

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-II:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.P.L.A.2541/2023

(Against the judgment dated 30.03.2023 passed by the Lahore High Court, Lahore in W.P. No.39095/2020)

Muhammad Din

... Petitioner

Versus

Province of Punjab through Secretary, Population Welfare, Lahore, etc.

... Respondent(s)

For the petitioner(s): Mr. Rashad ul Musawar, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the respondent(s): N.R.

Assisted by: Umer A. Ranjha, Judicial Law Clerk.

Date of hearing: 12.02.2025

JUDGMENT

Syed Mansoor Ali Shah, J.- "Sexual harassment is not about sex. It is about power."¹ Briefly stated, Dr. Sidra Zafar, a lady doctor ("respondent No. 5") filed a complaint against her driver, Muhammad Din ("petitioner"), alleging harassment and misconduct before the Ombudsperson, Punjab on 30.12.2019 under the Protection against Harassment of Women at the Workplace Act, 2010 ("2010 Act"). The complaint detailed how respondent No. 5 was subjected to abuse, verbal assaults, and character assassination by the petitioner by engaging in inappropriate conduct, using indecent language and behaving unethically with female patients and by spreading malicious rumours about her alleged affairs with male colleagues, scandalizing her reputation, and making derogatory remarks in the presence of other staff members. Despite multiple warnings, his misconduct continued. On 26.10.2019, the petitioner unlawfully entered the ultrasound room while respondent No.5 was

¹ Catherine A. MacKinnon, Only Words (Harvard University Press, 1993).

performing an ultrasound on a patient. He video-recorded the procedure without consent, later disseminating the video and making false and defamatory allegations against her, insinuating multiple affairs with men in an attempt to tarnish her dignity and professional standing.

2. It is important to underline that respondent No. 5 lacked the direct authority to remove the petitioner from his position, hence enjoying no control over him. Infact, she formally requested her department to transfer him and even after the transfer order was issued, the petitioner defiantly refused to comply with the order, withholding the vehicle's keys and logbook from the next appointed driver.

3. Taking cognizance of the complaint, the Ombudsperson issued a show-cause notice to the petitioner, who denied the allegations. However, after a thorough examination of the evidence, the Ombudsperson found that the allegations stood proved and ruled that the petitioner's actions constituted harassment under Section 2(h) of the 2010 Act, and imposed the major penalty of compulsory retirement from service under Section 4(4)(ii) of the 2010 Act, *vide* order dated 18.03.2020. Aggrieved by the same, the petitioner preferred a representation before the Governor of Punjab, which was dismissed, *vide* order dated 06.08.2020 ("impugned order"). Subsequently, the petitioner invoked the constitutional jurisdiction of the Lahore High Court, Lahore, by filing a writ petition against the impugned order, which was also dismissed, *vide* judgment dated 30.03.2023 ("impugned judgment"). Hence, the instant petition for leave to appeal.

4. We have heard the learned counsel for the petitioner at some length and have gone through the impugned judgment of the High Court and the record of the case.

5. At the outset, it is imperative to recognize that workplace harassment remains a pressing global issue, affecting millions of workers across various sectors. More than one in five workers (22.8% or 743 million people) worldwide have experienced some form of workplace violence or

harassment.² Women are slightly more likely than men to have faced harassment over their careers.³ Workplace harassment is not merely an individual grievance—it is a systemic problem that perpetuates gender inequality by restricting women’s economic and professional growth. According to the Global Gender Gap Index (2024), (an index designed to measure gender equality globally) Pakistan ranks 145th out of 146 countries, making it the second lowest in the world.⁴ In terms of economic participation, it ranks 142nd, reflecting a deteriorating situation for women in the workforce. These alarming statistics underscore the persistent challenges faced by women in professional settings, particularly in countries with significant gender disparities like Pakistan. The prevalence of workplace harassment not only affects individual well-being but also reinforces systemic gender inequality, limiting women’s participation in the workforce and widening economic gaps.

6. Workplace harassment as a concept embodies a pattern of persistent mistreatment based on gender, power, or hierarchical disparities that creates a climate of fear and oppression in professional settings.⁵ It is deeply intertwined with institutional culture and functions as a mechanism of exclusion, discouraging women from fully participating in professional and economic life.⁶ Rooted in power imbalances, discrimination, and systemic inequalities, workplace harassment not only undermines an individual’s autonomy and dignity but also erodes broader principles of liberty, equality and social justice, particularly for women and transgender persons. Workplace harassment and sexual harassment are deeply interconnected, as both stem from power imbalances, systemic discrimination, and entrenched societal norms that reinforce gender hierarchies. Sexual harassment is indeed widely understood as a manifestation of power dynamics rather than merely a sexual act. This perspective is well-documented in standard literature, which emphasizes that harassment often stems from an individual's desire to assert dominance, control, or exploit power imbalances, particularly in hierarchical settings like

² International Labour Organization, Experiences of Violence and Harassment at Work: A Global First Survey (2022) <
https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/documents/publication/wcms_863095.pdf> accessed 12 February, 2025.

³ Ibid.

⁴ World Economic Forum, Global Gender Gap Report (June 2024), <
https://www3.weforum.org/docs/WEF_GGGR_2024.pdf> accessed 12 February, 2025.

⁵ Paula Nicolson, Gender, Power and Organization: A Psychological Perspective on Life at Work (Routledge, 1996).

⁶ Deborah Rhode, Speaking of Sex: The Denial of Gender Equality (Harvard University Press, 1999).

workplaces, schools, or other social structures.⁷ Pioneering feminist legal scholar Catherine MacKinnon reframed sexual harassment not as individual misconduct but as systemic sex-based discrimination that reinforces gender hierarchies in the workplace.⁸ She identifies two primary forms of workplace harassment. The first, “quid pro quo” meaning (meaning “this for that”), involves explicit demands for sexual favours in exchange for job benefits or avoiding negative consequences. The second, “hostile work environment” harassment, occurs when unwanted sexual conduct – conduct rooted in gender – creates an intimidating, hostile, or offensive work environment affecting an employee’s ability to work. Unlike “quid pro quo” harassment, which involves direct coercion, “hostile work environment” harassment is more pervasive and indirect, yet equally damaging. According to MacKinnon, both forms of harassment originate from gender-based discrimination, impeding women’s equal opportunity for employment, performance, and professional advancement.⁹ For her, sexual harassment is the mechanism through which women are kept in their place in the workplace.

7. MacKinnon’s model reinforces that workplace power structures are viewed as hierarchical, with authority flowing from senior to junior employees. However, the present case demonstrates how *gendered power dynamics*¹⁰—even if an individual is lower in a formal power hierarchy, they may still wield informal power rooted in societal gender norms; *social reinforcement*¹¹—harassment can be perpetuated by individuals at any level of a hierarchy if they are reinforced by social or cultural norms that condone or trivialize such behavior; and *intersectionality*¹²—literature on intersectionality highlights how multiple axes of power (gender, race, class, etc.) intersect to shape experiences of harassment—can override organizational hierarchies. Despite being senior in hierarchy, respondent No. 5 was subjected to harassment by a driver, an employee significantly lower in the institutional hierarchy. This contradiction underscores the reality that harassment is about

⁷ L. Fitzgerald and S. Shullman, ‘Sexual Harassment: A Research Analysis and Agenda for the 1990s’ *Journal of Vocational Behavior*, 42(1) (1993).

⁸ Catherine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press, 1979).

⁹ *Ibid.*

¹⁰ ‘Enforcement Guidance on Harassment in the Workplace’ U.S. Equal Employment Opportunity Commission < <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace>>. It addresses how harassment based on race, color, religion, sex, national origin, age, disability, or genetic information is defined under EEOC-enforced statutes and the analysis for determining whether employer liability is established.

¹¹ Anne M. Kelly, Lynn Bowes-Sperry and Emily R. Lean, ‘Sexual Harassment at Work: A Decade (Plus) of Progress’ *Journal of Management*, 35(3) (2009).

¹² Sumi Cho, Kimberle Williams Crenshaw and Leslie McCall, ‘Towards a Field of Intersectionality Studies: Theory, Applications, and Praxis’ *Signs Journal of Women in Culture and Society*, 38:4 (2013).

power, not formal position. The petitioner exerted informal power—through gendered privilege, power dynamics, and social reinforcement—to create a hostile work environment for a senior. This phenomenon reflects deeply ingrained patriarchal norms that resist women’s leadership, particularly in male-dominated professions where authority remains subconsciously associated with masculinity. However, gender-based harassment is not solely about hierarchy—it is fundamentally about who is perceived as having the right to wield authority. Even a junior employee, through informal power structures, social reinforcement, and gendered privilege, can create a hostile work environment for a senior. When women’s authority is perceived as illegitimate or easily undermined, colleagues, clients, and even subordinates may use harassment as an “equalizer” to reassert traditional power dynamics.¹³ This reinforces the notion that workplace harassment is less about sexual desire and more about control and domination, serving as a tool to police and punish women who disrupt male-dominated spaces.¹⁴ Thus, while sexual harassment is primarily understood as a power-based behavior, individuals at any level of a hierarchy can perpetrate harassment, particularly when supported by gendered or social reinforcements.

8. Pakistan has made legislative strides to combat workplace harassment, notably through the 2010 Act, which aims to create a safe working environment for all individuals, including women and transgender persons, free from harassment, abuse, and intimidation with a view towards fulfilment of their right to work with dignity.¹⁵ The 2010 Act provides a definition¹⁶ of harassment, encompassing unwelcome sexual advances. It applies to all workplaces, including public and private sector organizations, educational institutions, and businesses, and establishes mechanism such as inquiry committees within workplaces¹⁷ and the office of the Ombudsperson to adjudicate complaints¹⁸. It is important to note that recently, the Parliament of Pakistan has

¹³ Heather McLaughlin, Christopher Uggen and Amy Blackstone, ‘Sexual Harassment, Workplace Authority, and the Paradox of Power’, *American Sociological Review* (Volume 77, Issue 4) (August 2012).

¹⁴ Jennifer L. Berdahl, ‘Harassment Based on Sex: Protecting Social Status in the Context of Gender Hierarchy’ *Academy of Management Review* (April 2007); Vicki Schultz, ‘The Sanitized Workplace’ *Yale Law Journal* (Volume 112, 2003).

¹⁵ Statement of Objects and Reasons of the 2010 Act.

¹⁶ Section 2(h) of the 2010 Act defines harassment as: “any unwelcome sexual advance, request for sexual favors or other verbal 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.”

¹⁷ Section 3 of the 2010 Act.

¹⁸ Sections 7 and 8 of the 2010 Act.

expanded the scope of the 2010 Act to enhance its effectiveness through the Protection against Harassment of Women at the Workplace (Amendment) Act, 2022 (“Amendment Act”).¹⁹ The Amendment Act broadens the application of the law by redefining key terms and extending its protections to a wider range of individuals and workplaces. The definition of “employee” now includes informal workers without contracts, freelancers, domestic workers, interns, trainees, among others.²⁰ Similarly, the definition of “workplace” has been expanded to encompass any location where professional services are rendered, including educational institutions, concerts, studios, performance venues, courts, highways, sporting facilities, and gymnasiums.²¹ Additionally, the Amendment Act refines the definition of “harassment” by explicitly incorporating gender-based discrimination—whether sexual in nature or not—when it stems from a prejudicial mindset and results in discriminatory behavior.²² The phrase “sexually demeaning attitude” has been clarified to mean any gesture or expression with a derogatory connotation that interferes with work performance or creates an intimidating, hostile, or offensive work environment. The Act now explicitly recognizes that harassment includes gender-based discrimination that fosters an abusive workplace, even when it is unrelated to sexual conduct. It is important to note that the petitioner’s actions also fall within this expanded definition. Pervasive workplace harassment, such as the denial of equal opportunities or gender-based criticism of one’s abilities, also falls within its ambit. Significantly, the Amendment Act replaces the phrase “a woman or man” with “any person” in the definition of “complainant,” thereby extending the law’s protection to transgender persons as well.²³ This inclusive approach ensures that the law safeguards all persons—male, female, and transgender persons—acknowledging the heightened vulnerability of female and transgender persons to workplace harassment.

9. In effect, the 2010 Act along with the recent amendments uphold gender equality and women’s right to work

¹⁹ The Amendment Act received the assent of the President on 22nd January 2022.

²⁰ Inserted vide Section 2(b) of the Amendment Act.

²¹ Inserted vide Section 2(h) of the Amendment Act.

²² Inserted vide Section 2(d) of the Amendment Act which defines “harassment” as: (a) any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expressions conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or (b) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mindset or notion, resulting in discriminatory behavior on basis of gender against the complainant.

²³ Inserted vide Section 2(a) of the Amendment Act.

without fear of exploitation under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”), safeguard human dignity under Article 14 of the Constitution, promote the right to a safe and working environment under Article 18 of the Constitution, and strengthen institutional accountability. Moreover, they give effect to Article 34 (Principles of Policy) of the Constitution which mandates steps to ensure the full participation of women in all spheres of national life and guarantees equal opportunity for women and transgender persons to earn their livelihood in a safe working environment. Viewing on a constitutional plane, the right to a safe, harassment-free workplace for all genders—including men, women, and transgender persons—is rooted in the constitutional guarantees of life, liberty, dignity, and equality.²⁴ A safe, harassment-free workplace is intrinsically linked to gender justice, which embodies the protection of human rights, ensuring equal access to opportunities and resources for all genders, and the elimination of discrimination, violence, and structural inequalities based on gender.

10. The 2010 Act along with the Amendment Act aligns with most international legal instruments, most notably the International Labour Organization Violence and Harassment Convention No. 190 (“ILO Violence and Harassment Convention”), which is the first-ever binding international treaty that explicitly provides for the elimination of workplace harassment and violence. It defines workplace harassment as, “A range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm, and includes gender-based violence and harassment.”²⁵ Similarly, Articles 11 and 12 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)²⁶ protect women’s right to work in safe and equitable conditions free from discrimination and mandates states to introduce laws and mechanisms to prevent gender-based violence, including workplace harassment. The United Nations Sustainable Development Goals, Goal 5 (Gender Equality) and Goal 8 (Decent Work and Economic Growth) call for eliminating all forms of violence against women and girls and ensuring safe working conditions, and protection from harassment. Other

²⁴ *Uzma Naveed Chaudhry v. Federation of Pakistan* PLD 2022 SC 783.

²⁵ Article 1, ILO Violence and Harassment Convention (2019). The Convention entered into force on 25 June 2021 and has been ratified by 39 states.

²⁶ Articles 2 and 11, CEDAW (1979). Pakistan ratified the CEDAW in 1996.

international instruments that support eliminating workplace harassment include the Universal Declaration of Human Rights ("UDHR")²⁷, the International Covenant on Civil and Political Rights ("ICCPR"),²⁸ and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR")²⁹.

11. Courts worldwide have played a crucial role in shaping workplace harassment jurisprudence by interpreting these principles within their national legal frameworks. In *Meritor*³⁰, the U.S. Supreme Court formally recognized sexual harassment as a form of sex discrimination under Title VII of the Civil Rights Act, 1964. It established that a hostile working environment constitutes unlawful workplace harassment, even if no economic loss occurs. The U.S. Supreme Court, once again, in *Harris*³¹ lowered the burden of proof for victims, and employed an objective criterion to establish that if the work environment was hostile or abusive from the perspective of a reasonable person, it qualified as harassment. The landmark ruling of the Supreme Court of India in *Vishaka*³² recognized workplace harassment as a violation of fundamental rights, specifically the right to equality, life, and dignity under the Indian Constitution. It also introduced the Vishaka Guidelines, making it mandatory for organizations to establish mechanisms to address workplace harassment and paved way for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in India. In *Janzen*³³, the Supreme Court of Canada recognized sexual harassment as sex discrimination under the Canadian Human Rights Act and ruled that harassment is about power and control, not sexual attention. In *Carmichele*³⁴, the Constitutional Court of South Africa held that the state has a duty to prevent workplace harassment and gender-based violence, placing responsibility on the government to ensure that laws provide protection against sexual violence in employment settings.

12. The 2010 Act and the Amendment Act, along with constitutional and international legal principles, provide a robust framework to combat harassment and promote safe, inclusive work

²⁷ Articles 1 and 23, UDHR (1948). Pakistan ratified the UDHR in 1948.

²⁸ Article 7, ICCPR (1966). Pakistan ratified the ICCPR in 2010.

²⁹ Article 7, ICESCR (1966). Pakistan ratified the ICESCR in 2008.

³⁰ *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986).

³¹ *Harris v. Forklift System* 510 U.S. 17 (1993).

³² *Vishaka v. State of Rajasthan* AIR 1997 SC 3011.

³³ *Janzen v. Platy Enterprises* [1989] 1 S.C.R. 1252.

³⁴ *Carmichele v. Minister of Safety and Security* 2001 (4) SA 938 (CC).

environments. However, the effectiveness of these laws depends on strong judicial enforcement. As jurisprudence evolves, courts must continue to interpret and apply these protections in a manner that upholds human dignity, gender justice, and workplace equality.

13. Viewing the instant case with the aforesaid lens, the contentions raised by the learned counsel for the petitioner have been convincingly answered in the impugned judgment. No jurisdictional error, illegality or procedural irregularity in the impugned judgment has been pointed out to us. In this background we are of the view that the impugned judgment does not warrant any interference. Leave is, therefore, declined and this petition is dismissed.

14. Before parting with this judgment, it is significant to note that Pakistan's commitment to eliminating workplace harassment requires stronger alignment with international legal frameworks. While the 2010 Act and the Amendment Act provide a foundation for safeguarding workers against harassment, the country has yet to ratify the ILO Violence and Harassment Convention which sets a comprehensive global standard for preventing and addressing workplace harassment, ensuring legal accountability, and promoting a culture of dignity and respect. Ratifying ILO Violence and Harassment Convention would reinforce Pakistan's constitutional guarantees of dignity, equality, and non-discrimination, strengthen legal protections for workers—particularly women and marginalized groups—and signal a firm commitment to upholding international human rights standards.

15. Copy of this judgment be dispatched to the Attorney-General for Pakistan for considering the recommendation in this judgment regarding the ratification of the ILO Violence and Harassment Convention with the relevant quarters.

Judge

Islamabad,
12thFebruary, 2025.

Judge

Approved for reporting
Iqbal/Umer A. Ranjha, LC.