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Harassment in Public Places: Legal Framework and Societal Perspectives in Pakistan

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Abstract

Harassment in public spaces poses a significant threat to women's safety and rights, impacting their freedom, dignity, and ability to engage in daily activities. This research delves into the multifaceted aspects of street harassment in Pakistan, examining its historical context, current legal framework, societal attitudes, and the challenges faced by women. Utilising data analysis and literature review, the study sheds light on the pervasive nature of street harassment, encompassing verbal, nonverbal, and physical forms of harassment experienced by women in public settings. The study proposes legislative reforms, improved law enforcement strategies, awareness campaigns, and community empowerment initiatives to address street harassment effectively. By exploring the impact of harassment on women's rights and safety, this research contributes to creating safer and more inclusive public spaces in Pakistan.

Keywords: Street Harassment, Gender-Based Violence, Legal framework

1. Introduction

Harassment is detrimental to a person's life, particularly that of a woman. It is pervasive and negatively impacts women's fundamental rights, including freedom, health, and education (Çelik & Çelik, 2007). According to data from the United Nations (UN), over one-third of women worldwide have experienced harassment from known individuals (UN Women, 2022). In Pakistan, the lives of women also paint a very unsettling picture (Khan, 2019). According to data analysis provided by the Sustainable Social Development Organisation (SSDO), approximately 8 out of 9 instances nationwide include violence against women and children, including rape, child marriage, domestic abuse, honour killing, and kidnapping. The majority of cases are unreported for a variety of reasons, such as apprehension about retaliation, the reputation of corrupt law enforcement, the challenging nature of the judicial system, lower conviction and penalty rates, etc. Consequently, compared to statistics figures, the overall ratio of crimes against women is more substantial (Dhillon & Bakaya, 2014).

Remarkably, the pattern for this occurrence dates back to the latter part of the 1800s (Bowman, 1993). Prior to the 1800s, harassing in public spaces was referred to as "mashing," denoting dishonourable behaviour. According to police records, the first instance of public harassment was documented in the nineteenth century (Fairburn, 1942). Recently, harassment in public places, which include markets, streets, centres for transportation, parks, bus stops, walkways, and other areas, has drawn the attention of feminist legal experts as a kind of sexual harassment that is seldom addressed (Davis, 1993). The concept of this kind of harassment was initially introduced by Bowman and Leonardo. According to Leonardo as mentioned by Bowman (1993),

“Street 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.”

In the words of Garner, “Public place is the place which is open for all; the behaviour of society and their appearance towards that place varies from those places which are in private dwellings” (Gardner, 1995). In a recent article, Fernandez further defined harassment in public spaces as offensive or sexually suggestive words directed at women through their body language, such as winking, whistling, pinching, grasping, and touching them improperly. Additionally, he said that the harasser made the victims uncomfortable by staring at them (Fernandez, 2016).

Common forms of street harassment include verbal and nonverbal communication. It is also difficult to gather proof in this case that verbal or nonverbal abuse has occurred. In Pakistan, where social interaction between males and females is low, harassers tend to resort to nonverbal forms of harassment. Additionally, by using nonverbal harassment, the harasser can leave the scene swiftly. Compared to verbal and nonverbal harassment, physical harassment is less frequent; nonetheless, because it can lead to other types of harassment, including rape, society views it as harmful. Lengnick-Hall distinguishes between three sorts of harassers using a more inclusive classification system. "Hardcore harassers" find opportunities to harass and persist in doing so even when the victim refuses. People who label themselves as "opportunists" are individuals who actively seek out opportunities and conditions and seize them when they arise. Finally, "insensitive harassers" don't comprehend how their behaviour affects other people (LEGNICK-HALL, 1995).

The belief held by those who annoy others is that it provides amusement or pleasure. In Pakistani society, harassing on the street is not seen as a criminal offence at all. Men acknowledged that they harassed women in public, and they thought that any woman who dared to leave her home without a male companion or an abaya could expect to be harassed. Similarly, a poll found that on their way to work, school, or other destinations, men harass four out of five Pakistani urban women (Amir & Pande, 2019). Furthermore, society believes that when women are harassed by males, it is because they are inciting them. Although there is a statute in Pakistan to address street harassment, a cursory examination of the law reveals that it is inadequate in both the language and its application.

This article aims to identify the deficiencies in Pakistan's existing legislative framework concerning harassment in public spaces. This article posits that the egregious nature of this social issue must be emphasised to attract the attention of policymakers, educational institutions, and the media towards Pakistan's legislation and actions concerning public harassment, including punitive measures for deterrence and behavioural modification of offenders.

2. Literature Review

According to the literature that is currently available, there has been very little research on harassment in public places both globally and in Pakistan. It also emphasises how much of the research conducted

in Pakistan focuses on the social and psychological effects on women. Nevertheless, no study has previously examined Pakistan's legislation regarding harassment in public areas. One issue that prevents women from thriving in various walks of life is sexual harassment or assault. Harassment in public spaces is just one type of harassment that violates women's fundamental rights to equality, dignity in life, and the ability to engage in any kind of employment, trade, or business (Davidson et al., 2015).

Street harassment occurs more frequently in public settings where strangers are present, as observed by Chery Benard and Edit Schlaffer (Benard & Schlaffer, 1984). Street harassment is the term used to describe any interference or violation of women's privacy in public settings that occurs without their consent (West, 1987). One woman who participated in Kissling and Kramarae's study on harassment in public places said, "*Strangers make rude personal comments regardless of whether the remark is kind or bad, sexual or not, it is impolite and invades someone's privacy*" (Kissling & Kramarae, 1991). There are other types of street harassment, such as listening to offensive music, touching someone indecently in public, or making comments about how they look, including their physique or attire.

According to the research conducted by Fairchild and Rudman, 41% of 228 female college students reported having received unwanted sexual attention, including sexist or suggestive remarks, from unknown individuals at least once a month (Fairchild & Rudman, 2008). Moreover, these individuals frequently encounter vocal forms of public harassment, including "catcalls, whistles, and stares" (Asif et al., 2023). Nevertheless, in a matter of days or weeks, hundreds of Pakistani women also encountered unwelcome sexual insults and offensive remarks about their bodies and appearances (Kirmani, 2021). Although it is difficult to gather evidence and establish the harasser's intent, this type of harassment is a serious crime (Fairchild & Rudman, 2008).

Bowman claims that someone who harasses someone on the street is usually unfamiliar with the victim and makes comments that are overtly sexual (Bowman, 1993). He uses "verbal and nonverbal actions such as wolf-whistles, leers, winks, grabs, pinches, catcalls, etc" to make public remarks about the physical appearance of women. Benard and Schlaffer bring up the fact that women are typically the victims of this kind of harassment, with men acting as the harassers (Benard & Schlaffer, 1984). Dhillon and Bakaya claim that this link demonstrates a patriarchal society and a form of gender discrimination (Dhillon & Bakaya, 2014). Men may be able to humiliate themselves by using their (physical) power. According to Jos Boys' book, street harassment serves as a constant reminder that males take advantage of women and that society determines women's rights and safety (Matrix & Boys, 1985).

In general, incidents of harassment in public places remain unnoticed or unreported, which is the primary reason for the ineffectiveness of legal enforcement. Naila Masood and his colleagues observed instances where victims did not report to Pakistan's law enforcement institutions (Ahmad et al., 2020). Mustafa asserted that the police are not a solution but rather a problem; this societal attitude has a significant influence (Mustafa, 2017). Laura Beth also referenced another interviewee who indicated that the actions of insensitive police generate concerns regarding the enforcement of any laws designed to protect victims of harassment (Nielsen, 2000). Hlavka noted that girls refrain from reporting occurrences owing to the worry of being judged for exaggerating or overreacting (Hlavka, 2014). Generally, women tend to choose staying at home and eschewing public places.

Anna Gekoski, Jacqueline M. Grey, and their colleagues identified several factors contributing to non-reporting. The predominant kind of street harassment is often deemed insufficiently serious for formal complaint. The victim refrains from the conduct, believes that the authorities will be ineffective, and is uninformed about the process (Gekoski et al., 2015). Authorities are unable to

enforce legislation due to inadequate case reporting. Deborah M. Thompson stated that such administrative structure would be highly intricate and create obstacles in case reporting (Thompson, 1994). Regrettably, the offenders are typically oblivious to the repercussions of their actions on both the victims and society. The U.N. Special Rapporteur asserts that public harassment undermines self-respect, instills fear, and infringes upon rights to “bodily integrity” and “freedom of movement,” adversely impacting the self-esteem of women (Salman et al., 2016).

The lack of case reporting, coupled with insufficient knowledge and awareness, constitutes a significant obstacle to safeguarding against harassment in public places (Imtiaz & Kamal, 2021). Recently, Sullivan asserts that several Non-Profit Organisations (NGOs) have initiated awareness campaigns on this topic via social media (Sullivan, 2014). Likewise, several NGOs in Pakistan have initiated awareness campaigns against violence against women. These organisations encompass White Ribbon, Aurat Foundation, Acid Survivors Foundation of Pakistan, Gilani Research Foundation, and War Against Rape, among others. Nonetheless, this awareness predominantly centres on severe forms of sexual harassment, including rape. Despite the existence of legislation and awareness, women are not advocating for themselves, primarily owing to insufficient knowledge. The issue of harassment is anticipated to diminish with evolving societal norms and the implementation of awareness initiatives.

3. Analysis of Legal Framework on Harassment in Public Places

In terms of law, there might not be a civil remedy for street harassment since it is hard to bring a lawsuit against the stranger who harasses you and then vanishes (MacKinnon, 1979). As a result, many victims choose not to report the harasser or respond to them (Fitzgerald et al., 1995). It is a prevalent problem in Pakistan that presents difficulties for women. Every day, harassment against women occurs in public spaces, limiting their freedom. According to the 1973 Constitution of the Islamic Republic of Pakistan, Pakistani women are entitled to the fundamental human right of freedom of movement. Numerous national laws and policies are in place to shield women from assault. These laws include but are not limited to the Women Protection Bill of 2006, the Prevention of Anti-Women Practice Act of 2011, the Protection against Harassment of Women at Workplace Act of 2010, the Domestic Violence Act of 2020, and the Pakistan Penal Code 1860. An overview of the legislation that pertains to harassment in public places is provided below.

3.1 Constitutional Provisions

"The Constitution of the Islamic Republic of Pakistan, 1973" guarantees equal rights for women. The Equal Rights and Treatment of All Citizens/Persons Principle is emphasised in the chapter on Principles of Policy, and it applies to everyone, regardless of gender or other characteristics. A list of pertinent articles that empower women is provided below:

Article 4:

Every Pakistani citizen is entitled to the protection of the law and to be treated fairly by it. According to the Court, every citizen has an inalienable right to equal protection, and no action that jeopardises a person's life, liberty, or other rights may be taken unless authorised by law.

Article 15:

Every Pakistani citizen is entitled to freedom of movement under the constitution. Citizens of Pakistan have the inalienable right to migrate, live, and establish anywhere in the country. Under their right to life and liberty, citizens have the common right to travel by van or car on public roads (Butt, 2007).

Article 26:

The law grants all citizens, regardless of gender, the right of access to all public areas, including resorts, public transportation, and places of entertainment. Men may not be included in any special

measures that the government makes for women and children. Nonetheless, harassment of women in public places is against the 1973 Pakistani Constitution, which protects their fundamental rights. Because of harassment in public areas, women are unable to exercise their right to use public resources. In addition, they pay taxes for amenities like parks, markets, streets, walkways, and public transportation.

3.2 Pakistan Penal Code 1860

Many provisions of the "Pakistan Penal Code, 1860 (P.P.C.)" are essential for both men and women because they enable victims to pursue justice against their offender (Basit, 2018). Although P.P.C. did not define street harassment precisely, they did offer instances of it. This makes it challenging for law enforcement to enforce the law and for victims to get assistance.

Section 294:

In order to be subject to this provision, the accused must perform an offensive act in a public setting or speak, sing, or recite offensive lyrics, songs, or verses in a public setting to offend others. The word "obscene" literally means something disrespectful to decency or modesty. However, the Code offers no definition for the word "modesty." Due to a lack of reports of verbal harassment in public places under Section 294(b), there are extremely few cases under this P.P.C. provision. All of the problems stem from the obscene conduct that is covered in the first section of the section. The purpose of the legislation that Section 294 created to stop the annoyance of prostitution and comparable such illegal acts in or near public areas is discussed by the Court in the *Mst. Mahjabeen v. D.P.O.* case (*Mst. Mahjabeen v. D.P.O.*, (2009) PCr.LJ (Kar.)). The Court addresses the legislative aim behind Section 294's enactment, which was to end the prostitute nuisance and related unlawful acts in or around public areas. In this instance, the premises were utilised for illicit purposes. As a result, the High Court gave the police officers instructions to file an F.I.R.

In *Mst. Shakeela v. the State* case (*Mst. Shakeela v. the State*, (2001) P Cr. L J (Pesh.)), the defendants were discovered kissing each other in a guesthouse. According to the Court, kissing one another is considered an intention to commit Zina rather than an attempt to commit Zina. This act is illegal by law for its sheer aim, making it an obscene act under Section 294 P.P.C. In this instance, bail was granted.

Section 354:

In order for an act to be considered an offence under this provision, there must be an assault on a woman or the use of unlawful force against her, as well as an intent to violate a woman's modesty. In *Muhammad Noman v. the State*, the prosecution had effectively proven that the accused had taken pictures of the females while the co-accused had removed the victim girl's shalwar. According to the Court, these conditions fit within Section 345's outrage of feminine modesty rather than the Zina-bil-jabr case.

Section 509:

According to Pakistan's Ministry of Human Rights, the P.P.C.'s Section 509 was amended in 2010. There are two parts to this section, however only the first one addresses harassment in public areas. The following criteria must be met for an act to be considered unlawful under this section:

- The accused must have spoken, made a sound, gestured, or displayed an object;
- The accused must have intended for such words and gestures to be heard and for women to see the gestures; and
- The accused must have also intended to offend any woman's modesty (Basit, 2018).

According to this clause, doing such an act carries a maximum sentence of three years in prison, a maximum fine of Rs. 500,000, or both. Public areas and street harassment were not defined specifically in this section. Since judges are unable to amend the law or add new provisions, it remains susceptible to clear interpretation. In the case *Government of Khyber Pakhtunkhwa v. Muhammad Younas*, The Supreme Court declared that because it contributes to system stabilisation and raises public trust in the law and the judicial system, laws and their interpretations must be transparent and uniform. The Court made it clear in another P.L.J. 2009, Lah. 584 that it is unethical and offensive to female modesty for any term, song, or image to imply dirty ideas. Furthermore, the fact that women were okay with such obscene behaviour does not absolve them of their crimes.

Under Section 509, it is challenging to prove harassment, and the accused is granted bail by the court. For example, the prosecution presented evidence in *Mujahid Hussain Naqvi v. Ansar Mehmood Awan*, stating that the accused was completely participating in the incident, which was captured on Close Circuit Television (CCTV) film. Because there is nothing in the record to suggest that, even in cases where witnesses and complaints of harassment had been seen, the incident was questionable, the court declared that more investigation was necessary in this case. The petition was dismissed and the court declined to grant bail.

4. Procedure of Prosecution

Section 345 of the Criminal Procedure Code states that complaints under Section 509 are considered by the Magistrate of First Class. The process and requirements for submitting complaints are complicated, though. In cases of harassment in public places, the crucial factor that is challenging to establish is the perpetrator's intention. As a result, in Pakistan, women who experienced public harassment were unable to pursue justice. These clauses are ambiguous and will only become more useful if more, targeted clauses are added. The provisions allow the offender time to go away and intimidate the victim because they are eligible for bail and compoundable. For example, in *Abdul Rashid and another v. the State*, the complainant argued that the accused should not be granted bail because he had committed the same act while out on bail in the last F.I.R. The accused was found guilty of an offence under Section 354 P.P.C., which carries a bailable sentence. The court granted bail based on the established precedent law in *Qurban Ali v. the State*, which states that the outcome of a prior criminal case is not relevant to the present petition.

4.1 Special Laws

Pakistan is dominated by men, therefore enacting legislation protecting women from abuse has taken a while. Furthermore, there was no precise definition of harassment in effect prior to the 2010 legislation prohibiting harassment of women at work.

4.1.1 Protection Against Harassment at Workplace Act, 2010

This Act seeks to give women the fundamental right to a workplace free from harassment and to work with dignity. Additionally, this Act enables women to work with great efficiency and lift their families out of poverty. It abides by the global norms for women's empowerment set forth in the UDHR, CEDAW, and the worker's rights conventions 100 and 111 of the International Labour Organisation. It allows the formation of an inquiry committee under section 3 of this Act to look into the allegations. In accordance with Section 6 of this Act, it also offers a complaint/appeal procedure for establishing a secure workplace for all working women. Additionally, under Section 7, it permits the creation of Ombudsmen at the federal and provincial levels (Protection of Women against Harassment at Workplace Act, 2010).

Nevertheless, there isn't a specific regulation that addresses harassment in public spaces that complies with the UDHR, CEDAW, or Pakistan's Workplace Act. Therefore, complaints under Section 294 or Section 509 of the P.P.C. are filed regarding harassment, including wolf-whistles, evil glances,

touching, catcalls, statements made by strangers, etc. But since the harasser is unfamiliar to them, the victim is unable to sue him. Furthermore, no inquiry commission considers the reports of harassment on the streets and administers prompt justice.

4.2 National Policies

4.2.1 Punjab Commission on Status of Women Helpline

PCSW established a helpline “1043” for individuals experiencing harassment, especially women. Additionally, the Women Safety App was released in 2017 by PCSW and the Punjab Safe Cities Authority (PSCA). Women may indicate locations where they don't feel safe with the help of this app. In order to handle the issue, women can also notify the police via the app's crisis button. The individual is tracked by the authorities using CCTV footage and the Global Positioning System to track his whereabouts (Mustafa, 2017). However, this app can only be used by such women who are conscious, educated, and own cell phones. Though not all the roads of Punjab and streets in Pakistan have CCTV, police were nonetheless able to track the perpetrator's location.

4.2.2 Implementation of Policies

Exemplary execution can make the provisions that are already in place far more effective. Unfortunately, Pakistan's low performance renders the existing rules meaningless and creates an unfair society for women (*The World Justice Project*, 2018). In addition, the lax enforcement of regulations promotes violence in public areas like transportation, marketplaces, parks, historic sites, etc. Pakistani culture is patriarchal in nature. Thus, the largest obstacle to putting such laws into effect is the lack of awareness, the mindset of society, and the non-reporting of cases (Asif et al., 2023).

5. Conclusion

In Pakistan, harassment in public spaces, often known as street harassment, is a prevalent issue. The body of studies on the subject suggests that street harassment is a common occurrence for women. Verbal harassment is the most common type of street harassment that women encounter. They are left to handle this issue on their own since society does not know enough about street harassment. Additionally, because of social stress and a host of additional anxieties, Pakistani women neither respond to harassers nor report incidents of harassment.

Prior to the 2010 amendment to the Pakistan Penal Code, there was no law that addressed harassment in public places. The P.P.C.'s provisions, while not clearly defined, provide instances of harassment that occur in public areas. Harassment instances are not reported to the police, even after the P.P.C. was amended because of the provision's flexibility in interpretation and the lengthy and complicated case reporting process. As a result, those affected women in Pakistan were unable to pursue justice. By adding precise and clear specifications, existing laws may be made more efficient. Initiatives are necessary to provide social, moral, and legal assistance. Empowering women to enjoy their fundamental right to freedom of movement is necessary to support the nation's economic growth and development.

6. Recommendations

The following suggestions are determined by the analysis of this research in order to reduce or eliminate instances of harassment in public areas.

6.1 Legislative Reforms

According to this research, Section 509 of the P.P.C. should be amended to clearly define what constitutes harassment on the street or in public places. Additionally, it is highly advised that Sections 354 and 509 be amended to better define “modesty” in accordance with Indian law.

In order to make clearer what women's modesty included, an amendment was adopted in 2013. It is advised that a specific law on harassment in public spaces be created in order to improve things in the future. A unique regulation known as "Harassment of Bicyclists" exists in Columbia and covers wheelchair users, pedestrians, and cyclists. The following important components of that statute are required:

- Scope and beneficiaries,
- Definitions of terminology such as "harassment," "harassment in public places,"
- The rights and options available to the victim of harassment in public.
- National Committees, similar to those in India, are tasked with routinely monitoring and reviewing current policies and practices in order to suggest changes that will better assist victims.

6.2 Implementation of Current Laws

The primary obstacle to implementation is the non-reporting of cases. It is therefore advised to simplify the complaint submission process. Similar to Italy, setting up a national hotline for victims to get assistance, file reports, etc., is advised. The languages spoken on that hotline are English, Urdu, the national language, and several province languages. Similar to how complaints are filed online in India, a website is also required.

6.3 Law Enforcement Organizations

It is recommended that the government assist law enforcement, particularly the police and local authorities, in understanding the effects of street harassment on victims and taking into account their reports. It is imperative that police stations enhance their representation of female personnel. Because of this, ladies visited police stations without hesitation. The government must also give victims of crime assistance and a safe environment in public areas including marketplaces, walkways, parks, and transportation.

6.4 Awareness

Last but not least, it is recommended to raise public awareness through the media regarding harassment of women and public spaces. Curriculum items must be added, and university lectures or campaigns should be coordinated to encourage women to report harassment they may experience when moving freely in public areas.

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