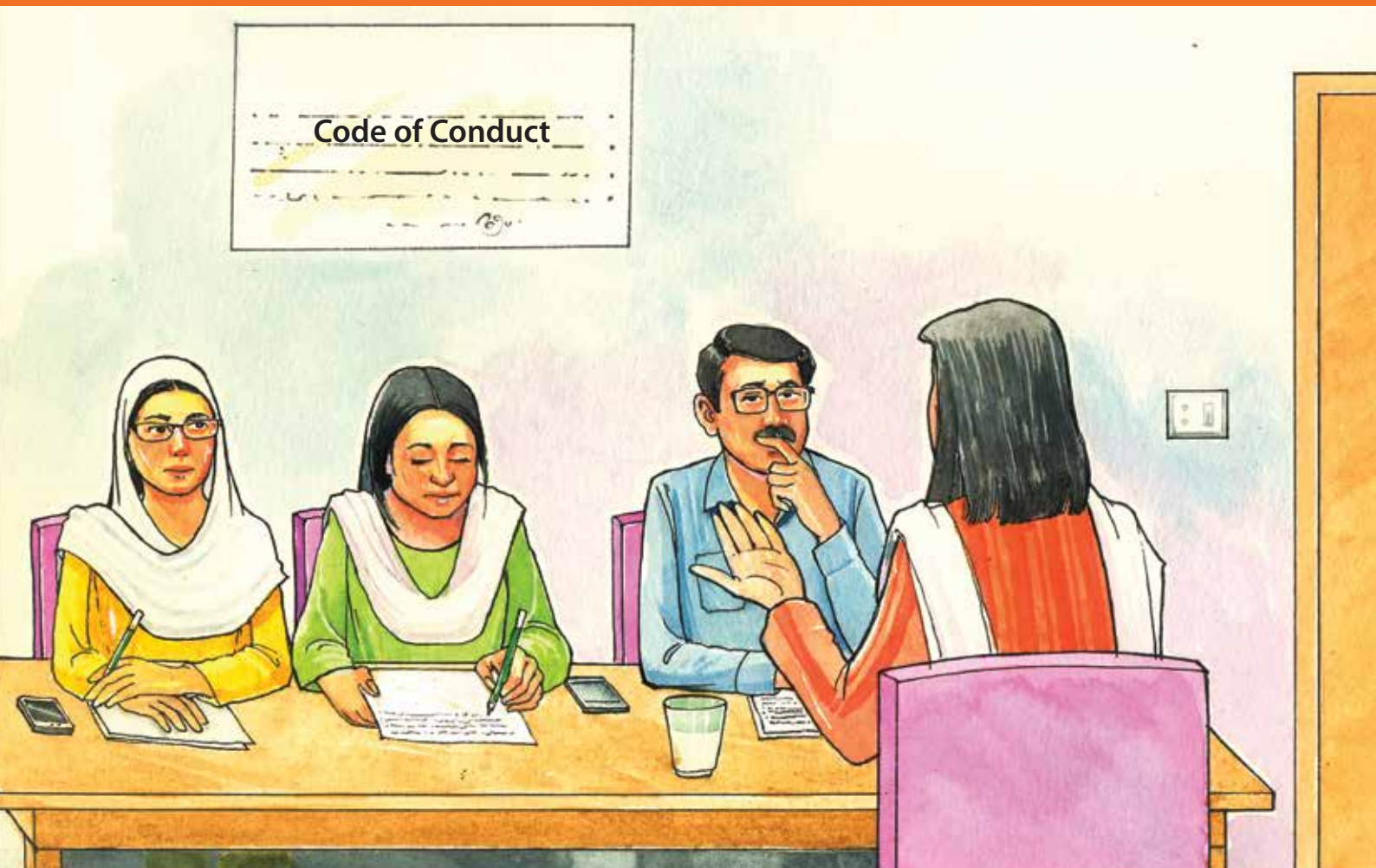


Harassment at the Workplace Toolkit

Understanding Sexual Harassment, Legal Provisions
Roles of Duty Bearers & Rights Holders
2020



UN Women

in Collaboration with
Ombudsperson, Punjab Protection Against Harassment at Workplace,
Government of Punjab

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FOREWORD

I took charge as Ombudsperson for the province of Punjab in April 2018. Ever since, I have dealt with numerous cases of harassment against women at the workplace. I fully comprehend the importance and sensitive nature of my assignment. Punjab houses over 50% of this country's population, out of which almost half are women. Coping with the demands of the modern era and realising their crucial role in the development and growth of their country, these women leave the protection of their homes to pursue a career and earn a livelihood. It is our responsibility to ensure that the dignity, respect and rights guaranteed to them in the constitution of Pakistan are secured.



Women need to be encouraged to raise their voice against all kinds of exploitation, abuse and harassment and to make full use of the protection mechanisms in place in the province. However, it is essential for them to be aware of these mechanisms and to have full understanding of how to avail them. The Punjab Ombudsperson's Office has witnessed a constant increase in the number of complaints received, which is a good sign as it shows that more women are aware of their rights and speaking up to get them. However, we also must make sure that all women in Punjab and all duty bearers are aware of the role of the Ombudsperson and are comfortable with approaching and utilising this important redressal mechanism.

The Office of the Ombudsperson Punjab takes the awareness-raising aspect for proper implementation of the law very seriously. We are running a campaign for raising awareness and this manual, designed and developed in partnership with UN Women, is another effort to spread information regarding The Punjab Protection against Harassment of Women at the Workplace Act, 2012.

I am confident that soon we will be able to send a loud and clear message to all those who still believe that harassment is not a big deal that the Government of Punjab is committed to provide protection to women and will not tolerate harassment at any workplace in the province.

Rukhsana Gilani
Ombudsperson Punjab

ACKNOWLEDGEMENTS

This Toolkit was designed and commissioned by UN Women Pakistan in partnership with the Office of the Ombudsperson Punjab. It was adapted from the toolkit for KP, that was developed and field tested by Kishwar Sultana, under the technical supervision of Saman Ahsan, Portfolio Manager, Ending Violence Against Women, Governance and Human Rights, UN Women Pakistan with support from Hafsa Mazhar and Nabila Malick from UN Women Punjab Sub-Office and Muhammad Younas Khalid, Ali Zafar, Umer Ehsan and Habib Asgher from the Country Office.

Finally, we would like to gratefully acknowledge the generous support of UK Aid that enabled us to develop this toolkit with the aim to provide public and private sector stakeholders with a better understanding of laws related to sexual harassment in Punjab as well as redressal mechanisms available to survivors.

ACRONYMS/ ABBREVIATIONS

AASHA	Alliance Against Sexual Harassment
CBA	Collective Bargaining Agent
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CoC	Code of Conduct
DFID	Department for International Development
FGD	Focus Group Discussion
FIA	Federal Investigation Agency
FIR	First Information Report
GBV	Gender-Based Violence
GDP	Gross Domestic Product
HEC	Higher Education Commission
IC	Inquiry Committee
ILO	International Labour Organisation
KII	Key Informant Interview
LTC	Lahore Transport Corporation
MOU	Memorandum of Understanding
NCSW	National Commission on the Status of Women
NGO	Non-Governmental Organisation
NR3C	National Response Center for Cyber Crime
PCSW	Punjab Commission on the Status of Women
PDHS	Pakistan Demographic and Health Survey
PPC	Pakistan Penal Code
SDGs	Sustainable Development Goals
SEAH	Sexual Exploitation and Abuse and Sexual Harassment
SOPs	Standard Operating Procedures
TORs	Terms of Reference
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

Chapter 1 - Introduction

1.1 Background

Female participation in economic activities is essential for social evolution and to create an environment in which the rights of women can be secured. For achieving this objective, a conducive and safe workplace has to be created where women can utilise their potential for personal and national growth with peace of mind and confidence.

The Constitution of Pakistan, 1973, recognises the fundamental rights of citizens to dignity and respect. To make provision for protection of women against harassment at the workplace, the **Protection against Harassment of Women at the Workplace Act, 2010 (Act IV of 2010)** was enacted, which was adapted by the Punjab vide **Punjab Protection against Harassment of Women at the Workplace (Amendment) Act, 2012** (Act III of 2013). Government of the Punjab established Office of Ombudsperson in February 2013. **The Criminal Law (Amendment) Act, 2009 - Amendment to Section 509** of the Pakistan Penal Code, 1860 and In the Code of Criminal Procedure 1898 - is another legal provision to make the public and work environment safer for women.

For effective implementation of any law its knowledge and understanding among the masses is essential. For women to live with dignity and respect and enjoy human rights as equal citizens, guaranteed by the constitution, awareness of all available protection mechanisms is important.

The Protection Against Harassment of Women at the Workplace Act provides a detailed framework on how workplace harassment is to be reported and dealt with. The act requires organisations - government, private and non-governmental - to endorse and implement the Code of Conduct. This Code provides for the minimum standards on how employees, management and owners of organisations are required to conduct themselves in a work environment.

The law on sexual harassment has the potential to bring about positive change for women at the workplace. The Act and the establishment of the Ombudspersons' secretariats are a significant step in the right direction. But this is just the beginning, of course. There are many challenges faced by the Offices of the Ombudspersons to ensure effective functioning and support the implementation and monitoring of the legal framework. National and Provincial Commissions on Status of Women, UN agencies, Civil Society and other stakeholders are providing support for the capacity building, synergies creation and development of mechanisms that are required to effectively implement the law.

1.2 About the Toolkit

This is an easy-to-understand toolkit that has been developed with the aim to enhance awareness and knowledge about harassment and sexual harassment. The toolkit also explains anti-harassment concepts, normative frameworks/ instruments as well as procedures for creating a safe work environment for all, in accordance with the laws in Punjab. It can be used for information dissemination and effective implementation of the law, as most of the legal provisions are often not implemented due to lack of awareness of the duty

bearers as well as the victim.

The specific objectives of this toolkit are to enhance understanding of:

- **Duty Bearers** - regarding their role in the provision of safe work environment for women, men and transgender persons and for the implementation of Punjab Protection Against Harassment of Women at Workplace Act 2012.
- **Trainers, within the Departments/ Organisations** - for imparting knowledge to the Inquiry Committees and training staff.
- **Complainants** - regarding how to file and pursue their case effectively.
- **Everyone** - about the issue of sexual harassment, legal provisions and their implementation, loopholes and challenges.

This Toolkit has four chapters. Each chapter addresses various questions regarding sexual harassment including legal provisions, redressal mechanisms, responsibilities of the duty bearers and information and guidelines for the complainant.

Annexures:

At the end of the toolkit is the annexure section which provides details on the relevant information – full texts of important laws, some other relevant sections of the Pakistan Penal Code, and an account of some useful training methodologies with note for the trainers.

Chapter 2 – Understanding Harassment

From Denial to Acceptance of the Prevalence of Harassment and Sexual Harassment at the Workplace

Understanding the issue of harassment and sexual harassment is important – unless the state and society accept its prevalence, we will be unable to address it in a manner that can create a safe environment for all, especially for women and girls. Acceptance of the fact that harassment exists is the first step towards preventing and addressing the issue. However, for this, it is important to understand and differentiate between harassment and sexual harassment. This chapter of the toolkit addresses these terms in essence, and other related questions as well.

2.1 What is Harassment?

Harassment means any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating hostile, or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures, actions or omissions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. It includes harassment based on any of the following grounds.

Such kind of harassment can be based on:

- Religion/sect
- Age
- Disability
- Sex/gender or sexual orientation
- Race/color
- National origin
- Ethnic and linguistic origin

Types of Harassment	Examples to Understand and Differentiate
Religious/ Sectarian Harassment	<ul style="list-style-type: none"> • Pressurising to convert to another religion or sect • Disrespecting others' religion or constantly threatening them on the basis of religion • Expressing hatred through printed material or showing hatred that can pose serious threats for one's wellbeing or security • Intolerance or disrespect toward religious rituals, holidays, traditions and customs • Making religious/ sectarian jokes • Stereotypical derogatory comments
Racial Harassment	<ul style="list-style-type: none"> • Displaying racist or other offensive or derogatory material • Written or verbal abuse or intimidation based on race • Insults, insulting jokes, prejudices, mean comments, disrespectful gestures for any particular race or other races in general • Intolerance towards differences – skin colour, facial features, clothing, etc.
Gender Harassment	<p>This refers to harassment on the basis of one's gender (male/ female/ transgender person) and the stereotypical gender roles and expectations. Some examples of harassment on the basis of gender are:</p> <ul style="list-style-type: none"> • Harassing, putting down or belittling a male for doing what is socially believed to be a woman's job. • Ridiculing a female banker, pilot, machine operator, etc., for their unconventional role. • Showing insensitivity towards working women by expressing biases regarding their performance because they are women. • Sharing cartoons, making jokes, remarks or gestures that are degrading to women. • Deriding a transgender person for doing office work as if that is not their domain.
Sexual Harassment	<p>This refers to harassment that is sexual in nature. For example:</p> <ul style="list-style-type: none"> • Sharing sexual photos or pornographic material • Making sexual comments, jokes, questions • Unwelcome/ inappropriate sexual touching and gestures or unwelcome repeated invitations for a date/ dinner, etc. • Invading someone's personal space in a sexual way. <p><i>(Details in the next section of the toolkit)</i></p>

Physical Harassment	<p>This form of harassment means violent/ aggressive behaviours which might include threats/ intent to inflict harm:</p> <ul style="list-style-type: none"> • Physical attacks (hitting, shoving, kicking) • Threatening behaviour (shaking fists angrily) • Destroying property to intimidate
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All kind of harassments can have verbal, non-verbal and physical aspects

Important Note: As defined in the Protection of Women from Harassment at Workplace Act 2010), no case of harassment can be taken up by the Ombudsperson's office if it is not about the workplace/ office staff and that does not fall under the "sexual-harassment" category according to the definition provided in the law.

See details in other sections of the toolkit

2.2 What is Sexual Harassment?

Sexual harassment is harassment that is sexual in nature and generally includes unwanted sexual advances, conduct or behaviour. According to the Protection Against Harassment of Women at Workplace Act 2010:

"Harassment" means any unwelcome behaviour,¹ sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment,² or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman, man or transgender person. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker.
- Sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.³

Any **UNWELCOME** Sexual:

- Advance
- Request for sexual favors, or
- Other verbal or written communication, or
- Physical conduct of a sexual nature or sexual demeaning attitude

Causing

- Interference with work performance, or
- Intimidating, hostile or offensive work environment, or
- Attempt to punish the complainant for refusal to comply to such a request, or compliance is made a condition for employment

According to Pakistan's Legislative Framework:

According to Amendment to the Pakistan Penal Code, Section 509 and the Code of Criminal Procedure, 1898 - Insulting modesty or causing sexual harassment is defined as when someone:

- (i) Intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;
- (ii) conducts sexual advances, or demands sexual favours or uses written or verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of work place, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

DFID's standards, guidance for partners and information on how to report a concern:

Safeguarding against Sexual Exploitation and Abuse and Sexual Harassment (SEAH):

Safeguarding broadly means avoiding harm to people or the environment. Since early 2018, DFID has been focused on safeguarding against Sexual Exploitation and Abuse and Sexual Harassment (SEAH) in the international aid sector.

UN definitions for SEAH:

- **Sexual Exploitation:** Any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes. Includes profiting momentarily, socially, or politically from sexual exploitation of another. Under UN regulations it includes transactional sex, solicitation of transactional sex and exploitative relationship.
- **Sexual Abuse:** The actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. It should cover sexual assault (attempted rape, kissing/ touching, forcing someone to perform oral sex/ touching) as well as rape. Under UN regulations, all sexual activity with someone under the age of 18 is considered to be sexual abuse.
- **Sexual Harassment:** A continuum of unacceptable and unwelcome behaviours and practices of a sexual nature that may include, but are not limited to, sexual suggestions or demands, requests for sexual favours and sexual, verbal or physical conduct or gestures, that are or might reasonably be perceived as offensive or humiliating.

Types of Sexual Harassment	
Gender Harassment	Generalised sexist statements and behaviour that exhibit insulting or degrading attitudes about women, men, transgender persons. Examples: insulting remarks, obscene jokes or humour about sex, etc.
Seductive Behaviour	Unwanted, inappropriate and offensive sexual advances. Examples include repeated and unwanted sexual invitation; insistent requests for dates/ dinner; persistent letters, emails, phone calls, messages, etc.
Sexual Bribery	Solicitation of sexual activity or other sex-linked behaviour by promise of reward; the proposition may be either overt or subtle
Sexual Coercion	Coercion of sexual activity or other sex-linked behaviour by threat of punishment; examples include negative performance evaluations, withholding of promotion, threat of termination, etc.
Sexual Imposition	Gross sexual imposition (such as forceful touching, feeling, grabbing), or sexual assault
Source: American Psychological Association	

Verbal and Non-Verbal Harassment	
Verbal Sexual Harassment:	Non-verbal Sexual Harassment
<ul style="list-style-type: none"> • Sexual remarks • Gender-based insults or sexual oriented comments/ remarks • Jokes of a sexual nature that cause awkwardness or embarrassment • Innuendoes or taunting • Telephone calls with sexual overtones/ undertones • Proposals of physical intimacy whether indirect or explicit, or through intimidation • Repeated unwelcome requests for dates • Requesting sexual favours 	<ul style="list-style-type: none"> • Pinching, grabbing, hugging, patting, brushing against, touching, kissing • Displaying/ electronically sending pornographic or other offensive or derogatory pictures/ cartoons/ sayings • Leering (suggestive staring), or • Other obscene or offensive gestures like touching oneself sexually for others to view

2.3 Who can be Sexually Harassed?

The issue of sexual harassment, however, is not related to only women and girls - anyone can be sexually harassed. Anecdotal evidence and data show that within the gendered power structure, women, men, transgender persons of all ages and irrespective of class, caste, religion, ethnic, racial or educational background may all be victims according to the circumstances and power dynamics.

Anyone can be Sexually Harassed:

Men and boys, women and girls, transgender persons of all ages irrespective of class, caste, religion, race or ethnic background, designation at workplace and education

Points to remember:

The victim may be a woman/ girl, man/ boy or transgender persons of any age

The victim does not have to be of the opposite sex

Women, Girls, Boys and Transgender persons are more vulnerable

More cases of harassment are registered by these groups

Sexual harassment is a manifestation of power relations. Women, girls, boys and transgender persons are much more likely to be victims of sexual harassment because they often lack power, are in more vulnerable and insecure positions, lack self-confidence, or have been socially taught to remain silent.

This requires an intersectional analysis of the situation – to understand how people are often disadvantaged by multiple sources of oppression: their race, class, gender identity, sexual orientation, religion, and other identity markers.⁴ Intersectionality is defined as the complex, cumulative way in which the effects of multiple forms of discrimination (such as racism, sexism, and classism) combine, overlap, or intersect especially in the experiences of marginalised individuals or groups.⁵

What does data tell us:

As per the records of the Punjab Ombudsperson for Protection Against Harassment of Women at Workplace following is the data available between 2014 and mid-2020.

COMPLAINANTS OF HARASSMENT AT WORKPLACE

Total Complaints received regarding women grievances: 4630				
Total relevant complaints of harassment: 380				
Total relevant complaints of harassment admitted for hearing: 338				
Decided complaints of harassment: 246				
Penalty imposed	Exonerated	Withdrawn by complainants	Filed due to different reasons	Under process (at different stages)
145	38	48	15	92

Appeals Against Decisions of Inquiry Committees**Total Entertained: 35**

DECIDED : 34				
Modified	Impugned order set aside	Filed	Impugned order upheld	Under process
12	7	2	13	1

Complaints Against Employers Failure to Ensure Implementation of The Act**Total Entertained: 8**

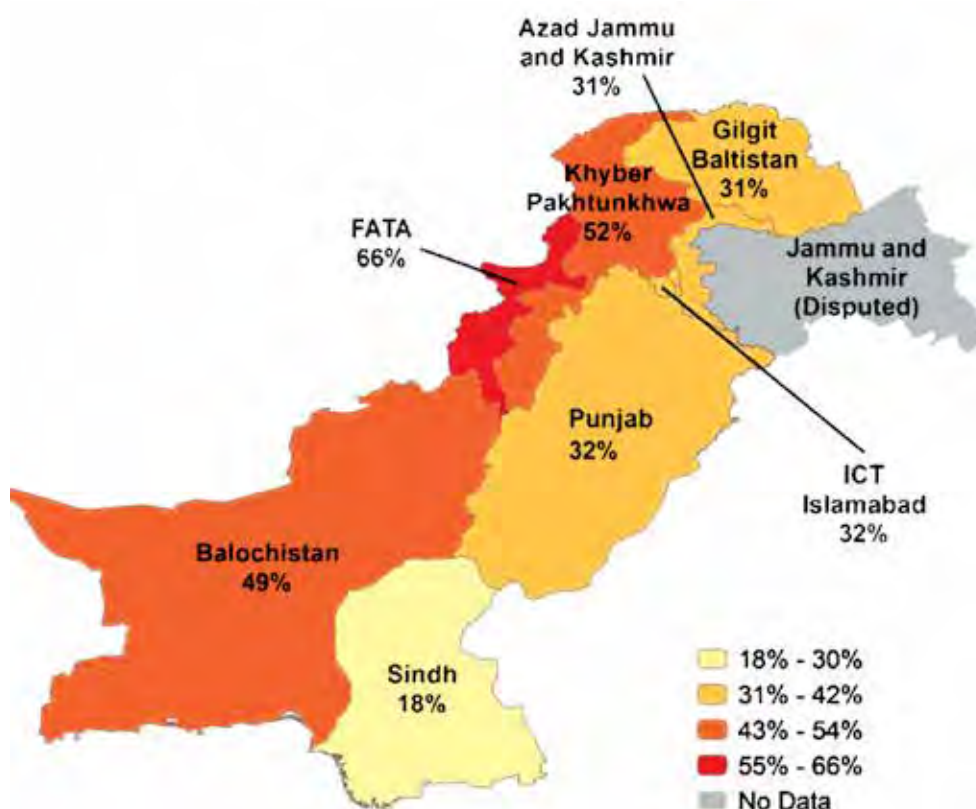
DECIDED : 34	
Decided	Under process
7	1

Annual Breakdown of Cases

Year	Cases registered
2013	14
2014	30
2015	68
2016	55
2017	25
2018	58
2019	65

Some Facts on other Forms of Gender-Based Violence (GBV):

The Pakistan Demographic and Health Survey (PDHS) 2017-2018 map given on this page indicates the percentage of women who have experienced spousal violence including physical, sexual and emotional violence. According to the survey, Punjab shows a percentage of 32% but the highest percentage was recorded in FATA at 66%, followed by Khyber Pakhtunkhwa (52%)⁶



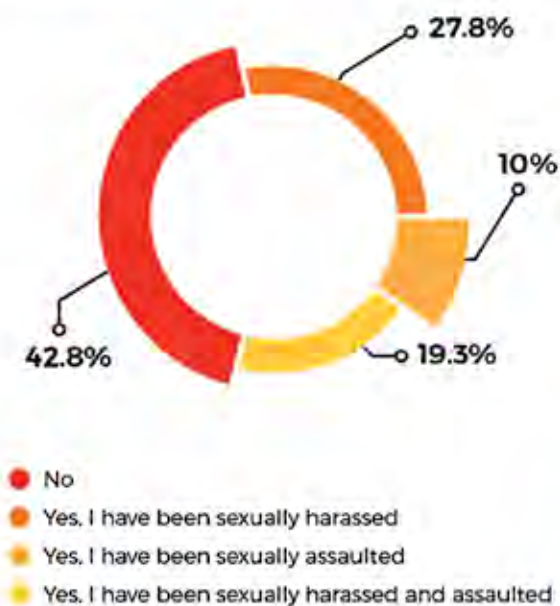
Women Safety Audit in Public Transport in Lahore

A "Women's Safety Audit in Public Transport in Lahore"⁷ was conducted by UN Women, Aurat Foundation, and the Women Development Department, Government of the Punjab in 2017 with support from Australian Aid. The safety audit found that:

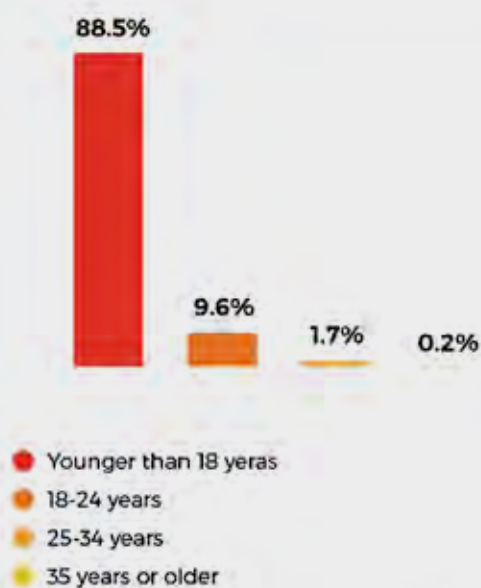
- About 90% of women report experiencing sexual harassment on buses, with a higher ratio on Lahore Transport Company (LTC) buses. The main types of sexual harassment include passing sexual comments, staring, pushing and inappropriate touching.
- About 82% of women commuters' report facing harassment at bus stops, with higher rates at LTC bus stops compared to Metro bus stations, and amongst younger women (20–29 years of age) as compared to older women. The most common types of sexual harassment at bus stops include staring, stalking, obscene gestures, whistling, passing sexual comments, and touching.
- The perpetrators are primarily fellow passengers. About 62% of women state that they have been harassed by fellow passengers; this perception is confirmed by all Metro bus drivers and 97% of LTC bus drivers and conductors. Women also report being harassed by bus staff and by passers-by.

The Express Tribune conducted a survey in 2016 in which readers were asked whether **men had ever been assaulted or abused** and what was their age when the incident happened. The results of the same were quite horrifying:

1. Have you ever been sexually harassed or assaulted?



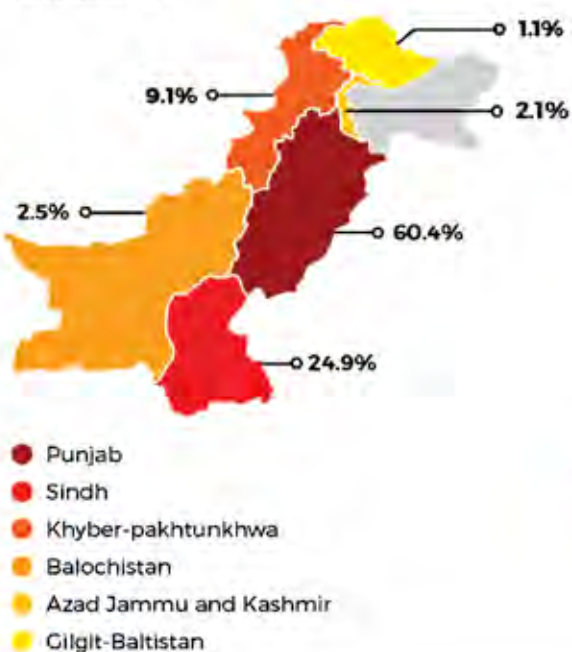
2. What was your age when this incident happened?



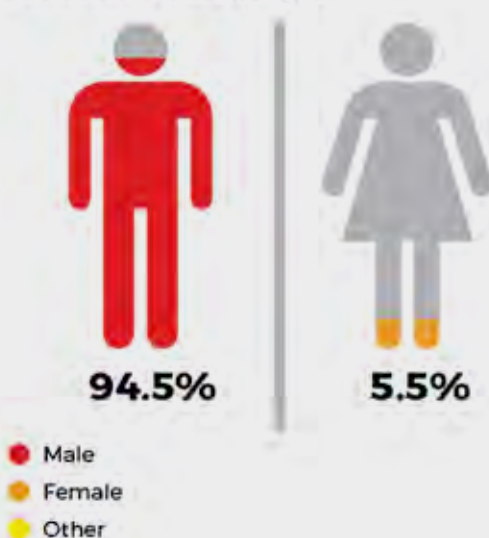
Respondents: 927

Source: The Express Tribune survey

3. What province or region did this incident take place in?



4. How would you identify the person who harassed or assaulted you?



Source: The Express Tribune survey

About the Harasser - Some Common Characteristics of a Harasser:

Although there is no simple profile of a harasser, some common characteristics have been compiled by organisations/ researchers⁸, which are as follows:

- **Abuse/ misuse of power** - want to maintain the power dynamics that favour them and misuse them to perpetuate the power differential
- **No Empathy** - lack empathy towards others, have low understanding about others' rights and their responsibilities towards others. Although they have little empathy, they can be good at mimicking it in order to exploit their victims.
- **Narcissistic tendencies** - might justify sexual harassment if they think they've been deprived of a sexual experience they "deserve." Narcissism is an imposing view of one's own talents coupled with a lack of empathy for others and a deep need for admiration. Narcissists don't care if you like them, but they do want you to think they are powerful and impressive.
- **Fearless dominance and aggressive impulsivity** - In other words, they are bold, manipulative exploiters.
- **Change Values to Justify Behaviour** - we usually choose behaviours that match our values, but sometimes, through moral disengagement, people can change their values to justify their behaviour. This is how sexual harassers can maintain their view of themselves as decent, even morally upstanding people.
- **Have internalised the following beliefs/ attitudes:**
 - o Their subordinates are weak and will not speak-out
 - o They have cultural and legal leverage
 - o They hold conventional views on gender roles and concepts regarding women's role in the public/ private spheres
 - o Have a hostile/ negative attitudes towards women and/ or other weak/ vulnerable groups.
 - o Believe that what they are doing is not a crime.

2.4 Impacts of Sexual Harassment?

Harassment and sexual harassment can leave long lasting impacts that can range from painful to destructive and short-term to long-term. Sexual harassment can have a strong impact on the psychological, physical and economic wellbeing of an individual. The American Psychological Association lists the following effects of sexual harassment:

Physiological	Psychological and Emotional	Career Related Effects
<ul style="list-style-type: none"> • Skin reactions • Weight fluctuation • Headaches • Lethargy • Sexual problems • Gastrointestinal distress 	<ul style="list-style-type: none"> • Confusion, feelings of being powerless • Shame, self-consciousness, low self-esteem, guilt, self-blame • Isolation • Phobias, panic reactions • Depression, anxiety, shock, denial • Anger, fear, frustration, irritability • Insecurity, embarrassment, feelings of betrayal • Sleep disturbances, nightmares 	<ul style="list-style-type: none"> • Change in career goals, jobs, educational programs, academic majors, etc. • Withdrawal from work or school, drop in academic/ work performance • Decreased job satisfaction • Unfavourable performance evaluations • Loss of job or promotion

Sexual harassment is a reality that not only negates the fundamental rights of women, but also restricts women from taking an active and effective part in society according to the fullest of their potential and capabilities. This results in social, psychological and economic suffering of half of the country's population and has negative implications for social and economic growth at the national level.

AASHA – Alliance Against Sexual Harassment -Pakistan

In addition to harmful effects on the concerned individual, lack of seriousness in any society/ institution about dealing with sexual harassment can have long term and broader negative impacts on the society. It:

- Can lead to an increase in sexual and gender-based violence and crimes
- Nurtures a power-dominated culture with no respect for the fundamental rights of women, children, transgender persons, religious and ethnic minorities
- Erodes respect for institutions
- Promotes a culture of fear
- Undermines development of the country – through low productivity of the labour force and subsequent decrease in GDP

Pakistan has a male dominated work environment and labour market, which are often hostile and challenging for women. Women and girls face many barriers towards their equal participation in the country's development and exercising their fundamental right to employment. Despite these challenges, however, women's participation has increased in government and private sectors in recent years. The Government has introduced a 10% quota for women in order to encourage them to join the labour force. Yet, there is still a great deal that needs to be done for creating a safe and conducive working environment for women.⁹

Sexual Harassment is one of the main challenges faced by Human Resource Departments in Developing Countries in the 21st century.¹⁰

According to the Status Report of 2016, "Women Economic Participation and Empowerment in Pakistan", by Center of Gender and Policy Studies, UN Women and National Commission on Status of Women-Pakistan:

- Women comprise 39% of the labor force in the agriculture, forestry, hunting and fishing sector (with 73% of employed women working in this sector), 22% in the Community, social and personal services sector and 20% in Manufacturing.
- Within agriculture, women are concentrated in animal production (47%), followed by mixed farming (23%) and growing non-perennial crops (18%).
- Within occupations, the share of women's employment is high in the category of skilled agriculture and fishery workers (38%), professionals (30%), elementary occupations (21%) and crafts and related trades (18%). Women in skilled agriculture are concentrated in the sub-category of livestock and dairy producers.
- 30% of women and 3% of men in the labor force are home-based workers. Of the total wages of Rs. 400 billion earned by these women and men, Women's contribution share is 65%.

2.5 Does Sexual Harassment happen at Workplaces and in Public Spaces in Punjab?

Low reporting does not mean that prevalence of sexual harassment is low. Even developed countries where human rights are fully recognised and promoted continue to improve their systems to protect women and vulnerable groups against harassment. Patriarchy is global and so is the issue of sexual harassment. The Ombudsperson's office hears cases everyday regarding sexual harassment complaints. For details on Punjab Ombudsperson office please refer to the website address given below:

<https://ombudsperson.punjab.gov.pk/>

A Dawn survey of 300

women found: Sexual harassment, abuse and discrimination in Pakistan's workplaces, including universities, are pervasive, mostly unreported and ignored by senior managers.

April 19, 2018 –<https://www.dawn.com/news/1395215>

2.6 Why Denial? Pretexts and Myths

In general, society tends to deny or ignore the prevalence of sexual harassment on different pretexts. Some of these are as follows:

- Sexual harassment is culturally seen as bringing "dishonour" therefore society does not accept its occurrence at the level of the family.

- People lack awareness and skills to tackle the issue, so they find it easier to ignore rather than take action.
- Families keep silent for they fear that the family member shall be stigmatised for life.
- People think that sexual harassment is a “personal issue” and they don’t want to get engaged with others’ matters.
- It is perceived that reporting and highlighting cases of harassment can lower the image of the country at an international level.
- Sense of impunity encourages perpetrators to continue to harass without fear.
- A culture of victim-blaming is also prevalent, as there is a common misconception that women and girls actually invite harassment.
- Often women and young girls keep quiet because they fear losing their jobs if they speak up.
- Some people wrongly believe that harassment is not an issue, but an instrument used by women to make personal gains. They believe that harassment charges are only for blackmailing.
- There is also a mindset that naming and shaming will dishonour the harasser, which is explained to be against religious teachings of forgiving and covering up someone’s vices.
- A utopian notion leads some to believe that their co-workers are pious people who cannot harass women at all.
- There is also a perception that the issue of harassment is actually a western propaganda. People who hold this belief therefore deny that women, children and transgender persons in country are being harassed.

Self-deception is not helpful for the development of any society.

Acceptance of the prevalence of Sexual Harassment is the first step to combat it.

Sexual Harassment: Myths and Facts:

A range of myths and misconceptions are prevalent regarding sexual harassment that show society’s attitude and practices for responding to the issue. If we want to tackle sexual harassment at the workplace, we need to debunk these myths. Some of the myths and facts are given in the table below.¹¹

Myths	Facts
Sexual harassment is not as harmful to the victim as portrayed.	Sexual harassment can cause significant psychological, physical and economic harm. Psychological and physical consequences include poor physical and mental health, depression and anxiety, sense of helplessness and low self-worth. Economic consequences include decreased performance which can cause job loss or dropping out.

It is not a big deal if a person feels harassed. It's all done in good fun.	Harassment is an abuse. Even if the perpetrator believes he/ she is only doing it for fun, it still is unacceptable. It always makes people feel disempowered, intimidated, degraded and uncomfortable. It should never be taken lightly in the spirit of fun.
Victims are to blame for being harassed ('What were you wearing?' 'What were you doing there?').	The harasser is always responsible for having committed the harassment – the victim is not responsible for it, regardless of what he/ she was wearing or doing.
Older people are not considered sexually attractive by others, so they don't experience sexual harassment.	Sexual harassment is unrelated to physical attractiveness or sexual desire, so it can happen to anyone. It is used to coerce, bully and intimidate.
Men sexually harass others because they are sexually frustrated or cannot control themselves.	The majority of sexual harassment is planned and does not indicate a loss of control on the perpetrator's part.
Prostitutes cannot be sexually harassed.	Sexual harassment means unwelcome behaviour, and everyone has the right to say no.
'No' can sometimes mean 'Yes' – women are difficult to understand	No always means NO! A yes can also turn into a no. When someone says no, regardless of what they are wearing, doing or whether they said yes in the past, it is to be taken as a no.
If a woman really wanted to discourage sexual harassment, she could have done so.	Often the harasser is in a position to punish the women by withholding a promotion/ bonus or by giving a bad evaluation, etc., so women are in a power dynamic where they find it difficult to speak up. Further, women are ingrained to be gentle, mild and please others, so it goes against their upbringing to express their discomfort with certain behaviour.
If you ignore sexual harassment, it will go away	Ignoring only encourages the harasser to make further advances. Telling the person clearly to stop or taking action against them can help.
Sexual harassment is inevitable where men and women work together	While interaction between them might be inevitable, unwelcome sexual advancements are not.

2.7 Why Does Sexual Harassment Take Place?

Studies show that there are two major factors which together makes a work environment more prone to sexual harassment:

1. **Male-Domination at Workplace** – Number of male employees is higher than the female employees or only a few women are working. Also, this gap is visible in the leadership/ management of the organisation.
2. **Organisational Systems/ Procedures and culture give the message that harassment is not an issue – or will be tolerated.** This happens where the organisational leadership does not take complaints of harassment/ sexual harassment seriously, take action according to the laws, or communicate and implement a zero-tolerance policy against sexual harassment.

According to Dr. Shawn Burn (Psychology Professor at California Polytechnic State University in San Luis)¹²

- Sexual harassment is used to intimidate, disempower, and discourage women in traditionally male-dominated occupations.
- Often the behaviour goes so unchecked by leaders of an organisation that it becomes a workplace norm.
- Many men are surrounded by a culture that reduces women to sexualised objects, which makes this treatment look normal to many.
- Men in high places of power often believe that they are above the law, immune to company policy or beyond scrutiny.

Those institutions are conducive to sexual harassment where a Culture of Silence exists. "Breaking Corporate Silence: How High Influence Leaders Create Cultures of Voice,"¹³ research shows four types of silence exists:

Four Types of Silence	
1 Defensive	Rooted in fear - Silence is used as a response to the perception of aggressive leadership practices. Employees use silence as a way to stay safe in such environment.
2 Offensive	Rooted in the Pursuit of Justice - Offensive silence has a retaliatory motivation. When an employee perceives a leadership or company action as unfair or unjust, they can determine that silence is a way to level the playing field.
3 Futility	Rooted in Apathy and Cynicism - Employees who have tried to participate by speaking up in the past and experienced no acknowledgement or change as a result determined that speaking up made no difference and that their voice has no merit
4 Social	Motivated by Protectionism - which is the desire to maintain close peer relationships. Employees may look the other way if they see a colleague doing something wrong, even if it represents risk to the company/ organisation

Celebrating #MeToo's Global Impact

BY MEIGHAN STONE AND RACHEL VOGELSTEIN

First launched by the activist Tirana Burke in the United States a decade ago, the MeToo movement has now reached nearly every region of the world; the phrase itself, and the viral hashtag #MeToo, is in regular rotation in more than 85 nations. Comparable local campaigns exist in dozens more. Women who previously endured abuse, harassment, and discrimination in silence have raised their voices en masse, collaborating across borders to demand reforms.

Fear not. A fundamental shift in women's rights is underway. The #MeToo movement continues to achieve widespread—and tangible—progress on a global scale. Its influence can be measured in the courts, in changing legislation, and, paradoxically, in the growing backlash.¹⁴

UN Women's Publication on #MeToo¹⁵

Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #MeToo

Authors/ editor(s): Purna Sen, Eunice Borges, Estefania Guallar, and Jade Cochran

The #MeToo movement has made obvious that sexual harassment is a universal phenomenon that occurs in private and public spaces, and in formal and informal institutions, including government agencies, private sector, non-governmental organisations (NGOs), and the United Nations.

This publication intends to support policy makers, employers, and activists by sharing UN Women's work on this topic and offering new guidance on policy and practice on sexual harassment. It does so within the context of international commitments and standards that address violence, discrimination against women, and human rights, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Sustainable Development Goals (SDGs).

The publication defines sexual harassment as a form of violence and discrimination rooted in historic power imbalances and the male dominated culture, which permeates governments, the private sector, international organisations, and even areas of civil society. It underscores that leadership and culture change are the foundation for permanent and meaningful organisational change to end sexual harassment. It includes "Core elements of effective sexual harassment policy and procedure" as well as examples of UN Women's specific work against sexual harassment in a range of contexts. Moreover, it includes contributions from UN Women's Youth Council and the United Nations Feminist Network towards ending sexual harassment.

Chapter 3 - Steps Taken

Laws and Implementation Mechanisms – Understanding the Role of Duty Bearers

3.1 Do we have any Legal Provisions available for Protection Against Harassment in Pakistan?

Law/ Legal Provision	Description
The Protection against Harassment of Women at Workplace Act, 2010	<p>The Law was enacted in March 2010 for whole of Pakistan. It makes sexual harassment of women and men at workplace a criminal offence. The law requires from government and non-governmental organisations/ institutions to constitute a dedicated three-member Inquiry Committee according to the Code of Conduct, however, a complainant can also submit an application in the office of the Provincial Ombudsperson for Protection Against Harassment of Women at Workplace.</p> <p style="text-align: right;"><i>Annex 1 – Full text of the law</i></p> <p>The Government of Punjab has endorsed the Act of 2010. The amendment act is called Punjab protection against harassment of women at workplace Act 2012. The office of Ombudsperson was established in 2013.</p>
The Criminal Law (Amendment) Act, 2009 Amendment to Section 509 of the Pakistan Penal Code, 1860 and In the Code of Criminal Procedure 1898	<p>The Criminal Law (Amendment) Act, 2009 Amendment to Section 509 of the Pakistan Penal Code, 1860 and In the Code of Criminal Procedure 1898 - defines harassment and recognises it as a crime both at workplace and public spaces.</p> <p>This section has increased the maximum punishment for this offence to imprisonment which may extend to three years or a fine of up to five hundred thousand rupees or both.</p> <p style="text-align: right;"><i>Annex 2 – Full text of the Amendment</i></p>
Transgender Persons (Protection of the Rights) Act 2018	<p>This Federal Law extends to the whole of Pakistan.</p> <p>2(H) of the definition's section defines "harassment".</p> <p>The Enforcement mechanism will be the same as defined by Protection Against Harassment of Women at Workplace Act 2010.</p>
Prevention of Electronic Crimes Act, 2016	<p>In case of receiving pornographic material/ pictures, repeated threats, spying on data and blackmailing, etc., a complaint with the National Response Centre for Cyber Crime (NR3C) FIA can be filed. Penalties range from a minimum for Rs.100,000 in a fine and a few months in jail to over ten million rupees in fines and up to twenty years in jail.</p>
Other Relevant Provisions	<p>There are some other provisions available in Pakistan Penal Code regarding violence against women/ molestation etc. However, the complaints cannot be submitted to Ombudsperson.</p> <p style="text-align: right;"><i>Annex 3 – Brief Info about Pakistan Penal Code Relevant Sections</i></p>

3.2 Who has to Adopt the Code of Conduct According to the Law? Responsibilities of the Management

Protection of Women Against Harassment at Workplace Act 2010 was passed as a commitment to create a harassment free work environment for women in Pakistan. It states that the Constitution of the Islamic Republic of Pakistan recognises the dignity of person as a fundamental right.

The law makes it mandatory for every “organisation” to:

- (1) Adopt Code of Conduct prescribed in the law;
- (2) Mention it in the organisation’s Human Resource (HR) policies;
- (3) Set up a three-member committee to address complaints; and
- (4) Inform employees about the policy and the procedures.

“Organisation” Means

Section 2 definitions (L) define what is meant by the word “organisation” for whom it is compulsory to adopt the code of conduct.



- a Federal or Provincial Government Ministry, division or department,
- A corporation or any autonomous or semi-autonomous body,
- Educational Institutes,
- Medical facilities established or controlled by the Federal or Provincial Government or District Government or
- Registered civil society associations or
- Privately managed commercial or industrial establishment or institution,
- Any other registered private sector organisation or institution

*a company as defined in the Companies Ordinance, 1984 (XLVII of 1984)

For example: Higher Education Commission will endorse the Code of Conduct and constitute a committee informing all employees - however, it does not mean that universities are not mandated to endorse the code of conduct. Universities that come under the commission will also adopt the Code of Conduct separately and meet all the requirements according to the law. If a University has separate departments then the committees are to be constituted at that level too.

Section 2(n) of the law also defines what does it mean by **“Workplace”**



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

Questions:

- I run a transportation business. I have two vehicles, each one is for 100 passengers. I have no female staff. Do I need to comply with the law? **Yes!**
- I am heading a government office. Though, according to the quota 10% should be hired but still don't have any women in office. It is an all men office. Do I need to endorse the Code of Conduct on Sexual Harassment? **Yes!**
- I am really strict about sexual harassment in my workplace as well as the conduct of my staff. We never had faced such issues, Alhamdu Lillah! However, it is said that we all have to endorse the Code of Conduct. Is this correct? **Yes!**

3.3 Who is Responsible to have the Code of Conduct Implemented within the Organisation?

“Employer” in relation to an organisation, means any person or body of persons whether incorporated or not, who or which employs workers in an organisation under a contract of employment or in any other manner whosoever and includes:



- (i) an heir, successor or assign, as the case may be, of such person or, body as aforesaid;
- (ii) any person responsible for the direction, administration, management and control of the management;
- (iii) the authority, in relation of an organisation or a group of organisation run by or under the authority of any Ministry or department of the Federal Government or a Provincial government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;
- (iv) the office bearer, in relation to an organisation run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;
- (v) the proprietor, in relation to any other organisation, of such organisation and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof.
- (vi) a contractor or an organisation of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organisation for any purpose whatsoever and for payment in any form and on any basis whatsoever; and
- (vi) office bearers of a department of a Division of a Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette.

According to the Protection Against Harassment of Women at Workplace Act 2010, the responsibility for the implementation of the Act, including but not limited to incorporate the Code of Conduct, lies with the “Employer” as part of their management policy- section 11 (1).

Any employee of an organisation may file a petition before the District Court on non-compliance of the harassment law. An employer who fails to comply and is found guilty is liable to a fine from 25,000 to 100,000 Rupees - Section 11(3)

3.4 What Challenges do we have regarding Implementation of the Anti-Harassment Laws/ Code of Conduct?

Laws and legal framework are there for the protection of women/ girls, men/ boys and transgenders persons of all ages from sexual harassment, however their effective implementation is a challenge. Some of the challenges are as follows:

- Institutions (governmental/ non-governmental – public/ private) are mostly unaware of their role in creating a sexual harassment free environment. No doubt, 9 years have passed since the law was enacted, yet the departments are still struggling to understand it fully and learn how to endorse the code of conduct, develop systems and procedures and orient/ sensitise staff.
- An overwhelming majority of people in Pakistan have not understood the normative framework as well as the issue of sexual harassment itself and we are still in a phase of denial of the existence of the issue.
- Effective implementation requires not only a thorough understanding of the anti-harassment law especially the Code of Conduct and procedures, but also skills for training the staff and institutionalising the mechanisms, which are lacking in organisations.
- Development of institutional structures and mechanisms, refining them and implementing them for the enforcement of the laws and transparency is important but can take considerable time and effort at the start. As a result, there is resistance and low interest towards establishing them for the implementation of the anti-harassment law.
- Often, the organisational leadership has poor confidence in their or their organisation's ability to tackle the issues, or feel that they may not be able to handle the burden of complaints due to the culture or power dynamics within the organisation.

Anti-harassment laws can be Misused! (fear)

All laws can be misused.

However, if there is no law, society will implode

3.5 I am an Employer - What is the Process of Endorsement of the Code of Conduct on Harassment?

Step by Step Process to Assist Organisations/ Employers	
Steps	Get More Clarity
Get a copy of the Code of Conduct	<ul style="list-style-type: none"> The Code of Conduct is a part of the Protection Against Harassment of Women at Workplace Act 2010. It can be downloaded from the websites of the National Assembly of Pakistan, National Commission on Status of Women, International Labour Organisation (ILO), AASHA (Alliance of CSOs on Sexual Harassment), etc. <p>Here is a link: https://aasha.org.pk/Women_Harassment_Docs/Code%20of%20Conduct.pdf</p>
Organise a meeting of senior management/ board of the organisation	<ul style="list-style-type: none"> Organise a dedicated meeting for this or add "Endorsement of the Code of Conduct on Sexual-Harassment" as an agenda item of a regular/ planned meeting. Explain to the members that endorsement of the Code of Conduct is an organisational responsibility according to the law. Take a decision to "officially" incorporate the code in the organisation's Human Resource Policies.
<p>In the meeting, appoint a three-member Inquiry Committee</p> <p>"Each organisation shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act".</p>	<ul style="list-style-type: none"> The Inquiry Committee shall consist of three members to whom the complaints for the sexual harassment would be submitted for inquiry. Among the three, at least one shall be a woman as required by the law. One must be from senior management, or a representative of the senior management or a senior employee where there is no Collective Bargaining Agent (CBA)* One or more members can be from outside the organisation if the organisation is unable to designate three staff members from within the organisation A Chairperson shall be designated from amongst them, based on majority vote or consensus building <p><i>* "CBA" means Collective Bargaining Agent as provided in the Industrial Relations Act 2008, (IV of 2008) or any other law for the time being in force.</i></p>

Identify a Competent Authority	<ul style="list-style-type: none"> • “Competent Authority” means the authority as may be designated by the management for the purposes of this Act. • A person that will have powers to impose the penalties on the person in case there is a complaint regarding sexual harassment submitted and inquiry committee, after thorough inquiry, found guilty. In other words, a person with whom the hiring/ firing authority rests.
Notify all Employees	<p>Management will notify all employees of:</p> <ul style="list-style-type: none"> • Incorporation of the Code of Conduct in their HR policies; • The Names and Contact numbers of all members of the Inquiry Committee; • The instructions about approaching any of the committee members in case of a sexual harassment complaint; and • Their right to ask for the replacement of a committee member who might be a harasser in the past or present.
Display the Code for wider information of the employees and for constant reminders	<p>Management shall:</p> <ul style="list-style-type: none"> • Post this notification and full text of the code on the Notice Board or any common area that all employees can see it for information and constant reminders: <ul style="list-style-type: none"> o What is Sexual Harassment? Sexual-Harassment is a Crime! o We have Zero Tolerance for Sexual Harassment! o Who can be contacted for complaints regarding sexual-harassment – Name and Contact Numbers of Inquiry Committee? o If the complaint is against any member of the inquiry committee, he/ she would be replaced by another member. o Complainant can directly report to Police under section 509 of the Pakistan Penal Code (PPC)

	<ul style="list-style-type: none"> • Display the above-mentioned information in a language that is easily understood by the employees – Urdu, English and/ or any local language. • The Information should be brief and in a font that is easily readable even from a distance. • Catchy or illustrated information is always helpful. <p>Many organisations have translated the code in different languages. One can find the Urdu translation on the AASHA's website. Posters have also been designed and can be obtained.</p>
<p>As an Employer, have You Completed all Steps explained above?</p> <p>If Yes</p> <p>You Have Successfully Adopted the Code of Conduct on Harassment according to the Law - Congratulations!</p> <p>If Not Yet</p> <p>Immediately Do This!</p> <p>A Petition Can Be Filed Against You in the District Court According to the Law</p>	

Points to Remember:

- Once all steps are completed, it is important to regularly refresh and update information.
- It doesn't end here. You must organise orientations, sensitisation sessions and awareness sessions for staff and especially for new appointees.
- Allocate budget for this endorsement meeting, committee meetings and operational costs for the inquiry committee.

Zero Tolerance for Sexual Harassment

Code of Conduct

Minimum Requirements for a Smaller Organisation

This Code provides the minimum requirements that an organisation needs to adhere to in order to comply with the 'Protection Against Harassment of Women at Workplace Act, 2010.

The Code

Sexual harassment by any employee is unacceptable behaviour in an organisation. It is defined as:

- any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature
- or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment,
- or the attempt to punish the complainant for refusal to comply to such a request or if compliance is made a condition for employment.

It is prohibited in any circumstance including any interaction or situation that is linked to official work or official activity outside the office. It constitutes a violation of this Code and is punishable.

- (1) A complaint can be filed with one of the members of the Inquiry Committee against any employee of the company if such behaviour is experienced.
- (2) The Committee can, according to the preference of the complainant, initiate an informal or a formal inquiry.
- (3) The management must make sure that the process is just and no retaliation against the complainant is allowed.
- (4) Once the Committee reaches a decision and recommends a penalty, in case the accused is found guilty from the options given in the law, the management/ competent authority has to implement the decision.

www.AASHA.org.pk

A Few Useful Points for Management to Improve Organisational Culture:

Issue	Actions to be taken by Management
<p>Silence</p> <p>People do not report an act of sexual harassment at workplace for several reasons. There is a commonly held fear that the harasser will retaliate. There may be other reasons such as fear of losing one's job or pressure from colleagues.</p> <p>Most often observers and eyewitnesses remain silent, in order to avoid getting "dragged" into the case. This is called "the culture of silence". There are two reasons for this behaviour¹⁶:</p> <ol style="list-style-type: none"> 1. People expect that someone else might intervene. 2. If no-one is seen to intervene, it is felt as this situation could be the status quo which goes by as such without any challenge. 	<p>Management needs to provide training to the staff so that they have an understanding of the Culture of Silence and ways to handle it. This type of training should:</p> <ul style="list-style-type: none"> o Make staff (who may be observers/eyewitnesses in the future) aware of the problem so they have the knowledge to identify the crime when they see it. o Make observers responsible: increase accountability of the observers so they know that they must extend assistance. o Educate staff members on how to intervene when they observe an instance of sexual harassment. o Encourage males to stop tolerating sexual harassment behaviour as a critical way to reduce sexual harassment in the workplace and society at large.
<p>Toxic Masculinity</p> <p>Some male staff members disempower women to prove their masculinity and establish "male supremacy". Some women might also want to be part of the high-status male group and trivialise sexual harassment not only for themselves but also for other women. They think that an action on their part might risk their upward mobility and affiliation with the seniors. They might become carrier of the same values as harassers to stay relevant and maintain their access to the "boys' club". Men can use sexual harassment to keep women out.</p>	<ul style="list-style-type: none"> o Assess the work culture of the organisation and address any issues especially with regard to male superiority, misogyny or toxic masculinity. o Conduct confidential surveys to evaluate the culture and work environment of the organisation/ company. o Ensure that women have supportive supervisors and work groups. This reduces the risk of sexual harassment. o Undertake periodic needs assessments and regular trainings. o Transmit strong messages regarding zero tolerance for sexual harassment, especially from the senior management, which holds the greatest responsibility for creating a safe and conducive work environment.

3.6 What are the TORs and Powers of the Inquiry Committee? How should they follow up on complaints regarding Sexual Harassment?

Organisations and employers are required to endorse the code of conduct on harassment and constitute an inquiry committee from within the organisation within 30 days of the enactment of the Act of 2010.

Composition of Inquiry Committee:

- **Number of Members** – The Committee shall consist of three members to whom the complaints for the sexual harassment would be submitted for inquiry.
- **Gender Ratio** - Among the three at least one shall be a woman.
- **Authority Figure** - One must be from senior management, or representative of the senior management or a senior employee where there is no CBA*.
- **Outside the Organisation**- One or more members can be from outside the organisation if the organisation is unable to designate three staff members from within the organisation.
- **Structure** - A Chairperson shall be designated from amongst them

(*“CBA” means Collective Bargaining Agent as provided in the Industrial Relations Act 2008, (IV of 2008) or any other law for the time being in force.)

Powers of the Inquiry Committee:

The Inquiry Committee shall have Powers to:

- a) Inquire into the matters of harassment under the Act
- b) Get the complainant or the accused medically examined by an authorised doctor, if necessary.
- c) Summon and enforce attendance of any person and cross-examine him on oath;
- d) Require the discovery and production of any document;
- e) Receive evidence on affidavits; and
- f) Record evidence

The Inquiry Committee also have Powers to Recommend:

- Appropriate penalty against the accused (within the meaning of sub-section (4) of section 4 on penalties)
- To Ombudsperson for appropriate action against the complainant if allegations levelled against the accused found to be false and made with mala fide intentions.

The Inquiry Committee can instruct to treat the proceedings as confidential.

Procedure for Holding Inquiry on Sexual-Harassment Complaints:

After A Written Complaint is Received by the Inquiry Committee	
Within 3 Days	Inquiry Committee communicates in writing the charges and statement of allegations to the accused.
Within 7 Days from the day the charge is communicated	The Committee requires the accused to submit a written defence.
After 7 days	On failure of the accused in submitting written defence to the Inquiry Committee without any reasonable cause, the Committee shall proceed <i>ex parte</i> .
Inquiry Process	<p>The Committee Inquires into the Charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as the Committee may consider necessary. Each party shall be entitled to cross-examine the witnesses against him/ her.</p> <p>The following provisions inter alia shall be followed by the Committee in relation to the inquiry</p> <ul style="list-style-type: none"> a) The statements and other evidence acquired in the inquiry process shall be considered as confidential; b) The Inquiry Committee can instruct to treat the whole proceedings confidentially, if necessary; c) An officer in an organisation, if considered necessary, may be nominated to provide advice and assistance to both parties; d) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a CBA representative, a friend or a colleague; e) Adverse action shall not be taken against the complainant or the witnesses; f) The Inquiry Committee shall ensure that neither the employer nor the accused shall initiate any action that would create a hostile environment for the complainant so as to pressurise him/ her from freely pursuing his/ her complaint; and g) The Inquiry Committee shall give its findings in writing by recording reasons thereof.

<p>Within 30 Days of the Initiation of the Inquiry</p>	<p>The Inquiry Committee shall submit its findings and recommendations to the Competent Authority.</p> <p>If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more penalties (written in the law)</p> <p>Minor penalties</p> <ul style="list-style-type: none"> a) censure; b) withholding, for a specific period, promotion or increment; c) hold, for a specific period, at an efficiency bar in the time-scale; d) recovery of the compensation payable to the complainant from pay or any other source of the accused; <p>Major penalties</p> <ul style="list-style-type: none"> a) reduction to a lower post or time-scale, or to a lower stage in a time-scale b) compulsory retirement; c) removal from service; and d) dismissal from service. e) Payment of a Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.
<p>Within One Week of the receipt of the Recommendation</p>	<p>The Competent Authority shall impose the penalty recommended by the Inquiry Committee under clause (18)</p> <p>Implementation of the Decision</p> <ul style="list-style-type: none"> • The Inquiry Committee shall meet on a regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority, if applicable, have been implemented. • In case the complainant is in trauma, the organisation will arrange for psycho-social counselling or medical treatment and for additional medical leave. • The organisation may also offer compensation to the complainant in case of loss of salary or other damages.
<p>Within 30 Days - of written communication of the decision</p>	<p>Any party on whom minor or major penalty is imposed and is dissatisfied by the decision of the competent authority can file an appeal.</p> <ul style="list-style-type: none"> • Appeal to the Ombudsperson established for this purpose by the respective Governments at the Federal and Provincial levels.

	<ul style="list-style-type: none"> • The appellate authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer. • Until such time that the Ombudsperson is appointed, the District Court shall have the jurisdiction to hear appeals against the decisions of competent authority.
<p style="text-align: center;">Mala Fide Accusation</p> <p>The Inquiry Committee may recommend to Ombudsperson for appropriate action against the complainant if allegations levelled against the accused are found to be false and made with mala fide intentions.</p>	



Sexual Harassment Complaints can directly be submitted to the Ombudsperson instead of the Inquiry Committee –

See Details in the Next Section of the Manual



The Law doesn't stop any organisation or employer to develop more creative, innovative and responsive systems and procedures for creation of sexual harassment free work environment. Instead, the law encourages to do so.

Helpful Guidelines for the Inquiry Process:

(Referred to in clause 17 of the Code) - (source: aasha.org)

Main Points	Details
Make the environment of the inquiry process conducive and unintimidating	<ul style="list-style-type: none"> The members should not reflect any bias in their attitude or their questioning. It is acknowledged that the society mostly blames the woman and usually makes an assumption that sexual harassment happens to women who are immoral or have encouraged an innocent man to provoke this kind of behaviour. The committee members need to be careful not to exhibit such biases and victim blaming and should remain neutral and objective.
Confidentiality of the process and evidence should be maintained	<ul style="list-style-type: none"> During the inquiry process all details and the record of evidence should be kept very carefully. All the processes and records are confidential information that should not be disclosed by any member or the inquiry committee.
Abuse of authority cases are complex because of power imbalance between complainant and accused, and may require severe disciplinary actions	<ul style="list-style-type: none"> Such cases could be linked with hiring and firing of an employee, promotion, work duties, relocation, leave, training and other aspects affecting employment. In such cases the Committee members need to be aware that a reaction from the victim is not easy at the time when the offensive behaviour takes place because of fear or power of a senior person over a junior employee. Therefore, strict measures regarding why the victim let it happen or did not speak up earlier might not be relevant.
Hostile work environment	It must be noted that actions which create a 'hostile work environment' could range from patterns of offensive behaviour over a period of time to single severe incidents of harassment.
Harassment outside working hours and workplace	The harassment can occur outside working hours and the workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or relation that is relevant here

<p>To constitute sexual harassment, the conduct must be 'unwelcome'</p>	<ul style="list-style-type: none"> • Exploration of a case must consider whether the person indicated to the other that the advances were unwelcomed or not. • It is possible that initially the victim might have considered the behaviour permissible, but later, due to personal reasons, personal choices or due to escalating advances, may have wanted the person to stop that behaviour. • In such situations, it is helpful to keep in mind that the initial permission should not be taken as a license for life. • Or a welcomed response for a friendly advance should not be taken as an assumed door opener for physical links. • Whenever a person feels that her/ his personal limits are being crossed and chooses not to go any further, s/ he has the right to convey this to the other person, and if that person does not stop that behaviour, it should be considered sexual harassment.
<p>Supervisory employees and co-workers should be asked about their knowledge of alleged harassment</p>	<ul style="list-style-type: none"> • When witnesses are not identified, testimony may be obtained from persons who observed change in demeanour of the complainant after alleged incident. • Other persons with whom the complainant discussed the incident should be interviewed.
<p>Sexual harassment usually occurs between colleagues when they are alone; therefore, usually it is difficult to produce evidence.</p>	<p>It is strongly recommended that staff should report an offensive behaviour immediately to someone they trust, even if they do not wish to launch a formal complaint at the time; although not reporting immediately should not affect the merits of the case.</p> <ul style="list-style-type: none"> • Detailed account of the complainant and the accused form a part of the evidence. • Statements from eyewitnesses/ observers of the incidents are important but may not always be available.

	<ul style="list-style-type: none"> • Statements of persons with whom the complainant might have discussed the incident, statements of persons from whom advice may have informally been sought, should be considered as evidence. • Any other documentary, audio or video records can be submitted. Expert technical advice can be sought for such submissions.
Records should be maintained	The complainant should inform the accused about his/ her conduct constituting sexual harassment. It is advisable that records should be maintained in writing, all incidents noting dates, places, descriptions of acts, notifications to the accused and names of those to whom the incident may have been mentioned.
Credibility of the complainant's allegations	In some cases, sexual harassment determination can be based solely on the credibility of the complainant's allegation, if the account is sufficiently detailed and internally consistent.
A general denial by the accused will carry little weight	Lack of corroborative evidence where such evidence should exist could undermine the allegations. By the same token, a general denial by the accused will carry little weight when contradicted by other evidence.
Series of incidents- should be considered as a pattern	When dealing with harassment through a series of incidents, the investigator should not consider the series of incidents as separate specific incidents, but should consider the pattern. The cumulative impact of such incidents on the victim can make the work environment hostile.
Any person who aids or covers also be considered liable	Any person who aids and abets or covers up from the commission of any such act perpetrated by another, without which it could not have been committed might also be considered liable under this Code. While probing the matter of sexual harassment, if the investigation results in the involvement of any close relative or any associated person to the owner or management in committing that act of sexual harassment, the committee could recommend commencing legal proceedings against them at the cost of the management.

Organisation will arrange for the counselling of the complainant	In case the complainant is in trauma, the organisation will arrange for counselling and for additional medical leave. This may be suggested as a part of the decision.
Compensation to the complainant	<p>The organisation can also offer compensation to the complainant in the case of loss of salary or other damages resulting from the harassment.</p> <p>The complainant can also be offered compensation if the employer has failed in the duty to prevent the sexual harassment of the complainant.</p>

Some Frequently Asked Questions by Inquiry Committees:

Questions	Answers
Can anonymous complaints be addressed by an IC?	No
What if the competent authority does not act according to the report submitted by the Inquiry Committee (IC)? Can any aggrieved party complaint/ accused appeal to the Ombudsperson against the Competent Authority?	The aggrieved party can appeal to the Ombudsperson against the competent authority. If still not resolved than the aggrieved party can file a writ petition in High Court.
Who can dismiss/ remove the IC? What is the duration of the term of IC?	There is no fixed term - on the basis of a complaint against a member, or misuse of powers, or in case of a member being involved in harassment, the member shall be changed by senior management
What is the Legal Security provided to IC by the Law? What steps/ process would be followed in case of threats or retaliation of the accused against IC members during or after the case completion?	The Pakistan Penal Code applies in such cases, and in case of government institutions, the Efficiency and Disciplinary Rules 2011 (applicable at the Federal and provincial level with some minor changes). Retaliation, in response to refusal of sexual favours, such as gossip, limiting employees' options for future promotions, distorting evaluation reports also constitute as harassment.
Nomination of IC members is by name or by designation?	By name - both are acceptable
In case of breach of confidentiality by any member of the IC what should other IC members do?	They should inform the senior management
Can ICs conduct reconciliation among both the parties?	Yes – if both the parties are ready to reconcile without any pressure. Sometimes, reconciliation is done in hurry and to avoid the thorough investigation and the complainant may be under pressure/ threat to reconcile, without his/ her full will.
Can complaints by students against professors or fellow students be heard by the IC? And by the Ombudsperson's office?	Yes
There are various government rules creating confusion on how to go about it in government departments. How execution of the Inquiry Committee's recommendations will take place?	Inquiry Committee will send an initial report to senior management. The Secretary will send a summary to the Chief Secretary - in case of compensation and force retirement/ dismissal - final decision endorsed by the Chief Secretary and respective secretaries.

Important Responsibility of the Duty-Bearers:

Ensure Confidentiality and Anonymity

One of the major reasons why cases of sexual harassment are not reported is the fear of stigma and disrepute – lack of data protection is a big source of this fear.

Maintaining confidentiality and abiding by the rules on privacy and confidentiality provides the victim a safe environment in which they can feel comfortable to talk without fear of breach of trust.

One of the important responsibilities of the Inquiry Committee(s) and Ombudsperson is to ensure and maintain strict confidentiality of:

- 1) the inquiry process, and
- 2) all information about: a) complainant; b) witnesses, c) statements of both the parties and other relevant personnel; and d) all related material/ evidences, etc.

Each member of the inquiry committee (IC) is responsible to abide by a high level of confidentiality.

The Ombudsperson's Office and the relevant IC must ensure that mechanisms and processes are in place to ensure confidentiality. For example:

- It is responsibility of the IC and the Ombudsperson's secretariat to keep all files/ data in a secure place. Paper files need to be kept in a locked cabinet. Any digital records should be password protected so that only the concerned duty-bearer with the authority to view the data can access it.
- Any communication/ correspondence on the subject must also ensure confidentiality. When the IC communicates in writing the charges and statement of allegations to the accused, the annexures are not shared – this means that the detailed information is not sent to him/ her. However, the names of both the parties are shown on the show cause list.

Likewise, both the parties are also responsible to keep information confidential until the case is concluded. If one party breaches the rule of confidentiality a case of defamation can be filed.

Landmark Verdict on Sexual Harassment at Workplace Petition:

Asif Saleem vs Chairman BOG University of Lahore - 2019

The verdict by Jawad Hassan of Lahore High Court is a landmark judgement and “... being celebrated for its contributions to the jurisprudential debate surrounding the issue of sexual harassment at workplaces in Pakistan.”¹⁷

Does Protection Against Harassment of Women at Workplace Act 2010 apply to the complaints of students against university faculty members – this was a confusing subject for the Inquiry Committee(s). The judgement on this particular case in 2019, expanded the scope of very important definition provided in the law.

What the Law says on Confidentiality?

3(a) of the Section 4 on the procedures for holding inquiry emphasises: “the statements and other evidence acquired in the inquiry process shall be considered as confidential.”

According to the law, the Ombudsperson shall conduct the inquiry on any case according to the same rules made under the Protection Against Harassment of Women at Workplace Act 2010.

The Case and the Important Points of the Verdict of Lahore High Court

Who was Asif Saleem?	Asif Saleem was serving as an Assistant Professor at the University of Lahore and was a student of doctorate in the Institute of Molecular Biology and Biotechnology in the same university.
What was he accused of?	<p>He was accused of sexual harassment by one of his students in early 2017.</p> <p>"He harassed her sexually by way of sending her vulgar text messages on WhatsApp while she was asking about subject cell and tissue culture; he forced her to visit his bachelor accommodation and cook food for him; she also alleged that being a G.R. when she was inquiring from him about the status of class result, he starting conversation relating to sex and showed his intention of having sex with her; that some other girls also faced sexual harassment by him."</p>
What was the decision of the Inquiry Committee?	The Inquiry Committee (IC) at Higher Education Commission (HEC) initiated the inquiry upon receiving the complaint. IC submitted a detailed report of the inquiry. The Competent Authority dismissed him from his job at the university and also expelled him from the doctorate program.
What was the decision of the Ombudsperson?	<p>Asif, aggrieved by the decision, filed an appeal to the Ombudsperson. On 3rd December 2018, the Ombudsperson changed the punishment given by the Competent Authority (CA) from 'dismissal' to 'removal' from the service.</p> <p><i>("Dismissal" and "Removal" both mean termination from the employment however, dismissal mean disqualification for future employment while in the case of removal, employee is not disqualified for the future jobs.)</i></p>
How did the Governor of the Punjab respond?	Again, aggrieved by the decision of the Ombudsperson, he then filed an appeal before the Governor of Punjab which got dismissed on 20th February 2019 "being not maintainable before him".
On what grounds did Asif file a writ petition before the Lahore High Court?	<p>Finally, he filed a writ petition against the Chairman BOG University of Lahore before the Lahore High Court under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. He challenged the decision of the university under Article 10-A of the Constitution which guarantees the due process right of every citizen.</p> <p>He submitted that the "impugned orders are illegal and against the law and facts; that no opportunity of personal hearing has been afforded to the Petitioner, as such he has been condemned unheard; that the Act was not applicable to the case of the Petitioner; that the Petitioner was entangled on the basis of jealousy by the Respondent..."</p>

What did the respondents argue?	<p>The respondents opposed these arguments by the petitioner and prayed for dismissal of the petitioner at limine stage (see meaning of the legal term, “limine stage” on the next page). The Respondent stated: “after proper inquiry the Petitioner has been found guilty of sexual harassment as such has rightly been awarded major penalty; that the Petitioner is an Assistant Professor and the victim is his student and if such like acts/ conducts are not curbed with iron hands the dignity and prestige of the female students would become toy at the hands of the teachers; that the act of sexual harassment is a great stigma on the relationship of teacher and a student; that the major punishment to the delinquents by the departments in such like offences would create an atmosphere of safety and respect for the female students.”</p>
What were the Court’s Moot Points?	<p>Examining the submissions of the petitioner and the respondent, the court framed following three moot (arguable) points:</p> <ol style="list-style-type: none"> I. Whether the Respondents were justified to impose penalty of removal from service against the Petitioner, under the Act? II. Whether the Respondents were justified to expel the Petitioner from Ph.D. programme of the University? III. Whether this petition can be dismissed in limine?
Moot Point I	<p>I. Whether the Respondents were justified to impose penalty of removal from service against the Petitioner, under the Act?</p> <p>On this moot point, court discussed that the purpose of the Act 2010 “...is to create a safe working environment for women, which is free from harassment, abuse and intimidation to facilitate their right to work with dignity. It will also enable higher productivity and a better quality of life at work.”</p> <p>The Verdict says, “It is also our constitutional duty to protect women to ensure their full participation in all spheres of national life.” To support it, reference - Article 25 Equality of the Citizens- from the Constitution of Pakistan 1973 were given:</p> <ol style="list-style-type: none"> (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this article to prevent the state from making any special provisions for protection of women and children.

	<p>The Court argued that “the protection of women from being harassed at the workplace is already enshrined under the Constitution and was given under the Act and protected by the Executive and Judiciary.”</p> <p>The verdict expended the understanding on the law by explaining that the “Act is not confined only to the relationship of an employer and employee; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/ exploiting his/ her official position/ capacity.” Asif, “the petitioner/ teacher/ employee used his official position to sexually exploit his female student.”</p> <p>Likewise, the definition of the “Employee” was discussed. “Section 2 (f) clearly states that employee means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice. The employer includes all persons who employ workers under contract or any manner.”</p> <p>Furthermore, the definition of the “Workplace” also explained according to the law: “... any place of work which includes any situation that is linked to official work or official activity outside the office. This means that any worker whoever is employed in any manner or capacity with the employer is protected from being harassed. Therefore, in the case in hand the Petitioner was the employee as well as the student of the University and in his employment as teacher he exploited and harassed the Respondent by sending vulgar messages on WhatsApp for illicit purpose.”</p> <p>The court in its verdict used extensive and some very interesting jurisprudence on sexual harassment from across the world.</p>
Moot Point II	<p>II Whether the Respondents were justified to expel the Petitioner from Ph.D. programme of the University?</p> <p>The court agreed with the detailed report of HEC and the stood by the decision of IC. The court argued that “the persistent and unwanted amorous advanced by the petitioner to a female student would amount to a fundamental breach of the implied term of mutual trust and confidence. No doubt, more and more girl students, women etc. go to educational institutions, workplaces etc., their protection is of extreme importance to a civilised and cultured society.” The court said, “in order to create a safe and healthy educational environment for all the female students, the presence of the petitioner in the said University is unwarranted and unjustified.”</p>

Moot Point III	<p>III Whether this petition can be dismissed in <i>limine</i>?</p> <p>Limine Control Doctrine, in simple words means using the court's authority to dispose of a case at the very beginning. The Court discussed that usually courts in such cases and petitions send notice to the respondent instead of dismissing the petition at the very early stage. That can cause inconvenience and monetary loss for the respondents. In order to strengthen the perception of the general public about the rule of law it is important to expeditiously dispose of such petitions.</p>
What happened to the petition?	<p>Found it being devoid of merits, the court dismissed the petition in limine on 13th May 2019.</p> <p>Read the full verdict: https:// www.scribd.com/ document/ 411337747/ LHC-judgement-Asif-Saleem-vs-University-of-Lahore-BoG</p>

3.7 What are the TORs and the Powers of the Ombudsperson?

Offices of the Ombudspersons at Federal and Provincial level are functional to deal with complaints of sexual harassment.

The Office of the Ombudsperson is to be headed by a person with the same qualifications as that of a Judge of a High Court. The Ombudsperson shall for the purpose of the “Protection Against Harassment of Women at Workplace Act 2010”, have the same powers as are vested in a Civil Court under the Code of Civil Procedures, 1908 (Act V of 1908)

The Office of the
Ombudsperson will deal with

Sexual harassment at workplace faced by an employee anywhere in the Punjab falls within the purview of provincial Ombudsperson



- **Appeals** from persons who are aggrieved or not satisfied by the decision of the Inquiry Committee.
- Complaints made directly for **cases of sexual harassment at the workplace** of formal organisations.
- **Complaints from the management of an organisation**, in case it believes that a complainant has made a mala fide attempt to intentionally defame someone.

Ombudsperson's Powers - in respect of the following matters, are:

- i. Summoning and enforcing the attendance of any person and examining him/ her on oath;
- ii. Compelling the production of evidence;
- iii. Receiving evidence on Affidavits;
- iv. Issuing commission for the examination of witnesses;
- v. Entering any premises for the purpose of making an inspection or investigation, enter any premises where the ombudsperson has a reason to believe that any information relevant to the case may be found; and
- vi. The Ombudsperson shall have the same powers as the high court has to punish any person for its contempt.

Inquiry Procedures for the Ombudsperson:

<p>Within 3 Days of Receiving A Complaint The Ombudsperson shall issue a Written Show Cause Notice to the Accused</p>	
<p>Within 5 Days of receiving the show cause notice from the Ombudsperson the accused shall submit a written defence to the Ombudsperson</p>	
<p>Failure of the Accused to submit the defence to the Ombudsperson within the stipulated time without a reasonable cause would allow Ombudsperson to proceed ex parte. Both the Parties can represent themselves before the Ombudsperson</p>	
<p>The Ombudsperson shall conduct an inquiry into the matter according to the rules under the Protection Against Harassment of Women at Workplace Act 2010, and conduct proceedings</p>	<p>The Ombudsperson may require any office or member of an organisation concerned to provide any written or verbal information which is relevant and helpful in the conduct of the investigation, for the Ombudsperson.</p>
<p>Decision of the Ombudsperson</p> <ul style="list-style-type: none">• The Ombudsperson may impose any of the minor or major penalties specified for the Inquiry Committee within the organisation.• The Ombudsperson shall record his/ her decision and inform both parties and the management of the concerned organisation for implementation of the orders.• The management of the organisation is bound to abide by the decision of the Ombudsperson. If the decision is not implemented, the management shall be charged with contempt of high court.	
<p>Aggrieved by a Decision of the Ombudsperson? An Appeal can be made within 30 days</p>	
<p>When a case is taken directly to the Ombudsperson instead of an inquiry committee and either the complainant or the accused is aggrieved by a decision of Ombudsperson, he/ she could make a representation to the President or Governor, as the case may be, within thirty days of decision, who may pass such order thereon as he/ she may deem fit.</p>	
<p>The management of the organisation is bound to abide by the decision of the Ombudsperson. If the decision is not implemented; the management shall be charged with Contempt of High Court.</p>	

What the Ombudsperson's Secretariat Can Do?

- Take Complaints on "Sexual Harassment at the Workplace"
- Proceed/ hear the Parties
- Inquire into the charges
- Decide
- Penalise if charges are established
- Take up appeals filed by any party against a decision of the inquiry committees
- Take up appeals by the Inquiry Committees or the management of any organisation for specific complaints with mala fide attempts to intentionally defame someone.

What the Ombudsperson's Secretariat Cannot Do?

Other kinds of Harassment -Sexual Harassment Not at Workplace	As defined in the Protection of Women from Harassment at Workplace Act 2010), no case of harassment can be taken up by the Ombudsperson's office if it is not about the workplace/ office staff and that does not fall under the sexual-harassment category according to the definition provided in the law. It precisely means that harassment on the basis of religion, caste, race, gender etc. cannot be submitted to the office of the ombudsperson. In such cases, the aggrieved person should go to the High Court with reference to the Constitution of Pakistan. The course of action and support available depends on the nature of the violation - rights are covered under Article 8 to 39 of the Constitution.
Cases subjudice in another forum under the Act of 2010	Ombudsperson office will not entertain cases already in process in courts.
Matters Concerning Other Provinces	Complaints from Punjab cannot be filed in Khyber Pakhtunkhwa, Sindh or Balochistan Ombudsperson's secretariats and vice versa. For each province there is a separate Office of the Ombudsperson to receive the cases that occurred within the respective province.
Cybercrimes	Threats, pornographic material, or other harassing items received digitally (for example via WhatsApp, twitter, Facebook, etc.) if by any member/ employee of the organisation with which you are working then this law applies and you can file a complaint to the Ombudsperson.
Already Disposed of Cases	If a case is closed the complaint on the same case cannot be registered.

Students' Affairs	Students' affairs such as matters of deduction or waive-off of fee, student disputes, etc., cannot be registered with the Ombudsperson. However, cases of sexual harassment of students by other students or teachers/ professors/ administrative staff and vice-versa etc. can be submitted to the Ombudsperson.
Domestic violence, family matters/ disputes	Such cases are beyond the jurisdiction of the Ombudsperson. All these matters are important but have separate laws/ rules and regulations/ mechanisms.
Other miscellaneous matters	<ul style="list-style-type: none"> • Service/ administrative grievances • Anonymous complaints filed under a false name • Financial help requests • Requests for contractual dues

Chapter 4 – Guidelines for Complainant

Process of Filing Complaints and Conducting Inquiry

Who is a complainant?



Complainant means a woman or man who has made a complaint to the (Ombudsperson) or to the Inquiry Committee on being aggrieved by an act of harassment.

Who is an Employee?



Employee means a **regular or contractual** employee whether employed on **daily, weekly, monthly or hourly basis** and includes an **intern or apprentice**

4.1 I am working in an organisation, what should I know about sexual harassment?

Checklist for a Victim of Sexual Harassment

This Checklist can be helpful for every person/ employee and can be improved further as needed.

Know what Constitutes Sexual Harassment	<ul style="list-style-type: none"> Understand fully what constitutes sexual harassment and what causes a culture of silence and denial around it Recognise that sometimes a victim of sexual harassment doesn't report it because of fear as well as confusion about what constitutes sexual harassment.
Be aware of the Laws on Sexual Harassment at Workplace	<ul style="list-style-type: none"> What are the legal provisions available for the redressal of sexual harassment cases? Do you know about the Protection from Harassment of Women at Workplace Act? PPC 509? Prevention of Electronic Crimes, Act 2016? Did your Organisation/ Company/ Institute/ Department etc. endorse the Code of Conduct on Sexual Harassment according to the Law? Is the code displayed properly?
Update your Knowledge of available Support Mechanisms	<ul style="list-style-type: none"> Have handy access to important Contact Numbers for help. This includes Personal/ Official contacts, Helplines, emergency numbers Be aware of institutions that provide support or services to victims – like the Ombudsperson's office, Women Commissions, NGOs working to support women especially on sexual harassment cases, Women Lawyers or lawyers that provide legal Counselling and legal aid. Know why and where to get psycho-social counselling.

Know where to Register a Complaint of Sexual Harassment	<ul style="list-style-type: none"> • Where can you register a complaint regarding sexual harassment at workplace? • Who are the members of the inquiry committee within the organisation? • What is the ombudsperson's office for, what is its role and functions, and how can it support victims? • What type of complaints can the ombudsperson receive?
Be aware about Keeping Evidence of Sexual Harassment	<ul style="list-style-type: none"> • What does it mean by evidence of sexual harassment? What kinds of items can be shown as evidence in a case of SH? • Are you keeping the record of sexual harassment incidents at workplace? • Are you keeping a record of all messages/ snapshots/ texts/ emails/ letters/ pictures sent by harasser? • Are you filing them properly in a chronological order for easy understanding of the series of incidents and your response? • Who can you ask to be the witness? • What evidence is there of the impact these incidents left on you?
Understand the Proper and Effective Way of Filing a Complaint	<ul style="list-style-type: none"> • Know How to Register Complaints on Sexual Harassment. • What are the Requirements for registering a case? • What information must be there in the written complaint?

4.2 Where can Sexual-Harassment Complaints be registered under the Law?

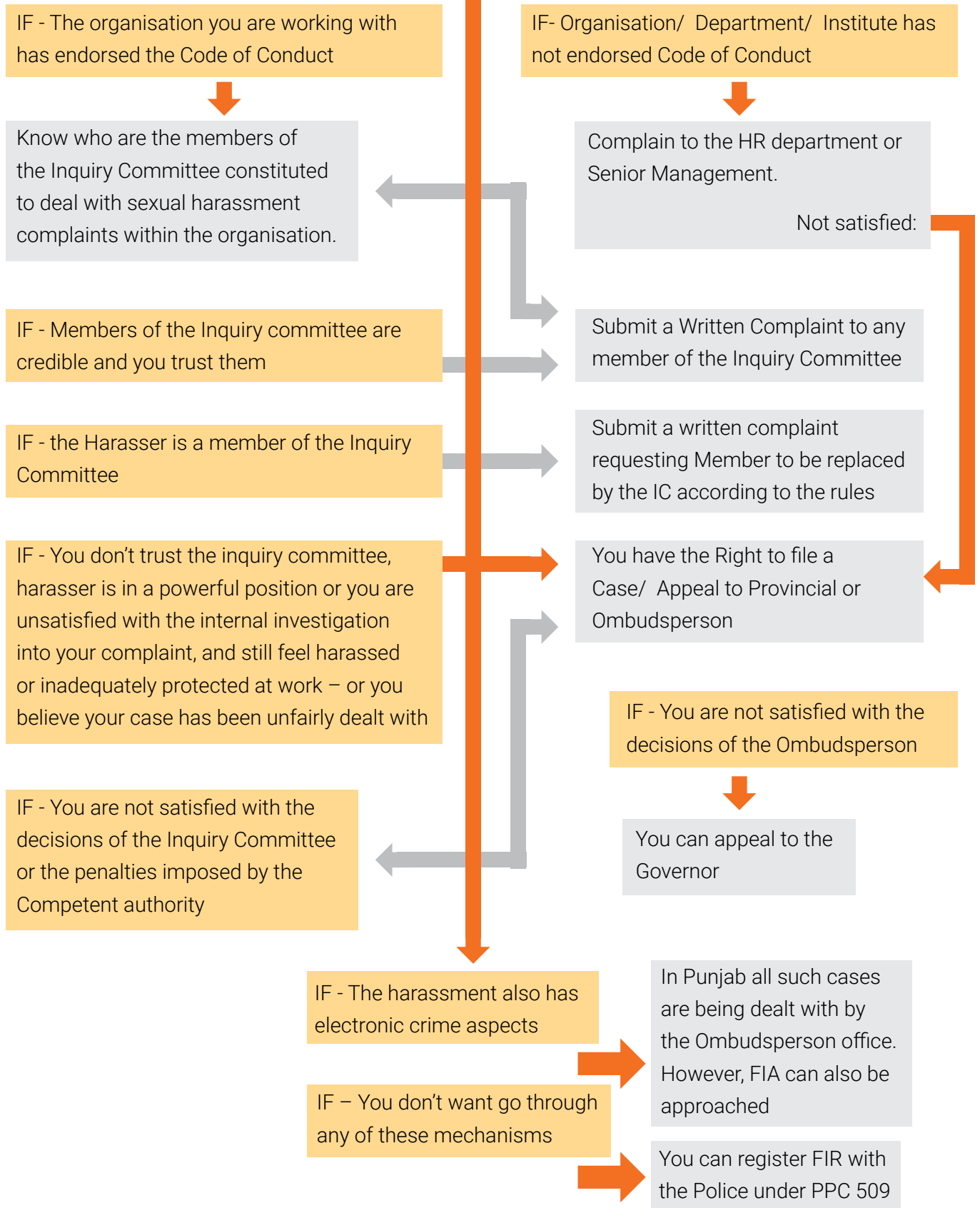
Sexual Harassment Complaints can be registered under the following laws depending on the nature of the harassment:

- **Protection of Women from Harassment at Workplace Act (2010):** Violations of the Code of Conduct on Harassment – One can submit complaint to the Inquiry committee constituted by the organisation or to the Office of the Ombudsperson in the province where the harassment took place).
- **Pakistan Penal Code 509:** An FIR can be registered with the Police.
- **Prevention of Electronic Crimes Act, 2016:** A Complaint can be filed with the National Response Centre for Cyber Crime (NR3C) Federal Investigation Agency (FIA)
- **Transgender Persons (Protection of the Rights) Act 2018:** The Federal Law extends to the whole of Pakistan – Procedures and enforcement mechanism will be the same for other laws

How do I go about registering a Sexual Harassment Case?

If	What To Do?
The organisation you are working with has endorsed the Code of Conduct	Know who are the members of the Inquiry Committee constituted to deal with sexual harassment complaints within the organisation.
The Organisation/ Department/ Institute has not endorsed the Code of Conduct	Complain to the HR department or Senior Management.
Members of the Inquiry committee are credible and you trust them	Submit a Written Complaint to any member of the Inquiry Committee.
The Harasser is a member of the Inquiry Committee	Submit a written complaint asking for the replacement of the member according to the rules.
You don't have trust in the inquiry committee members, the harasser is in a powerful position and you think you won't be heard, or you are not satisfied with the decisions of the Inquiry Committee or the penalties imposed by the Competent authority	You have the choice to file a case/ appeal to Provincial Ombudsperson. (Note: there are facilities available for online complaint registration.)
You are not satisfied with the decision of the Ombudsperson	You may appeal to the Governor.
The harassment also has electronic crime aspects	You may file a complaint with the FIA as well.

Being Sexually Harassed at the Workplace?



4.3 Frequently Asked Questions.

What is the Inquiry Committee? If my organisation has not endorsed the Code of Conduct, what should I do?

Under “The Protection against Harassment of Women at Workplace Act, 2010”, it is mandatory for all public and private institutions, organisations and companies, to form and notify Inquiry Committees. There will be at least one female member in the Committee.

The institutions are required to display the Code of Conduct at a prominent place. It has to be in English and other language(s) understandable by employees. If any department/ organisation does not comply with this legal requirement, one can file a written complaint with the Ombudsperson’s Office under section 11 of the Act. Ombudsperson can fine the employer up to Rs.1,00,000.

Can a complaint on Sexual Harassment be filed if there are no eye witness(es)?

Yes!

Which Organisations fall in the purview of the provincial Ombudsperson?

“Organisation” means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, an educational institution, medical facility established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed commercial or industrial establishment/ institution - a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organisation or institution.

Are proceedings on the inquiry of the case with the Inquiry Committee or the office of Ombudsperson confidential?

Yes, the whole proceedings which include complaint, statements of witnesses, inquiry and evidence are kept confidential.

What should a complainant do if he/ she apprehends retaliation from the accused at the workplace?

The complainant may submit an application along with the main application for adjustment/ transfer/ suspension of the accused which is sent to the concerned department, as per the law.

Can a complainant file an application with another forum when the complaint is under process in the provincial Ombudsperson’s office?

No. Complaints are only processed when no application/ inquiry is under process/ pending/ filed on the same subject/ charges at any other forum.

Can relatives/ friends accompany the complainant?

Yes. Colleagues can also accompany.

Will the complaint be filed if the complainant does not pursue the case/ proceedings?

Yes, the complaint shall be filed in case the complainant does not pursue the case in the Ombudsperson’s office.

4.4 How to Register a Complaint on Sexual Harassment?

Written Statement to the **Inquiry Committee of the Organisation should include:**

A Simple written statement on white paper or sent via email

- Stating the complaint and need for immediate inquiry.
- Your name and contact information
- Name of the accused and his/ her information
- Information about the incidents (you are not required to give detailed information about the incidents at this point)
- If you are concerned about retaliation from the accused, include it in the statement

Application to the **Ombudsperson**

According to the requirements given by various sources, this **sample application form** has been developed indicating the required information/ documents for submission of a complaint to the ombudsperson.

Application Form (sample)			
Complaint on Sexual Harassment at Workplace to the Provincial Ombudsperson			
*Filled in form, with required documents can be submitted by post or by email			
Complainant's Information			
Gender:	Female	Male	Transgender
Full name:			
CNIC No.:			
Name of Department/ Organisation/ Institute/ Company			
Designation			
Contact Details			
Personal Mailing Address			
(House no. Street., District, Province)			
Phone/ Cell No.			
Email Address			

Office Address			
Office Phone Number			
Information of the Accused Person			
Gender:	Female	Male	Transgender
Full Name:			
Designation			
Residential or Official Address			
Phone Number			
Narrate the Incidents in Chronological Order in a Detailed Manner			
<ul style="list-style-type: none"> o Details of the incidents of harassment (include dates, places, time etc.) o Witnesses (if any) as well as their names/ designations, address o You can use additional sheets 			
<p>Affidavit</p> <p>I do hereby solemnly affirm:</p> <p>a) That the facts mentioned in this complaint are correct to the best of my knowledge and belief.</p> <p>b) That no suit, appeal, petition or other judicial proceeding in connection with the subject matter of this complaint is pending in any court, tribunal or board.</p> <p>c) I made a representation to the senior officers of the agency in this connection but have failed to elicit a reply/ my representation has been unjustly turned down.</p> <p>I do affirm the Affidavit</p>			
Signature of the Complainant		Date	
Required Documents to be attached along with the Filled-in Application Form			
<ol style="list-style-type: none"> 1. Copy of Complainant's CNIC 2. Appointment letter from the organisation 3. Documentary/ Audio-visual evidences to strengthen your case (if any) (e.g. text message, emails, audio messages, etc.) <p>• Certificates Required</p> <p>Once the application fulfils all the criteria, other certificates are also obtained from the complainant, including:</p> <ul style="list-style-type: none"> o Certificate for Adjustment (either transfer or suspension of the accused) o Certificate of Retaliation o Application cum Certificate that the inquiry regarding sexual harassment is not pending at any other forum and the complainant wants to be heard at the office of the Ombudsperson. 			

Missing Details? Don't Worry!

In case of missing details:

- Office of the Ombudsperson contacts the complainant and guides him/ her on how to write the application with the complete details.
- Complainant can also visit the Office of the Ombudsperson for advice.
- Meeting with the concerned staff, registrar, and Ombudsperson can also be arranged.
- The Ombudsperson office provides an equal opportunity to both parties to access information regarding procedures and documents.

Submit the Application

For Electronic Submission

Email: ombudspersonpunjab@gmail.com

Fax: 042 99268283

Telephone: 042 99268281-2

By Regular Post Submission or for More Information and Guidance Contact:

The Office of Ombudsperson Punjab,

Punjab Protection of Women against Harassment at the Workplace

Address: 174 Shadman II, Gen. Sarfraz Khan Road/ Service Road, Canal Road, Lahore

Tel: 042 99268281-2

Fax: 042 99268283

After the application is successfully submitted and all the documents are provided to the Ombudsperson, the complaint will be officially registered with the office.

The office processes the application as per the Rules 4 and 5 of Protection Against harassment of Women at the Workplace Rules, 2010.

Note:



Complaints from women, men, transgenders from all over Pakistan can be submitted to the Federal Ombudsman Secretariat For Protection Against Harassment.



Each Province has its own Provincial Ombudsperson's office. So, the applications from Punjab can be submitted to Ombudsperson on Protection of Women from Harassment at Workplace, Government of Punjab.

4.5 How can I maintain Evidence on Sexual Harassment Incidents?

Why is it important to maintain a record of evidence?

In case the victim of sexual harassment at the workplace doesn't have any evidence or any witness, even then she/ he can file a complaint to the Inquiry Committee of the organisation or to the Ombudsperson's office. However, it is always important to keep a record of the evidence. It will make the case stronger and increase the chances of the provision of justice. It is best to record an incident as soon as it is experienced, even if you think or have no intention of complaining at that point. Sometimes, you might not be sure about whether it was harassment or not. Sexual harassment cases often start with one or two isolated remarks or incidents, but over time develop into a series of incidents, so it is always recommended to record all incidents from the start.

Why do many victims/ complainants of sexual harassment usually not have evidence of the sexual harassment incidents?

- Usually it happens at such a place and time when no one is around. Or if people are around it can be subtle or sudden that they may not notice it, but it leaves the victim in shock.
- Usually the victim undergoes emotional trauma when faced with harassment and considers the evidence as a constant reminder of the harasser. That's why he/ she may want to destroy the evidence.
- As a result of the trauma, the victim could get worried and stressed. She/ he may think that family members would be uncooperative or fear insulting behaviour of family members who consider sexual harassment as a taboo topic, one that could bring dishonour to the family. Therefore he/ she may not feel the need to collect evidence.
- Sometimes the victim could be scared that evidence may go against her/ himself. This can happen if he/ she feels that the evidence is weak or if the harassment was not threatening/ unwelcome at first, so he/ she did not stop it but gradually became more serious or unwelcome. She/ he may feel that others would blame her for letting the advances grow and not stop them at the very start.
- A Victim may think that even if s/ he has witnesses, they can refuse to speak up or change their statements for fear of losing their jobs. Normally, witnesses keep quiet because they wait for others to speak about it first. "If others are not speaking up, why should I".

Don't delete any evidence received electronically – take snapshots of the conversations, with dates and phone number.

Sometimes the harasser sends harassing material/ pictures and then deletes it within a few minutes. As soon as you get it, take a screenshot immediately.

Tips for Maintaining a Record of Evidence of Sexual Harassment

- Get help from reliable and trustworthy friend(s) and discuss with them to get emotional support. They could also serve as witnesses later on regarding the impact of the harassment on you.
- Try to contact organisations that deal with sexual harassment cases and support victims.

- Know that it is the harasser who is dishonoured, not the victim.
- Know that speaking up can open opportunities and give courage to others which can contribute towards creating a respectful and free of fear culture for all.
- Don't delete any evidence received electronically – take snapshots of the conversations, with dates and phone number. Sometimes the harasser sends harassing material/ pictures and then deletes it within a few minutes. As soon as you get it, take a screenshot immediately (take the picture of your mobile screen).
- Keep a record of repeated unwanted calls – they can be recorded on a simple paper or you can take screenshots of recent calls/ missed calls from your mobile phone's screen. If possible, try to record the calls (many phones have such options available and there are also software/ apps that can do this).
- Keep a record of all harassment incidents – What happened? Where? Date and Time? Who was around? What impact did it have on you? How did you try to respond to it?

Keep a Record of the Incidents in Chronological Order

You can maintain a record the evidence on daily basis.

Sample template for Victim of Sexual Harassment

Record of Sexual Harassment Incidents (Chronological Order)					
#	Date and Time Place	Incident of Sexual Harassment/ unwelcome advance	How? Electronically/ in person	How did I respond? What did I tell the harasser? What did I try to do?	Witness/ who was/ could be around?
1					
2					
3					
4					
5					
6					
7					

* Make sure that you have recorded the calls, have taken screenshots of the material sent (pictures of your mobile screen) or have saved these on a reliable source.

4.6 Relevant links for Punjab

Women Development Department: www.wdd.punjab.gov.pk

Punjab Commission on the Status of Women: www.pcs.w.punjab.gov.pk

Punjab Police: www.punjabpolice.gov.pk

Social Welfare Department: www.swd.punjab.gov.pk

Bait ul Maal: www.baitulmaal.punjab.gov.pk

National Commission on Status of Women

National Commission on the Status of Women (NCSW) is a statutory body, established in July 2000. It is an outcome of the national and international commitments of the Government of Pakistan like Beijing Declaration and Platform for Action, 1995; and National Plan of Action (NPA) for Women, 1998.

The National Commission on the Status of Women (NCSW) was established with the specific purpose to: Examine policies, programs and other measures taken by the Government for women's development and gender equality; Review laws, rules and regulations affecting the status of women; Monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances; Encourage and sponsor research to generate information, analysis and studies relating to women and gender issues; Develop and maintain interaction and dialogue with NGOs, experts and individuals in society at the national, regional and international level; any other function assigned to it by the Federal Government.

Address: 1st Floor, State Life Building No. 5, China Chowk, Blue Area, Islamabad

Phone: 051-922-4875

Fax: 051-922-4877

Email: info@ncsw.gov.pk

Website: [https:// www.ncsw.gov.pk](https://www.ncsw.gov.pk)

Digital Rights Foundation

Digital Rights Foundation runs the Cyber Harassment Helpline which is Pakistan's first dedicated, toll-free Helpline for victims of online harassment and violence. The Helpline aims to provide legal advice, digital security support, psychological counselling and a referral system to victims of online harassment through a free, safe and confidential service. It provides a judgment-free, private and gender-sensitive environment for all its callers.

Toll-free number: 0800-39393 (9:00 a.m. to 5:00 p.m. daily)

Email: helpdesk@digitalrightsfoundation.pk;

Website: [https:// digitalrightsfoundation.pk/ cyber-harassment-helpline/](https://digitalrightsfoundation.pk/cyber-harassment-helpline/)

Alliance Against Sexual Harassment (AASHA)

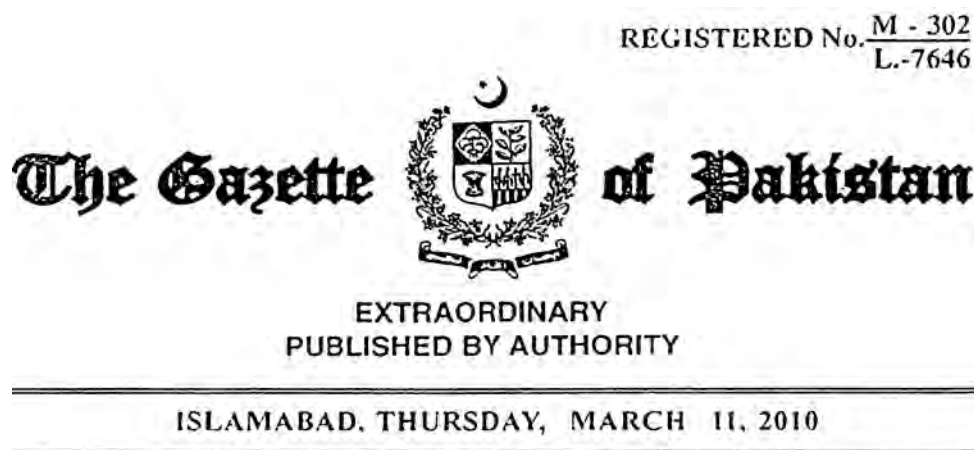
AASHA means “hope” – a hope to root out harassment especially of women from the society. The AASHA Alliance aims to raise awareness on the issue and assist the government and private sectors to create a society free of sexual harassment. AASHA’s first initiative is directed towards taking active measures to mobilise and influence policy makers for providing protection to women at the workplace and ensuring a safe and healthy working environment.

Phone: 051-210-2012

E-Mail: info@mehergarh.org

Web-site: [https:// aasha.org.pk](https://aasha.org.pk)

Annex 1: THE PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT, 2010



[THE PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT 2010]

PART 1

Acts, Ordinance, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 11th March, 2010

No. F. 9 (5)/2009- Legis.__ The following Acts of Majlis-e-Shoora (Parliament) received the assent of the President on 9th March, 2010, are hereby published for general information: __

Act No. IV of 2010

An Act to make provisions for the protection against harassment of women at the workplace

WHEREAS the constitution of the Islamic Republic of Pakistan recognizes the fundamental rights of citizens to dignity of person;

AND WHEREAS it is expedient to make this provision for the protection of women from harassment at the workplace;

It is hereby enacted as follows:

- 1. Short title, extent and commencement.** - (1) This Act may be called the Protection against Harassment of women at the Workplace Act, 2010.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions. – In this Act, unless there is anything repugnant in the subject or context, –

- (a) “accused” means an employee or employer of an organisation against whom complaint has been made under this Act;
- (b) “CBA” means *Collective Bargaining Agent as provided in the Industrial Relations Act 2008, (IV of 2008) or any other law for the time being in force.*
- (c) “Code” means the Code of Conduct as mentioned in the Schedule to this Act;
- (d) “Competent Authority” means the authority as may be designated by the management for the purposes of this Act;
- (e) “Complainant” means a woman or man who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment;
- (f) “Employee” means a regular or contractual employee whether employed on daily, weekly, or monthly or hourly basis, and includes an *intern or an apprentice*;
- (g) “Employer” in relation to an organisation, means any person or body of persons whether incorporated or not, who or which employs workers in an organisation under a contract of employment or in any other manner whatsoever and includes –
 - (i) an heir, successor or assign, as the case may be, of such person or, body as aforesaid;
 - (ii) any person responsible for the direction, administration, management and control of the management;
 - (iii) the authority, in relation of an organisation or a group of organisation run by or under the authority of any Ministry or department of the Federal Government or a Provincial government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;
 - (iv) the office bearer, in relation to an organisation run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;
 - (v) the proprietor, in relation to any other organisation, of such organisation and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof.
 - (vi) a contractor or an organisation of a contractor who or which undertakes to procure the labor or services of employees for use by another person or in another organisation for any purpose whatsoever and for payment in any form and on any basis whatsoever; and

- (vi) office bearers of a department of a Division of a Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;
- (h) harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;
- (i) "Inquiry Committee" means the Inquiry Committee established under sub-section (1) of section 3;
- (j) "management" means a person or body of persons responsible for the management of the affairs of an organisation and includes an employer;
- (k) "Ombudsman" means the Ombudsman appointed under section 7
- (l) "organisation" means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organisation or institution;
- (m) "Schedule" means Schedule annexed to this Act;
- (n) "workplace" means the place of work or the premises where an organisation or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organisation or of employer are carried out and including any situation that is linked to official work or official activity outside the office.

3. Inquiry Committee. –

- (1) Each organisation shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.
- (2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organisation if the organisation is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.
- (3) In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside

the organisation.

- (4) In case where no competent authority is designated the organisation shall within thirty days of the enactment of this Act designate a competent authority

4. Procedure for holding inquiry. –

- (1) The Inquiry Committee, within three days of receipt of a written complaint, shall–
- (a) communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;
 - (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte; and
 - (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.
- (2) Subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting.
- (3) The following provisions *inter alia* shall be followed by the Committee in relation to inquiry:
- (a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;
 - (b) An officer in an organisation, if considered necessary, may be nominated to provide advice and assistance to each party;
 - (c) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague;
 - (d) Adverse action shall not be taken against the complainant or the witnesses;
 - (e) The inquiry Committee shall ensure that the employer or accused shall in no case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint; and
 - (f) The Inquiry Committee shall give its findings in writing by recording reasons thereof.
- (4) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:

(I) Minor penalties:

- (a) censure;
- (b) withholding, for a specific period, promotion or increment;
- (c) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and
- (d) recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

- (a) reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (b) compulsory retirement;
- (c) removal from service;
- (d) dismissal from service; and
- (e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.

- (5) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under sub-section (4) within one week of the receipt of the recommendations of the Inquiry Committee
- (6) The Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority have been implemented.
- (7) In case the complainant is in trauma the organisation will arrange for *psycho-social* counseling or *medical treatment* and for additional medical leave.
- (8) The organisation may also offer compensation to the complainant in case of loss of salary or other damages.

5. Powers of the Inquiry Committee. –

- (1) The Inquiry Committee shall have power–
 - (a) to summon and enforce attendance of any person and examine him on oath;
 - (b) to require the discovery and production of any document;
 - (c) to receive evidence on affidavits; and
 - (d) to record evidence.

- (2) The Inquiry Committee shall have the power to inquire into the matters of harassment under this Act, to get the complainant or the accused medically examined by an authorized doctor, if necessary, and may recommend appropriate penalty against the accused within the meaning of sub-section (4) of section 4.
- (3) The Inquiry Committee may recommend to Ombudsman for appropriate action against the complainant if allegations leveled against the accused found to be false and made with mala fide intentions.
- (4) The Inquiry Committee can instruct to treat the proceedings confidential.

6. Appeal against minor and major penalties. –

- (1) Any party aggrieved by decision of the Competent Authority on whom minor or major penalty is imposed may within thirty days of written communication of decision prefer an appeal to an Ombudsman established under section 7.
- (2) A complainant aggrieved by the decision of the Competent Authority may also prefer appeal within thirty days of the decision to the Ombudsman.
- (3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.
- (4) Until such a time that the ombudsman is appointed the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority and the provisions of sub-sections (1) to (3) shall *mutatis mutandis* apply
- (5) On the appointment of Ombudsman all appeals pending before the District Court shall stand transferred to Ombudsman who may proceed with the case from the stage at which it was pending immediately before such transfer.

7. Ombudsman: -

- (1) The respective Governments shall appoint an ombudsman at the Federal and provincial levels.
- (2) A person shall be qualified to be appointed as an Ombudsman who has been a judge of high court or qualified to be appointed as a judge of high court. The Ombudsman may recruit such staff as required to achieve the purposes of this Act and the finances will be provided by the respective Governments

8. Ombudsman to enquire into complaint. -

- (1) Any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee. ‘
- (2) The Ombudsman shall within 3 days of receiving a complaint issue a written show cause notice

to the accused. The accused after the receipt of written notice, shall submit written defense to the Ombudsman within five days and his failure to do so without reasonable cause the Ombudsman may proceed *ex parte*. Both the parties can represent themselves before the Ombudsman.

- (3) The Ombudsman shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the Ombudsman deems proper.
- (4) For the purposes of an investigation under this Act, the Ombudsman may require any office or member of an organisation concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation.
- (5) The Ombudsman shall record his decision and inform both parties and the management of the concerned organisation for implementation of the orders.

9. Representation to President or Governor: -

Any person aggrieved by a decision of Ombudsman under sub- section (5) of section 8, may, within thirty days of decision, make a representation to the President or Governor, as the case may be, who may pass such order thereon as he may deem fit.

10. Powers of the Ombudsman

- (1) The Ombudsman shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedures, 1908 (Act V of 1908), in respect of the following matters, namely:
 - i. Summoning and enforcing the attendance of any person and examining him on oath;
 - ii. Compelling the production of evidence;
 - iii. Receiving evidence on affidavits;
 - iv. Issuing commission for the examination of witnesses
 - v. entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsman has a reason to believe that any information relevant to the case may be found; and
 - vi. The Ombudsman shall have the same powers as the High Court has to punish any person for its contempt.
- (2) Ombudsman shall while making the decision on the complaint may impose any of the minor or major penalties specified in sub- section (4) of section 4.

11. Responsibility of employer. –

- (1) It shall be the responsibility of the employer to ensure implementation of this Act, including but not limited to incorporate the Code of Conduct for protection *against harassment at the workplace* as a part of their management policy and to form Inquiry Committee referred to in section 3 and designate a competent authority referred to in section 4.

- (2) The management shall display copies of the Code in English as well as in language understood by the majority of employees at conspicuous place in the organisation and the work place within six months of the commencement of this Act.
- (3) On failure of an employer to comply with the provisions of this section any employee of an organisation may file a *petition before the District Court* and on having been found guilty the employer shall be liable to fine which may extend to one hundred thousand rupees but shall not be less than twenty-five thousand rupees.

12. Provisions of the Act in addition to and not in derogation of any other law. –

The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

13. Power to make rules. -

The Federal Government may make rules to carry out the purposes of this Act.

Schedule

[See sections 2(c) and 11]

CODE OF CONDUCT FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE

Whereas it is expedient to make the Code of Conduct at the Workplace etc. to provide protection and safety to women against harassment it is hereby provided as under:

- (i) The Code provides a guideline for behavior of all employees, including management, and the owners of an organisation to ensure a work environment free of harassment and intimidation;
- (ii) "Harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;

The above is unacceptable behavior in the organisation and at the workplace, including in any interaction or situation that is linked to official work or official activity outside the office.

Explanation:

There are three significant manifestations of harassment in the work environment:

(a) Abuse of authority

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

(b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment.

The typical "hostile environment" claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) Retaliation

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is

also a part of the harassment.

- (iii) An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;
- (iv) A *complainant* or a staff member designated by the complainant for the purpose may report an incident of harassment informally to her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;
- (v) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner;
- (vi) If the incident or the case reported does constitute harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;
- (vii) A complainant does not necessarily have to take a complaint of harassment through the informal channel. She can launch a formal complaint at any time;
- (viii) The complainant may make formal complaint through her in charge, supervisor, CBA nominee or worker's representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to initiate the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;
- (ix) Assistance in the inquiry procedure can be sought from any member of the organisation who should be contacted to assist in such a case;
- (x) The employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;
- (xi) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;
- (xii) The harassment usually occurs between colleagues when they are alone, therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an

offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case; and

(xiii) The Code lays down the minimum standards of behavior regarding protection of women from harassment at workplace etc. but will not affect any better arrangement that an organisation may have developed nor will it bar the grant of protection that employees working in an institute may secure from their employers through negotiation.

STATEMENT OF OBJECTS AND REASONS

The objective of this Act is to create a safe working environment for women, which is free of harassment, abuse and intimidation with a view toward fulfillment of their right to work with dignity. It will also enable higher productivity and a better quality of life at work. Harassment is one of the biggest hurdles faced by working women preventing many who want to work to get themselves and their families out of poverty. This Act will open the path for women to participate more fully in the development of this country at all levels.

This Act builds on the principles of equal opportunity for men and women and their right to earn a livelihood without fear of discrimination as stipulated in the Constitution. This Act complies with the Government's commitment to high international labor standards and empowerment of women. It also adheres to the Human Rights Declaration, the United Nation's Convention for Elimination of all forms of Discrimination Against Women and ILO's convention 100 and 111 on workers' rights. It adheres to the principles of Islam and all other religions in our country which assure women's dignity.

This Act requires all public and private organisations to adopt an internal Code of Conduct and a complain/appeals mechanism aimed at establishing a safe working environment, free of intimidation and abuse, for all working women. It shall also establish an Ombudsman at Federal and provincial levels.

MINISTER-IN-CHARGE

YOUSAF RAZA GILLANI

PRIME MINISTER

ISLAMIC REPUBLIC OF PAKISTAN

Annex 2: Pakistan Penal Code, Section 509

Amendment to the Pakistan Penal Code, Section 509

further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement. –

- (1) This Act may be called the Criminal Law (Amendment) Act, 2009.
- (2) It shall come into force at once.

2. Amendment of section 509. XLV of 1860. - In the Pakistan Penal Code, 1860 (Act XLV of 1860), for section 509, the following shall be substituted namely: -

“509 **Insulting modesty or causing sexual harassment** – (1) whoever; -

- (iii) Intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;
- (iv) conducts sexual advances, or demands sexual favors or uses written or verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of work place, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behavior, or conducts such behavior with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment,

shall be punished with imprisonment which may extend to three years or fine up to five hundred thousand rupees or with both.

Explanation-1

Such behavior might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to work places, private gatherings, or homes.

Explanation-2

Workplace means, the place of work or the premises where an organisation or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organisation are carried out. Sexual advances may occur after working hours and outside workplace.

It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job-related functions and activities.”.

4. Amendment of Schedule II, Act V of 1898.- In the Code of Criminal Procedure 1898, (V of 1898) in Schedule II, -

(a) for the entries relating to section 509, in column 1 to 8 the following shall be substituted, namely: -

1	2	3	4	5	6	7	8
509	Insulting modesty or causing sexual harassment	Shall not arrest without warrant.	Warrant	Bailable	Compoundable With permission of the court	Imprisonment up to 3 years, or fine up to Rs.5,00,000, or both	Magistrate of the first class

STATEMENT OF OBJECTS AND REASONS

Harassment is one of the most common issues faced by the women of Pakistan. They face intimidation in the market place, in buses, at bus stops and at work place. This issue alone inhibits most of the women to move out of their houses for education, for availing medical facilities and for earning a livelihood. Parents are hesitant to send their daughters out of the homes alone because the social environment is not safe.

Though in Pakistan Penal Code there are some sections that attempt to address sexual harassment to a certain extent but the terminology is vague. For example, *violate* the *modesty* of women. Neither the term “violate” is well defined nor “modesty”. Therefore, it is open to interpretation and can be made much more effective by adding a more specific section.

The amendment drafted in PPC is in the same spirit as section 509 and the other relevant clauses of PPC that provide protection to women. It elaborates and specifies what constitutes harassment of women in public, private and workplaces. It also increases the maximum punishment.

In addition, the clauses in the PPC deal with harassment in the public places only. Workplace is considered a private place and therefore, those clauses are not applicable there. So far, in Pakistan no law covers the incidents of sexual harassment against women at the workplace. The amended version covers sexual harassment at the work place for the first time.

Thus, in conclusion, the new amendment takes the spirit of the PPC forward and makes it more effective for women in cases of insults, humiliation and intimidation.

This amendment will not only make the public and work environment safer for women but it will open up the path for more women to pursue livelihood with dignity. It will reduce poverty as more and more women will get the courage to enter the job market.

In addition, it will open up the opportunity for private and government sector to get competent human resource and result in better production and quality services. The social benefits as a result of providing protection for women will become a major contribution to the development of this country.

MINISTER-IN-CHARGE

SYED YOUSUF RAZA GILLANI

Annex 3: Relevant Pro-Women Sections in the Pakistan Penal Code

Relevant Pro-Women Sections in Pakistan Penal Code (PPC)

Section	Offense	Description
S.354.	Assault or criminal force to woman with intent to outrage her modesty	Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.
S.354-A.	Assault or use of criminal force to woman and stripping her of her clothes	Whoever assaults or uses criminal force to any women and strips her of her clothes and in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine.
S.354-B	Molestation with sexual motive	Whoever with sexual motive resorts to act of fondling, stroking, caressing, pornography, exhibitionism, or inducing or intimidating any person, with or without his knowledge, to submit for such act shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Annex 4: Guidelines for Designing a Training

Guidelines for Designing a Training on Sexual Harassment at Workplace and Effective Training Methodologies

The Toolkit in hand is designed in a way that it responds to almost every possible question regarding sexual harassment at the workplace, creating a harassment free work environment, legal provisions, enforcement mechanisms and guidance for the complainants and duty bearers. Designing a training on sexual harassment for each stakeholder is possible by writing down the objective of the training and the stakeholders for whom the training is being designed. According to the needs of the stakeholders, relevant sections/ questions addressed in the Toolkit can be selected for the training sessions.

Sample Training Design for Management of any Organisation on Endorsement of the Code of Conduct on Harassment

For instance, if a one- day training is being designed for the management of any organisation on endorsement of the code of conduct on sexual harassment at workplace, the following sessions could be helpful:

- Welcome and Introduction of the Participants
- Ground Rules for the Workshop
- Objectives of the Workshop
- What is the difference between harassment and sexual harassment?
- Why does harassment take place at the workplace?
- Who is responsible for endorsing the Code of Conduct on Harassment according to the Protection Against Harassment at Workplace Act 2010?
- What is meant by “Workplace” and “Employee” according to the law?
- What fears could we have regarding implementation of the Code of Conduct on Sexual Harassment at Workplace?
- I am an Employer (management of an organisation) – what is the process of endorsement of the Code of Conduct?
- Summing-up and reiteration of the main messages of the workshop.
- Feedback, evaluation of the workshop and Follow-up plan

Sample Training Design for Staff of any Organisation on Sexual Harassment

- Objectives of the Workshop – Including clear message from the higher management regarding “Zero Tolerance for Sexual Harassment at Workplace” – Harassment is a Crime and CANNOT be Tolerated.

- What is the difference between harassment and sexual harassment?
- Why does harassment take place at the workplace?
- Who can be sexually harassed?
- What impacts can it have on the victim, organisation and development of the country?
- Code of Conduct on Sexual Harassment of the Organisation and TORs of the Inquiry Committee with their contact information.
- Process for filing a complaint – and that it is encouraged to file complaint without any fear or fear of retaliation. If harasser is from the inquiry committee, even then staff member can file a complaint – he/ she will be replaced from the committee.
- Ending the Culture of silence and Zero Tolerance for such culture – encourage all staff to speak-up.
- Feedback, evaluation and follow-up plan

Other informative/ sensitisation sessions can be added as well according to the need of the groups to be trained. Various participatory methodologies/ techniques may be used.

Guidance for the Trainer on Anti- Sexual Harassment

Here are some useful guidelines/ points to remember for the trainers:

Give Clear Objectives and Serious Messages

It is important to keep in mind that training on sexual harassment at the workplace - no matter with whom is being conducted - should NOT start with the statements like, “As we have a law on sexual harassment at workplace in Pakistan – we want to implement the law. Therefore, this workshop has been organised.”

The need of the workshop or the main objective of the workshop/ sensitisation is always to – “CREATE RESPECTFUL and HARASSMENT FREE Environment for ALL” and that “we as an organisation/ institution have ZERO TOLERANCE FOR SEXUAL HARASSMENT.” Clear and serious message from management on the commitment of the objective is helpful.

Clearly Define Sexual Harassment

Don't make general statements about the unacceptable behaviour. Clearly define what is sexual harassment and give examples. If trainers themselves feel shy to speak about sexual harassment, and instead of clearly defining it make general statements and beat about the bush, the message will not be conveyed and the training will be useless.

Define other Unlawful Form of Harassment

It is important to define clearly all forms of unlawful harassment, like harassment on the basis of race, ethnicity, religion etc. Gender-based harassment should also be discussed even when such harassment may not be sexual in nature.

According to the international commitments ratified by Pakistan including the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), all kinds of discrimination must be addressed by the member states. Likewise, fundamental rights enshrined in the Constitution of Pakistan ensure the rights and dignity of all citizens irrespective of race, colour, religion, ethnicity and gender.

Use Humour Carefully

Humour is good to be added in the presentations and discussion, however, it is really important to know how and when to use it. Not many people are well versed with this art. In patriarchal cultures humour generally is based on inequalities or around class, caste, ethnicity, religious, sectarian, linguistic, racial and gender prejudices. Sometimes biased statements/ jokes can reinforce stereotypes as well as trivialise the seriousness of the issue of sexual harassment, so as trainers you need to be fully mindful of your words.

Use Participatory Training Methodologies

Instead of delving into lengthy lectures, use training techniques which involve everyone. Encourage questions, brainstorming on various subjects to obtain an understanding of the participants. Design group work with clear instructions on what to do for collecting and presenting the collective wisdom as well as for effective participation of all. Role-play can be another technique; however, it should be designed carefully. Read and Report back sessions can be also helpful. The reading material should be brief, precise and easy to understand.

Continuously assess the mood of the participants and see when they are losing interest. Change the pace or introduce energisers and breaks as needed.

Get Feedback of the Participants and Evaluate the Workshop

It is always useful to get feedback of the participants on the content, methodologies and logistical arrangement of the workshop to improve it further. Always try to know what content and approach worked or what didn't. Get suggestions from the participants regarding further needs for more detailed material as well as training.

Carefully use Real Life Stories or Case Studies of Incidents of sexual harassment

It is better to use success stories of the successful filing of a complaint and an impartial effective inquiry process. If you don't have such stories, don't use unsuccessful case studies as they may be discouraging. Stories regarding impact of sexual-harassment or culture of silence regarding sexual harassment at workplace on business, institutions and development of the society can be used.

Some Useful and Interactive Training Techniques

Interactive and participatory teaching/ training techniques are always helpful for everyone to feel comfortable and take an active part in the discussions. Such methodologies help participants in learning, taking lead, speaking up and creating an environment in which everyone facilitates one another. Some common interactive techniques are as follows:

Ground Rules Setting

From the very start of the interactive workshops it is important to set ground rules for the effective delivery of the learning process. Encourage all to participate in making rules for the workshop as it develops a sense of ownership and responsibility.

For example - Some Common Workshop Ground Rules

- Disagreement is not disregard - respect each other's opinions – challenge the idea but not the person.
- Participate and give space/ time to others to express/ contribute as well.
- Be punctual.
- No question is invalid or stupid - so don't hesitate to ask.
- Listen to understand.
- Keep information confidential – if someone is sharing his/ her personal stories, incidents, etc. it means they trust you. Don't breach their trust!
- If jargon and acronyms are being used, please do not hesitate to clarify.
- No personal comments - respect diversity and celebrate commonalities.

Brainstorming

Brainstorming is another technique used to bring out the creativity of the group. A question or common theme may be given to the participants on which everyone makes their comments or gives suggestions. Trainer writes down all the ideas on a board or a flip chart. Usually the trainer just lists down the spontaneous ideas of the participant without any criticism or any changes/ suggestions. At the end collectively the ideas are evaluated to come to commonly acceptable conclusions.

Small Group Discussion

The Trainer can break the participants into small groups according to the number of participants, or gender, or work experience etc. There might be many grounds on which the groups can be created in order to gain more effective results from the exercise. Participants can be provided with case studies, handouts, questions, or quizzes to solve, or asked to develop role plays according to various scenarios. Small group discussion instructions should be very clear, and trainer should give each group some time to make sure that every member of the group has understood the instructions. It is also important to assign responsibilities to the members to ensure participation of each group member in the discussion or preparations and delivery of the presentation.

Question and Answer Sessions

Always make space for question/ answer after each session for more clarity.

Quizzes and Checklists

Quizzes and checklists prepared by the trainers in advance can be helpful to learn the information shared. Sometimes, to motivate participants, small rewards can be given. Quizzes help create an environment of healthy competition.

Case Studies

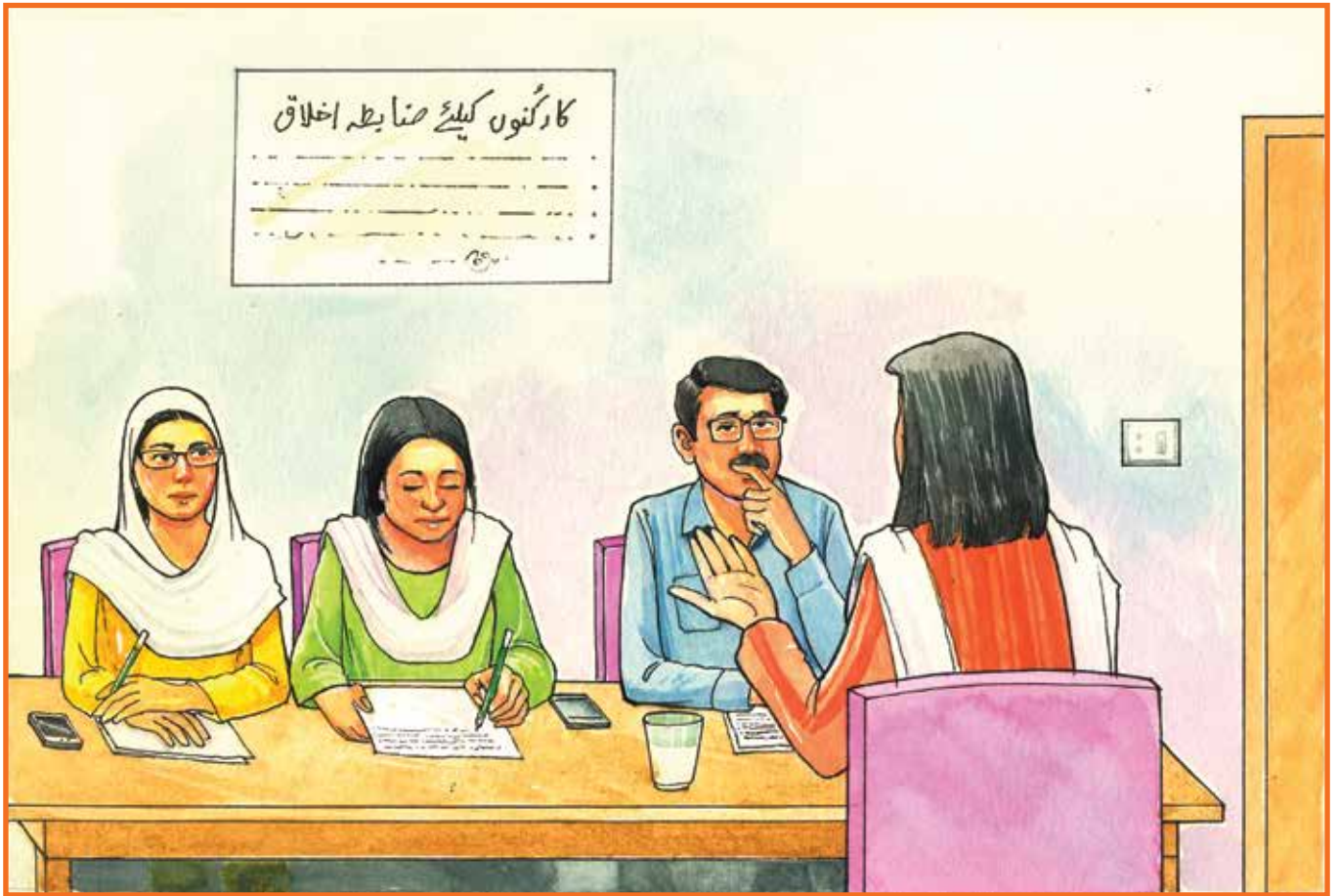
Experts agree that adults usually prefer trainings with problem-solving ways of thinking. So, it is always helpful to develop some case studies, imaginary scenarios with questions to respond, or find solution or more better ways etc.

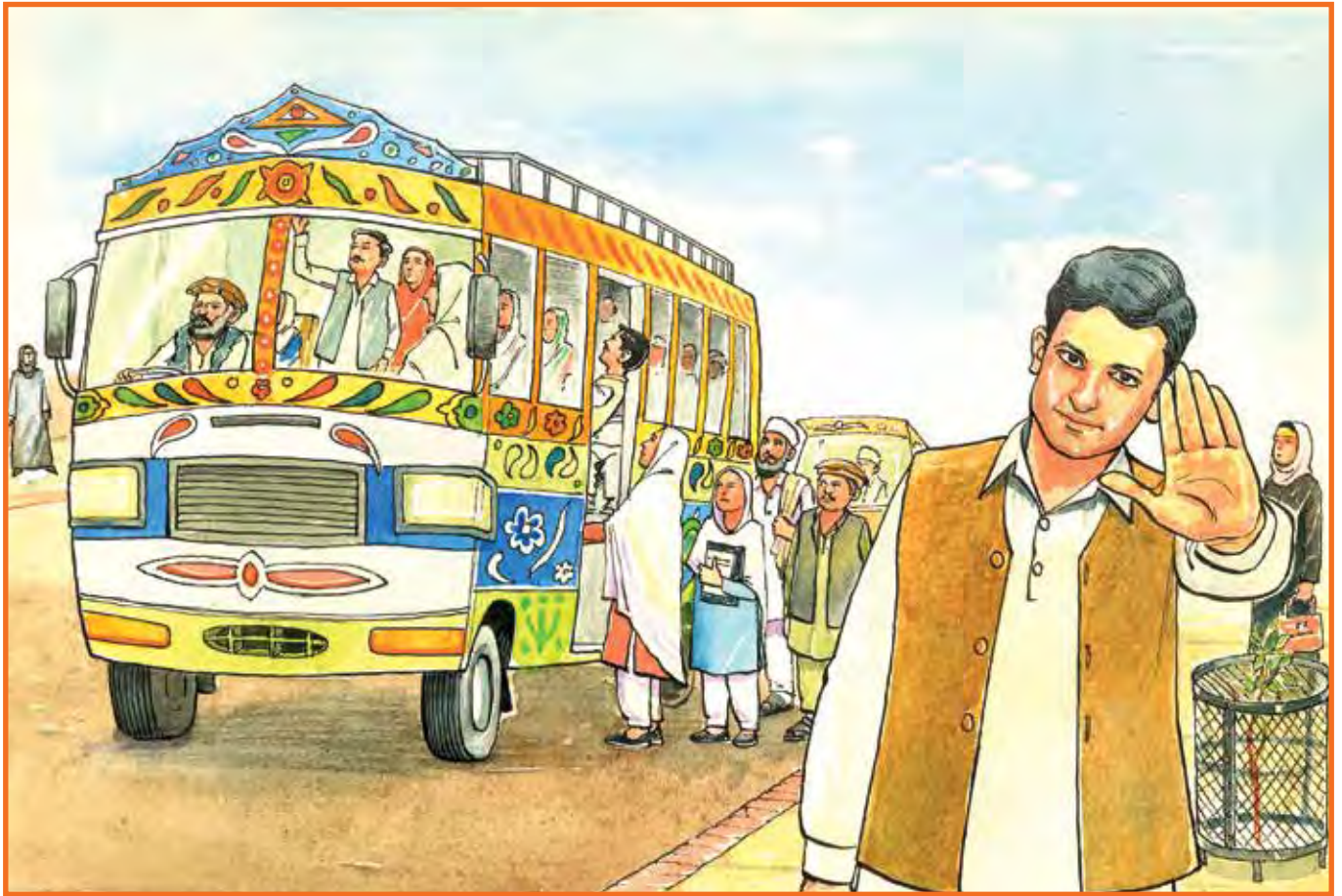
Role Plays

This is a teaching technique in which scenarios, case studies or situations are given to the participants in small groups and they are asked to develop a role-play (drama or act out the situation). After the role play it is important to discuss the results, messages and what went well or not. It is important to note that during the role plays usually cultural biases or humour with prejudices can be displayed to make the role play more relevant and incisive. It should be clarified at the beginning.

End Notes

1. Unwelcome does not mean "involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances.
Source: Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73 1992 manual
2. Offensive work environment is a work environment created by unwelcome sexual behavior or behavior directed at an employee because of that employee's sex that is offensive, hostile and/ or intimidating and that adversely affects that employee's ability to do his or her job.
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4. What is intersectionality, and what does it have to do with me? YW Boston, 2017 [https:/ / www.ywboston.org/ 2017/ 03/ what-is-intersectionality-and-what-does-it-have-to-do-with-me/](https://www.ywboston.org/2017/03/what-is-intersectionality-and-what-does-it-have-to-do-with-me/)
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