

Harassment Of Women At Workplace In Khyber Pakhtunkhwa Pakistan: Causes And Faultiness In The Legal And Institutional Framework

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Abstract

This study was conducted to appraise the curse of women harassment at workplace highlighting the legal and institutional framework adopted by the government to curb it. The study aimed at knowing the causes of different types of women harassment at workplace and the faultiness in legal and institutional framework using primary and secondary data and review of legal publications. The literature was sifted out through desk review of all existing policies, laws and case studies related to sexual harassment at workplace, especially in Khyber Pakhtunkhwa. Moreover, data was also collected through personal interviews and Structured Questionnaire based surveys from the stakeholders. The findings of the study show that the major causes of women harassment at work place are patriarchal society, under reporting of the cases, office setup and job status, male dominated organizations, and lack of awareness. Besides, the findings also reveal some faultiness in the legal and institutional framework such as: (i) transgender and inter-sex persons are not covered by the law, (ii) lack of clear cut definition of employer and employee, (iii) absence of rules under the law to regulate operating procedures at the Ombudsperson's Office, (iv) lack of financial and administrative powers of Ombudsperson, (v) lack of organizational setup and infrastructure of Ombudsperson at divisional/district level, (vi) inadequate monitoring and compliance mechanism, (vii) dormant departmental enquiry committees, and (viii) mostly complaints are settled internally, hence, there is no sector-wise database about complaints and their fate. By

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bridging the gaps identified by this study will help enabling women workforce to contribute to economic growth and development in the province.

Key words: Women, Harassment, Workplace, Legal Framework, Government.

1. Introduction

In terms of human rights and equal gender based opportunities for livelihood, several developments have taken place since the late 20th century. Consequently, women participation has been encouraged in public and private sectors. More women are joining different disciplines achieving higher administrative positions. A parallel participation of women in business and non-profit organizations has been registered as well. It is estimated that the increased women's participation in economic activities has contributed about 35-40% of the annual growth of advanced developing countries, notably China, South Korea, Taiwan, Singapore, etc, in the last 30 years (Kamal & Woodbury, 2016). However, the rapid progress in bridging the gender gap is marred by persecution of women at workplace. Women harassment in public and private organizations is one of the main obstacles which discourages women to participate actively in the economic and social development of a society (Maria & Ahmed, 2016).

Sexual harassment is a complex phenomenon and described as any undesirable behavior at the workplace that is venereal or chauvinistic (Fitzgerald, 1993). In general, three types of harassment are described in literature including: (a) behavioral (verbal and non-verbal-facial expressions, gestures, paralinguistic, body language, proxemics or personal space, eye gaze, haptics (touch), appearance, and artifacts that carry aggression, objectification, exclusion, or gender based inferior status); (b) unwelcome sexual invitation or sexual overtures (verbal or physical); and, (c) sexual persuasion, i.e., favorable benefits promised subject to sexual activity). Moreover, the behavior may be directed (direct harassment) or a basic persecution in a circumstance that a person feels as frightening or degrading (ambient harassment). Based on the categorization of MacKinnon (1979), i.e. "hostile" and "quid pro quo", a standard lawful definition of harassment has been outlined by the US Equal Employment Opportunity Commission (USEEOC). When an individual accepts or refuses the evil demand of an aggressor made for giving the otherwise legitimate benefit to an employee is called as "quid pro quo" harassment (Hadi, 2018). However, harassment seems to be more complex than the definition given by USEEOC. Psychological research has recognized different kinds of harassment displaying population-based institutional and emotional traits linked with cognizance of an individual about harassment (Blumenthal, 1998).

Harassment is legally described in the code of conduct for protection against harassment of women at the workplace act, 2010(PAHWWA) as "any undesirable 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". Similarly, according to section 2(n) of the same act, the term

“workplace” means the premises where an organization or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work or official activity outside the office.

Sexual harassment at workplace is a traumatic event and women who experience this go through serious corporeal and cognitive hardships affecting the victims. Women harassment at workplace thus wears away professional and educational achievements. The workers that face harassment at workplace may experience decreasing job satisfaction, i.e., workers keep themselves away from work rather than leaving it, half-hearted commitment with the organization, increasing job stress, consequently poor performance, and ultimately quitting the job or organization or both. Mostly, harassment is experienced by female workers, whereas, either gender can experience the harassment at workplace (Sadrudin2013; Naveed, Tharani, & Alwani, 2010). Harassment at workplace is a stumbling block for women in practical life especially in developing countries having strong social norms.

Therefore, a need was felt to improve working culture of government and private organizations so that women can work without fear. In March 2010, Government of Pakistan enacted an Act titled: “Protection against Harassment of Women at Workplace Act, (PAHWWA) 2010” having extension throughout the territory of Pakistan. The same Act was adopted and passed by the Provincial Assembly of Khyber Pakhtunkhwa. PAHWWA as a piece of provincial legislature actually ensures fundamental rights of the citizens that are enshrined under Articles 25,26 and 27 of the constitution of Islamic Republic of Pakistan 1973. Under the KPPAHWWA 2010, a Code of Conduct was framed regarding harassment at workplace. Therefore, before concluding something, it is appropriate to analyze various aspects of the issue related to socio-economic dynamics of harassment, the policies of the provincial government and their implementation mechanism.

1.1 Legal and Institutional Framework

The International Covenant on civil and political Rights 1966, International covenant on economic, social and cultural rights 1966 and The Convention on the Elimination of all forms of Discrimination (CEDAW) against women 1979 have been duly signed by the state of Pakistan. In this context, it is mandatory for The State of Pakistan to incorporate substantive gender equivalence through its legislation and to provide equal access and opportunities in political and public life. The legislative bodies of the state of Pakistan has shown keen interest to eradicate women’s discrimination from all the walks of life (in context of all working places). In this regards Government of Pakistan has passed various enactments, both at central and provincials level and specially adopted zero tolerance policy against all types of women harassment at workplaces. Therefore, it is imperative to review the legal and institutional frameworks in the province related to harassment of women at workplace.

1.1. Legal Framework

The Following laws and amendments have been enacted to prevent harassment of women at the workplace:

1.1.1 General laws and Amendment in Section-509, Pakistan Penal Code, 1860

Pakistan Penal Code 1860 is the major enactment of the state of Pakistan that contains of different substantive provisions relating with harassment. Section 294 of Pakistan Penal Code 1860 stated that any person who practices any filthy or uncouth language with malafide intention at public place an intention to offend, he is liable for his offended act. Another section 354(A) of PPC makes liable every offender for death or life imprisonment with fine for undressing woman at public place either assaulting and using of criminal force. Section 366A of Pakistan Penal Code 1860 sanctions the offender with 10 years imprisonment who compel a juvenile woman for sexual performing intersection. (Nizami, 2018) Furthermore, to make more effective the law on harassment and to change the status of woman harassment from social evil to criminal act, Section-509 of the Pakistan Penal Code, 1860, has been amended and causing “sexual harassment” included in the provision of “insulting the modesty of a woman”. The definitions of sexual harassment and its forms, workplace, circumstances of harassment are incorporated in the said section. Apart from the definition of workplace given in the Act, 2010, the amendment has included markets, public transport, streets, public parks, homes and social gatherings in the workplace. The acts of sexual harassment shall be punished with imprisonment up to three years or a fine up to Rs.500,000/- or with both.

1.1.2 The Protection against Harassment of Women at the Workplace Act, 2010

“ Protection against Harassment of Women at the Workplace Act, 2010” was enacted on 11th march 2010 by the central legislature to curb the menace of harassment at workplace by providing a comprehensive framework for the said harassment. The central legislation adopts a three-pronged exemplification of harassment that includes misuse of authority, creating un-conducive climate and retribution. Acts of retaliation subsequent to refusal to comply with sexual favors also constitute sexual harassment under the law. Therefore, under the said act all facets of the issue of sexual harassment are covered. Besides, both women and men can file complaints of sexual persecution under section 2(e) of the said Act.

1.1.3 The Khyber Pakhtunkhwa Protection against Harassment of Women at the Workplace Act, 2010

The same act was adopted by the Khyber Pakhtunkhwa assembly. The legislation provides a code of conduct to be visibly displayed at all places of employment. This law has been twice amended in 2018 and 2020 respectively. The amendment is made in line with the statutory and international obligations of the state of Pakistan and just to fill the lacunas and irregularities in the anti-harassment law in order to make them more effective.

1.2 Institutional Framework

The government of Khyber Pakhtunkhwa has established different organizations women’s rights. The details of primary organizations dealing with protection of women at workplace and related laws are given below:

1.2.1 The Khyber Pakhtunkhwa Commission on the Status of Women (KPCSW)

The KPCSW is the provincial semi-governmental body which acts as a bridge between civil society and the Government of Khyber Pakhtunkhwa. The Commission operates as a monitoring body to review the policy, programs and other steps undertaken by KP government to achieve the objectives of equitable rights for all citizens, economic empowerment of women and their representation at different forums including legislative assemblies and local government bodies. Moreover, the KPCSW monitors implementation of laws and rules to address the menace of violation of rights of women.

1.2.2 The Khyber Pakhtunkhwa Women Parliamentary Caucus (KPWPC)

The KPWPC is a unique institution in terms of supporting effective representation of women in the assemblies and as a legislative oversight body playing a significant role for women legislators to come together across party divides on issues that affect women. Understanding that a collective stance is critical for ensuring women rights, the WPC of Khyber Pakhtunkhwa has been working with unity and solidarity to ensure women empowerment.

1.2.3 The Khyber Pakhtunkhwa Directorate of Human Rights

KP's Directorate of Human Rights aims at to promote and protect human rights in the province. The Directorate ensures implementation of various International Conventions, Treaties, Covenants and Agreements to which Pakistan has acceded. The Directorate has approved the first ever Khyber Pakhtunkhwa Human Rights Policy in 2018 which stipulates recommendations for improving access to justice for women and ending savagery against women.

1.2.4 The Khyber Pakhtunkhwa Ombudsperson Office

Under the KPPHWW (Amendment) Act, 2018, an Ombudsperson has been appointed in January 2019, for three years by the provincial government. The KP Ombudsperson and UN Women have launched jointly a tool toolkit in 2020 emphasizing the implementation of the Workplace Harassment Law by strengthening the existing mechanisms, raising awareness by producing knowledge products, and enhancing the capacity of Ombudsperson Office.

2.0 Review of Literature

Sexual harassment at work place is a global problem. It is estimated that 30-50%, 50%, and 25% women workers have experienced sexual harassment at workplace in European Union, UK and in US, respectively (Oosten & Chatham, 2013). The researchers state that the recent increase in women labor force has resulted in higher number of women experiencing sexual harassment. Harassment at workplace is an important issue especially in Muslim majority countries (Syed & Pio, 2010), therefore, a few studies have been conducted on this topic. Pakistan is the 2nd worst country in the world in terms of gender inequality (WEF, 2018). In 2014, 139 incidences of aggression against women were registered among which 736 cases were in Khyber Pakhtunkhwa (CGPA, 2017). There is a paucity of literature related to the topic, however, related literature is reproduced below in seriatim.

Sexual harassment in hospitals is the major concern of nurses. This was revealed by a study conducted in the Khyber Teaching Hospital, Peshawar (Zeb, 2009). The working environment was not conducive due to close contact with males, patriarchal structure, unequal customary laws, in-sensitive and weak administration, inconsiderate attitude of males, and lack of gender-sensitive policies. The nurses had experienced sexual harassment from doctors, paramedical staff, patients, attendants and ward boys. Similarly, women workers in pharmaceutical industries in Hayatabad (Peshawar) experienced sexual harassment in different forms. The primary reasons of harassment were: male dominance, gender in-sensitivity, poverty, low job position at workplace, lack of trade unions and the inviting attitude of female workers (Hassan, 2009). Women workers experienced harassment from their male colleagues and management, as well as, outside the factories from male staff, conductors and drivers due to joint transport.

Sexual persecution at institutional level results in inefficiency, low work output, sneaking out, low morale of staff and consequently poor business. These findings have been reported by Naveed, Tharani & Alwani (2010) in a case study reported from a hospital in Abbottabad. Similarly, Sadruddin, (2013) conducted a study on sexual harassment at workplace at managerial sector in Karachi-Pakistan. The findings of the study show that harassment is practiced routinely at workplace affecting the efficiency of working women. As compared to public sector, women are more harassed in private sector. Moreover, harassment occurs mostly in the form of slanders, defamation, indecent gestures, mental torture and threats. In order to protect their jobs, majority of the female workers, especially those who are the sole breadwinners of their families, do not report the incidents. Likewise, married women are also the easy victims of sexual persecution. They do not report mishandling due to the hopelessness of redressal. Consequently, offenders keep harassing women uninterruptedly. The findings also reveal the fact that most of the female workers are unaware about the anti-harassment laws such as “Protection against Harassment of Women at the Workplace Act, 2010”.

According to Nauman and Abbasi (2014), several factors play role in sexual harassment at workplace such as female attractiveness, office setup, organizational policy, work ethics, sex (femininity) role and the job status. The study reveals that attractiveness, sex role and the job status have positive relationship with sexual harassment, while privacy in office setup, organizational policy and work ethics have negative relationship with sexual harassment at workplace. Another study conducted earlier where job satisfaction and job dimensions including type of work, administration, colleagues, salary and promotion chances were assessed among the enrolled female nurses in Khyber Teaching Hospital, Peshawar (Hassina & Shahzad, 2012). The findings reveal that pay and promotion opportunities had strong negative relationship with overall job satisfaction, while other parameters were positively correlated with job satisfaction. The job satisfaction created interest in female workers, while the unsatisfied nurses were involved in deviant activities.

Socio-cultural influence is another principal factor that controls the implementation of the policies and code of conduct. For instance, Ali and Kramar (2015) assessed perceptions of employees and managers about sexual harassment at workplace in six organizations in Pakistan. They found that although there were policies and code of conduct for preventing

sexual harassment, but socio-cultural conditions influenced the implementation. The study further highlighted three factors namely socio-cultural female modesty, institutional inappropriate redressal approaches, and management biasness that critically affected sexual harassment issues. Despite the refusal of the male resource managers, the female workers claimed that they were gender biased regarding sexual harassment at workplace.

2.1 Statement of the Problem

It has been reported that nearly three-fourth female workers have experienced sexual harassment at workplace, while some studies revealed sexual harassment up to 90 percent (Malik & Shama, 2006). Women persecution at workplace is a ubiquitous problem in our society. However, the Khyber Pakhtunkhwa Protection against Harassment of Women at Workplace Act, 2010, as amended by the Act, 2018 and the Act, 2020, need to be appreciated since these are the earnest efforts of the provincial Government to eradicate the menace of sexual harassment at workplace. Through these enactments, Khyber Pakhtunkhwa's government recognized sexual harassment at workplace as a crime rather than a social problem. The Acts provided opportunity to working women to raise their voice against harassment. In recent past, women are breaking the silence and speaking about incidences they faced including lascivious conduct, vulgar comments, indecent gestures and jokes, ruining of career, repeated sexual gratifications, groping, body touches, etc.

However, despite all these efforts, cases of harassment are escalating indicating, besides societal behavior, the existence of lacunae in legal and institutional framework for implementation of the laws. The paper addresses the research question:

Whether sexual harassment at workplace exists in Khyber Pakhtunkhwa and whether legal and institutional framework is adequate to curb this menace? Besides, the equally important research question related to the causes of sexual harassment and faultlines in legal and institutional framework as well as suggested options, is discoursed.

2.2 Significance and Scope of the Study

Despite the presence of different laws and policies, the harassment of women at workplace is rampant discouraging women's active participation in economic activities. Thorough scanning of the existing polices, laws and institutional framework would highlight faultlines in implementation of the legal instruments. Therefore, this research paper has great significance and scope. Bridging the gaps identified by this study will help enable women workforce to contribute to economic growth and development in the province.

2.3 Research Methodology

The study was conducted using primary and secondary data and review of legal publications. The literature was sifted out through desk review of all existing policies, laws and case studies related to sexual harassment at workplace. Moreover, information was collected through personal interview with Ombudsperson KP for Protection against Harassment of Women at the Workplace. The Gender Specialist of Social Welfare Department, KP was also consulted. In order to have a clear picture of the situation of harassment in hospitals, a Structured Questionnaire based survey was conducted in six hospitals — Lady Reading

Hospital, Khyber Teaching Hospital, North-West Hospital, Rehman Medical Institute, Hayatabad Medical Complex and Peshawar Institute of Cardiology — in Peshawar. Their responses were scanned to measure the intensity of the issue in general and health institutions in particular.

Desk reviews are widely used in research for identifying gaps and faultiness in existing laws and policies. The reviews give an understanding of the state of affairs, as well as steps taken that show the hypothetical questions being addressed. This is an important method to know in detail the intellectual and formal circumstances on the organizational phenomenon (Rousseau & Fried, 2001; Hartley, 2004). Thus, review gives a chance to study the influence of environment on the fact, i.e., the current study on harassment of women at workplace.

3.0 Analysis and Discussion

3.1 Present Situation of Working Women in Khyber Pakhtunkhwa

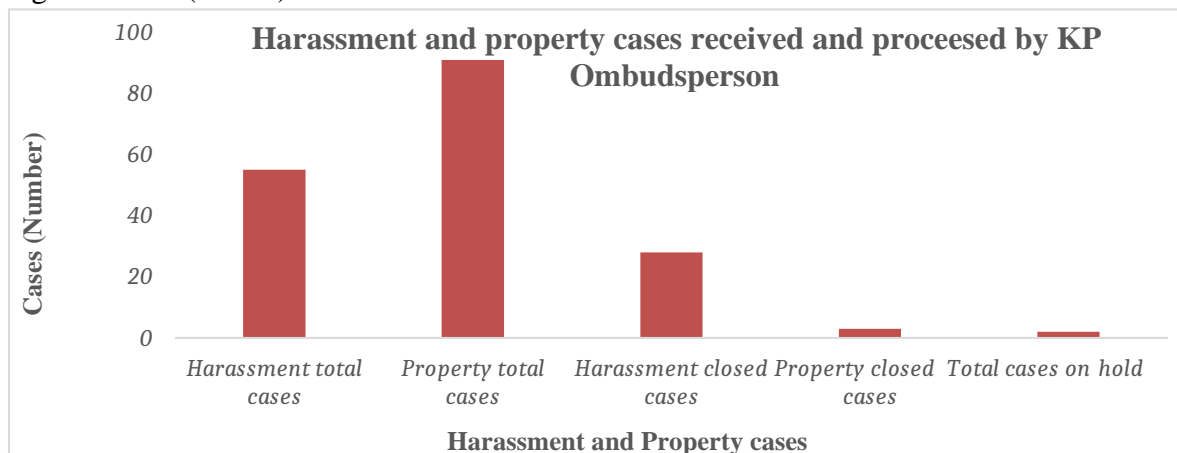
Pakistan is ranked at 148 out of 149 in terms of gender equality indicating women's critical marginalization. In Khyber Pakhtunkhwa gender inequality is more pronounced as compared to other federating units. For instance, women contribute about 40% to labor force, whereas, men's share is 60%. This disparity may be assigned to more orthodox and patriarchal society in the province. Women are overwhelmingly engaged in unpaid domestic labor, such as agriculture and livestock production (WEF, 2018). Similarly, a significant gap is found in gender wages. On an average women receive 58% less wages compared to that of men's (Kamal & Woodbury, 2016). This situation is more miserable in newly merged districts of Khyber Pakhtunkhwa. In Khyber District, the overall literacy rate is 49.4%, with male literacy is 76.3% and the female literacy rate is only 17%. The employment situation is highly deplorable with 99% of the women being unemployed (Rehman & Rahat 2020).

3.2 Incidents of Harassment of Women at Workplace

Recently a new wave of harassment is reported in colleges and universities. Numerous complaints were lodged against a professor working as head of the Department of Islamic Studies and Arabic in Gomal University, Dera Ismail Khan. An inquiry was held revealing the heinous character of the professor who was ultimately sacked. Similarly, a study was conducted in three public and three private sector business schools in Peshawar. The study revealed a menace of sexual harassment in all the institutions. There was strong positive slope between sexual harassment and employees turnover intentions indicating the large number of employees thinking to leave their jobs due to sexual harassment (Salman, Abdullah, & Saleem, 2016). Similarly, a case of sexual harassment of female students was noticed in Islamia College University, Peshawar. An inquiry is being conducted the results of which are still awaited.

Sexual harassment at work place is a wide spread problem in KP. Cases of sexual harassment have been reported frequently from hospitals, pharmaceutical industries, banks, educational institutions, domestic female workers, duty-bearers. Involvement of social workers, judges, police personnel, health care workers, teachers, etc. in sexual harassment is not uncommon. In 2019, 40 harassment complaints were received by the KP Ombudsperson.

Similarly, the KP Ombudsperson received 112 complaints during a time period of 17 months (February 2019-July 2020) through different channels. According to Ombudsperson, majority of the complaints came from the department of education and health, and non-government organizations (NGOs).

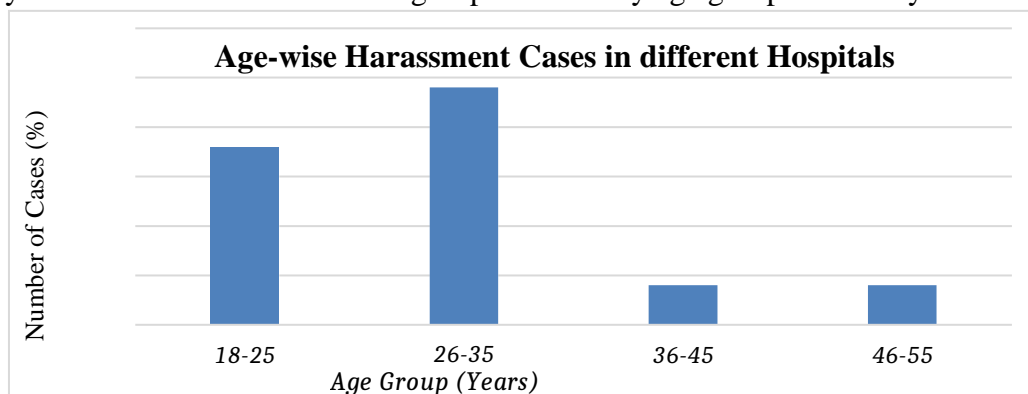


(Source: The Ombudsperson KP)

The above graph indicates the alarming rate of the cases of sexual harassment at workplace. For example, the KP Ombudsperson office received 40 and 112 complaints during 2019 and February 2019-July 2020 (17 months), respectively. The number of complaints increased to 146 in February 2019-December 2020. About 62.3% and 37.7% cases were concerned to properties and sexual harassment, respectively. Approximately, 51% cases of sexual harassment were resolved by the KP Ombudsperson.

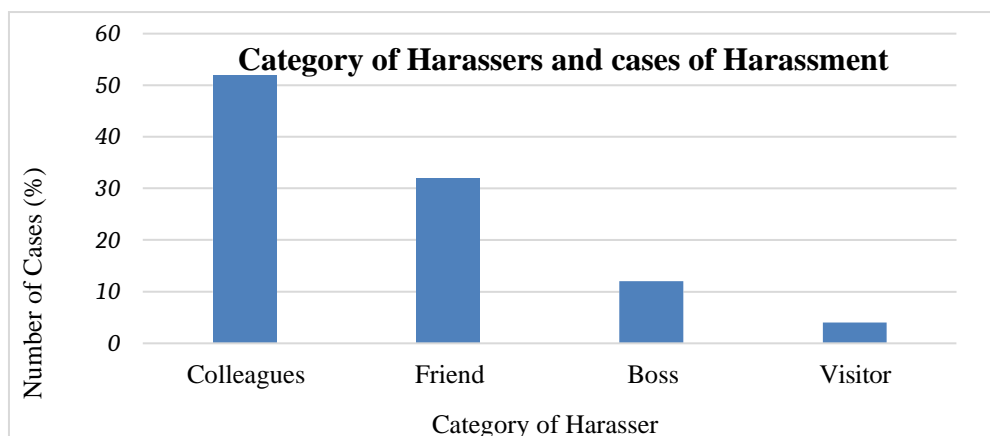
3.3 Survey of Hospitals

Results of the survey show the alarming situation in hospitals. All the respondents replied in affirmatively about harassment. Medical and paramedical staffs in an age group of 26-35 years were the most vulnerable group followed by age group of 18-25 years.



(Source: Created by Author through Questionnaire Survey Responses)

Most of the respondents were harassed by their colleagues followed by friends and management. The incidences of harassment were frequent, i.e. several times and the cases were reported to administrations of the hospital which helped the victims. With exception, all respondents were unaware about the Khyber Pakhunkwa PAHWWA, 2010, and Departmental Inquiry Committees constituted by the hospitals.



(Source: Created by Author through Questionnaire Survey Responses)

4.0 Findings of the Study The finding of the current study explored several causes that are genuine and substantive, behind women harassment at workplace. They are enlisted as Follow:

4.1 Patriarchal Society

The hostile working culture for women at workplace reveals several facts about sexual harassment. Firstly, the working environment in the province is male dominated. This deep-rooted societal culture objectifies women depicting them as mere recipients of male desire. In general, men are considered religiously and physically superior, while women, physically weak and dependent on man. Due to the strong man-dominated culture, the condition of the tribal women of the province is more miserable as compared to the other parts of the province. The objectification of women sows seeds of patriarchal societies. Through analysis Hadi (2018) found that the patriarchal society of Pakistan encourages women persecution at workplace. This is one of the principal reasons of sexual harassment and under reporting of harassment cases.

4.2 Under Reporting of Cases

Cases of harassment at workplace are mostly not reported. In general, women in Pakistan, especially in Khyber Pakhtunkhwa prefer to hide harassment incidents due to religion and cultural traditions. The victims do not report cases because of the hopelessness of getting justice. Majority of the victims feared the persecution in case of reporting the cases. The hiding of untoward incidents encourages aggressors and consequently offence continues uninterrupted. These findings are in conformity with Hamlin and Hoffman (2002). It is a dilemma that those who face harassment are blamed inappropriately in our society. In such cases modesty of the women is questioned. The job insecurity and hopelessness of justice are the weakest signs of inviting sexual harassment. Previously, such findings have also been reported by (Trainers, 2009; Bjorrkqvist, Osterman, & Monika, 1994).

4.3 Office Setup and Job Status

Working environments in which women workers have a chance of privacy, i.e. having isolated offices, closed entrances, minimal interference or visibility from outside, have more

chances of getting sexually harassed (Zeb, 2009). Moreover, ethical standards of an organization play important role in harassment or otherwise. The organization(s) with poor professional ethical standards observe frequent harassment cases. In such organizations, employees are mostly involved in various maverick behaviors. The conventional behavior is an important factor of sexual harassment at workplace (Keyton & Rhodes, 1997). Besides, females are employed usually at lower hierarchical positions which also play important role in sexual exploitation. In many organizations, women are offered menial positions. The positions of receptionists, private secretaries and personal assistant are offered in organizations. These posts demand close contact with bosses increasing chances of sexual harassment. The lower ranked women on resistance could face retaliation and loss of job. Similarly, the low paid staff can also be gratified for sexual involvement by reward or threats of transfers.

4.4 Lack of Awareness

Lack of awareness among working women about their rights and laws envisaged with protection of women at workplace. Majority of women workers have accepted their lower job position in organizations and victimization as a part of their job (Riasat, 2009). It is worth mentioning, a personal visit revealed that none of the government institutes and industries had displayed the Code of Conduct framed under the KPPAHWWA, 2010, mandatory for all organizations. Similarly, the employees did not know about the committees notified by their organizations.

4.5 Faultiness in Policy, Institutional Framework and Implementation

In the prevailing environment in Pakistan where rule of law is not practiced strictly across all strata of society, only framing policies and enactment of laws could not help to curb the menace of sexual harassment at workplace. The unabated sexual harassment at workplace shows inequitable access to rights. The bipartisan society with patriarchal mindset is not helpful to transform working culture in government and corporate sectors. Recognizing the fact that harassment at workplace is a crime and enacting the KPPHWWA, 2010, was a paradigm shift from socio-cultural belief but unfortunately, the law could not achieve the desired objectives.

The following important faultlines in policy and implementation could be identified related to the issues of harassment at the workplace in KP:

4.6 Normative Gap in Legislation

A normative gap in law means absence, gap or non-existence of certain forms of gender-based aggression in a law. This gap may be absence or inadequacy of legal definitions attributed to persistent acts and circumstances depriving women of their rights. Although women experience harassment at workplace disproportionately as compared to men but men and transgender also face harassment at workplace. Due to sensitivity of the female status in society, this Act mostly deals with protection of women against sexual harassment at workplace which is evident from the very title of the Act. The protection of men at workplace is only symbolically covered in the Act, while inter-sex, boys and transgender persons are not

covered in this act. The scope of the Act should be expanded because assaults made against transgender persons in Khyber Pakhtunkhwa are a serious problem. For instance, at least four transgender persons were killed in 2018. Moreover, lack of clear cut definition of employer and employee is missing in law. This led to complications in implementation where women do not fall in employer or employee relationship, for instance, in educational institutions, especially relationship between students and teachers.

4.7 Implementation Gap

An implementation gap means the actions and circumstances constituting gender-based violence are dealt well in the law but are not practiced and executed in true sense. All laws regarding the protection of women harassment are appropriate and adequate theoretically to ensure the protection against harassment of women at workplace. The real benefits of the KPPAHWWA, 2010 and KPPAHWWA, (Amendment) Act 2018, in terms of actual protection of women rights are subject to its effective implementation. The failure of implementation may be due to lack of political will, a conscious or unconscious de-prioritization of the issue. The de-prioritization occurs sometimes through diversion of funds or alleged lack of resources, lack of visibility of the issue in national perspective or a lack of technical understanding necessary to ensure implementation.

4.8 Monitoring and Information Gap

A monitoring gap exists where no autonomous body is mandated to ensure compliance with the law. An information gap exists where substantive discussions on the rights of women and girls are hindered by absence of disaggregated data and statistics.

The monitoring and compliance mechanism as described under section 11(3) of the KPPAHWWA is inadequate. The Ombudsperson can only take action on cases reported by Departmental Inquiry Committees or complaints filed with the Office of Ombudsperson. The Ombudsperson cannot start proceeding on anonymous complaints. This is very disadvantageous for those complainants who want to hide their identity due to social and family pressures. Most importantly, Ombudsperson has no authority to inspect premises of any government or private organization to monitor working environment and implementation status of the KPPAHWWA, 2010. The organizations settle the harassment complaints internally, hence there is no sector-wise data base about complaints and their resolved fate.

4.9 Dormancy and Ineffectiveness of Departmental Inquiry Committees

Under the KPPAHWWA, 2010, each federal, provincial, private enterprises and educational organizations have to notify a three member Departmental Inquiry Committees (DIC) (the KPPAHWWA, 2010, Section 3). Surprisingly, a greater number of harassment cases have been reported in private sector as compared to public sector. While in most of the private enterprises, DICs have either not been notified or act as rubber stamps in the hands of top management. In Government organizations, the DICs have been notified but are either dormant or work as per wishes of the management. It is worth mentioning that DICs take action only when a complaint is reported to them. The DICs have no power to conduct periodical assessment of the workplace.

4.10 Insufficient Publicity

The KPPAHWWA, 2010, has no specific section for publicity. That's why most of the women are not aware about this Act. The government has not made serious effort to educate people about the laws and institutions available for redressal of harassment related grievances. That's why many incidents of harassment go unreported. During this study, it was found that organizations have not displayed Code of Conduct at their premises. Moreover, most of the employees do not know about the notified DICs.

4.11 No Justice for the Accused

Data of the office of the Ombudsperson KP reveals that some elements in public sector have misused the KPPAHWWA, 2010, for personal favors, i.e., for transfer and postings at desired positions. The mala fide attempt to defame colleagues, due to professional rivalry under the KPPAHWWA has also been noticed. Though a countless number of incidences were shared by social media campaign (#MeToo) but only a few could be proved in the courts of law. For instance, a complaint was registered by famous singer Meesha Shafi against her colleague Ali Zafar. The case, however, landed in the court of Additional Sessions Judge as defamation suit against Ms Meesha Shafi. She is facing hard time to prove her case.

4.2 Conclusion

Despite being a global issue, in Pakistan, women harassment at workplace came under more focus during the last decade. Although the province of Khyber Pakhtunkhwa adopted the relevant federal legislation about the issue, it was in the last two years when the provincial government started serious consideration to take legal and institutional actions to curb this evil. As the data exhibits, more than 50% female workers have experienced harassment in one or other form at workplace. In KP, frequent cases of harassment have been reported in hospitals, pharmaceutical industries, banks, educational institutions, corporate offices, NGOs and duty-bearers in public and private sector. Besides the societal behavior, numerous factors like workplace environment, cultural and economic issues have aggravated the situation of harassment in KP.

Realizing the grave nature of the offence, KP government enacted laws and established institutions to enforce the anti harassment laws and ensure protection of women from sexual harassments. This is, however, unfortunate that both the policies and institutional framework lack the will and capacity to address the issue. One of the reasons for this slow pace could be that the institutions established for this purpose are in their embryonic stage and may need more time and attention to deliver effectively.

It may also be observed that in KP, public sector has been more focused ignoring harassment in private sector, particularly in small scale corporate offices. Women workforce does not have information about the workplace harassment and the available redressal mechanisms. Even if they know, they hesitate in reporting the incidents as it may entail various social, economic and professional consequences. Hence, the hopelessness of getting justice is further encouraging the culprits and discouraging the victims. However, the wind has started blowing from the other side now, in support of the victim, through mainstream media, social media and civil society organizations. It is noticed that the incidents of

harassment are being reported getting serious consideration by the government of KP. This fact is substantiated by the recent actions of the government against culprits of harassment in educational institutions. The office of Ombudsperson KP has become more active and responsive to receive complaints and dispose of the cases on priority basis.

4.3 Recommendations

In view of the above, the following recommendations are proposed to remove the fault lines in law, policy and institutional framework of KP in order to prevent and deal effectively with incidents of harassment at the workplace:

1. The Section 2(e) of The Khyber Pakhtunkhwa Protection against Harassment of Women at the Work Place Act, 2010, needs to be amended to delete the words “man” and “woman” and replace them with the word “person”. In definition part, the “person” should be defined as all genders including men, women, transgender, boys and girls.
2. The Section 11(3) of the KPPAHWWA, 2010, should be amended as per decisions of LHC so that jurisdiction of the Ombudsperson may be clarified for smooth functioning of Ombudsperson. Moreover, the terms employee and employer should be redefined. Students and teachers and other staff of educational institutions should be included in employee and employer relationship. A lot of female workers are engaged in informal employment, i.e., at household where cases of gruesome violence on domestic workers are reported frequently. By expanding the scope of the KPPAHWWA, 2010, through amendment, protection of domestic workers can be ensured.
3. Rules under Section 13 of the KPPAHWWA should be framed and notified to regulate operational procedures at the Ombudsperson’s Office. The office of Ombudsperson needs to be strengthened by providing adequate infrastructure, financial and human resources. Ombudsperson should be given financial and administrative autonomy so that it can work independently without any influence.
4. The penal aspect of the law should be enhanced. The penalty (fine, imprisonment and dismissal from service etc.) should match the severity and frequency of the harassment.
5. There is need to enhance clarity and responsibility at all levels. The cases of harassment and disciplinary steps taken should be publicized as deterrence for others. Mass awareness campaign should be initiated through media, public service messages, seminars and civil society organizations to educate people about sensitivity of the offence and redressal mechanism available.
6. The dormant DICs should be activated, especially in private sector and they should be tasked with publicity and training. A uniform code of conduct for departmental committees should be prepared and implemented for investigation and decision making. The committees should periodically arrange seminars about sexual harassment at organization level and submit report to Ombudsperson.

7. In order to regain strength, the government should support harassed persons by providing them shelter and legal assistance. For this purpose, shelter homes and female worker hostels may be established.
8. The government should enhance the status of women in society through legislation and women empowerment through spending more on education, particularly female education and changing the patriarchal mind. Media may also play its role in this regard. A dynamic and progressive society leaves little space for incidents of harassment.

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