**Redefining harassment**

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Empowering women in the economy is central to realising women’s rights and eliminating gender inequality. Women’s economic empowerment can only be achieved if barriers that impede their access to the world of work are removed.

Workplace harassment is a form of gender-based violence (GBV) that disproportionately affects women negatively, resulting in tragic economic and social inequalities. It is a significant barrier that impedes women’s access towards gaining financial and economic independence.

There is no official data on workplace harassment in Pakistan. Nevertheless, a survey conducted by Dawn News in 2018 found that only 17 percent of those who experienced harassment approached their organisation’s internal inquiry committees. However, the data does not reflect the accurate number of employees who faced workplace harassment in Pakistan.

Comparatively, the UK Government Equalities Office revealed in its 2020 report that at least 29 percent of those in employment experienced some form of sexual harassment at the workplace in a time span of 12 months in the UK.

The fact is that workplace harassment is severely underreported in Pakistan. One of the reasons could be fear of retaliation by supervisors due to the presence of harmful power dynamics. Quite often tactics that aim to isolate and silence victims are utilised by a workplace’s supervisors and senior management. This is supported by data. A study conducted by the US Equal Employment Opportunity Commission (EEOC) found that 75 percent of employees who spoke out against workplace mistreatment faced some form of retaliation. Moreover, survivors and victims of workplace harassment were not adequately protected by the pre-existing law in relation to workplace harassment. Due to this, if a case was reported, the pre-existing law failed to protect them, further normalising workplace harassment.

Previously, Section 2(h) of the Protection against Harassment of Women at the Workplace Act 2010 (2010 Act) defined “harassment” as “any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment”.

On July 5, 2021, a three-judge bench of the Supreme Court of Pakistan held in Nadia Naz v President of Islamic Republic of Pakistan (2021 PLD 784 Supreme-Court) that the word “harassment” defined in Section 2(h) of the 2010 Act only covers harassment of a “sexual nature” and any other demeaning attitude, behavior, or conduct which may amount to harassment in the generic sense of the word, however devastating it may be to the victim, is not actionable under the 2010 Act. This judgment created uproar throughout Pakistan on the insufficient protection offered under the 2010 Act.

It has been argued that the previous definition of harassment under Section 2(h) of the 2010 Act was insufficient as it did not protect women from discrimination and other forms of workplace harassment. Discrimination can be a form of harassment, when a supervisor or co-worker behaves in a way that creates an intimidating, hostile or threatening work environment. However, the previous definition did not provide protection against discrimination and as a result, most harassers never had to face the consequences of their actions. Limited social and legal protections and poor implementation of the pre-existing law made it difficult to prevent and address workplace harassment.

In this backdrop and the justified uproar on the bare minimum protection provided to women, the Protection against Harassment of Women at the Workplace (Amendment) Act 2022 (2022 Amendment) was enacted on January 24, 2022, to increase the ambit and scope of the law.

The definition of harassment under Section 2(h) was redefined under the 2022 Amendment. While “stalking” and “cyberstalking” were added under Section 2(h)(i), “discrimination on the basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and pre-judicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant” was inserted through Section 2(h)(ii).

Recently, Federal Ombudsperson for Protection against Harassment of Women at Workplaces Kashmala Tariq stated that sending text messages containing good morning and good night wishes and poetry fall under workplace harassment too. She added: “It is harassment. If your colleague calls you pretty out of the blue, even that is harassment.” Undoubtedly, the new expanded definition of workplace harassment will go on to protect women from all forms of workplace harassment and not just sexual harassment, which was the case under the old definition of harassment under the 2010 Act.

Furthermore, through redefining section 2(e), the protection against harassment was extended to “former employee who has been removed or dismissed from service or has resigned, and a parent or guardian where the complainant is a minor”. Importantly, the definition of workplace under 2(n) was extended to include: educational institutes, concerts, studios, sporting facilities, etc.

The 2022 amendment has widened the ambit and scope of the law. Nevertheless, it is important to ensure the effective implementation of the 2022 amendment.

Enterprises must adopt and enforce strict anti-harassment policies. Inquiry committees must be established as mandated by the law. Moreover, strong reporting mechanisms must be established, and reporting must be encouraged at workplaces, which must respond to all allegations of workplace harassment through a survivor-centered approach. All enterprises must conduct regular sexual harassment trainings to educate their employees on what constitutes workplace harassment and how they can report it.

Workplace harassment affects all forms of employment (formal or informal) and has massive socio-economic consequences for workers, their families and the wider communities. It also affects the reputation and productivity of enterprises. In light of this, the 2022 amendment isa much-welcome light at the end of a very dark tunnel and will hopefully go on to protect victims/survivors of workplace harassment.

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