

## **Analysis of Anti-Sexual Harassment Legislation in Pakistan Under International Human Rights Law Obligations**

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### **ABSTRACT**

This legal research article delves into the evolution of anti-sexual harassment legislation in Pakistan by its international human rights law commitments. Recognizing sexual harassment as a pervasive issue in our society, particularly within the workplace, the study elucidates its role in fostering a hostile and offensive environment while simultaneously violating fundamental human rights and perpetuating gender discrimination. Applying a human rights-based perspective, the analysis situates sexual harassment within the broader context of victims' economic and social rights and underscores its interconnectedness with global imperatives such as international harmony, defense, and economic development. The primary objective of this research is to comprehensively examine the trajectory of anti-sexual harassment legislation in Pakistan, shedding light on its development and the factors influencing its evolution. It critically evaluates the legislation's effectiveness in addressing the multifaceted challenges posed by sexual harassment and its impact on the victims' rights, economic well-being, and social standing. Employing a qualitative methodology, the research draws on an extensive review of legislative texts, case law, and scholarly articles. The study concludes by affirming the necessity for Pakistan to uphold its international human rights law obligations in combating sexual harassment

effectively. It highlights the symbiotic relationship between a robust legal framework and broader societal objectives, emphasizing the interconnectedness between human rights, economic development, and global well-being. The findings of this research contribute to the ongoing discourse surrounding the development and implementation of anti-sexual harassment legislation, offering valuable insights for policymakers, legal practitioners, and advocacy groups committed to fostering a fair and just society.

**Key Words:** Sexual Harassment, International Human Rights Law, Pakistan law, CEDAW, ICESR, ICCPR, UDHR

## INTRODUCTION

Sexual harassment is a usual crime in our society. Its occurrence can be found everywhere, whether it is a bus stop, market, park/recreational area, restaurant, mall, or more important office/workplace. All occupations are affected by this inappropriate and bothersome sex-related behavior and hiding phenomenon. Often the victims of harassment are women, especially working women as they are more vulnerable than men to being sexually harassed. Numerous exploratory studies conducted in all nations, including Pakistan, show that women experienced sexual harassment<sup>1</sup>.

A few common forms of harassment are verbal, written, and visual through which the harasser demands sexual favor and in case of refusal threats like termination, demotion, deprivation from service benefits, etc. are offered to the victim. Regardless of the occupation, workplace incidences of sexual harassment or harassment of other kinds happen wherever

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<sup>1</sup> Niazi, Amarah. 2012. *Expressions of Modernity In Rural Pakistan: Searching for Emic Perspectives*. : Oregon State University.

women work<sup>2</sup>. Sexual harassment is a type of discrimination that is important both structurally and practically. It violates universally established human rights since it is a kind of violence that mostly targets women.

The legal literature has not given significant attention to the historical aspects of sexual harassment<sup>3</sup>. American radical feminist and legal scholar Catherine MacKinnon first used the term "sexual harassment" in 1974. She differentiates between the two types of *quid pro quo* and offensive job conduct<sup>4</sup>. Sexual harassment is described as unwanted sexual approaches, demand for sexual favors, and other verbal or bodily actions of a sexual kind" by the Equal Employment Opportunity Commission (EEOC).

It is an improper conduct, either orally or bodily, of any person who is objectionable and unwelcomed for another person according to the United Nations (UN). The Protection Against Harassment of Women at the Workplace Act 2010 ("The 2010 Act") defines it: "Any unwanted sexual advances, requests for sexual favors, physical acts of a sexual nature, or sexually demeaning remarks that hinder work performance or foster an intimidating, hostile, or offensive work environment, or that attempt to punish the complainant for refusing to comply with such a request or that are made a condition of employment"<sup>5</sup>.

The 2010 Act also defines the term workplace: "Place of work or the premises where an organization or employer operates, including any location linked to official work or official activity outside of the office, where the business operations of the organization or the employer are performed"<sup>6</sup>. Supreme Court of India in Punjab and Sind Bank & Others Vs. Durgesh

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<sup>2</sup> McLaughlin, Heather, Christopher Uggen, and Amy Blackstone. "The economic and career effects of sexual harassment on working women." *Gender & Society* 31, no. 3 (2017): 333-358.

<sup>3</sup> Ali, Rafia Naz, Johar Wajahat, and Mohammad Jan. "Combating the Harassment of Women at Workplace: An Analysis of Legislation in Pakistan." *Journal of Social Sciences Review* 1, no. 1 (2021): 72-93.

<sup>4</sup> Sapiro, Virginia. "Sexual harassment: Performances of gender, sexuality, and power." *Perspectives on Politics* 16, no. 4 (2018): 1053-1066

<sup>5</sup>"The Protection against Harassment of Women at the Workplace Act," 2(h) § (2010).

<sup>6</sup>Supra note,4, S 2(n)

Kawar, significantly held that workplace harassment is an arrangement of ferocity especially against women that affronts their basic rights, respectability, and self-esteem under Article 14, Article 15, and Article 21 of the Constitution of India<sup>7</sup>.

The Constitution of Pakistan also guards these fundamental rights under Articles 14, 25, and 34. Women's participation in the workforce is a crucial indication of economic progress and gender equality. In practically every country in the globe, fewer women are working than men<sup>8</sup>.

According to the census of 2017, women constitute 49% of Pakistan's population and their share in the workforce is only 24% according to International Labor Organization. One of the major reasons for such an insignificant share is workplace harassment which impedes women from joining the workforce in Pakistan.

The constitution of Pakistan under Article 18 provides the freedom to every citizen to join the lawful profession Article 25 protects all citizens from all sorts of discrimination. Sexual harassment is gender-based discrimination.<sup>9</sup> Therefore, the eradication of this evil is inevitable for making the workplace environment more dignified for women to play their equitable part in the development of the country. The Islamic Republic of Pakistan's Constitution now views sexual harassment as a breach of such rights<sup>10</sup>.

According to a nationwide study carried out by the Alliance Against Sexual Harassment (AASHA) it was found that out of 17 nurses (Aged 16 to 21) interviewed 58% of them admitted having been harassed by male doctors, paramedics, attendants, patients, and visitors of the opposite sex,<sup>11</sup> as a result, 93% of working women in the different sectors who were surveyed

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<sup>7</sup> *Civil Appeal No. 1809 of 2020*, Supreme Court of India

<sup>8</sup> Thakur, Sai, and Shewli Kumar. "Sexual harassment in academic spaces: a comparative analysis of legal processes in India and Pakistan." *Jindal Global Law Review* 10 (2019): 173-196.

<sup>9</sup> Rabia Jawaid, "'Situation Analysis of Sexual Harassment at Workplace,'" <https://Aasha.org.pk/>, 2012.

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

for (AASHA) interviews on workplace harassment reported experiencing some kind of harassment<sup>12</sup>.

The offense is not limited to office settings only. Another study of domestic workers by AASHA revealed that 91% of <sup>13</sup>landlords and contractors sexually exploit the women working under them in fields and brick factories (Bhatta). It can be easily inferred from the above statistics that workplace harassment is a common phenomenon in Pakistan.

Moreover, talking about harassment is taboo in our society therefore the actual occurrence of the offense is much higher than what is reported. Furthermore, the burden of proof lies upon the victim, patriarchal social norms and future adverse implications on the matrimonial life of the victim are also the major reasons for not complaining of sexual harassment at the workplace<sup>14</sup>. It persists regardless of age, education, or status. This issue has been talked about now and is becoming a legal and management concern in modern workplace settings.

International Human Rights Laws under the framework of following treaties and conventions provide broad guidelines for nations to formulate legislation for the eradication of different social evils including harassment.

- Convention on the Elimination of All Types of Discrimination against Women (CEDAW)
- Universal Declaration of Human Rights (UDHR)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- Declaration on the Elimination of Violence Against Women (DEVAW)

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<sup>12</sup>Ibid

<sup>13</sup>Ibid

<sup>14</sup>Deeba, Malieka F. "Protection of Women against Sexual Harassment-Social Barricades and Implementation of Laws in Pakistan." *Journal of International Women's Studies* 22, no. 4 (2021): 134-151.

A maiden attempt at the legislative front in history, following legislation exclusively dealing with issues related to sexual harassment at the federal level was passed by the Parliament of Pakistan in 2010. The first comprised an amendment to Section 509 of the Pakistan Penal Code that made sexual harassment a crime anywhere in the country and the second is an exclusive law "The 2010 Act" which pertains to the harassment of women in the workplace. After the eighteenth constitutional amendment, all the provinces also enacted the same at the provincial levels.

## **1 Sexual Harassment Under International Human Rights Law**

Sexual harassment is viewed from a human rights perspective in the context of women's economic and social rights as well as, more broadly, within the greater framework of international needs, such as the preservation of global harmony and defense and economic development. Recently, this this problem gained global attention. There hasn't been a large pushback as there has been in certain national jurisdictions because sexual harassment is a novel phenomenon in international law. Compared to other aspects of women's human rights, such as various types of violence against women, generative rights, and crimes against women in armed conflict, it has received less attention at the international level.

Generalizations concerning the kinds of harassment experienced and the necessary reactions are problematic due to the range and variety of paid jobs performed by women worldwide. According to the World Conference on Females held in Beijing in 1995, women are now acknowledged as significant economic contributors who work for both paid and unpaid wages at home, in the community, and at work. This has helped to eradicate poverty. Women frequently have no choice but to take employment that lacks long-term job security or entails hazardous working conditions, engage in unprotected home-based manufacturing, or be unemployed, according to the 1995 Beijing Platform for Action.

Many women want to increase their household income by entering the workforce in underpaid and devalued positions; other women choose to relocate for the same reason<sup>15</sup>. All of these circumstances encourage sexual harassment in ways that are very similar all around the world. This assertion also acknowledges that women endure a variety of working environments and situations around the world. For instance, women labor in rural vocations in huge numbers throughout the world. In addition, women make up a sizable portion of the home-based workforce, which prevents them from organizing and leaves them open to abuse from both their suppliers and sellers<sup>16</sup>. Although other estimates suggest that during the 1980s women migrant workers significantly outnumbered males, at least half of these employees were women<sup>17</sup>.

They are coerced into modern kinds of slavery because of their significance to the economies of the states they have left and to their relatives<sup>18</sup>. These variations in the workplace need the identification of sexual harassment and discrimination in its many types, which can include unequal pay and working conditions, sexual abuse and degrading behavior, sweatshop labour, isolation, vulnerability to violence, and even death and these problems affect people everywhere and are not specific to any one culture. Their application necessitates taking gender into account within the settings of each specific society's ethnic, religious, racial, and class groups. Other problems arise when sexual harassment is included in international human rights law.

According to human rights legislation, states must accept global responsibilities for the individuals under their jurisdiction. Even where formal human rights standards exist, the

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<sup>15</sup> Rabia, *supra* note, 9.

<sup>16</sup> Alexander, M. Jacqui, and Chandra Talpade Mohanty, eds. *Feminist genealogies, colonial legacies, democratic futures*. Routledge, 2013.

<sup>17</sup> 'Report of Special Rapporteur on Violence against Women, Preliminary Report, U.N. Doc. E/CN.4/1995/42, Para. 220'.

<sup>18</sup> *ibid*.

importance of work done predominantly by women to both national economies and the global liberalization of trade and investment undermines commitment to those standards and leads to the suppression of any claims for their enforcement. From claiming that state economic development comes first to using women's passivity and femininity as a national economic resource, the state can be found culpable in the denial of individual workplace rights<sup>19</sup>.

The compliance and participation of women are additionally necessary for the operation of numerous governmental enterprises, most notably the military. To sum up, women's labor is subject to national and international policies that disregard their rights and are economically and socially undervalued throughout the world. At best, their working circumstances are typically poorly regulated or monitored, which increases their susceptibility to various and frequently severe types of harassment. The institutional design of the International Labor Organization (ILO) contains elements of international law dealing with sexual harassment, common and specialized instruments about human rights, and dedicated institutes. These have all grown independently, and there has been less institutional knowledge and experience sharing than could have been expected. The contributions of each are briefly examined in this section.

Even though discrimination, including that based on sex, has long been outlawed by human rights legislation, sexual harassment hasn't always been thought to be under the purview of the broader human rights international agreements negotiated inside the U.N. framework.<sup>20</sup> Particular employment rights are included as per the list of monetary and societal rights that have received a lower priority than civilian and partisan rights, at least in Western legal doctrine<sup>21</sup>. Although sexual harassment isn't specifically mentioned in the ICESCR,

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<sup>19</sup> Danjo Koyo Kikai Kintoho and Minaoshi Ni Kansuru, 'Recommendations on Reexamination on the Equal Employment Opportunity Law after Its Enact- Ment'.

<sup>20</sup> UDHR, art. 2, G.A. Res. 217 A (III) (1948)

<sup>21</sup> (ICESR), arts. 6–8



which is the main international document guaranteeing economic and social rights, it can be included because it's mentioned in the context of equality at work, the right to "fair and promising conditions of work," and the right to "safe and healthy working environment."

A cogent strategy for addressing wrongs that fall under both categories of rights has been hampered by the false dichotomy between categories of rights, which has been reinforced by two separate treaty monitoring bodies, the ICESCR and the Human Rights Committee (civil and political rights).

The issue of harassment extends beyond the workplace. It infringes on civil and political rights including equality, freedom of movement, and freedom of association, but it frequently takes place in the workplace, neglecting to take into account how it interferes with the enjoyment of such other rights. The statement of the indivisibility of all human rights established at the World Conference on Human Rights, which was held in Vienna in 1993, may help to change is perception.<sup>22</sup> However, the ICESCR's substantive and enforcement procedures are weaker in practice than those of its civil and political rights counterparts. Demands for a women-specific convention grew as it became clear that the general human rights mechanisms of the U.N. gave insufficient attention to the types of discrimination that are particularly harmful to women. The CEDAW was ratified by the UNGA in 1979. Contrary to the U.N. Covenants, the Women's Convention's Article 1 "According to the definition given by the UN, discrimination is any difference, prohibiting, or limit based on sexuality with the effect or drive of obstructing or annulling the credit, gratification, or workout by women, regardless of their matrimonial status, based on the parity of men and women, of human rights and important freedoms in the political, economic, social, cultural, civil, and political ranges.."

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<sup>22</sup> U.N. World Conference on Human Rights: Vienna Declaration and Programme of Action, pt. I, para. 5, U.N. Doc. A/CONF.157/24 (1993).

The aspects of sexual harassment included in this definition include the objective presence of a differentiation, exclusion, or restriction based on sex and the resultant interference with the enjoyment of rights by women<sup>23</sup>.

The ILO Convention No. 111 and the 1965 (EATRD) both define discrimination in this document. The ILO Committee of Experts clarified its understanding of harassment under ILO Convention No. 111 and reiterated its belief that sexual harassment is a type of bias. The ILO's concept of harassment can be applied to the other Conventions thanks to the shared definition of discrimination.

The undesirable behavior must exhibit one of the traits listed below: it is legitimately regarded as a requirement or prerequisite for employment; it affects hiring decisions or negatively affects job performance; or it humiliates, degrades, or threatens the target<sup>24</sup>. The Women's Convention's (CEDAW) inclusion of monetary, civilian, and other allied rights is one of its strengths e.g., article 11 deals particularly with banning discrimination in the workplace.

Although Article 11 addresses the right to work, the right to equal employment opportunities, the right to free professional choice, promotion, job security, and training, the right to societal care, the right to health and safety at work, and measures related to maternity and childcare, it does not specifically address sexual harassment. In Helen Campbell's 1887 report on women wageworkers, she refers to the widespread belief that "household employment has become associated with the lowest degradation that comes to woman," which was prevalent by the end of the nineteenth century. Campbell also went into considerable length about the various ways that women employed in the textile and apparel industries were subjected to sexual extortion.

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<sup>23</sup> Nielsen, Henrik Karl. "The concept of discrimination in ILO Convention No. 111." *International & Comparative Law Quarterly* 43, no. 4 (1994): 827-856.

<sup>24</sup> Ibid p.834

The right to reasonable and favorable working circumstances is included in the Convention for the EATRD, which the Women's Convention is largely based on. The ICESCR also contains this formula, but the Women's Convention does not. This backs up MacKinnon's assertion that racial discrimination receives a more severe and comprehensive response than sex discrimination.<sup>25</sup> Given that the Women's Convention was adopted in 1979, when the idea was still relatively new in national legal systems, the lack of any specific reference to sexual harassment is hardly surprising. Instead of being a charter of women's rights, the Women's Convention's main principle is equality between men and women in the aforementioned areas.

The Women's Convention is not a charter of women's rights, but rather its central principle is equality between men and women in the aforementioned areas. Therefore, widespread failure to see sexual harassment as an equality issue at the time prevented its inclusion in the Convention. The regional human rights mechanisms have frequently promoted human rights law, but in this situation, the same prejudice is present. The European Social Charter's rights, such as workplace rights, are not covered by the court system that upholds the civilian and other allied rights provided by the European Convention on Human Rights (ECHR)<sup>26</sup>.

The American Convention on Human Rights (ACHR) contains a single clause requiring states to gradually meet certain economic, social, educational, scientific, and cultural standards<sup>27</sup>. The Added Protocol (ACHR) in the Area of monetary societal and allied Rights contains specific workplace rights and is subject to the Inter-American Commission and Court of Human Rights jurisdiction by individual petition<sup>28</sup>. It defends the right to healthy and safe working conditions and workplaces that respect employees' dignity (article 29). The charter's

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<sup>25</sup> Lin Farley, *Sexual Shakedown: The Sexual Harassment of Women on the Job* (Warner Books, 1980), 39.

<sup>26</sup> *European Social Charter*, Part I, October 18, 1961.

<sup>27</sup> *American Convention on Human Rights*, art. 26, November 22, 1969

<sup>28</sup> *Protocol of San Salvador*, Nov. 17, 1988

format, however, has not yet been decided and will only apply to the member states of the European Union.

This concise evaluation of sexual harassment law under human rights law depicts a hybrid picture. It is possible to construe the equality clauses of the U.N. human rights treaties to include sexual harassment. It is possible to construe the equality clauses of the U.N. human rights treaties to include sexual harassment. However, there are few indications that the relevant supervisory authorities agree with this reading due to a lack of attention to the likelihood of such an interpretation.

Additionally, enforcement measures are limited, except for the European Community and regional human rights institutions. Due to its dedication to workplace equality, the European Community has the most significant legal protections against sexual harassment; yet these protections are *sui generis* and do not constitute universal international law. Another indication of a lack of awareness at the international level is the U.N.'s poor progress in considering claims of sexual harassment seriously<sup>29</sup>.

The challenge has been to integrate evolving national conceptions of sexual harassment and discrimination into global equality norms, which can then be used to exert pressure on national legal systems that have not yet made similar changes. Furthermore, accusations of discrimination must be made about the rights protected by the applicable convention, making the nondiscrimination articles contained in regional treaties insufficient on their own. Although discrimination is generally prohibited by Article 26 of the (ICCPR), its applicability to employment rights has been hindered by the Human Rights Committee's emphasis on civil and political rights. However, it does emphasize the need for equality in the workplace in General Comment 28, which was adopted on March 29, 2000. This Convention

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<sup>29</sup> Charlesworth, Hilary, and Christine Chinkin. *The boundaries of international law: A feminist analysis, with a new introduction*. Manchester University Press, 2022.

allows sexual harassment to be brought more readily under its terms than those of the American or ECHR, but once again, the monitoring procedures are inadequate. It also forbids sex-based discrimination.

In Europe, the European Community has been more successful in tackling equality issues than the Council of Europe's human rights procedures. Several pertinent soft law measures have addressed sexual harassment<sup>30</sup>. A deeper explanation of actions that violate this dignity can be found in the European Commission's Code of Practice on the dignity of men and women in the workplace. These actions include unwelcome physical sex, sexually explicit verbal or nonverbal communication, sexually explicit nonverbal communication, and sex-based behaviour such as comments about looks.

Regardless of the reason for the behaviour, it qualifies as harassment "after it has been made evident that it is seen by the recipient as objectionable<sup>31</sup>." Recommendations and Codes of Practice are a part of the Community's "soft law," which refers to non-binding rules that rely on self-regulation and outside pressure to be followed. The application of the equal treatment mandate to workplace sexual harassment has given rise to a substantial body of legal guidance that is outside the purview of this study.

While the relationship between the equal treatment directive and the soft law against sexual harassment creates a legally enforceable framework, barriers still stand in the way of a comprehensive ban on hostile working environments and all types of sexually degrading behavior in the workplace<sup>32</sup>. Unlike the ECHR, the Draft Charter of Fundamental Rights of the European Union, which was approved on July 28, 2000, has separate articles on equality before the law (article 20), equality and non-discrimination (article 21), and equality opportunities

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<sup>30</sup> European Commission Recommendation on the Protection and Dignity of Men and Women at Work, Nov. 27, 1991

<sup>31</sup> Ibid

<sup>32</sup> Ibid

between men and women regarding employment and work (article 22). Additionally, it defends the right to healthy and safe working conditions and workplaces that respect employees' dignity (article 29). The charter's format, however, has not yet been decided and will only apply to the member states of the European Union.

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The CEDAW is the most obvious means of enacting change. The CEDAW was unable to develop jurisprudence clarifying and advancing the articles of the Convention, especially those pertaining to sexual harassment, in the past because there was no individual

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<sup>33</sup> Charlesworth, Hilary, Christine Chinkin, and Shelley Wright. "Feminist approaches to international law." *American Journal of International Law* 85, no. 4 (1991): 613-645.

complaints process.<sup>34</sup> This has altered now that the Optional Protocol to the Women's Convention has established an individual complaints procedure and an investigation process. Three months after the tenth country accepted the Optional Protocol, on December 22, 2000, it became operative.

The equality provisions of the Convention have nonetheless served as the foundation for subsequent developments that have been crafted using two interrelated strategies: direct recognition of sexual harassment through the concept of discrimination. These advancements have mostly been caused by two forces. First, nongovernmental organizations (NGOs) represent

women around the world have successfully advocated for and rallied support for the recognition of women's rights as human rights. Second, CEDAW has worked on future-focused interpretations of certain Convention sections, which it has released as broad suggestions. These have grown in quantity and complexity, partially making up for the absence of an international body of law governing women's human rights. General Recommendation No. 19 on Violence Against Women was adopted by CEDAW in 1992. This suggestion is exactly based on the Women's Convention's wording, which strengthens its power and validity.

States are required by CEDAW to include information about the steps they have taken to protect women from harassment, violence, and coercion in the workplace in both their initial and periodic reports to the Committee. States can also anticipate being questioned about their progress, though it seems that this hasn't happened very often. Test case uses of these provisions are possible now that the Optional Protocol to the Women's Convention has entered into force. In addition to CEDAW's work, women's NGOs organized around the demand that violence against women be acknowledged as a universally invalidating of all human rights and as a

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<sup>34</sup> Byrnes, Andrew, and Jane Connors. "Enforcing the human rights of women: A complaints procedure for the women's convention." *Brook. J. Int'l L.* 21 (1995): 679.

direct violation of women's human rights as a unifying theme of the campaign for the broader affirmation of women's rights as human rights. This campaign was carried out in the 1990s through a number of fora, such as the U.N. human rights bodies, the General Assembly, and the international summit meetings that took place during the decade, particularly the World Conference on Human Rights in Vienna in 1993 and the Fourth World Conference on Women in Beijing in 1995.

## **2 International Human Rights Law Under Anti Sexual Harassment Legislation in Pakistan**

Pakistan has ratified the ICESCR, it is under obligation to ensure that its domestic laws are in line with the terms of the aforementioned agreements. According to Article 7 of the treaty, women have the right to reasonable working conditions and are prohibited from being sexually harassed at work. The responsibility of the courts is greatly increased in this situation. Pakistan is a signatory to the UN Declaration on Violence Against Women, and Article 2 goes into great detail about sexual harassment and coercion in the workplace. In addition, Pakistan is a signatory to the International Labor Organization Conventions 100 and 111, which deal with equal pay for equal work and employment discrimination.

Almost all international treaties dealing with women's rights indirectly address the issue of harassment under the realm of the right to work for women. The right to work is multifaceted under the legal framework of International Human Rights and cannot be considered a single right, but rather a collection of rights. It includes all the rights associated, including the protection of human dignity which is violated due to sexual harassment as the process of getting justice is very cumbersome and the victim is required to undergo the procedural requirement set under the local and above-mentioned convention. This drawn-out process of obtaining justice has crushing impacts on the victims, including tremendous personal



pain, reputational harm, loss of dignity, and low self-esteem. As a result, it undermines the victim's self-esteem, respect, and social acceptance.

The Planning Commission of Pakistan's report published in 2019 says that under the international human obligation framework: "The right to labour has many different ramifications and binds Pakistan to a range of commitments. It is recognized as a fundamental right and a guiding rule in the Constitution. As a result, the State has a duty to guarantee the availability of resources and workplace amenities, as well as to grant citizens the freedom to select their professions."

UDHR is a significant piece of writing in the history of the modern world that was created by legal and regional specialists and endorsed by the UN General Assembly on December 10, 1948, in Paris. This instrument provides guidelines regarding the enforcement of different human rights to the signatory states. UDHR was ratified by Pakistan in 1948 along with 48 other Muslim countries, including Egypt and Iran. UDHR discusses harassment under Article 23 which talks about the right to work): <sup>35</sup>

- Every individual has to work right
- Fair beneficial circumstances
- Equal Remuneration for Equal Job

As per the definition, harassment creates a hostile and offensive environment in which it becomes difficult for the victim to perform up to the mark. It causes physical and mental trauma for the victim. By virtue of the signatory of UDHR, it is the responsibility of the states to protect the right to work and provide dignified just, and favorable working conditions for women so that they can contribute optimally.

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<sup>35</sup>Supra note, 20, art 23

The CEDAW was adopted by the UN General Assembly in 1979 comprising 30 articles and a preamble. This legally non-binding document provides a protection mechanism for discrimination against women. Pakistan by virtue of rectifying this treaty on April 12, 1996, is bound by its provisions. The harassment definition of CEDAW also signifies gender-based discrimination.<sup>36</sup>

Due to the violence against women, sexual harassment is considered to be a type of gender-based discrimination and is therefore illegal under international human rights legislation. Article 11 of CEDAW provides equal rights of employment to women and provides them the liberty to join the profession of their own choice. Women are equally entitled to all the employment rights and privileges men enjoy. However, sexual harassment in the workplace impairs the concept of equality in employment when women are facing gender-based violence.

It can be implied from the above discussion that sexual harassment infringes the right to work and subsequently all the underlying rights including the right of the dignity of the victim. As a party to CEDAW, it is the responsibility of Pakistan to take remedial measures to eliminate discrimination based on gender<sup>37</sup>. It was highlighted during periodic review by the CEDAW Committee that practically in the legislative sphere, the reflection of CEDAW is lacking<sup>38</sup>. The local legal framework of the country is inadequate to prosecute the harassers, instead, it reinforces the woman's experience of humiliation, embarrassment, and public exposure by isolating her further<sup>39</sup>.

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<sup>36</sup>(CEDAW), art. 1

<sup>37</sup> Ibid

<sup>38</sup> Women's International League for Peace and Freedom. "Pakistan's CEDAW Session: A Step Further in the Integrated Human Rights Approach for Women." 2020. Accessed July 2, 2022

<sup>39</sup> Ibid

However, Pakistan reaffirmed its obligation to conform to its domestic legislation accordingly<sup>40</sup> On December 16, 1966, ICESCR was adopted by the UN GA, and entry into force by January 03, 1976, and Pakistan ratified the ICESCR in 2008. As a signatory Pakistan is under obligation to safeguard and protect the right to work of its citizens.<sup>41</sup> the state to provide a fair and promising working environment including a safe and healthy working environment<sup>42</sup>.

These obligations cannot be fulfilled without eliminating gender discrimination and sexual harassment against women.

DEVAW was adopted by the UN General Assembly on December 20, 1993. The purpose of this declaration is to strengthen and complement the process of elimination of violence against women which originated from CEDAW<sup>43</sup>. Intimidation and sexual harassment at the workplace also come under the scope and definition of violence against women<sup>44</sup>. The essence and spirit of these conventions remain compromised as the above conventions and treaties are not legally binding on the states and the governments are more interested in politically motivated agendas rather than the protection of human rights. In this regard situation in Pakistan is not very different. The showcased attempts of dealing with the matter related to human rights often lead to miscarriage of justice.

### **3 Anti-Sexual Harassment Legislation in Pakistan**

Pakistan had to deal with constitutional issues up until 1956 because it was a newborn state plagued with so many enormous challenges. However, Pakistan had given women enough constitutional protections in its constitution of 1956<sup>45</sup>. The most notable aspect of the said

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<sup>40</sup>Ibid

<sup>41</sup>(ICESCR), art. 6.

<sup>42</sup>Su41 art 07.

<sup>43</sup>DEVA

<sup>44</sup> DEVA, art 2(b)

<sup>45</sup> *The Constitution of Pakistan* (1956).

constitution was its provisions against sex-based employment discrimination and its prohibition of discrimination in access to public areas<sup>46</sup>. In Pakistan, the state was given the authority to pass special laws to advance women's status.<sup>47</sup> Within a span of less than ten years, the constitution was superseded by the new Constitution of 1962 since it could no longer advance. Basic rights were initially not mentioned in the aforementioned constitution; nevertheless, as a result of the first constitutional amendment, citizens were granted fundamental rights. The 1962 constitution, like its forerunner, guaranteed women's fundamental rights, including freedom from sex discrimination in public spaces<sup>48</sup>. On a similar note, sex-based discrimination in services was also prohibited<sup>49</sup>.

The Constitution of 1973, which superseded the aforementioned one and, in contrast to its forerunners, featured extensive measures dealing with women's welfare. Pakistan Women's Rights Committee, 1976, was established comprising 14 members and the attorney general serving as its chairman almost three decades after the country's independence. The committee was tasked with reviewing all of Pakistan's current legislation governing women and offering suggestions for their advancement. Even though the committee produced multiple reports, the change in government prevented the implementation of those reports.

A Commission on the Status of Women was established in 1985 in a similar manner to the previous attempt. The third attempt to improve the status of women in Pakistan was the Commission of Inquiry for Women in 1994. The panel was tasked with reviewing all current laws to take the required action to improve the status of women in Pakistan. The commission comprising ten members under the chairmanship of Mr. Justice Nasir Aslam Zahid delivered its report in 1997 and suggested that several discriminatory laws be repealed. Additionally, it

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<sup>46</sup> Supra note, 44, art 17

<sup>47</sup> Supra note, 4, art 14(2)

<sup>48</sup> The Constitution of Pakistan (1962), art. 16.

<sup>49</sup> Supra note, 47, art. 17

highlighted the need to create a powerful framework for observing how those laws are being implemented while recommending changes to legislation.

The committee placed a strong emphasis on the creation of mechanisms to handle instances of gender discrimination promptly. So, taking a closer look at the situation reveals that Pakistan's laws pertaining to women's issues have undergone regular updates, and in this regard, commissions and committees have been making their proposals for updating those laws.

The (AASHA) was founded in 2001 by organizations focused on women's concerns under the capable leadership of Dr. F. Saeed, a well-known women's rights activist.<sup>50</sup> She had been involved in a sexual harassment case in which she along with 10 other women filed a complaint against a senior staff member in an international development organization and they pressured the government to participate in this procedure. AASHA played a vital role in policy formulation for countering sexual harassment<sup>51</sup>.

In order to address the issue of sexual harassment, AASHA and the Government of Pakistan began establishing a policy framework and collaborating closely with the ILO and senior government officials in 2002, and the same was named as Code of Conduct for gender justice AASHA later implemented the policy in the private sector<sup>52</sup>.

The Pakistani government passed legislation outlawing harassment of women in the workplace because it values women's rights. In 2010, Pakistan became the first nation in South Asia to enact a law against sexual harassment in the workplace. For the first time in history, legislation exclusively dealing with issues related to sexual harassment at the federal level was passed by the Parliament of Pakistan in 2010.<sup>53</sup> Moreover to counter sexual harassment at

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<sup>50</sup> "AASHA." 2019. Accessed August 2022. <https://www.aasha.org.pk>.

<sup>51</sup> Ibid

<sup>52</sup> Ibid

<sup>53</sup> Maleeha Hussain and Fouzia Saeed, "A Baseline Study on Anti-Sexual Harassment Policies in the Public and Private Sector before March 2010" (Mehergarh: A Centre for Learning, Islamabad, Pakistan, 2010).

places other than work an amendment in Section 509 of the Pakistan Penal Code was made which contains provisions for the modesty of women but not discussing the harassment. In accordance with revisions made, entries have been made to the Schedule related to Section 509 of the Pakistan Penal Code, 1980 (Criminal Code, Amendment of Schedule II, Act V of 1898). After the eighteenth constitutional amendment, all the provinces also enacted the same at provincial levels as per the following details.

<b>Province</b>	<b>Enactment Adopt in</b>
Punjab	2012
Baluchistan	2016
KPK	2017
Sindh	2018

The 2010 Act was passed to legally protect women's right to work and make the workplace gender inclusive. Many terms defined in the 2010 Act including harassment are almost identical to the definitions provided by the CEDAW. The 2010 Act also complies with the CEDAW requirements regarding the provision of separate legislation to women. A formal mechanism is laid down in the 2010 Act for addressing the issue, specifically in the organizations. This also makes the management responsible for establishing internal mechanisms within the organization<sup>54</sup>.

A standing inquiry committee comprising at least three members including a woman is required to be constituted under the 2010 Act<sup>55</sup>. Within three days of the receipt of the complaint, the Inquiry Committee shall communicate the charges and statement of allegation to the accused and demand a reply within seven days of communication of the charge in the type of written defence. The committee has the right to examine the written or oral evidence

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<sup>54</sup> Supra note, 05

<sup>55</sup> Ibid

provided in charge or defence of the case and also provide the opportunity for cross-examination between the parties. The committee is required to furnish its report within thirty days of initiation of inquiry to competent authority along with findings and recommendations, and the imposition of penalty (if any)<sup>56</sup>. The committee also has the powers to issue summons, enforce recording evidence, and demand records<sup>57</sup>. Any party aggrieved by their decision can file an appeal before the ombudsman appointed under Section 7 of The 2010 Act. The 2010 Act is extended to the whole of Pakistan<sup>58</sup>.

### **Conclusion:**

It is quite evident from the available literature that this problem has now been recognized as a legal and management concern at national and international levels. The most prevalent type of gender-based violence experienced by working women in Pakistan nowadays is sexual harassment at work. Sexual harassment is the grim reality of life and one of the reasons for the disproportionate share of women in the workforce.

Pakistan's dedication to guaranteeing the enjoyment of these rights for its population is demonstrated by the ratification of seven important international human rights accords. These legally binding treaties do, however, impose a significant obligation on the State to guarantee that the rights inherent in them are not infringed and that, in the event that they are, adequate methods for their redress are available. Despite the many difficulties the nation faces, there are still a number of significant indications that point to a successful trajectory for the State's efforts to uphold and advance human rights. On the legislative front, the last ten years have seen the

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<sup>56</sup>Ibid

<sup>57</sup>Ibid

<sup>58</sup>Ibid

adoption of several laws that have significantly improved the rights protections for specific groups, such as minorities, women, and children.