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An Analysis of the Implementation of Protection Against Harassment of Women at Workplace Act, 2010: In the Light of Decisions of Judicial Forums in Pakistan, (2011-2015)

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Abstract

In this paper we attempt to find the flaws in implementation of The Protection against harassment of women at workplace Act, 2010 in the light of decisions pass by August institution of Ombudsman, Civil Courts and Apex courts of Pakistan. Harassment is universally recognized phenomena which hinders the way of prosperity of nation and de moralize the women participation in employment. Pakistan being one of South Asian country has its own cultural traits, religious obligations and social norms. Females are not considered as free agent to act arbitrary. Keeping in view Constitutional concept of 3P; s, Government of Pakistan enacted Anti-Harassment laws to address the issue with iron hands. It is well said that Law without proper implementation is of no use, Judiciary and Office of Ombudsman are identified as legal forums to entertain the complaints on the issue and implements the provisions of Enactments 2010.The main focus has been made on the complaints and suits filed under The Act, 2010 and decisions thereon. In this regard comprehensive study is carried out of the judicial forums in order to ascertain the applicability of The Act, 2010 in Pakistan.

Key Words: *Act 2010(The Protection Against Harassment of Women at Workplace Act, 2010), Pakistan, Employee, Ombudsman, Judiciary and Management.*

Introduction

Since earliest eras of civilization women are owned as assets of tribe and their inferiority entrusted the tribe men to apply any type of violence against women. Globally various types of violence are carried out against women. The concept of sexual harassment is persistent dilemma around the world. Constant efforts are putt forward for making laws and policies for rooted up the social evil of harassment specially observed at work place (Thornton, 2002). To tackle with the issue of Universal jurisdiction, many organizations have framed policies and introduced mutually agreed terms and conditions and conduct trainings to negate sexual harassment at workplace. (McCann, 2005). Harassment is exercised in all professions and work environments, though kept as secret by making it an unheard issue. It may vary in its forms i.e. gender harassment, physical harassment, sexual harassment, psychological harassment and

many others. Harassment at workplace is an extensive in nature that it is difficult to determine a particular action as occurrence of some act specifically amounting to harassment (Hunt, Davidson, Fielden, & Hoel 2007).Pakistani society is dominated under cultural restraints, traditional values and social norms; these are causing factors of increasing rate of harassment. Women mostly faced unjust behavior on a daily basis due to various cultural and social norms entrenched deeply in society of Pakistan and the frequency of suppression against women are mostly prevalent in rural areas. (Babar, 2007) Syed (2008) having the view that Pakistan is not different than other countries in context of harassment. Sexual harassment is frequently exercise at the place of employment, regrettably there are no public records of the cases as either on account of cultural basis, religious factor, economic situations or other social restraints.

The aim of research article is to identify the gap between legislations and implementation of such laws in judicial setup with special reference to leading cases decided by Judiciary in Pakistan. The Constitution of Pakistan, 1973 ensure the fundamental rights to its citizens but due to certain socio cultural factors fail the true implementation of these rights spiritually. Practically in Pakistan women are mostly victimized of offence of sexual harassment at workplace (Abbas 2011). Pakistan, a Muslim country characterize by patriarchal society with gender disintegration and discrimination. Amendments in the Constitution of Pakistan, has been made frequently but failed to upgrade the status and enforce rights of women. (Yasin, Chaudhry, & Afzal 2010)

With reference to religious context of South Asian countries, in India, Indian culture female are inferior in status. The "theory of perpetual tutelage for women" was given by Manu, the Hindu legal practitioner .According to his theory females are not entitled for any civil and social rights further stated that women participation should not be encouraged by native families as a free agent. On the same lines Buddhism considered the female as inferior to men. According to founder of Buddhism he viewed women as hindrance in the way of men to get the best and holy soul above the standards of this world. Islam as a religion emerged in Asia with the great injunctions. Islam for the first time regarded the women as a free and dignified person. Sub-continent under 200 years of British rule Women were kept aloof from the social circle of society, women were not entitled for enforcing their rights for 200 years of British colonial system. (Niaz, 2002)

Earlier to 1970s, "sexual harassment" was a generally discussed as social evil and met the fate of a blank look. During 1980, Employment Opportunity Commission (EEOC) issued guideline whereby sexual harassment at workplace has been defined and scope has been determined under international standards. A study has been made at international law whereby 100 states are taken for considering their laws regarding protecting and promoting the rights of women, out of 100, 78 countries have relevant laws on the harassment at workplace. (Hersch,2017**).**

Analysis & Practicality approach of The Act, 2010 in terms of Judicial Findings:

After 18th Amendment to the Constitution of Pakistan, 1973 the forum of Ombudsman was professed a federal subject; citizens of Pakistan are entitled to file complaints against harassment at workplace as Judicial forum. Office of Ombudsman enjoys all the powers and functions of Civil and Criminal Courts. The purpose of research article is to analysis the implementation of The Act, 2010 in the light of leading cases to adjudge whether the provisions of The Act, 2010 are taken into considerations and to check the fruitfulness of the Act, 2010. Cases of Harassment at workplace decided by Ombudsman Office, Civil courts and Apex court under The Protection against harassment of women at workplace Act, 2010.

Sobia Kausar w/o Imtiaz Waryah v/s Ghulam Ahmad and Nisar Ahmad-

Facts of the Case

Complaints by Sobia Kausar , Imtiaz Waryah and Niziran Bibi of the same nature were filed.It was alleged by Niziran Bibi that accused tried to slap her along with indecent wordings are used by accused. Meanwhile Imtiaz Waryah approached to place of occurrence and condemned the behavior of accused with female, in response accused started coercion over complainant.

Complaint was filed before concerned Departmental authorities i.e. Directorate of Education on 9.1.2011, committee was formed under Section 3 of the Protection against harassment of women at workplace Act, 2010 to inquire into matter but committee failed to perform its desired role efficiently, same was put forwarded before the Office of Principal of concerned school where the actual incident harassment occurred but in vain. After availing departmental remedy complainant put forward complaint to Ombudsman Office established under Act, 2010.

Appearance of both parties was made under Section 7 of Act, 2010 whereby statements were recorded. Counsel from complainant raised two objections.

1. Regarding accused that he was already tried by competent authority of several times, his personal file is full of complaints of same nature lodged against him from time to time for his immoral activities and misconduct but no formal punishment has been awarded to him
2. As far as question of relevancy of statements of co staff of complainant namely Ms.Farida Yasim and Ms.Shehnaz Parvin are concerned, these are relevant under sub clause 4 of Section 8 of Act, 2010 wherby the Ombudsman may take into consideration the statements made by any officer, member of same organization, eye witnesses on the place of occurance regarding the matter in hand.

Decision

It was decided by The Federal Ombudsman keeping in view the pro and contra evidences that accused is hence proved guilty of putting complainant and other into state of intimidation and complaint is hereby decide in the favor of complainant. Further it was reiterated by Federal Ombudsman that it is duty of Federal Directorate of Education to take necessary steps for ensuring safe working place and include Act, 2010 in to Code of conduct and service regulations.

Order announced on 1.8.2011whereby, accused was dismissed from his job with order of compliance by Federal Directorate of Education within 14 days.(Complaint No. (3)/FOS/2011)

Ms.Shamin Bano, Accounts officer Finance Department Pakistan International Airline v/s Amir Mehmood Senior Account's officer Pakistan International Airlines.

Facts of the Case

Complainant Ms.Shamin Bano filed a complaint regarding the insulting words (Batamiz and Jahil) used for her publicly by respondent. After filing departmental complaint, committee has been formed. Committee constituted under Section 3 of Act, 2010 issued summons for appearance of parties with their relevant evidences. Committee uniamiously decided the complaint in the favor of Ms.Shamin Bano and directed

Mananing Director P.I.A to transfer him to another unit and issued him letter of censure. Being feeling aggrieved from the decision of committee preferred an appeal under Section 6 of Act, 2010 for want of jurisdiction and clarification of the words used by him comes under the Act, 2010.

Counsel for the appellant argued that matter was not of the nature that required to be tried under Act, 2010 as the words used for complainant are not of such nature that amounts to sexual harassment .In this regard Section 2 of the Act, 2010 must be taken into consideration which clearly define and elaborate the scope of harassment against female at workplace.

Decision

After going to the facts and evidences Federal Ombudsman is of the view that words alleged are not qualify the criteria and scope extended in Section 2 of the Act, 2010. Further stated that the words are not suitable and decent even used for a male colleague. In this case complainant failed to prove her case and the findings of the committee is regarded as null and void. (Complaint No. 1(9)/2011-FOS)

Ms.Iffat Jabbar Programme Manager Pakistan Broad casting Corporation v/s Amir Nawaz and 9 others

Facts of the Case

Complainant filed a complaint that on account of personal grudges respondent No.1 and others subjecting her under abusive, coercive and degrading measures and treatment at workplace. Respondents were summoned they submitted their written replies whereby denied all the allegations put forwarded by complainant. During the proceedings respondent No.2 was appointed as Station Director in his position as a boss, complainant is unable to produce witness in her case, Federal Ombudsman made direction regarding the leave of Respondent No.2 till the disposal of matter impartially.

Pro and contra evidences were recorded witnesses from both sides are examined. It is worth mentioning that attitude of complainant was not serious as counsel from her side demanded adjournments of proceedings on different pretexts. Non cooperative behavior, remained absence on the date of hearing, frequent demands for adjournments established a reasonable ground for dismissal of complaint. Federal Ombudsman issued directions for resumption of job of respondent No.2.

Decision

Complaint filed under Section 8 of The Act, 2010 stood dismissed in this case. (Complaint No.1 (12)/FOS/2011).

Muhammad Rustam v/s Ms.Faiza Ali- Glaxo smith Kline Pakistan Ltd.

Facts of the Case

Ms.Faiza employee of Penicillin packing Department Karachi, made a complaint against the sexual harassment of physical nature committed by one namely Muhammad Rustam, committee under Section 3 of The Act, 2010 was constituted in order to inquire into the issue. Parties were appeared and examined by committee members, after taking evidences committee came to the conclusion that respondent is proved guilty of offence of sexual harassment hence there dismissed from his service.

An appeal was made by appellant Muhammad Rustam under Section 6(1) of the Act, 2010 to Federal Ombudsman against the decision of committee members. Parties were summoned left over evidences were again produced before the appellate forum. Question on the non-production of any of the eye witness to the event was highlighted by counsel of appellant and its relevancy under the text of the Act, 2010.

Decision

Federal Ombudsman is of the view that question as to non-production of eye witness is immaterial as likewise cases are mostly made or committed privately and disclosing the fact of being putting some one in state of any form of sexual harassment is regarded as a step of courage otherwise no one dare to do as it involves the question of honor and name of the family repute etc. Court up held the finding of the committee under Section of the Act.2010. (Complaint No. 1(15)2011-FOS).

Ms.Tehrim Thir v/s Noor Muhammad Mustafa Awan-

Facts of the Case

Brief facts of the complaint are that Ms.Tehrim Tahir student of Quaid.e.Azam University filed a complaint against respondent who was served as course instructor for Computer system IT-304 .She alleged that she was physical harassed by respondent in his office. An application was forwarded to worthy Vice Chancellor of University being competent authority to take action against respondent. Committee under Section 3 of The Act, 2010 was constituted. Committee after conducting inquiry came to the conclusion that respondent is proved as guilty of Harassment against women hence terminated from service. Syndicate also approved and upheld the action taken by inquiry committee in matter.Respondent filed an appeal before Federal Ombudsman under Section 6 of The Act, 2010, counsel from appellant raised objection that Act, 2010 is not applicable to educational institution and relation of employer and employee does exist between complainant and respondent.

Decision

Federal Ombudsman gave verdict that as far as applicability of said Act, is concerned, the Act , 2010 clearly mentioned the jurisdiction, scope and extent of application of Act, 2010.Educational Institutions are part and parcel of the Act and Syndicate being the higher forum of University is a competent body under Section 2(j) and (d) of The Act, 2010. Fate of appeal is decided under Section 2 (h) of The Act, 2010 hence declared as dismissed.(Appeal No. 1(20)/FOS-2011).

Haleema Bibi v/s Rasheed

Facts of the Case

Complainant lodge Departmental complaint against respondent for subject her sexual harassment at place of duty. Both the parties were appeared before the committee and produced their evidences along with witnesses. Police Chowki incharge Bari Imam through SP security being member of committee on the basis of previous inquires that her performance was not satisfactory so she stood remove from her service.

Decision

An appeal was filed under The Act, 2010 .After perusing the record place on record and evidences forwarded to committee. Federal Ombudsman gave decision that termination of appellant was due to her own negligent behavior and appeal stands dismissed.(Complaint No. 1(25)2012-FOS)

Farhat Jabeen v/s Respondent

Facts of the Case

Complainant filed a complaint that respondent has put her under harassment in order to take revenge on some personal issue and terminated her from job. Showcause notice was issued to respondent No., he submitted his written statement whereby he denied all the allegations leveled against him. On 12.10.2012 respondent moved an application for adjournment of proceedings as he was proceeding for Holy journey towards Makkah Al Mukarrama. Meanwhile an application for dispose of with withdrawn has been made by complainant.

Decision

Keeping in view the application forwarded by complainant, matter is dispose accordingly. (Complaint No.1(27)2012-FOS).

Naila Irfan Hashmi v/s Imran Shaukat

Facts of the Case

The complainant Ms.Naila Irfan Hashmi a computer operator at Standard Development Centre Rawalpindi, alleged that respondent used to harassed her and frequently tried to degrade and demoralize her at other colleagues. Complaint was lodge in Federal Ombudsman Office for relief. Parties were summoned and record pursued.

Decision

Federal Ombudsman pointed out that application on same issue is pending before Director General Pakistan Standards and Quality Control Authority (PSQCA) and Secretary Ministry of science and technology in capacity of seeking departmental reddressal .Keeping in view the status of application Federal Ombudsman issued directions to concerned quarters to expedite the matter in hand same report be send to Office of Federal Ombudsman within 3 weeks.(Complaint No. 1(36)/2012-FOS)

Shaista Shehzad v/s Col.Kushi Muhammad

Facts of Case

Complainant was employee of Pakistan Air Force she has joined National Defense University on contract with taking lien from the previous Department. She alleged that she joined NDU job with insurance that job will get permanent further stated she was appoint as superintendent account section but she was given task in library section .She alleged that respondent served as In charge of Library approached her several times for gain of sexual favors, but she refused .In consequences she faced a lot of problems and

her personal file related to permanent the post her job is retained by respondent. Respondent tried to part with ACR of complainant in order to create hurdles in regularization of job of complainant. It is alleged due to adverse performance report her job was terminated by concerned quarters. She filed application before Human Rights Cell of Supreme Court of Pakistan and Federal Service Tribunal for readmitting her to service.

Decision

Federal Ombudsman after pursuing the record came to the conclusion that Federal Ombudsman has no jurisdiction to entertain the complaint of Ms.shaista although she allege respondent yet her main prayer she made about re installing in service, she failed to produce any documentary or circumstantial evidence against respondent. Complainant was directed to approach to forum of concerned jurisdiction. (Complaint No. 1(48)/2012-FOS).

Staff College Islamabad versus Director, 2011

Facts of the Case

Complainant was employee of Staff College Islamabad as training coordinator. It is alleged that complainant served since 2009 but after joining of respondent as Director, in 2011 she started facing harassment at the hands of respondents. Complainant alleged that respondent physically harassed her in order to get sexual favors .Complainant further reveal that not only complainant but other female employees are not happy and save with the behavior of respondent. Department remedy was sorted by complainant by in vain. In defense respondent produced evidence whereby denied all the allegations level against him further stated that complainant herself not contained good reputation in general.

Decision

Federal Ombudsman after taking into consideration the available material on record came to the findings that allegations are made but complainant failed to proof beyond the doubts. As far as harassment issue is concerned according to Section 2 (h) of Act, 2010 is not proved hence complaint in hand is dismissed for the want of evidence and merit.(Complaint No.1(50)/2013-FOS).

Seemab Khan Versus Commissioner, Hazara Division, Deputy Commissioner Abbottabad and Senior Superintendent Police Abbottabad, 2013

Facts of the Complaint

Ms. Seemab in complaint has alleged that she was sexually harassed and threatened by one Muhammad Saqib who was Doctor and was running a private Hospital named as “Al-Mumtaz” Hospital Abbott bad but actually the Hospital was used for prostitution purposes. She filed a complaint for taking actions against his unlawful activities. Allegations were rebutted by opponents. Inquiry was conducted in the matter it was revealed that a civil suit was pending between complainant and opponent, further revealed that complainant was an afghan national and allegations were frivolous. The inquiry report was communicated to the complainant for her response but she did not respond and summon sent to her on given address was returned undelivered.

Decision

Case was decided in the light of Section 10 of The Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 whereby Ombudsman is authorized to decide the matter on the basis of cogent and relevant inquiry report and discourage the baseless litigation. Complaint was proofed as frivolous. (Complaint No. (0068)/2013-FOS)

Conclusion

Perusal of the relevant Laws and the facts complaints filed before Office of Ombudsman reveal that mostly harassment was exercised in all institutions whether in formal or informal sectors of employment. Inquiry committee constituted under Section 3 of The Act, 2010 is in most of the cases are not formed in strict compliance of the Act, 2010.It is provided by the Act, 2010 under Section 3 that inquiry committee must be constituted by every organization, management and employer as a permanent body but in practice it is found that this provision is lacking in its implementation as a rule of practice inquiry committee are either constituted as on a paper work or constituted upon the reception of complaint. Perusal of facts of the complaints also revealed that inquiry committee is formed by management, employers or organizations after submissions of same complaint twice or thrice. It is suggested that inquiry committee under the provisions of the Act, 2010 must be constituted by every organization on regular basis. The Act, 2010 provides for the forums for taking action in cases of harassment: Internal Departmental Complaint system, Filing of direct complaint before the office of Ombudsman, Appeal before the Office of Ombudsman, and Representation before President of Governor as the case may be and Filing of complaint in District Court if Ombudsman office is not available. Perusal of cases on harassment reveals that most of cases are filed before Office of Federal Ombudsman, Institution of complaints on issue of harassment before District courts are silent. Inter departmental complaints were filed but decisions were appealed before the Office of Ombudsman. Offices of Ombudsman are established at federal and provincial levels. Office of Ombudsman is meant to provide speedy justice to the citizens, to keep check on the practices of maladministration of the agencies, organizations and institutions either public or private. After the enactment of the Act, 2010 Office of Ombudsman powers and functions are extended to deal with the cases of harassment filed before it. To deal with the complaints filed before Ombudsman against harassment at workplace, the Act, 2010 empowered the Office of Ombudsman to exercise the powers of civil courts in order to inquire and decide the complaint at its veracity and merit. It is suggested that powers given under Code of Civil Procedure, 1908 must be utilize by Office of Ombudsman in its true sense, as in some stated complaints lack of summons, trial process, lack of role of investigating agencies are found which is regarded as delaying agent in expeditious disposal of complaint. Lack of awareness is also found one of the key factor which causes delay in filing complaint before relevant forum. In this regard civil society can bring change by holding lectures, arranging seminar, awareness programs and conducting workshops at various public institutions and organizations. It is suggested that media should play its role to implement the Act, 2010 through social media and utilizing advertisement agencies. Media has effective approach towards the conscience of harassment at workplace. Press and printing agencies should play their role in spreading information at public level. Newspapers, brouchers, pamphlets and articles can spread knowledge and information. Harassment should be added in academic curriculums, in the labor laws and services Act of the Pakistan. Perusal of the decisions found that although penalties are enlisted in the Act, 2010 but these penalties are not proved to be effective to curbing the issue of harassment at workplace. Further in mostly cases lack of cogent and reliable evidences decided the fate of complaint and hence dismissed.

Decisive role of Act, 2010 can be achieved by ensuring awareness among society, conducting fair inquiry by Inquiry Committee, provision of cogent and reliable evidence, liability of management to ensure safe workplace, revival and revision by the legislators over penalties and lastly the role of victim is very crucial to boost confidence in legal forums established to address the Harassment at workplace.

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