



Harassment of Women in Afghanistan: A hidden phenomenon addressed in too many laws

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Afghan women and girls often quietly endure harassment, including sexual harassment. Speaking out brings with it the possibility of their honour being called into question, and could lead to further restrictions being placed on their lives. Over the past few years, several legal initiatives have sought to address the issue of harassment. This has led to a situation in which two of them, in particular – the more progressive Elimination of Violence against Women Law (the EVAW Law) and a more recent, narrower Anti-Harassment of Women and Children Law – have been pitted against each other. AAN's Ehsan Qaane (with input from Sari Kouvo) unpacks these legal initiatives and looks at how the issue of harassment has become embroiled in old conflicts among Afghan women's rights activists and between the presidency and parliament.

There is no official record of the cases of harassment against women in Afghanistan. Harassment, whether it occurs within the family or educational institutions, in the workplace or the public sphere, is a little talked about phenomenon.

A report by the Afghanistan Independent Human Rights Commission (AIHCR) documenting violence against women between March and November 2016, for example, only included 34



complaints relating to harassment against women. Latifa Sultani, the Coordinator of the AIHRC's Women's Rights Unit told AAN, "all the registered cases of harassment against women were committed by husbands or close relatives of the female victims." She added that the AIHRC had not received any complaints about women facing harassment in public spaces, workplaces or educational institutions. Sayed Ehsan Khaleq, a member of the legal board of the Ministry of Labour, Martyrs and Disabled People told AAN that while the ministry had received complaints from employees, including female employees, about unfairness in the work environment, none of the complaints had been about harassment.

The lack of any official record reveals a different story: the cases presented by Salam Watandar Radio Station, in a series of social reporting in the first half of 2016 ([see here](#)) indicate that with the increased presence of women and girls in the public sphere, cases of harassment had also increased.

The only other, more comprehensive [survey](#) specifically focusing on sexual harassment of women was carried out by the Women and Children's Legal Research Foundation, based in Afghanistan. The survey, carried out in 2015, was based on interviews with 346 women from seven provinces: Kabul, Badakhshan, Herat, Balkh, Nangarhar, Kandahar and Kapisa. 90 per cent of the women interviewed said that they had faced harassment at least once in public spaces, 87 per cent had experienced it in their workplaces and 91 per cent in educational institutions. A smaller survey, carried out in 2016 by the Youth Development Association focused on Daykundi province, showed the occurrence of "sexual harassment at an alarming rate" of over 80 per cent of the 115 women and girls interviewed. Different forms of harassment reported from that province included:

Verbal harassment appears to be the most frequent form (24.7%), followed by phone calls and call dropping (22.7%), staring at women and girls (13.9%), street harassment (10.3%), bothering and disturbance (9.3%), and other forms of workplace harassment (touching, stalking etc) (7.2%).

That harassment of women should be a concern for the Afghan government and lawmakers was highlighted in March 2015 when President Ashraf Ghani spoke to the US Congress. Pledging to make educational facilities and work places safe for women, he said "A mental and cultural revolution must take place over the treatment of women in and by our society. There is no point talking about how much we respect women's honour, if we let it go unpunished or allowed harassment in our streets." (Watch the video, particularly from minute 49 to 57, [here](#).)

The Afghan Penal Code and the EVAW Law

The current Afghan Penal Code, which dates from 1976, criminalises rape and sexual assault against women and men, but it does not include any provisions relating to harassment or sexual harassment. (1) The Elimination of Violence Against Woman (EVAW) Law adopted by presidential decree in 2009 is the first Afghan legal act specifically addressing this problem. The EVAW Law is a very progressive law within the Afghan context. Besides a broad approach to



violence against women, including the harassment of women, the law also addresses forced and early marriage, as well as polygamy.

Harassment of women is defined in article 3 (7) of the EVAW Law as “using words or committing acts by any means, which causes damage to the personality, body and psyche of a woman.” But these “acts” and “words” remain undefined. According to article 30, a person convicted of this offence can be sentenced from three to twelve months in prison. In cases where the person who committed the harassment misused his authority, the sentence cannot be less than six months. (2)

According to article 7 of the EVAW Law, the victims or their relatives can register complaints with the police, the *huquq* (civil departments within the Ministry of Justice), at courts or in other relevant offices. These institutions must tackle the complaints and inform the Ministry of Women’s Affairs (MoWA). Based on the same article and article 16, the High Commission on the Elimination of Violence (HCEV), chaired by MoWA and with participants from all relevant government institutions (3) is in charge of coordination between the different institutional actors and for developing policies and regulations for the implementation of the EVAW Law. One such regulation is the Anti-Harassment Regulation that will be addressed later in this dispatch.

Besides criminalising harassment against women and related crimes, the EVAW Law includes provisions that seek to ensure that government institutions work to address social and cultural patterns of harassment. For example, according to article 11, the Ministry of Information and Culture is required to broadcast programs on TV channels and radio stations and publish articles to raise public awareness about women’s rights, the root causes of violence against women and to create awareness about crimes committed against women.

The EVAW Law, however, has been in limbo for almost three years. This is due to a failed attempt by MP Fawzia Kufi, the chairwoman of the Women’s Rights Commission of the Wolesi Jirga, the lower house, to get it approved by parliament on 18 May 2013. Kufi had pushed for the presidential decree to become a ‘full law’ against the advice of other activists on the subject who did not want to involve parliament, fearing its conservative majority would reject the law and render it useless – as was indeed the case. The main driving force was Qazi Nazir Ahmad Hanafi, head of the Legislative Commission and the law’s most fierce critic. The law then only survived because the spokesperson of the Lower House, Abdul Rauf Ibrahim, took it off the agenda and sent it back to the Women’s Rights Commission (see AAN dispatches [here](#) and [here](#)).

The Anti-Harassment Regulation

Afghan women’s rights activists have long been lobbying for the fine-tuning of the EVAW Law’s definitions and procedures relating to harassment that they considered not specific enough. This included Zarqa Yaftali, the chairwoman of the Women and Children’s Legal Research Foundation – the organisation mentioned above – and a member of MoWA’s legislation committee as well as many other members of the Afghan Women’s Network (AWN),



one of the country's largest women NGOs. The survey on sexual harassment carried out by Yaftali's foundation in 2015 provided fresh input to these efforts. Zarqa Yaftali told AAN that the findings of the survey were the basis from which the Anti-Harassment Regulation was developed.

The first draft of this regulation was prepared by the MoWA, in light of Article 16 (6) of the EVAW Law, (4) with technical support of UN Women. (5) The draft was re-worked by the Ministry of Justice, then approved by the Afghan cabinet on 5 September 2015. It was finally published on 3 October 2015.

The regulation clarifies what constitutes harassment of women, providing a definition similar to that provided by the UN Secretary General in 2008 (6), as well as a stronger mechanism through which to address harassment cases. The definition, in the regulation's article 3, is as follows:

Hostile action or physical contact with women; publication of posters, pictures, audio and video clips that are against ethics; verbal or non-verbal abuse or illegitimate demands; intimidating or abusing a woman by threatening a demotion, transfer, termination, withholding of promotion, or withholding of a positive evaluation.

The key terms in the definition were also further elaborated upon in the regulation, as follows (highlights by AAN):

- 1. Hostile action** is an unfavourable action that might harm the human dignity of a woman or cause resentment [or] create an atmosphere of intimidation and humiliation for a woman.
- 2. Physical contact** is the touching of a woman's body (by a man who is not her mahram).
- 3. Verbal harassment:** causing harm to a woman's safety or wellbeing by use of words, phrases or jokes and humour [sic] describing the body, clothing or behaviour; harassment over the phone; telling stories; or expressing [offensive] emotions, ideas, or feelings.
- 4. Nonverbal harassment:** posting compromising images of a woman on social media or distributing offensive topics regarding sexuality by email, taking pictures, publishing or distributing films or personal and family photographs without permission, or any other such actions which might will destroy the personality of a woman and divest her psychological health and dignity.
- 5. Organisation:** ministries, governmental institutions, both civil and military, independent commissions, educational institutions, institutions of higher education, enterprises, private businesses and joint ventures, non-governmental organisations and foreign organisations which are located in Afghanistan, and where the individual[s involved] are working or studying.

The regulation did bring more clarity – or at least detail – to the EVAW Law's definition of



harassment. Nevertheless, it also created new problems. For example, physical contact as a form of sexual harassment was defined as “touching the body of a woman who is not *mahram*” (according to Islamic Law, *mahram* women are the women a man cannot marry – a sister, daughter, mother – or his own wife). This definition, however, excludes *mahram* women from those protected from becoming victims of sexual harassment, according to Latifa Sultani of the AIHRC. Indeed, the women involved in the 34 cases of sexual harassment registered by her commission in 2016 (see above) had been harassed by their husbands or close relatives, ie their *mahrms*.

The mechanisms for dealing with cases of harassment of women to be created based on this regulation (particularly in workplaces and educational institutions), would be more robust than anything the EVAW Law had stipulated to date. Both at the central level of government and at the provincial level, the boards implementing the regulation would have the authority to order administrative punishment, except when sexual harassment had a punitive element. In these cases, the boards would have to send the complaints to the relevant judicial organs. (7) The regulation is less clear regarding the role of non-governmental organisations. It obliges them to create a similar mechanism but is unclear on the specifics.

The politics of the EVAW Law versus the anti-harassment law

In October 2016, Hanafi managed to bring the Administrative Board (ie the presidium) of the Lower House to put pressure on the Women’s Rights Commission to bring the EVAW Law back onto the house’s agenda; had it not, the law would have been handed over to the Legislative Commission where – given its chairman Hanafi’s enmity to the law – it would likely have been watered down or even been dismantled. When the parliamentary Women’s Rights Commission received this ultimatum, it chose instead to draft new legislation dealing with the same issues, the Anti-Harassment of Women and Children Law, and not build on the existing EVAW Law and its Anti-Harassment Regulation. (8) In fact, the MPs’ take the view that the new law replaced the EVAW Law, which they objected to and never approved. Masuda Karokhi, the deputy head of the commission, confirmed to AAN that this law was “a new law to protect women’s rights.”

The new law was passed by the Lower House on 9 November 2016. The Upper House followed in approving it on 25 December 2016, with only some minor changes to the language (for example, the senators expanded the law’s validity from women only to include children in some articles.) A few days before parliament went into its winter recess on 20 January 2017, a joint commission of both houses chaired by Senator Humaira Nemati with MP Kufi as deputy, approved the amendments put forward by the Upper House.

The finalised law was then sent to President Ghani for his verification, but so far he has neither signed nor rejected it. Neither has it been published in the official gazette. (AAN has unsuccessfully requested information on the status of the law from the President’s Office several times.) Nevertheless, according to article 94 of the constitution, the Anti-Harassment Law has become applicable law, even if it has not yet been explicitly approved by the president.



(9)

Interestingly, the law passed through both houses with much less criticism from conservative MPs such as Qazi Hanafi than that directed at the EAW Law. Hanafi told AAN on 29 March 2017, “The Anti-Harassment Law was passed swiftly because the law was according to Sharia and for the benefit of women and children.” Being in part ‘un-Islamic’ was one of the main arguments against the EAW Law. (Read AAN analysis of the mobilisation against the law outside parliament [here](#).) However, the tug-of-war concerning the two laws also reflects the long-strained relationship between the country’s executive and legislative powers (read AAN analysis of this issue [here](#).) So neither side wanted to give in.

Although women’s rights activists agree on the need for strong mechanisms to prevent the harassment of women in public spaces, workplaces and educational institutions, not all activists are happy with the Anti-Harassment Law. Samira Hamidi, a member of the board of the Afghanistan Women’s Network (AWN) told AAN that her organisation and Medica Afghanistan (10) have lobbied the President’s Office, the First Lady’s Office and the Second Vice-President’s Office to convince the president not to sign it. Another source (who spoke with AAN on the condition of anonymity) said that the MoWA had also tried to convince the president not to sign the law. In a conversation with AAN on 29 March 2017, MP Masuda Karokhi claimed that President Ghani had not yet signed the law because the AWN had asked him not to. She further said that the Women’s Rights Commission of the Lower House would put pressure on the president if he ignored or postponed the endorsement of the law.

The choice regarding which methods to adopt in order to address the harassment of women has, in the first instance, legal dimensions. The EAW Law’s definitions have been considered to be too unspecific, and the Anti-Harassment Regulation – designed to overcome this shortcoming – do not have a status of a law. This opened up the way for the law’s opponents to forward the new anti-harassment law. Secondly, however, there are also political dimensions: this is a power-struggle between the MoWA, which initiated the Anti-Harassment Regulation in 2015, and the Women’s Rights Commission of the Lower House, which promoted the Anti-Harassment Law. There has also been competition between AWN and MP Kufi, since AWN opposed Kufi’s strategy to present the EAW Law to parliament. The fact that Kufi and her team do not seem to have consulted wide enough on the Anti-Harassment Law has not helped relations: AWN accuses Kufi of not involving them in the drafting of the law and ignoring its recommendations on it. Other women’s rights activists have echoed these accusations. In contrast, Zarqa Yaftali, the chairwoman of the Women and Children’s Legal Research Foundation (WCLRF), who brought up the idea of the Anti-Harassment Regulation in 2015, and Aziz Rafiee, the chairman of the Afghan Civil Society Forum, one of the biggest civil society networks, told AAN that their organisations had worked very closely with Kufi’s Women’s Rights from the beginning to the end of the legislative process.

Both the proponents and opponents of the anti-harassment law continued to lobby both the presidential office as well as the Second-Vice President for their demands to be heard. According to both a source in the Office of the Second Vice-President, as well as to Samira



Hamidi, on 20 February 2017 Second Vice-President Sarwar Danesh apparently told a group of members of both sides that both he and the president thought the Anti-Harassment Law was a good achievement, however there were a number of technical problems. He promised that the government would amend the law to improve it further.

Conclusion: double limbo or pragmatic compromise?

Laws and legal mechanisms to prevent the harassment of women are undoubtedly in urgent need in Afghanistan. For the moment, however, the country has two such laws that exist simultaneously and compete with each other, the EVAW Law and the Anti-Harassment of Women and Children Law. The EVAW Law – which came first – already criminalises sexual harassment, and the later-added Anti-Harassment Regulation fills its legal gaps, sharpens its definitions and defines implementing mechanisms. There is, in fact, no need for the anti-harassment law. That it emerged anyway has, as we have seen, to do with the competition between the groups of both law's initiators and the strained relations between the presidency and the parliament.

The EVAW Law's fate thus remains unknown; it is not even clear whether it will be presented to parliament again. With this law, the additional regulation and its clarifications to the EVAW Law are also at risk. While the Anti-Harassment Law does, then, ensure that harassment is addressed in a law, the 15 other offences covered by the EVAW Law – such as forced and early marriage and polygamy – may not be.

Edited by Sari Kouvo, Thomas Ruttig and Emilie Jelinek

(1) The Penal Code is currently under review. The 1976 version states in Article 429:

(1) A person who, through violence, threat, or deceit violates the chastity of another (whether male or female), or initiates the act, shall be sentenced to long imprisonment, not exceeding seven years. (2) In the case where the person against whom the crime is committed is less than eighteen years old, or the person who commits the crime is one of the persons specified under paragraph 2 of Article 437 of this law, the offender shall be sentenced to long imprisonment, not exceeding ten years.

(2) Related crimes recognised in the EVAW Law are intimidation and humiliation of women. Article 3(6) and (5) define intimidation of women as: "performance of acts or use of words which result in or lead to fear in women." And humiliation of women as: "using words or committing acts which belittle the personality of a woman."

(3) Government institutions with membership in the commission are: the Attorney General's Office (AGO), the Ministry of Labour, Martyrs and Disabled People (MoLMDP), the Afghanistan Independent Human Rights Commission (AIHRC), Kabul Family Court, the Ministry



of Women's Affairs (MoWA), the Ministry of Religious Affairs, Hajj and Endowment (MoHIA), the Ministry of Education (MoE), the Ministry of Higher Education (MoHE), the Ministry of Information and Culture (MoIC), the Ministry of Justice (MoJ), the Ministry of Interior (Mol), the Ministry of Public Health (MoPH) and the Afghanistan Independent Bar Association (AIBA).

(4) Article 16 (6) of the EVAW Law stipulates:

Suggesting regulations and adopting relevant rules/procedures for the purpose of better implementation of this law.

(5) This is the official short version of The United Nations Entity for Gender Equality and the Empowerment of Women.

(6) The office of UN Secretary General, in a bulletin published in 2008 for the internal regulations of the organisation on the "Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority" defined it as follows:

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 or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another, or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. [...]

Regarding sexual harassment, this UN bulletin clarified that "sexual harassment is any unwelcome sexual advance, request for sexual favour, [...]" that "it can take the form of a single incident." The bulletin also mentioned that harassment and sexual harassment "are particularly serious when accompanied by abuse of authority."

(7) At the central level of government, these boards would be chaired by a representative from one of the organisations on the board (the Ministry of Justice, the Ministry of Women's Affairs or the Ministry of Hajj, Religious Affairs and Endowments); in the provinces, where this board would also be composed of local representatives from these same ministries, it would be chaired by a representative from the provincial governor's office.

(8) The anti-harassment law defines harassment in article 3 as "physical contact, illegitimate request, verbal and non-verbal harassment and any other acts that caused psychological, physical damage and humiliated a woman or a child." The last part of this definition, "any other acts that caused psychological, physical damage and humiliated the dignity of a woman or a child" is broader than the definition of violence against women in Article 3 of the EVAW Law. Paragraph 2 of Article 3 of the EVAW Law defines violence as "committing those acts mentioned in Article 5 of this law which lead to damage to the personality, body, property, and psyche of a woman." The EVAW Law, at least, limited criminal acts to very specific acts, which are named in Article 5 of the Law. But the Anti-Harassment Law keeps it open to any acts. In addition to this, physical contact, as a form of sexual harassment, shall result in superficial



damage on the body of the survivor, according to the Anti-Harassment Law. However, most physical contact, as a form of sexual harassment, does not leave signs on the victim's body.

The second chapter of the Anti-Harassment Law includes mechanisms of registering and addressing complaints of victims of sexual harassment. These mechanisms are very similar to the mechanisms in the EVAW Law for handling violence against women. The law introduces a High Commission for the Prevention of Sexual Harassment as the highest body for dealing with sexual harassment complaints and to combat the culture of sexual harassment. It is made up of the deputies of eight relevant ministries (the Ministries of Interior; Hajj, Religious Affairs and Endowments; Justice; Public Health; Culture and Information; Education; Higher Education; and Women Affairs), and the Attorney General's Office; and representatives of the Afghanistan Independent Human Rights Commission (AIHRC), the Supreme Court, and Afghanistan Independent Bar Association (AIBA). Under this high commission, committees are to be established in all governmental organisations, with the same duties as the boards had according to the Anti-Harassment Regulation (discussed above).

(9) Article 94 of the anti-harassment law says:

Law shall be what both houses of the parliament approve and the president endorses, unless this constitution states otherwise. In case the president rejects what the parliament approved, the president shall send it back, within fifteen days of the date from when it was presented, to the Lower House mentioning the reasons for rejection. Within the expiration period or if the Lower House re-approves it with two thirds of all the votes, the draft shall be considered endorsed and enforceable.

(10) AAN received Medica's letters and petitions, which were sent to the president and the first lady, who takes a strong interest in these issues.