

**SUPREME COURT OF PAKISTAN**

(Review Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi  
Mr. Justice Muhammad Ali Mazhar  
Mrs. Justice Ayesha A. Malik

**CIVIL REVIEW PETITIONS NO.255 AND 570 OF 2021**

[Review against judgment dated 05.07.2021, passed by this Court in Civil Petition No.4570 of 2019]

Nadia Naz  
(in CRP.255 of 2021)

Syed Nayab Hussain Gardazi ...Petitioners  
(in CRP.570 of 2021)

Versus

The President of Islamic Republic of Pakistan,  
President House, Islamabad and others  
(in CRP.255 of 2021)

Nadia Naz, PTV Home H-9, Islamabad and others ...Respondents  
(in CRP.570 of 2021)

Petitioner : In person (in CRP.255 of 2021)

For the Petitioner(s) : Barrister Shehzad Ata Elahi,  
(in CRP.570 of 2021) Attorney General for Pakistan assisted  
by Miss Marium Rashid and  
Mr. Aitzaz ul Haq, Advocates

For Respondent Nos.4 & 5 : Barrister Umer Aslam Khan, ASC

For Respondents No.6 : Agha Muhammad Ali, ASC  
(in CRP.255 of 2021)

For Respondent No.7 : Agha Muhammad Ali, ASC  
(in CRP.570 of 2021)

For PTV : Mr. M. Nazir Jawwad, ASC

For Ministry of Information : M. Irfan Arjumand, Deputy Director

Date of Hearing : 14.03.2023

**JUDGMENT**

**AYESHA A. MALIK, J.-** Civil Review Petition No.255 of 2021 by Nadia Naz and Civil Review Petition No.570 of 2021 by the Attorney General for Pakistan are directed against judgment dated 05.07.2021 passed by this Court in Civil Petition No.4570 of 2019. The Petitioners pray for review and recall of the judgment due to its interpretation of the definition of *harassment* in Section 2(h) of the Protection against Harassment of Women at the Workplace Act, 2010 (Act).

2. Mr. Shehzad Ata Elahi, Attorney General for Pakistan (AGP), argued that while interpreting the definition of *harassment* under Section 2(h) of the Act, the judgment under review interpreted *harassment* in a very restrictive manner, one that overlooks the plausible and purposive interpretation of the section and is not in sync with the objectives of the Act. He argued that the given interpretation is not in accordance with the preamble and the Statement of Objects of the Act which is evident from the Parliamentary debates with reference to this Act. He emphasized that the given interpretation of *harassment* was made without considering the meaning of the word *sexual* which is used several times in the definition and has a significant impact on the interpretation of Section 2(h) of the Act. Consequently, the given meaning of *harassment* has effectively curtailed the scope of the Act and frustrated its very purpose. He argued that had the meaning of *sexual* been considered, it would have changed the outcome of the decision. The basic argument by the AGP is that the word *sexual* as contained in Section 2(h) of the Act should have been interpreted as being related to the gender in this context, which meaning significantly changes the interpretation of Section 2(h) of the Act. He argued that the Court adopted one meaning of *sexual* which means physical contact of sexual nature, or related to physical attraction or intimacy between individuals and failed to consider that there is another meaning given to the word *sexual* in the dictionary. He explained that the interpretation given in the judgment results in an incorrect understanding of the law which is not in consonance with its purpose. He argues that the word *sexual* or *sexually* when used as an adjective has two meanings, of which one meaning is related to the gender. As per his contention, had this meaning been considered, harassment under Section 2(h) of the Act also includes sex-based discrimination at the workplace and is not merely about behaviour or conduct of a sexual nature. He further argued that of the two possible meanings, the Court should have given to the word *sexual*, the more appropriate and plausible meaning in the instant cases, which is in accordance with the mandate of the Act, to protect against sex-based discrimination at the workplace. As per his arguments, the alternate meaning of *sexual* escaped the attention of the Court, which resulted in an erroneously narrow interpretation of Section 2(h) of the Act. Furthermore, the error in the judgment is so significant that it completely changes the outcome of the decision. His contention is that *sexual harassment* is not limited to behaviour of a

*sexual* nature and also relates to the gender where the employees are subjected to harassment on account of their sex. So far as the Respondents are concerned, they argued in support of the judgment and stated that no new interpretation was necessary.

3. What is in issue before us is the definition of *harassment* under Section 2(h) of the Act, which reads as follows:

*“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 impugned judgment dated 05.07.2021 interpreted this Section in the following terms:

*“12. The title and the preamble of “Protection Against Harassment of Women at the Workplace Act, 2010” hold out assurance to provide a legal regime for the “protection of women against harassment at workplace”. **When the Act, 2010 is examined as whole, it does not live up to expectation as title and preamble of the Act suggest. In its present form, surprisingly the harassment against which a woman is provided an assurance of protection is just another piece of cosmetic legislation; it is blinkered in its application. The Act, 2010 caters to grievance of the complainant [section 2(e)], may it be ‘men’ or ‘women’, against the act of misdemeanour defined as ‘harassment’ [under section 2(h)] on the part of an ‘accused’ [section 2(a)], who may either be an ‘employee’ or ‘employer’ of an organization, against whom a ‘complaint’ to the ‘Ombudsman’ [under section 8] or to the ‘Inquiry Committee’ [under section 4] is made.***

*13. Harassment, in all forms and manifestations, may it be based on race, gender, religion, disability, sexual orientation, age-related, an arrangement of quid pro quo, and/or sexual harassment etc affects and violates the dignity of a person, as guaranteed under the Constitution of Pakistan 1973. Even though anyone may be subject to sexual harassment, in a culture and society like Pakistan, women are the distressing majority of victims. Harassment in any society or organization is a testament to regressive behavior that creates an intimidating, hostile, degrading, humiliating, and offensive environment which has a devastating effect on any society or organization by adversely affecting its overall performance and development. **The Act, 2010, rather than addressing issue of harassment in all its manifestation, as noted above, in a holistic manner, is a myopic piece of legislation that focused only on a minute faction of harassment. The Act, 2010 confines or limits its***

**application to sexualized forms, including orientation of unwanted or unwelcome behavior, or conduct displayed by an accused person towards a victim in any organization. It may be observed that insulting modesty or causing sexual harassment at work place or public place etc. has been criminalized under Section 509 of the Pakistan Penal Code, 1860, which is punishable for a term which may extend to three years, or with fine up to five hundred thousand rupees, or both w.e.f. 02.02.2010.**

15. As could be seen from the definition of harassment as reproduced above, **any misdemeanor, behavior, or conduct unbecoming of an employee, or employer at the workplace towards a fellow employee or employer, in any organization, may it be generically classifiable harassment, is not actionable per-se under the Act, 2010, unless such behavior or conduct is shown to be inherently demonstrable of its 'sexual' nature. Any other demeaning attitude, behavior, or conduct which may amount to harassment in the generic sense of the word, as it is ordinarily understood, howsoever grave and devastating it may be on the victim, is not made actionable within the contemplation of actionable definition of "harassment" under section 2 (h) of the Act, 2010. Giving such restricted meaning to "actionable" harassment, by the legislature in its wisdom, impinges the very object and purpose for which the Act, 2010 was promulgated. The impact of harassment, as generically understood, and how restrictive its application has been made is very well articulated and thrashed out in paragraph 10 of the judgment rendered by the Islamabad High Court in the case of Shahida Masood (supra) which needs no further elaboration.**

16. **The Act, 2010 above has specifically been legislated to protect not only working women but men as well only against "harassment having sexual nature" at the workplace and, therefore, any conduct amounting to harassment of any other kind and nature, as noted in paragraph 13 above, despite howsoever distasteful and injurious, is not made cognizable before the Federal Ombudsman. The meaning of the term 'harassment' as given in Section 2 (h) of the Act, 2010 cannot be stretched to other conduct being not of sexual orientation. Apparently, the reason for limiting the actionable offence of 'harassment' could possibly be for the reason it may have a serious impact on all those involved, which includes both the potential 'harasser', the potential victims, and the responsibility for avoiding instances of harassment on workplace regulators. Such an approach is not unique to Pakistan and is in fact similarly followed in India. The Indian Supreme Court formulated the guideline known as Vishaka Guideline which made it mandatory for institutions across the country to put in place measures to prevent and redress sexual harassment**

at the workplace. The Vishakha Guidelines laid the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

“Section 2 (n) of the Act 2013 reads as follows:

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour

(whether directly or by implication) namely:

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”

21. While our version of the legislation to protect women at workplaces against harassment is titled “The Protection against Harassment of Women at the Workplace 2010”, however, **when the scheme of the enactment is carefully examined, its contents and application has been restricted to harassment of a purely sexual orientation and nature. It must be noted that under the Pakistani legislation on the subject, not only in the Preamble but also in the title of the Act, the term ‘harassment’ is used and not ‘sexual harassment’, but contrarily to the apparent intent, the meaning of the term ‘harassment’ has been explicitly given a restrictive meaning under clause (h) of Section 2 of the Act, 2010. ... The aggrieved person under the provisions of the Act, 2010 has the responsibility to prove that the perpetrator truly had an accompanying sexual intention or overture with his act, demeanor, behavior and/or conduct.”**

**[Emphasis Added]**

On review of the afore-noted paragraphs, we find that the emphasis of the judgment on defining *harassment* under the Act has been such that the word *sexual* has been considered as *an act of a sexual nature* which becomes actionable due to its sexualized nature and form, and sexual overtones. In other words, the judgment specifically states that the nature or the kind of harassment covered under the Act is limited to sexual forms of behavior or conduct meaning that harassment is limited to actions having sexual intent or overture, which is evident from behaviour and conduct. Furthermore, harassment in this form has to affect the victim’s work or performance at the workplace for it to be actionable under the Act. On considering the AGP’s arguments, we find that the Act does not define the word *sexual* and the judgment under review did not examine the meaning of *sexual* even though this word

has been used four times in the definition of *harassment*, which deficiency must be made up to do complete justice.

4. We have examined the definition of *sexual* in the following manner. In terms of the Concise Oxford English Dictionary, Twelfth Edition<sup>1</sup> the word *sexual* is an adjective, which has two meanings:

*“1 relating to the instincts, physiological processes, and activities connected with physical attraction or intimate physical contact between individuals.*

*2 relating to the two sexes or to gender.”*

Similarly, definitions are also found in Collins English Dictionary<sup>2</sup> which also gives two meanings to the word *sexual*:

*“1. feelings or activities are connected with the act of sex or with people’s desire for sex.*

*2. Relating to the differences between male and female people.”*

As per Merriam-Webster Online Dictionary<sup>3</sup>, *sexual* means:

*“1. relating to, or associated with sex or the sexes*

*2. having or involving sex”*

As per the dictionaries consulted, there are two meanings to the word *sexual*, which becomes relevant to the interpretation of the term *harassment*. The judgment under review did not consider these meanings, rather assumed that *sexual* only means relating to *the act of sexual nature*. As a result, the meaning relating to the *gender* was never considered and entirely excluded gender-based discrimination and harassment faced at the workplace. If the definition of the word *sexual* is taken to also include the gender, the impact is significant when reading Section 2(h) of the Act as *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. So in the context of harassment, the word *sexual* and *sexually* are relevant and give meaning to the word *harassment*, which in this context becomes actionable when it relates to the gender, being sex-based discrimination as opposed to only meaning coital relations and advances. Reading further into the definition of *harassment*, it appears sex-based discrimination does not have to be limited to *sexual* activity, rather it is behaviour which is promoted on

<sup>1</sup>*Sexual*, [Concise Oxford English Dictionary](#) (12<sup>th</sup> Ed. 2011).

<sup>2</sup>*Sexual*, [Collins Online English Dictionary](#), Collins, <https://www.collinsdictionary.com/dictionary/english/sexual>

<sup>3</sup>*Sexual*, [Merriam-Webster.com Dictionary](#), Merriam-Webster, <https://www.merriam-webster.com/dictionary/sexual>.

account of the gender as a result of gender-based power dynamics, which behaviour is harmful and not necessarily a product of *sexual* desire or *sexual* activity. Such harassment is motivated to degrade and demean a person by exploitation, humiliation and hostility which amounts to gender-based harassment and can include unwanted *sexual* alleviation and *sexual* coercion. Such behaviour in law becomes harassment at the workplace when it causes interference with work performance or creates an intimidating, hostile or offensive work environment and has the effect of punishing the complainant for refusal to comply with a request or is made a condition for employment. Accordingly, the definition of *harassment* includes sex-based discrimination that is based on the conduct of the harasser which affects the workplace environment in a negative manner as it interferes with the work and performance of the victim. If the conduct of the harasser is given a restricted meaning to being of *sexual* nature or form, it takes away the essence of the meaning of harassment, its purpose and reduces its impact and scope and ignores that *sexual* harassment is oftentimes less about *sexual* interest and more about reinforcing existing power dynamics.<sup>4</sup> Such an application of the law limits the protection offered under the Act and effectively excludes many instances where the victim may be harassed but cannot bring action against the harasser since the conduct was not *sexual* in nature.<sup>5</sup> We also note that the meaning of *sexual* is relevant when seen in the context of other definitions under the Act. The Act is not restricted to female victims, as the word *employee* defined in Section 2(f) of the Act means any regular or contractual employee and does not simply state women employees. Furthermore, *complainant* defined in Section 2(e) under the Act means a woman or man who has made a complaint. Hence, the Act recognizes that *harassment* is gender-based and that the victim can be a man or a woman. The impugned judgment overlooked the inclusion of men in the definition of complainant which is relevant when seen in the context of the protection given to employees under the Act. If the present definition of *harassment*, as given in the judgment under review is considered, its application on employees and complainants who are not women becomes questionable and its applicability may become redundant. We find that this aspect of the matter was not considered in the judgment under review as its interpretation of *harassment* has rendered the Act

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<sup>4</sup>International Labour Organization, *Sexual Harassment in the World of Work*, ILO.ORG, [www.ilo.org/wcmsp5/groups/public/---dgreports/-gender/documents/briefingnote/wcms\\_738115.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/-gender/documents/briefingnote/wcms_738115.pdf)

<sup>5</sup>Anum Mesiya, *Ten Years of the Protection Against Harassment of Women at the Workplace Act, 2010*, 11, *Pakistan Law Review*, 225, 238 (2020).

ineffective for employees or complainants who are not women. This error is so manifest and evident that it cannot be ignored.

5. In order to further examine the meaning of *sexual* and to understand the purpose of the Act, we also examined the Report of the National Assembly Standing Committee on Women Development dated 29.09.2009, the debates of the National Assembly of 21.01.2010 and of the Senate of 25.02.2010. These documents all show that the intent and purpose behind the enactment of the Act was to address harassment at the workplace which is prompted on account of gender and was not limited to a *sexual* form of harassment. The debates show that the intent was to *inter alia*, give effect to Articles 11 and 13 of the Convention Against the Elimination of Discrimination Against Women (**CEDAW**) and International Labour Organization (**ILO**) Convention Nos.100 and 111 on Worker's Rights and to eliminate all forms of discrimination in the workplace, including gender-based discrimination and sexual harassment. CEDAW was actively discussed in the debates and considered such that there should be no constraint on women when they enter the workplace. The Parliamentary debates also show that wherever the word *harassment* was used, it was intended to include harassment in the form of discrimination at the workplace. Furthermore, the Statement of Objects of the relevant bill is as follows:

*“The objective of the Bill is to create a safe working environment for workers, which is free of sexual harassment, abuse and intimidation with a view to enable higher productivity and a better quality of life at work. Sexual harassment is one of the biggest hurdles faced by working men and women preventing many from working to get themselves and their families out of poverty. This Bill will open the path for employees to participate more fully in the development of this country at all levels. This Bill builds on the principles of equal opportunity for men and women and their to earn a livelihood without fear of discrimination as stipulated in the Constitution. This Bill complies with the Government's commitment to high international labour standards and empowerment of women. It also adheres to the Human Rights Declaration, the United Nation's Convention on Elimination of all forms of Discrimination Against Women and ILO's convention 100 and 111 on worker' rights. It adheres to the principles of Islam and all other religions in our country.”*

This again confirms the view that *sexual* harassment at the workplace is not only about physical intimacy or *sexual* form but also includes discrimination on account of gender.



6. As for the documents considered by the Parliament, we find that, in addition to CEDAW and ILO, there are other conventions as well such as Discrimination (Employment and Occupation) Convention (No.111) of 1958 (**1958 Convention**), prohibiting sex-based discrimination, which was adopted by the international community and was ratified by Pakistan on 24.01.1961. The Committee of Experts on the Application of Conventions and Recommendations, ILO confirmed that as per the 1958 Convention, *sexual harassment* is a form of sex discrimination.<sup>6</sup> CEDAW also affirms women's right to be protected against sex-based discrimination and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights 1993 emphasizes that women's rights are inalienable, integral and indivisible parts of universal human rights and women are entitled to full and equal participation in political, civil, economic and social, and cultural life and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.<sup>7</sup> Moreover, the Vienna Declaration 1993 clearly states that gender-based violence, all forms of *sexual* harassment and exploitation are incompatible with dignity and worth of human person and must be eliminated<sup>8</sup> and the Beijing Declaration and Platform for Action states that the term *violence against women* means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including physical sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work.<sup>9</sup> If we look at these conventions and affirmations, it is clear that the understanding is that *sexual* harassment means and includes sex-based discrimination.<sup>10</sup>

7. During the course of the arguments, the AGP clarified that the Act has been amended in June 2022 vide the Protection against Harassment of Women at the Workplace (Amendment) Act, 2022 (**Amendment Act**) and in that the definition of *harassment* in Section

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<sup>6</sup>UN Women, Sources of International Law Related to Sexual Harassment, endvawnow.org, 2011, <https://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>

<sup>7</sup> Romana Asmat, *International Law and policies for Addressing Sexual harassment in the Workplace*, 2, International Research Journal for interdisciplinary and Multidisciplinary Studies (2016).

<sup>8</sup>Vienna Declaration and Programme of Action, Art.18, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

<sup>9</sup>Beijing Declaration and Platform for Action, Article 113, the Fourth World Conference on Women, having met in Beijing from 4 to 15 September 1995.

<sup>10</sup>Palvasha Shahab, Hubaish Farooqui and Maria Joyo, *Sexual Harassment at the Workplace: Nazia Naz and the (In)Violable Dignity of (Wo)Man?* 2.0, SZABIST Law Journal (2021).

2(h) has been substituted<sup>11</sup>. However, he states that the applicability of this definition shall be prospective in nature and that too limited to the federal law as the definition of *harassment* has not changed under the provincial laws to the best of his knowledge. Therefore, he argued that the purposive interpretation of the word *harassment* under the Act will benefit the complainants who have suffered harassment from 2010 to 2022 when the Amendment Act was promulgated. There is merit in this argument because whilst an attempt has been made to widen the scope of the definition of *harassment*, complaints from 2010 to 2022 will have to be seen in the context of the judgment under review.

8. While interpreting statutes, the cardinal rule is to take the purposive approach which means to look at the meaning of the words and the object and purpose of the law, which states the aim and objective of the law. Discovering the aim of the legislature carries significant weight while construing the meaning of the words of the statute as held in the case reported as Dilawar Hussain and others v. Province of Sindh and others (PLD 2016 SC 514). This Court has also held that the Court can refer to Parliamentary debates and the Statement of Objects to deduce the intent of the law in the cases reported as Mehr Zulfiqar Ali Babu and others v. Government of the Punjab and others (PLD 1997 SC 11) and Pepper (Inspector of Taxes) v. Hart (1993 SCMR 1019). This Court has also held that the object of the law is seen from the entire scheme of the law and its preamble and also subsequent legislative developments in the case reported as Irshad Ahmad Shaikh v. The State (2000 SCMR 814). In the instant case, the Amendment Act changed the definition of *harassment* to clarify that harassment can be physical, *sexual* or gender discrimination, which may not be *sexual* but is discriminatory behaviour against the gender. Consequently, the definition under review has been expanded to include physical and discriminatory behaviour which also testifies to the purposive meaning of Section 2(h) of the Act.

9. The judgment under review finds in para 16 that the reason for limiting the actionable offence of harassment could possibly be for the reason it may have a serious impact on all those involved, which

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<sup>11</sup>The Protection against Harassment of women at the Workplace (Amendment) Act, 2022, § 2(d), No. V of 2022 (Pakistan) substituted namely "(h) *harassment*" means- (i) any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating any intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment; or (ii) discrimination on basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind-set or notion, resulting in discriminatory behavior on basis of gender against the complainant;"

includes both the potential harasser, the potential victims; and the regulators which are responsible for avoiding instances of harassment at the workplace. The judgment under review finds that such an approach is not unique to Pakistan and is in fact similar to that followed in India. On examining the legal literature on the issue, it appears that the legal view is very different. Catharine A. MacKinnon<sup>12</sup> defined *sexual* harassment as a form of sex discrimination and required some form of legal remedy be made available for it.<sup>13</sup> As per her theory, there are two broad types of *sexual* demands in the workplace. The first is the “*quid pro quo*” theory in which a person in a position of authority demands attention in exchange for an employment benefit and while the impugned judgment mentions this theory, however, it fails to contextualize the same and also fails to acknowledge it in the context of MacKinnon’s actual theory. The second pertains to the conditions of work that one is subjected to, which may include repeated insults or invitations that are unaccompanied by an offer of employment benefit.<sup>14</sup> In both cases, this form of harassment is initiated on account of the gender and hence, it is referred to as *sexual* harassment. *Sexual* harassment, therefore, includes a form of sex-based discrimination, which hinders equal opportunity for employment performance and advancement of women. MacKinnon’s writings have embedded the understanding that *sexual* harassment is a form of sex-based discrimination,<sup>15</sup> which reduces a woman’s potential for social equality and reduces her participation in the workplace. As a phenomenon, *sexual* harassment is gender specific<sup>16</sup> and the majority of victims are women.<sup>17</sup> *Sexual* harassment at the workplace means that the presence of women at the workplace triggers this gender-based harassment, which in turn undermines a women’s right to public life, her right to dignity and most important, her basic right to be treated equal. *Sexual* harassment compromises these rights of a woman which entails being economically and financially independent and being able to make independent decision and more importantly to be considered as a

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<sup>12</sup>Catharine Alice MacKinnon is an American feminist legal scholar, activist and author. She is the Elizabeth A. Long Professor of Law at the University of Michigan Law School, where she has been tenured since 1990, and the James Barr Ames Visiting Professor of Law at Harvard Law School. From 2008 to 2012, she was the special gender adviser to the Prosecutor of the International Criminal Court. As an expert on international law, constitutional law, political and legal theory, and jurisprudence, MacKinnon focuses on women’s rights and sexual abuse and exploitation, including sexual harassment.

<sup>13</sup>Catharine A. MacKinnon, *Sexual Harassment of Working Women*, Yale University Press, New Haven and London, p. 183 (1979).

<sup>14</sup>Ibid, p. 185-186.

MacKinnon called this approach, the “inequality approach”.

<sup>15</sup>Palvasha Shahab, *Understanding Sexual Harassment at the Pakistani Workplace*, Legal Aid Society (2020)

<sup>16</sup>Chamallas, Martha, *Writing about Sexual Harassment: A Guide to Literature*, 4(1), UCLA Women’s Law Journal, 37, 38 (1993).

<sup>17</sup>Rhithu Chatterjee, *A New Survey Finds 81 Percent Of Women Have Experienced Sexual Harassment*, NPR.ORG, (21 February 2018, 7:43 PM ET), [www.npr.org/sections/thetwo-way/2018/02/21/587671849/](http://www.npr.org/sections/thetwo-way/2018/02/21/587671849/)

productive member of society.

10. Now, with reference to the case law relied upon in the impugned judgment, the Vishaka case<sup>18</sup> which has been mentioned in the judgment under review, the Indian Supreme Court found that gender equality includes protection from *sexual* harassment and the right to work with dignity which is a universally recognized basic human right. While looking at CEDAW, which also prescribes for equality in employment and *sexual* harassment as being gender-based discrimination, the court went on to direct that guidelines be made to protect the workplace from sex-based discrimination. In another case from the Indian Supreme Court, the Apparel Export Promotion Council<sup>19</sup> case the court again considered the meaning of *sexual* harassment in the context of harassment at the workplace and concluded that an act of *sexual* harassment is discriminatory as it is a form of gender-based discrimination projected through unwelcomed *sexual* advances, request for *sexual* favours and other verbal and physical conduct with *sexual* overtones whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee will affect the employment of that female and will interfere with her work performance. The judgment finds that *sexual* harassment creates a hostile working environment for women. So again, it goes to the very genesis of gender equality, the right to life and liberty and the right to dignity.

11. The Supreme Court of Canada in the case of Janzen v. Platy Enterprises Ltd. [1989] 1 SCR 1252 held that *sexual* harassment is a form of sex discrimination. It is unwelcome conduct that detrimentally affects the work environment or leads to adverse job-related consequences for victims of harassment. In the case before the Supreme Court of Canada waitresses at a restaurant alleged *sexual* harassment by the employer and the Supreme Court found that the *sexual* harassment suffered by the appellants constituted sex discrimination which was a practice or attitude related to the gender. It also found that *sexual* harassment is about power and abuse connected to the gender.

12. The cited case law shows that *sexual* harassment at the workplace affects the dignity and honour of a woman and needs to be eliminated. Further that the purpose of harassment laws is to address gender-based discrimination at the workplace and not to limit it to

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<sup>18</sup>(1997) 6 Supreme Court Cases 241 Vishaka and others Versus State of Rajasthan and others

<sup>19</sup>(1999) 1 Supreme Court Cases 759 Apparel Export Promotion Council Vs. A.K. Chopra

*sexual* forms of harassment. It includes a broad range of conduct and behaviour which results in workplace problems with serious consequences, one of the main being gender inequality. Being an issue grounded in equal opportunity and equal treatment of men and women in matters of employment, *sexual* harassment in any form violates the dignity of a person as it is a demeaning practice that aims to reduce the dignity of an employee who has been forced to endure such conduct. *Sexual* harassment as gender-based discrimination is gender-based hostility, which creates a hostile work environment. It is a reflection of the unequal power relations between men and women which translates into a form of abuse exploitation and intimidation at the workplace which makes it a violation of a basic human right.

13. In view of the above, there appears to be an error in the judgment owing to the interpretation of *harassment* displayed by the Court, which definition is patently against the Act and its Statement of Objects. We have no doubt that if the word *sexual* as used in the definition of the word *harassment* was assessed for its true meaning, as given in the dictionaries, then the conclusions drawn by this Court would have been different; and this makes valid grounds for review as was seen in Pakistan Bar Council v. Federal Government (2018 SCMR 1891). Additionally, the effect of the definitions of *complainant* and *employee* were not examined by this Court in looking at the case, thus, the interpretation of *harassment* as given in the judgment, if taken at face value, makes the Act redundant for men. Again, this goes against the object of the Act which allows both women and men to bring a case against harassment at the workplace. Every judgment of this Court is presumed to be a solemn and final decision on all points arising out of the case and if the Court has not taken a conscious and deliberate decision on point of facts or the law, then this results in a material irregularity, which makes for an error apparent on the face of the judgment and has a bearing on the fate of the case, reliance is placed on the case of Sikandar Hayat v. The State (PLD 2020 SC 559). In such circumstances, a review petition lies as was held in the case reported as Abdul Ghaffar Abdul Rehman and others v. Asghar Ali and others (PLD 1998 SC 363). In the instant case, since the Court did not give the word *sexual harassment* its due deliberation, it lacked the understanding of the scope of the law to draw a proper conclusion, therefore, interference by this Court in its review jurisdiction is warranted and this review petition is maintainable.

14. The second part of the judgment under review finds that the judgment of the Islamabad High Court dated 11.10.2019 is well reasoned as is the order of the President, against the decision of the Federal Ombudsperson for protection against harassment of women at the workplace. However, both the President and the Islamabad High Court decided the case of Nadia Naz on the understanding that *harassment* means *sexual* harassment having a *sexual* nature and form and did not examine the facts in the context of Nadia Naz's perspective and her understanding of the injury caused. In cases of harassment, the victim's perspective is relevant as against the notion of acceptable behaviour. The standard of a reasonable woman should be considered to determine whether there was harassment, which rendered the workplace hostile and all relevant factors should be viewed objectively and subjectively. In doing so, the order of the President and the judgment of the High Court failed to give due emphasis on the injury claimed and the harmful nature of the events to Nadia Naz. Under the circumstances, since *harassment* was understood in a limited context, both the order as well as the judgment decided the cases on a mistaken understanding of the law.

15. In view of the aforesaid, review petitions are allowed, the impugned judgment passed by this Court dated 05.07.2021 is set aside. The judgment passed by the High Court dated 11.10.2019 and the order passed by the President dated 05.01.2018 are also set aside and the matter is remanded to the President to decide the representation against the Ombudsperson's order dated 16.10.2017.

I agree. However, I have added a separate note.

**JUDGE**

**JUDGE**

'APPROVED FOR REPORTING'  
Azmat Ali/Alizeh Akbar Meer, LC.

**JUDGE**

Announced on \_\_\_\_\_ at \_\_\_\_\_

**JUDGE**

**Yahya Afridi, J.-** I have had the privilege of going through the judgment authored by my learned colleague, Justice Ayesha A. Malik. I concur with the conclusion. However, I am adding this brief note to underline three points: first, that the error pleaded by the petitioners and accepted by the Court to exercise its review jurisdiction does not require lengthy arguments or detailed re-examination of the record as it is apparent on the face of the record; second, that had the second meaning of the word 'sexual', which has now been brought to the attention of this Court, been then agitated and considered by the Court, its decision in the judgment under review on the meaning and scope of the word 'harassment', as defined in the Act, would have been otherwise; and finally, that the reference in the judgment of my learned colleague to the definitions of 'harassment' made in international Declarations and Conventions, as well as in existing legal literature is, as I understand, only for the purpose of elaboration, while the meaning and scope of the word 'harassment' is to be interpreted on the basis of the definition given in the Act. In this regard, I reiterate the statement of law referred to in the judgment under review, that when the definition of a particular expression has been given in a statute, then its ordinary meaning becomes irrelevant and cannot be considered.

2. The error apparent on the face of the record has rightly been pointed out in paragraph 4 of the judgment of my learned colleague, which I want to restate for precision, though at the cost of some repetition. Before doing so, I will cite here the definition of the word 'harassment', as given under the Act, which is under interpretation:

"harassment" means any [i] unwelcome **sexual** advance, [ii] request for **sexual** favors or [iii] other verbal or written communication or physical conduct of a **sexual** nature or [iv] **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;

(Numbers and emphasis are added)

The ordinary dictionary meanings of the word 'sexual', cited in paragraph 4 of the judgment of my learned colleague, show that it has two meanings: (i) relating to physical attraction between individuals, and (ii) relating to gender. The word 'sexual' highlighted as number (i), (ii) and (iii) in the definition cited above has been used in the first meaning, as held in the judgment under review. But the word 'sexually' highlighted as number (iv) has been used in the second meaning, that

is, demeaning attitudes on the basis of gender. This meaning of the word 'sexually' is justified by the words 'demeaning attitudes' that follow it. All three words 'sexually demeaning attitudes', when read together make the expression clear, as intended to be conveyed by the legislature. The word 'demeaning', which ordinarily means belittling and depreciating, is instructive in this regard. If the word 'sexually' is not understood in the context of 'relating to gender' in that expression, it will not produce any comprehensible meaning, as demeaning attitudes on the basis of physical attraction makes no rational sense. It is only when the second meaning of the word 'sexually' in the expression 'sexually demeaning attitudes' is applied that the expression conveys logic and understandable meaning.

3. 'Harassment' in form of 'sexually demeaning attitudes', as very rightly observed by my learned colleague, is motivated to degrade and demean a person by exploitation, humiliation and hostility on the basis of his or her gender, and such harassment is rooted in gender-based discrimination. 'Sexually demeaning attitude' becomes harassment at the workplace, as it causes interference with work performance or creates an intimidating, hostile or offensive work environment for the victim of such attitude.

4. The second meaning of the word 'sexual' was not brought to the notice of the Court, and thus, escaped its attention, while delivering the judgment under review, which resulted in misconstruction of the definition of 'harassment' as given in the Act. The non-consideration of an important aspect of the matter, which if it had been considered the decision of the Court would have been otherwise, amounts to an error apparent on the face of the record and is a well-established ground to exercise review jurisdiction.<sup>1</sup>

5. I have, therefore, concurred in the conclusion reached by my learned colleague, allowing the review petitions and remanding the matter to the worthy President of Pakistan for deciding afresh the representation of the petitioner, Nadia Naz, which shall be deemed as pending before him, and be decided in accordance with the law, in view of the meaning and scope of 'harassment' as discussed and explained above.

**Judge**

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<sup>1</sup> Amir Khan v. Controller of Estate Duty (PLD 1962 SC 335 - Per Kaikaus, J); Suba v. Fatima Bibi (1996 SCMR 158); Abdul Ghaffar v. Asghar Ali (PLD 1998 SC 363); Barkat Ali v. Qaim Din (2006 SCMR 562).