

Legal Analysis of Harassment Laws in Public Places: A Case Study of Pakistan

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Abstract

This study explores harassment in public places that violates the fundamental rights of women by making them insecure in such places. It is a social issue in Pakistan. Many studies have been conducted on sexual harassment rampant in educational institutes and the workplace surroundings, nonetheless, we find any study regarding public place harassment, especially with a legal perspective. Therefore, the study in hand highlights the notion of public place harassment and analysis of the laws of Pakistan regarding harassment in public places by considering case studies of Pakistan. The study reveals that harassment in public places is an everyday experience women face and recommends that legal reforms are necessary to restrain this act committed against women.

Keywords: Harassment in Public Places, P.P.C., Perpetrator, Street Harassment, Women Protection.

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1. Introduction

Harassment harms the life of a person, especially women. It is widespread and undesirably affects the fundamental rights of women, such as liberty, education, health, etc.¹ The United Nations (U.N.) statistics show that about 1/3rd of women globally have faced harassment through known persons.² Women's lives also have a profoundly alarming picture in Pakistan.³ Sustainable Social Development Organization (SSDO) shared data analysis that around 8 out of 9 cases throughout the country is related to violence against women and child, i.e. domestic violence, honour killing, child abuse, rape, child marriages, and kidnapping.⁴ Most cases are not reported for many reasons, including fear of revenge, the stigma of immoral police, complex legal procedures, fewer penalties and conviction rates, etc. Therefore, the overall ratio of crimes committed against women is higher than the statistical numbers.⁵

Interestingly, the trend of this phenomenon was traced back to the late 1800 A.D.⁶ Before the nineteenth century, "mashing" was used for harassment in public places, which means shameful action. The first case of public harassment was reported in the nineteenth century, as per the record

¹ Yusuf Çelik and Sevilya Şenol Çelik, "Sexual Harassment Against Nurses in Turkey," *Journal of Nursing Scholarship* 39, no. 2 (June 1, 2007): 200–206, doi:10.1111/j.1547-5069.2007.00168.x.

² "Facts and Figures: Ending Violence against Women," *UN Women – Headquarters*, accessed September 8, 2023, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

³S. Khan, "Violence against Women on the Rise in Pakistan," *Deutsch Welle*, September 23, 2019, <https://www.dw.com/en/violence-against-women-on-the-rise-in-pakistan/a-50550672>.

⁴SSDO, *State of Violence against Women and Children in Pakistan*, (2021) <https://www.ssdo.org.pk/storage/app/uploads/public/604/9f2/3fb/6049f23fbf245777465964.pdf>.

⁵ Megha Dhillon and Suparna Bakaya, "Street Harassment: A Qualitative Study of the Experiences of Young Women in Delhi," *SAGE Open* 4, no. 3 (2014), 4, doi: 10.1177/2158244014543786.

⁶ Cynthia Grant Bowman, "Street Harassment and the Informal Ghettoization of Women," *Harvard Law Review* 106, no. 3 (1993):520, doi: <https://doi.org/10.2307/1341656>.

of police.⁷ In recent years, the rarely discussed form of sexual harassment that gets attention from feminist legal scholars is harassment in public places, and public areas include markets, streets, transport, parks, bus stops, sidewalks, etc.⁸ It is generally defined as “any action or comment between strangers in public places that is disrespectful, unwelcome, threatening or harassing and that action or comments motivated by gender or sexual orientation or gender expression.”⁹ This harassment is also known as ‘street harassment’.

Bowman and Leonardo were the first to give the concept of such harassment. Leonardo defined it as, “[s]treet harassment occurs when one or more strange men accost one or more women whom they perceive as heterosexual in a public place which is not the woman’s/women’s worksite. Through looks, words, or gestures, the man asserts his right to intrude on the woman’s attention, defining her as a sexual object and forcing her to interact with him.”¹⁰ Bowman also elaborates on this definition by giving some characteristics of harassment, such as, 1) women are the target, 2) males are harassers, 3) harassers are strangers to their act, 4) harassers and target meet face-to-face, and 5) a public place is a medium that is streets, parks, transport, 6) visiting the place, and other places which are accessible to people in public.¹¹ Gardner defines a public place as “the place which is open for all; the behaviour of society and their appearance towards that

⁷ Major W. E. Fairbairn, *Self-defense for Women* (New York: D. Appleton-Century Company, 1942) 213.

⁸ Deirdre Davis, “The Harm that Has No Name: Street Harassment, Embodiment, and African American Women”, *UCLA Women's Law Journal* 4, no. 2 (1994):133, doi: 10.5070/L342017595.

⁹ Asian Development Bank, “Rapid Assessment of Sexual Harassment in Public Transport and Connected Spaces in Karachi”, December, 2014, <https://www.adb.org/projects/documents/rapid-assessment-sexual-harassment-public-transport-and-connected-spaces-karachi>.

¹⁰ Micaela di Leonardo, “Sexual harassment research: A methodological critique,” *Journal of Personnel Psychology* 48, no. 4 (1995):841-864, doi: <https://doi.org/10.1111/j.17446570.1995.tb01783.x>.

¹¹ Bowman, “Street Harassment,” 521.

place varies from those places which are in private dwellings”.¹² Recently, Fernandez also illustrated public place harassment as vulgar or sexual verbal remarks on women's non-verbal expression, including whistling, staring, stalking, winking, pinching, grabbing and inappropriately touching women. He also stated that the harasser gazed at the victims to make them uncomfortable.¹³

Verbal and nonverbal harassment are the most familiar types of street harassment. It is also challenging to collect evidence in this harassment that attests to the existence of verbal or nonverbal abuse. In Pakistan, harassers prefer to use a nonverbal form of harassment because there is minimal social interaction between males and females. Furthermore, the harasser can quickly escape the situation through nonverbal harassment. Physical harassment is less common than verbal and nonverbal harassment, but society considers it dangerous because it is a gateway to other forms of harassment, such as rape.

Lengnick-Hall introduces a more inclusive categorization scheme to differentiate three types of perpetrators; “Hardcore harassers” find occasions to harass and do not abstain from harassing even though the victim resists. “Opportunists” are those who do not find circumstances/opportunities, but if they present, they will take advantage of them. Lastly, “insensitive harassers” are not aware of the effect of their actions on others.¹⁴ Perpetrators believed that harassment is a source of entertainment or pleasure. According to the perception of Pakistani society, street harassment is not considered a crime at all. Men admitted the fact that men harassed women in public spaces and believed that any woman who

¹² Gardner, *Gender and Public Harassment* (University of California Press, 1995).

¹³ Noemi Fernandez, *Street Harassment Effects on Women: An Exploratory Study* (California State University, Long Beach, 2016).

¹⁴ M.L. Lengnick-Hall, “Sexual harassment research: A methodological critique”, *Journal of Personnel Psychology*, 48, no. 4 (1995):841-864, doi: <https://doi.org/10.1111/j.1744-6570.1995.tb01783.x>.

tries to go out of their house without a male or abaya must be ready to face harassment. Similarly, it was reported in a survey that every one out of four Pakistani urban women are harassed by men on their way to home, school, workplace, etc.¹⁵ Moreover, it is the perception of society that women harassed by men means they are doing something to provoke them. Pakistan has a law to deal with street harassment, whereas a quick assessment of that law shows that it is insufficient in its framing and implementation.¹⁶

Against this background, this article is an endeavour to highlight the gaps in the current legal framework of Pakistan regarding harassment in public places. This article suggests that the heinousness of this social problem needs to be highlighted to draw attention from policymakers, educational institutions, and media towards acts and laws of Pakistan regarding harassment in public places with punishments for deterrence and change in the perpetrator's behaviour.

2. Literature Review

The existing literature shows minimal research on public place harassment worldwide and in Pakistan. It also highlights that the research in Pakistan is much related to its social and psychological effects on women. However, no research ever analyzed the laws of Pakistan on public place harassment. Sexual harassment or violence is a problem that creates hurdles to the success of women. All forms of harassment, including public place harassment, violate women's fundamental rights to equality, her right to live with dignity and her right to practice any profession or to carry on any

¹⁵ World Bank Group, "Labour Force Aspirations, Experiences and Challenges for Urban, Educated Pakistani Women: Discussions in Four Metro Cities," *Pakistan Gender and Social Inclusion Platform and Center of Gender and Policy Studies*, February 2014, <https://documents1.worldbank.org/curated/en/190071611611113613/pdf/Labor-Force-Aspirations-Experiences-and-Challenges-for-Urban-Educated-Pakistani-Women-Discussions-in-Four-Metro-Cities.pdf>.

¹⁶ Ibid.

occupation, trade or business.¹⁷ Women experienced any form of harassment due to unequal treatment in society.¹⁸ Cheryl Benard and Edit Schlaffer have noted that public places are the medium for street harassment where people are unknown to one another.¹⁹ Any interference or invasion of women's privacy in public places committed without their consent is known as Street harassment.²⁰ In the study of Kissling and Kramarae on public place harassment, a woman also noted, “[s]trangers making rude personal comments. Whether the comment is sexual or not, optimistic or negative, it is still rude and interferes with privacy.”²¹ There are different forms of street harassment, which include playing vulgar songs public masturbation, which means touching their private parts to annoy or commenting on physical appearances, such as body or clothing, etc.

The study of Fairchild and Rudman indicates that 41 per cent out of 228 female college students experienced “sexual attention from unknown persons at least once a month, which is also undesirable and includes seductive or sexist remarks.”²² Additionally, the standard form of street harassment experienced by these participants is verbal, such as "catcalls,

¹⁷ Meghan Davidson, Sarah Gervais, and Lindsey W. Sherd, "The Ripple Effects of Stranger Harassment on Objectification of Self and Others", *Educational Psychology Papers and Publications*, no. 1 (2015):39, doi: <https://doi.org/10.1177/0361684313514371>.

¹⁸ Robin Clair, Nadia E. Brown, Debbie S. Dougherty, Hannah K. Delemeester, P. Geist-Martin, and W. I. Gorden, Turner, “Sexual harassment: An article, a forum, and a dream for the future,” *Journal of Applied Communication Research* 47, no. 2 (2019):1–9, doi: 10.1080/00909882.2019.1567142.

¹⁹ Cheryl Benard & Edit Schlaffer, “The Man in the Street: Why He Harasses, in Feminist Frameworks: Alternative Theoretical Accounts of The Relations between Women and Men”, *Yale Journal of Law and Feminism* 6, no. 313 (1984), <https://core.ac.uk/download/pdf/72836708.pdf>.

²⁰ Robin West, “The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory,” *Wis. Women's LJ* 3, no. 81 (2011), doi: 10.4324/9780203094112.

²¹ Elizabeth A. Kissling and Cheri Kramarae, “Stranger Compliments: The Interpretation of Street Remarks,” *Women's Studies in Communication* 14, no. 75 (1991):75-93, <https://psycnet.apa.org/psycinfo/1993-37430-001>.

²² Kimberly Fairchild, and Luraie A. Rudman, “Everyday Stranger Harassment and Women's Objectification,” *Social Justice Research* 21, no.3 (2008):338–357, doi: 10.1007/s11211-008-0073-0.

whistles, and stares."²³ However, hundreds of women in Pakistan also experienced unwanted sexual remarks, lewd comments on body and faces, etc., within a few days or weeks.²⁴ This form of harassment is a serious offence, but in this offence, it is challenging to collect evidence and prove the intention of the harasser.²⁵

According to Bowman, a person who perpetrated street harassment is a stranger to the victim, and their remarks are usually sexual in spirit.²⁶ He publicly comments on women's physical appearance through "verbal and nonverbal actions such as wolf-whistles, leers, winks, grabs, pinches, catcalls, etc."²⁷ Benard and Schlaffer mention the relationship that this harassment usually occurs between a man being the perpetrator and a woman being the victim.²⁸ According to Dhillon and Bakaya, this relationship shows a patriarchal system, a kind of gender inequality.²⁹ It may allow men to use (physical) power to embarrass them. In his book, Jos Boys stated that society controls women's rights and safety, and street harassment is a reminder that men exploit women.³⁰

²³ Beth Nightingale, "Street Harassment the Invisible Issue" (Bachelor diss. Kele University, 2018), https://www.academia.edu/45085777/Street_harassment_the_invisible_issue.

²⁴ Dr. Nida Kirmani, "The Past Few Months have been Harrowing for Pakistani Women," *AlJazeera*, October 8, 2021, <https://www.aljazeera.com/opinions/2021/10/8/violence-against-women-in-pakistan-is-not-new-but-it-must-stop>.

²⁵ Fairchild, and Rudman, "Women's Objectification," 351.

²⁶ Bowman, "Street Harassment", 523.

²⁷ Hasnaat Malik, "Gender Bias also Constitutes Harassment Rules, Supreme Court," *the Express Tribune*, June 6, 2023, <https://tribune.com.pk/story/2420483/gender-bias-also-constitutes-harassment-rules-sc>.

²⁸ Cheryl Benard and Edit Schlaffer, Alison M. Jaggar & Paula S. Rothenberg eds., *Feminist Frameworks: Alternative Theoretical Accounts of the Relation between Women and Men* (New York: MacGraw Hill book company, 1984).

²⁹ Dhillon and Bakaya, "Street Harassment," 5.

³⁰ Jos Boys, *Women and Public Space, in Making Space: Women and The Man-Made Environment* (Pluto press, 1985), 1-148.

The study of Wesselmann and Kelly discovered that men were more likely to engage in group harassment to annoy women.³¹ However, women mostly ignore their behaviour due to the fear of being labelled as aggressors or immoral women.³² The sexually harassing conduct of perpetrators discussed by Margate Crouch can differ from place to place, or it is based on the circumstance in which it occurs.³³ For example, victims of harassment at the workplace know the person who perpetrated it. However, the perpetrator and victim are strangers to harassment in public places. Perpetrators can belong to any age, from teenage to old age, race, or social class.

Sometimes, harassing women is merely a source of pleasure for male perpetrators. However, according to Ramezani, the perpetrator sometimes aims to get women's attention.³⁴ Most of the time, men take street harassment as usual, especially in underdeveloped and developing societies like Afghanistan, Bangladesh, India, Nepal, and Pakistan.³⁵ The results of a Gallup survey show that men had stalked every 1 out of 4 urban women in Pakistan.³⁶ Men hunted either on their way to home, educational institutions, markets, offices, parks, etc.

³¹ Eric D. Wesselmann, & Janice R. Kelly, "Cat-Calls and Culpability: Investigating the Frequency and Functions of Stranger Harassment," *Sex Roles* 63, no. 7 (2010):451–462, doi:10.1007/s11199-010-9830-2 .

³² Vicki J. Magley, "Coping with Sexual Harassment: Reconceptualizing Women's Resistance," *Journal of Personnel Social Psychology* 83, no. 4 (2002):930–946, doi: 10.1037/0022-3514.83.4.930.

³³ Margate Crouch, "Sexual Harassment in Public Places," *Social Philosophy Today* 25, (2019):135-148. doi: 10.5840/socphiltoday20092511.

³⁴ Ahmad Bilal, Sehrish Wazir, Shakeela Altaf, and Samina Rasool, "Relationship between sexual harassment at workplace and subjective well-being among working women in South Punjab, Pakistan," *Liberal Arts and Social Sciences International Journal (LASSIJ)* 5, no. 1 (2021):554-567, doi: 10.47264/idea.lassij/5.1.36.

³⁵ Shamile Shams, "Violence and harassment: South Asian women fight against patriarchy," *DW.com*, November 25, 2018, <https://www.dw.com/en/violence-and-harassment-south-asian-women-fight-against-patriarchy/a-46444410>.

³⁶ Imtiaz, Shumaila, and Anila Kamal. "Sexual Harassment in the Public Places of Pakistan: Gender of Perpetrators, Gender Differences and City Differences among Victims." *Sexuality & Culture* 25, no. 5 (2021):1808-1823, doi: 10.1007/s12119-021-09851-8.

While discussing the social status of women, Amber Ferdoos stated that women face harassment in both rural and urban areas, and they are not treated due to the masculine society of Pakistan.³⁷ Also, women are only expected to visit public places with their men.³⁸ As many women do not have much exposure to male strangers, they did not tackle the situation of harassment. Many women experience street harassment, which is unsuitable for their health and the development of any country.³⁹ Therefore, an effective law regarding street harassment is necessary. However, public place harassment is still controversial in Pakistan, and there is limited research on this topic.⁴⁰ The reason is that this harassment is not considered a crime in our society.

The traditional perspective of gender distinguished women into good and evil women.⁴¹ Similarly, Pakistani women are also advised to cover themselves and ignore any act of harassment as a good woman.⁴² It is a perception in Pakistan that the women who raise their voices against harassment are immoral and Westernized.⁴³ However, women in abaya have also experienced harassment in public places.⁴⁴ Ahmed also mentioned

³⁷ Amber Ferdoos, "Social Status of Rural and Urban Working Women in Pakistan - A Comparative Study," 2007, <https://api.semanticscholar.org/CorpusID:141821653>.

³⁸ Javed Syed, Faiza Ali and Daina Winstanley, "In Pursuit of Modesty: Contextual Emotional Labor and the Dilemma for Working Women in Islamic Societies," *International Journal of Work Organization and Emotion* 1, no. 2 (2005):150-167, doi: [10.1504/IJWOE.2005.008819](https://doi.org/10.1504/IJWOE.2005.008819).

³⁹ Ali Jan Maqsood, "Sexual Harassment in Pakistan," *Daily Times*, 2018, <https://dailytimes.com.pk/323651/sexual-harassment-in-pakistan/>.

⁴⁰ Maliha Husain & Khadija Ali, "*The AASHA Experience - A Decade of Struggle against Sexual Harassment in Pakistan*," *Mehergarh Research Publication*, (2002), https://aasha.org.pk/reports/The_AASHA_Experience.pdf.

⁴¹ Crouch, "Sexual harassment in public place", 137.

⁴² Noman Ansari, "Being groped, harassed and video-taped on Independence Day," *The Express Tribune*, August 18, 2015, <https://blogs.tribune.com.pk/tag/august-14/>.

⁴³ Dr. Nida Kirmani, "The past few months have been harrowing for Pakistani Women."

⁴⁴ Tehreem Azeem, "Street harassment in Pakistan," *The Diplomat*, August 31, 2018 <https://thediplomat.com/2018/08/street-harassment-in-pakistan/>

in his study that women are frequently harassed by men in the Rawalpindi city parks and public areas.⁴⁵

There are many international instruments for the protection of women. Along with other countries, Pakistan signs and ratifies those instruments, including the Universal Declaration of Human Rights (UDHR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), etc. Pakistan also has anti-harassment laws for the protection of women. However, these laws were passed for decades and did not clearly define sexual harassment. In 2010, Pakistan enacted new legislation for workplace harassment; this was the first-time sexual harassment was determined. However, it does not deal with harassment outside the workplace.

The Study of Holly Kearn shows that laws do not protect women because men engage in most common types of street harassment, which do not apply as crimes under current laws, like commenting on a woman's body or whistling, etc.⁴⁶ However, an amendment in 2010 was made in P.P.C., and Section 509 was added that deals with harassment in public places.⁴⁷ Nevertheless, this provision is only good once it clarifies its terms and imposes strict implementation because this behaviour is socially acceptable. To change the behaviour of society, Laura Beth mentioned an interview with a woman who has no expectations from the law. He also stated that rules were made to protect her, but it does not work in this harassment.⁴⁸

⁴⁵ Bilal Ahmed, Farhan Navid Yousaf, and Umm-e-Rubab Asif, "Combating Street Harassment: A Challenge for Pakistan," *Women Criminal Justice* 31, no. 4 (2019):283-293, doi: 10.1080/08974454.2019.1644697.

⁴⁶ Holly Kearn, *Stop Street Harassment Making Public Places safe and welcoming for Women* (Bloomsbury Publishing USA, 2010).

⁴⁷ Magazine Desk, "Stop the Harassment," *the News*, Tuesday, 07 2015 <https://www.thenews.com.pk/magazine/you/76927-stop-the-harassment>.

⁴⁸ Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment," In *the Law and Society Reader II*,

Generally, cases of public place harassment are not noticed or even reported, which is the leading cause of failure to implement the laws. Naila Masood and his colleagues witnessed those cases in which victims did not say to Pakistan's law enforcement agencies.⁴⁹ Mustafa also stated that the police are not the solution but a problem; it is a perception of society that has a strong effect.⁵⁰ Laura Beth also mentioned another interview who told her that the action of unjust police raises questions about implementing any law to protect them from harassment.⁵¹ Hlavka observed that girls do not report incidents due to the fear of being criticized for overstressing or overreacting.⁵² Mostly, women prefer to stay home and avoid public places.⁵³

Anna Gekoski, Jacqueline M. Gray, and their colleagues mentioned various reasons for non-reporting. The most common street harassment is not considered severe for reporting. The victim avoids the behaviour, thinks that the authorities would do nothing about it, and lacks awareness about the procedure.⁵⁴ Due to low reporting of cases, authorities are unable to implement laws. Deborah M. Thompson mentioned that an administration

edited by Erik Larson and Patrick Schmidt, (NYU Press, 2014) 232–40. <http://www.jstor.org/stable/j.ctt9qg0dk.33>.

⁴⁹ Naila Masood Ahmad, M. Masood Ahmad, and Ramsha Masood, “Socio-Psychological Implications of Public Harassment for Women in the Capital City of Islamabad,” *Indian Journal of Gender Studies* 27, no. 1 (2020), doi: 10.1177/0971521519891480.

⁵⁰ Waqar Mustafa, “Pakistani Province Launches App for Women to Report Harassment,” *Reuters*, January 6, 2017, sec. APAC, <https://www.reuters.com/article/us-pakistan-women-app-idUSKBN14P2B7>.

⁵¹ Nielsen, “Situating Legal Consciousness,”

⁵² H. Hlavka, “Normalizing sexual violence: Young women account for harassment and abuse,” *Gender Society* 28, no. 3 (2014):337-358, doi: 10.1177/0891243214526468.

⁵³ Bowman, “Street Harassment”, 555.

⁵⁴ Anna Gekoski et al., eds. *What works in reducing sexual harassment and sexual offences on public transport nationally and internationally: A rapid evidence assessment* (2015).

system would also be very complex and cause hurdles in reporting cases.⁵⁵ Unfortunately, the perpetrators are generally unaware of the consequences of their acts on the victims and society. According to the Special Rapporteur of the U.N., public harassment affects self-respect, creates terror, and violates their rights to “bodily integrity” and “freedom of movement,” harming women's self-esteem.⁵⁶ Along with the non-reporting of cases, awareness is also the main hurdle in protecting against harassment in public places.⁵⁷ Recently, Sullivan states that some Non-Profit Organizations (NGOs) have begun awareness campaigns on this issue through social media.⁵⁸ Similarly, some of the N.G.O.s in Pakistan also launch awareness campaigns on violence against women. These include White Ribbon, Aurat Foundation, Acid Survivors Foundation of Pakistan, Gilani Research Foundation, War Against Rape, etc.⁵⁹ However, such awareness mainly focuses on severe sexual harassment, such as rape. There are laws or awareness, but women are not standing up for themselves, mainly due to a lack of awareness. It is expected that the issue of harassment can be minimized with the changing times and with the help of awareness campaigns.

⁵⁵ Deborah M. Thompson, “The Woman in the Street: Reclaiming the Public Space from Sexual Harassment,” *Yale J.L. & Feminism* 6, (1993):313, <http://hdl.handle.net/20.500.13051/7188>.

⁵⁶ Maheen Salman, Fahad Abdullah, and Afia Saleem, “A. Sexual Harassment at Workplace and its Impact on Employee Turnover Intentions,” *Business & Economic Review* 8, no. 1 (2016):87–102, doi: 10.22547/BER/8.1.6.

⁵⁷ Imtiaz and Kamal, “Sexual Harassment in the Public Places of Pakistan”, 1830.

⁵⁸ Gail Sullivan, “Woman harassed 108 times as she walks around New York,” *The Washington Post*, October 29, 2014, <https://www.washingtonpost.com/news/morningmix/wp/2014/10/29/video-woman-harassed-108-times-as-she-walks-around-new-york/>.

⁵⁹ “Pakistan Centre for Development Communication,” *Directory of Non-profit Organizations in Pakistan*, July 12, 2021 <https://sites.google.com/site/thecivilsocietyforumofpakistan/Pakistan-nonprofits-directory>.

2. Analysis of National Laws on Harassment in Public Places

From a legal perspective, street harassment may not have a civil remedy because it is impossible to sue the perpetrator, who is a stranger and disappears after harassment.⁶⁰ Hence, many victims neither reply to the harasser nor report this behaviour.⁶¹ It is a common issue in Pakistan that challenges women in their lives.⁶² Women face several incidents of harassment in public places every day, which restricts their freedom. Freedom of movement is a fundamental human right provided to Pakistan females under the Constitution of the Islamic Republic of Pakistan, 1973. At the national level, there are many laws and policies to protect women from violence. These are the Women Protection Bill 2006, the Prevention of Anti-Women Practice Act 2011, the Protection against Harassment of Women at Workplace Act 2010, the Domestic Violence Act 2020, and the Pakistan Penal Code 1860. Following is the summary of laws that are relevant to public place harassment.

2.1 Constitutional Law

“The Constitution of the Islamic Republic of Pakistan, 1973” provides equal rights to females. The chapter on Principles of Policy underlines the principle of equal rights and equal treatment to all citizens/persons, without any distinction, including based on sex. Following is a summary of relevant articles that protect women.

Article 4: Every citizen of Pakistan has the right to enjoy the protection of the law and to be treated by the law. *The Court* stated that equal protection

⁶⁰ Catharine A. Mackinnon, “Sexual Harassment of Working Women: A Case of Sex Discrimination,” *Political Science Quarterly* 94, no. 4 (1979):95–97, doi: <https://doi.org/10.2307/2149645>.

⁶¹ F. L. Fitzgerald, S. Swan, and K. Fischer, “Why Didn't She Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment,” *Journal of Social Issues* 51, no. 1 (1995):117–138, doi: 10.1111/j.1540-4560.1995.tb01312.x.

⁶² A. Aamir, “Victim Shaming, the Burden of Proof in Sexual Harassment Cases,” *Pakistan Today*, June 2, 2018 <https://www.pakistantoday.com.pk/author/aadilaamir/page/2>.

is the inalienable right of every citizen and, in particular, no action detrimental to a person's life, liberty, etc., shall be taken except by law.⁶³

Article 15: The Pakistani Constitution gives freedom of movement to every citizen of Pakistan. It is an inherent right of citizens to move, reside or settle anywhere in Pakistan. The right of citizens to travel on a public Highway by van or automobile is not a privilege but a common right under their right to life and liberty.⁶⁴

Article 26: Law gives the right of access to all public places to every citizen irrespective of sex, including public transport, public entertainment, resorts, etc.⁶⁵ The government can make special provisions for women and children that may exclude men.⁶⁶ However, Public space harassment violates women's fundamental rights under the Constitution of Pakistan, 1973. Women did not enjoy their right to access public resources due to harassment in public places. They also pay taxes for such enjoyment as public conveyance, markets, streets, footpaths, and parks.

2.2 Pakistan Penal Code, 1860

"Pakistan Penal Code, 1860 (P.P.C.)" has various provisions that are important for both women and men, as they allow victims to seek justice against the actions of their criminals.⁶⁷ P.P.C. provided no clear definition of street harassment but provided examples of such behaviour. This makes it difficult for authorities to implement the law and for victims to find help.

Section 294: To invoke this section, the accused must do some obscene act in any public place, or the accused utters, sings or recite any obscene songs, ballads, or words in any public place to annoy others. The literal meaning

⁶³ (1978) PLD (Lah.) 523 (Pak.).

⁶⁴ M. Rafique Butt, *Constitution of the Islamic Republic of Pakistan, 1973* (Mansoor Book House, 2017).

⁶⁵ Pakistan Const. art. 26.

⁶⁶ (1954) A.I.R. (SC) 321 (India).

⁶⁷ M. Abdul Basit, *the Pakistan Penal Code, 1860* (Federal Law House, 2018).

of the word “obscene” is something offensive to modesty or decency.⁶⁸ However, the term “modesty” is not defined in the Code. Very few cases exist under this provision of P.P.C. because people did not report verbal harassment in a public place under Section 294(b). All the issues are related to the first part of the section, which is an obscene act, for instance, In the *Mst. Mahjabeen v. D.P.O.* case⁶⁹, the Court discusses the intention of legislatures that Section 294 enacted to stop the nuisance of prostitution and similar other illegal activities in or near public places. In the instant case, the premise was used for unlawful activities. Therefore, the High Court directed the police officials to lodge F.I.R.

In *Mst. Shakeela v. the State* case⁷⁰, the accused were found busy kissing each other in a Guesthouse. The Court stated that kissing each other does not fall within the meaning of an attempt to Zina but is termed as an intention to commit Zina. As the mere purpose is punishable by law, this act is an obscene act that falls under Section 294 P.P.C. Bail was admitted in this case, and that case needed further inquiry.

Section 354: For the constitution of an offence under this section, there must be an assault or use of criminal force to any woman and intention to outrage the modesty of women.⁷¹ However, the term modesty is not defined in P.P.C. There is also a case⁷² in which the Court remarks that whether a woman has or has not developed modesty is a question of fact in each case, and no definition of modesty applies to all cases.

In another case, *Muhammad Noman v. the State*⁷³, the prosecution had successfully established that the accused took snaps of the girls while the co-accused took away the shalwar of the victim girl. The Court stated

⁶⁸ (2009) PLJ (Lah.) 584 (Pak.).

⁶⁹ *Mst. Mahjabeen v. D.P.O.*, (2009) PCr.LJ (Kar.) 173 (Pak.).

⁷⁰ *Mst. Shakeela v. the State*, (2001) P Cr. L J (Pesh.) 43 (Pak.).

⁷¹ Pak. Penal Code, section 354.

⁷² (1963) A.I.R (Punj.) 443.

⁷³ *Muhammad Noman v. The State*, (2008) PCr.LJ (FSC) 1439 (Pak.).

that these circumstances do not fall in the case of Zina-bil-jabr but in the outrage of modesty of females under Section 345. The Court awarded a conviction to the accused under Section 345 P.P.C.

Section 509: In Pakistan, the Ministry of Human Rights explained that Section 509 of the P.P.C. was amended in 2010. This section has two parts, but only the first part of the provision deals with harassment in public places. To constitute an offence under this section, it has the following elements;

1. Accused uttered any word, made any sound or gesture, or exhibited any object,
2. The intention of the accused is that such words or sounds be heard, and women see gestures,
3. The accused also intends to insult any woman's modesty.⁷⁴

This section specifies imprisonment for such an act, which may extend to three years or a fine up to Rs. 500,000 or both. This provision did not explicitly define either street harassment or public places. It is still open for clear interpretation because courts could neither rewrite the law nor read into it something not provided therein. As in the case *Government of Khyber Pakhtunkhwa v. Muhammad Younas*,⁷⁵ The Supreme Court stated that the law and its interpretation must be clear and consistent because it helps to stabilise the system and increase the confidence of citizens in the law and the legal system.

There are very few cases of this provision because most women need to report, and sometimes police will not consider their complaints, for instance, in *Mst. Faizan Mai v. S.H.O. and four other cases*,⁷⁶ S.H.O. refused the registration of F.I.R. against accused persons for outraging a lady's modesty. The Police Superintendent of the area also declined to

⁷⁴ Pak. Penal Code, section 509.

⁷⁵ *Government of Khyber Pakhtunkhwa v. Muhammad Younas*, (2020) Civil appeal no: 73 (Pak.).

⁷⁶ *Mst. Faizan Mai v. S.H.O. and 4 others*, (1995) P Cr. L J (Lah.) 1000 (Pak.).

apply. Usually, this Court does not interfere in such matters and issues directions for registration of criminal cases or cancellation. Courts direct the S.H.O. to register a case on the complaint lodged by the petitioner and to stop the respondents from inflicting humiliation, insult, and intimidation in any manner. However, at the time of the announcement of the order, the inspector was not available. In another P.L.J. 2009, Lah.584, the Court clarified that any word spoken or sung or any picture that suggests lewd thoughts is immoral and insulting to female modesty.⁷⁷ Also, the fact that females did not mind such indecent acts is not an excuse for the offence.⁷⁸

It is difficult to prove the harassment under Section 509, and the accused get bail from the Court. For instance, in the case of *Mujahid Hussain Naqvi v. Ansar Mehmood Awan*,⁷⁹ the prosecution gave evidence that the accused was fully involved in the occurrence, which was recorded by Close Circuit T.V. (CCTV) footage. This footage shows a conflicting and contradictory situation. The Court stated that the case required further inquiry as there is nothing on the record to show that when witnesses and the allegations of harassment had been witnessed, the occurrence was also doubtful. The Court refrained from the bail and dismissed the petition based on the *Zaffar Mehmood v. Muzaffar* case judgment.⁸⁰

2.3 Procedure

According to Section 345 of the Criminal Procedure Code,⁸¹ The Magistrate of first class takes cognizance of complaints under Section 509. However, the procedure and elements for filing complaints are complex. The perpetrator's intention is the essential element of these sections that is

⁷⁷ (1967) A.I.R. (SC) 63.

⁷⁸ (2009) P L J (Lah.) 584 (Pak.)

⁷⁹ *Mujahid Hussain Naqvi v. Ansar Mehmood Awan*, (2016) PLD (AJ&K) 32 (Pak.).

⁸⁰ "Once a pre-arrest bail is granted by competent jurisdiction, then exceptional grounds are required to cancel that bail". *Zaffar Mehmood v. Muzaffar*, (2014) P Cr. L J 1512 (Pak.).

⁸¹ Pak. Code. Crim. Proc. 1860, section 345.

difficult to prove in the case of public place harassment. Therefore, women who were harassed publicly could not seek justice in Pakistan. These provisions are open for interpretation and can only be more effective once more specific provisions are made. Because the provisions are compoundable and bailable, it gives time for the perpetrator to escape, and he can also threaten the victim. For instance, in the case *Abdul Rashid and another v. the State*,⁸² The complainant resisted the Court not granting the concession of bail to the accused as he repeated the offence while on bail in the previous F.I.R. The Court granted bail because the accused was punishable under Section 354 P.P.C., which is a bailable offence, and according to the precedent law established in *Qurban Ali v. the State*, the effect of a previous criminal case is irrelevant for disposing of the instant petition.

2.3 Special Laws

As Pakistan is a highly male-dominated society, it has taken a long time to pass laws favouring women against violation. Also, a clear definition of harassment was not present before the passing of the law against harassment of women in the workplace in 2010.

Protection against Harassment at Workplace Act, 2010: This Act aims to provide a fundamental right to work with dignity and create an environment for women free of harassment. This Act also helps women offer high work efficiency and escape poverty with their families. It obeys the international standards for women's empowerment provided under UDHR, CEDAW, and International Labor Organization Convention 100 and 111 on worker's rights. It permits establishing an inquiry committee to inquire about the complaints under Section 3 of this Act. It also provides a complaint/appeal mechanism for creating a safe environment for all

⁸² *Abdul Rashid and another v. the State*, (2018) P Cr. L J Note 138 (Pak.).

working women under Section 6 of this Act. It also allows the establishment of an Ombudsman at both Federal and provincial levels under Section 7.⁸³

However, there is no special law regarding harassment in public places that provides procedures or adheres to the CEDAW, UDHR like Columbia, Workplace Act of Pakistan. Therefore, complaints related to harassment, such as wolf-whistles, evil eyes, touches, catcalls, stranger remarks, etc., are registered under Section 294 or Section 509 of P.P.C. However, the victim cannot sue the harasser because he is a stranger to them. Also, no inquiry committee looks at the complaints of street harassment and provides speedy justice.

2.4 National Committees

There is no National Committee to monitor the legal framework regarding public place harassment and review the existing laws to recommend amendments in favour of women.

2.5 National Policies

Punjab Commission on Status of Women (PCSW) Helpline: PCSW introduced helpline “1043” for people experiencing harassment, including women. In 2017, the Punjab Safe Cities Authority (PSCA) and PCSW also launched the Women Safety App. This app is helpful for women to mark those places where they do not feel safe. Women also alert the police through a crisis button of the app to tackle the situation. The police follow the location through the Global Positioning System and trace the man from the CCTV cameras.⁸⁴ However, this app is valid only for those women of

⁸³ Protection of Women against Harassment at Workplace, 4 of 2010, “Senate Secretariat,” last modified March 9, 2010, https://senate.gov.pk/uploads/documents/1363266764_764.pdf.

⁸⁴ Waqar Mustafa, “Pakistan Province launches app for women to report harassment,” *Thomas Reuters Foundation*, January 6, 2017, <https://www.reuters.com/article/us-pakistan-women-app/pakistani-province-launches-app-for-women-to-report-harassment-idUSKBN14P2B7>.

See also: The Pakistan Commission on Status of Women, “Government of Pakistan,” <https://pcsw.punjab.gov.pk/>.

Punjab who are educated, aware and have smartphones. Police can follow the location but failed to trace the man because CCTV is not on every street/road in Punjab, Pakistan.

2.6 Implementation of Laws and Policies

Existing provisions can be much more effective due to exemplary implementation. However, poor performance in Pakistan makes the current laws vain and makes society unjust for women.⁸⁵ This lack of enforcement of policies also encourages violence in public places such as transport, markets, parks, historic/visiting places, etc. Pakistani society is a patriarchal society. Therefore, the non-reporting of cases, the mindset of the society, and lack of awareness is also the biggest challenge to implementing such laws.⁸⁶

3. Conclusion

Public place harassment, or street harassment, is a common problem in Pakistan. The existing literature of this research indicates that street harassment is a part of the daily life experience of women. The most typical form of street harassment experienced by women is verbal harassment. They have to cope with this problem independently due to the lack of knowledge about street harassment by society. Also, women of Pakistan neither reply to the harasser nor report cases of harassment due to societal stress and many other fears. No law in Pakistan dealt with harassment in public places before the amendment was made to P.P.C. in 2010. The provisions of P.P.C. are not precisely defined but give examples of harassment in public places. Regardless of the amendment made to P.P.C., the incidents of harassment are not reported to the police. Because the

⁸⁵ The Rule of Law in Pakistan, “World Justice Project,” 2017 <https://worldjusticeproject.org/our-work/wjp-rule-law-index/special-reports/rule-law-pakistan>.

⁸⁶ Ahmed, Yousaf and Asif, “Combating Street Harassment”, 289.

provision is open for interpretation, and the procedure for reporting the case is very complex and lengthy. Therefore, women of Pakistan who are affected were unable to seek justice. Existing laws may be more effective by adding specific and clear provisions. Initiatives are needed to give social, moral, and legal support. It is required to empower women to exercise their fundamental right to freedom of movement, which can boost the economic growth and development of the country.

Recommendations

The analysis of this research identifies the following set of recommendations to minimize/prevent cases of harassment in public places.

Legal Reform Relating to the Harassment in Public Places: This research recommends revising Section 509 of P.P.C. to include an explicit definition of Street Harassment or Harassment in Public Places. It is also strongly recommended that Section 354 and Section 509 be revised to elaborate the term “modesty” like in India. The amendment was made in 2013 to clarify the scope of modesty of women. For a better future, it is recommended that a special law on harassment in public places be developed. In Columbia, there is a special law, “Harassment of Bicyclists”, which includes bicyclists, pedestrians, and persons in wheelchairs. That law needs the following significant contents;

1. Scope and beneficiaries,
2. Explanation of terms including Harassment, Harassment in Public Places, which are public places,
3. Rights and remedies provided to the victim who is harassed in a public place,

4. National Committees, like in India, are National Committees to monitor and review existing rules and procedures regularly to recommend amendments supporting victims.

Implementation of Current Laws

Procedure: Non-reporting cases are the main hurdle for implementation. Therefore, making the procedure easy for filing complaints is recommended. Like Italy, it is recommended to make a hotline at the national level for a victim to receive help, report, etc. That hotline includes different languages of provinces, a national language (Urdu), and an official language (English). A website is also needed, like in India, where complaints are registered online.

Enforcement Agencies: It is recommended that the government help the enforcement agencies, especially local authorities and police, comprehend the impact of street harassment on victims and consider their reports. Police stations need to strengthen and increase the number of female police officers. That is why women did not hesitate to go to police stations. Also, the government must provide support and a safe environment for victims in public places such as markets, sidewalks, parks, and transport.

Awareness: Lastly, it is recommended to make awareness among the people through media about harassment in public places and the respect of women. There is a need to include material in the school curriculum and organised campaigns or seminars in universities that females should consider harassing acts and feel free to report them for moving freely in public places.
