.publishing.service.gov.uk/media/5d25efc5e5274a5862768fd7/6.5613_LC_Annual_Report_Accounts_201819_WEB.PDF>

⁴⁹ Section 8 of PAHWWA, 2010



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days of order passed by ombudsperson⁵⁰.

The perusal of Indian Act disclose that appeal can be preferred from the decision of committees or recommendations within ninety days of receipt of inquiry committee report. The appeal may lie to the tribunal or court according to the service rules, 2013. If the appeal stands successful, the order of punishment will render nugatory and no appeal challenging the punishment order without challenging the Inquiry Committee report will be permitted⁵¹.

The **United States** offers dual forums to prefer appeal either against agency's order before EEOC Office within thirty days of receiving final order or you may go for filing a lawsuit in Federal District Court within ninety days of receiving EEOC's decision.

The Employment Appeal Tribunal (EAT) is an independent authority working in **United Kingdom** to hear appeals against the decisions of Employment tribunals⁵². It acts as a Superior Court of the record. The EAT Rules 1993 govern the procedure to file appeal to EAT within a stipulated time period of 42 days explicitly quoted in various judgments inclusive of Rule 3(3) of 1993 Rules⁵³. The time period can be extended to file an appeal if a party potentially fails to comply with the deadlines and it's discretionary for the EAT to consider the extension on various parameters⁵⁴. Furthermore, appeal against this tribunal goes to the Court of Appeal or Supreme Court that is not a frequent practice.

Prevention from Retaliation

During the pendency of harassment complaint, there is threat of revengeful attitude being adopted by the other party against the complainant. To avoid such apprehended situations and to promote the victims to report any such case without due fear of revenge, there must be mechanism for protection against retaliatory acts.

In **Pakistan**, the Code of Conduct specifically narrates the elaborated version of retaliation. The 2010 Act directly addresses this concept by defining it as negative consequences faced by a person who refuses any sexual favor⁵⁵. The aim of this code of conduct, supplementing the Act, is to establish minimum standards of conduct that must be improved upon by any institution or organization.

In **India**, the POSH Act, 2013 fails to advance any definitive protection or safeguard against retaliation if viewed through the prism of comparative analysis of cross jurisdictional statutes. An inference can be drawn from various sections⁵⁶ such as the Section 3 read with Section 2(n). If read conjunctively, a potential redressal can be granted to the aggrieved women to bring the claim of retaliation. Otherwise, a definitive clause or provision could include an express bar on retaliation. Thus, India is yet to ratify 2019 Convention of ILO that calls upon states to ensure protection against retaliation so it might prove a strong step towards amendment in Act.

Each of Equal Employment Opportunity Laws of **United States of America** prohibit retaliatory conduct⁵⁷. EEO provides rights for seeking protection against any such retaliatory act and assertion of such rights under EEO laws is called Protected Activity.

⁵⁰ Section 9 of PAHWWA, 2010

⁵¹ Pradip Mandal vs Union Of India & Ors on 9 June, 2016

⁵² Section 20 Employment Tribunals Act 1996

⁵³ Rana v London Borough of Ealing and ors [2018] EWCA Civ 2017

⁵⁴ Rule 37(1) and 37(5) Employment Appeal Tribunals Rules 1993

⁵⁵ Schedule Section 2(c) and 11, PAHWWA 2010

⁵⁶ Section 19: ensures employers' duty to create a safe environment at workplace

Section 12: request to recommend the employer to transfer or grant leave to the aggrieved woman for three months.

⁵⁷ Title VII of the Civil Rights Act of 1964 (Title VII)



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This protected activity is either involving in EEO legal process or opposing the illegal conduct under the mandate of EEO law. This activity basically stops an employer to take any adverse step against the employer on filing a complaint.

Victimization is a term replicating the concept of retaliation in **United Kingdom**. It is a specific type of discrimination defined under Equality Act, 2010 as a condition when someone is treated less favorably as being the complainant of harassment or discrimination case. Appropriately, it is suffering a detriment because of the intention to do a protected act.⁵⁸

Statutory Penalties

The penalties or punishments in any statute serves as mechanism for deterrence and accountability. As in Pakistan and India, the statutory penalties are incorporated with the range of punishments calibrated in accordance with the graveness of the misconduct unlike America and Great Britain, where the federal laws prevail ensuring the standardized civil remedies. In Pakistan there are further graded range of penalties or remedies as minor and major penalties including fine as a compensatory element to support the victim. The minor penalties such as censure, withholding promotion or increment, are prescribed to address less serious infractions while major penalties inclusive of demotion, removal from service or cancellation of license, are designed to impose the consequences proportionate to the severity of incident being reported⁵⁹. Furthermore, it encompasses the factor of psycho-social counselling to the victim, a forward step reflecting a holistic approach to redress mental trauma faced by the victim thus ensuring both punitive and retroactive dimensions of justice.

In Indian jurisdiction, the Service Rules are consulted while declaring any penalty for the accused. These rules may invoke disciplinary actions, warnings, deduction from salary, termination or even monetary compensation to the victims.

In contrast, United States empowers the EEOC and federal courts to award punitive and compensatory damages. The liability can be linked to both punitive and retroactive considerations in American jurisdiction that is validated by different pronounced judgments but it is also evident that punitive damages despite being the extraordinary remedy under Title VII, cannot be awarded in every instance of sexual harassment⁶⁰.

In a case concerning the measure of damages, a set of three band scale of damages known as Vento Bands was set out under Equality Act, 2010 in United Kingdom. It was held award should not be as low as to diminish the respect for the relevant legislation, certain factors like everyday value of award or public respect element must be concerned while awarding damages to maintain the broad range of awards⁶¹, thus serving as a new turn to the nature of damages or remedies in the anti-discrimination or harassment legislation. Unlike India and Pakistan, U.S and UK have adopted the civil or criminal liability approach to punish the accused while the former states operationalize the specific penalties.

Conclusion and Recommendations: A Pakistan Specific Perspective

From the above findings it is evident that the passage of anti-sexual harassment legislation has really taken a concrete stance on an issue that was significant in the lives

⁵⁸ Section 27 of Equality Act, 2010

⁵⁹ Section 4(3)(4) of PAHWWA 2010

⁶⁰ Ward v. AutoZoners, LLC, No. 18-2100 (4th Cir.

2020) <<https://www.ca4.uscourts.gov/Opinions/182100.P.pdf>

⁶¹ Vento v. Chief Constable of West Yorkshire Police [2003] EWCA Civ 1871



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of women and had not been dealt with head on before. Despite the stringent measures being adopted to ameliorate the worsening situation of women throughout the globe, the graph relating to the reported cases of cruelty, sexual harassment or sex based discrimination is soaring day by day. The comparative analysis of workplace harassment laws drawn in this study reveals the diverse landscape shaped by varying socio-legal frameworks and cultural contexts. The continuous efforts for the betterment of present legislations can be well articulated from the recent ILO convention No. 190 that marks the need of the hour to adopt the legislations in conformity with the changing patterns of world. Ultimately, harmonizing these approaches offer a route to the safe workplace environment and shows commitment to the universal rights to work with dignity without being discriminated on the basis of gender.

As far as Pakistan specific perspective is considered, the implementation of 2010 Act marked a historic move driven by persistent efforts of the human rights activists and legislators. A formal and institutionalized platform was established which initially served as a legal recourse for all aggrieved and victimized women across the country, later an amended version broadening the definition of aggrieved persons to all genders. This signals the way Pakistan is ahead of other states' legislations on workplace harassment that are limited to a specific gender; women. Despite the fact that Pakistan has successfully enacted this precise legislation, there are significant lacunas in the implementation of the Act. There are certain procedural shortcomings that hinder the mandate of PAHWWA 2010 that is to ensure expeditious dispensation of justice. In practice, there are immaterial delaying tactics often employed by the accused to linger the process. Moreover, the Act does not specifically provide for the liability of individuals who, by omission or deliberate silence, facilitate the accused. This practice should be introduced to mitigate the recurrent pattern of non-compliance with the act.

Another potential measure to avoid the incidents of workplace harassment is the strategic use of media in creating deterrence. The element of social accountability must be introduced to strengthen the preventive aspect of law. It is further suggested that a reconciliation tribunal be incorporated within the procedural framework of workplace harassment laws in Pakistan. Such a body would primarily focus on assessing the probability of settlement between the parties thereby preventing unnecessary lengthy proceedings which in most of the cases culminate in compromise or settlement. Importantly, the tribunal should operate under strict safeguards to ensure that the process must not compromise the complainant's dignity, voluntariness or right to pursue further legal remedies if reconciliation fails. This model can be better adopted by seeking guidance from the conciliation procedure prevalent in India (POSH Act. 2013) and UK (ACAS conciliation procedure). There can be other way forwards in addressing workplace harassment. These strategies must include effective policies, strong accountability and monitoring systems, compulsory trainings and workshops at regular intervals in organizations and legal consciousness among public by introducing this Act as a subject of professional ethics. Thus, there is a considerable room for betterment in the PAHWWA 2010, particularly in the ongoing scenario of changing dimensions of society and evolving dynamics of workplace. Although this act marks a significant achievement of the legislative history of Pakistan, its efficacy is undermined by procedural shortcomings.



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