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## Recommendations: Anti-Harassment Laws in Pakistan

These recommendations have been drafted after consultation with different stakeholders working on issues of harassment. Digital Rights Foundation feels that laws passed to address harassment in both online and offline spaces have been a step in the right direction, however in light of recent jurisprudence and the experience of victims, the laws fall short in terms of scope and procedures. Our aim is to recommend laws and amendments that evolve to capture the actual lived experiences of victims, particularly women and gender minorities.

### A. Definitions

1. The definition of 'complainant' in S2(e) of the Protection against Harassment of Women at Workplace Act 2010 (henceforth referred to as "Harassment Act") must include transgender individuals and should not be restricted to gender binaries.
2. The definition of 'workplace' in S2(n) of the Harassment Act ought to be widened to include all work-related situations, such as field visits, commute and living spaces provided by employers; and be expanded to include educational institutions, including informal ones such as madrasas, tuition centers, vocational centers, and special education schools.
3. The definition of 'harassment' under the Harassment Act should be broadened. The focus should shift from 'sexual harassment' to all 'sex-based harassment', i.e. harassment on the basis of sex, regardless of whether it is of a sexual or non-sexual nature.
4. The requirement of the employer-employee relationship under the Harassment Act should be relaxed as it excludes women working in informal and non-traditional workplaces.

## **B. Reform of Inquiry Committee Procedure**

1. The process of filing a complaint under the Harassment Act should be made accessible for persons with disabilities and specialized assistance should be furnished both by the institution and the Ombudsperson when the victim requires it.
2. Major reform of the Inquiry Committee process should be done through the standardization of rules. SOPs regulating the conduct of proceedings and rules of evidence should be in place.
3. In cases where the victim feels that the Inquiry Committee cannot be impartial, the Act should allow for setting up of an independent Committee from the workplace in question.
4. The constitution of the Inquiry Committee should include a minimum of two women.
5. Mechanisms for the protection and welfare of the victim should be in place such strict guidelines for confidentiality.

## **C. Strengthening and Reform of the Ombudsperson Office**

1. Powers of the Ombudsperson should be broadened and enhanced. Ombudsperson should be empowered to:
  - a. Issue protection orders for affording protection to the victims and witnesses.
  - b. Prevent retaliation, specifically in the form of termination or dismissal.
  - c. Temporarily suspend or separate the accused where it is evident that the accused is misusing authority to further harass or retaliate or is influencing witnesses or tampering with/hiding evidence.
2. Effective mechanisms for accountability of the Ombudsperson should be introduced. The issue of unauthorized delegation of powers of the Ombudsperson to the staff should be addressed.
3. Regular sensitivity training is needed for all personnel at the office of the Ombudspersons.

4. Procedure regulating the conduct of the proceedings and rules of evidence should be elaborated, in order to regulate and standardize the proceedings, promote certainty, structure discretion and satisfy the requirements of due process and fair trial. The legal standard of proof for cases of workplace harassment should also be clarified.

#### **D. Institutional Responsibility**

1. Penalties for non-compliance by employers ought to be strictly punished under S11 of the Harassment Act and higher fines should be considered. There should be mechanisms for the regular monitoring of organizations for compliance.

2. Responsibilities of employers under S11 of the Harassment Act ought to be widened - consider the addition of regular mandatory gender sensitivity training, extensive sexual harassment policy enactment specific to the workplace, and the requirement to keep a record of compliance with the law.

3. The institution should be held vicariously responsible for the actions of its employees--the accused or the Inquiry Committee--for failure to provide a safe working environment.

4. It should be the responsibility of the institution to protect against retaliation within the workplace.

#### **E. Defamation**

1. Criminal defamation laws under S499 and 500 of the Pakistan Penal Code and S20 of the Prevention of Electronic Crimes Act (henceforth referred to as "PECA") should be abolished.

2. In cases of harassment, if the accused has filed a defamation case, it should be stayed till such time there is a decision on the complaint of harassment filed by the victim.

3. Trial court judges seized of the defamation matters should be given guidelines and the power to dismiss the case before going to trial unless there is a reasonable and prima facie case of defamation.

## **F. Online Harassment under PECA**

- 1.** Establish women protection cells and facilitation centers where victims of cybercrime can seek legal and psychological support in the presence of the FIA officials.
- 2.** Establish special procedures to address urgent cases of blackmailing and harassment under S21 of PECA where the leaking of intimate images is imminent.
- 3.** Set a timeline for each stage of the complaint procedure and the final disposition of cases and penalize officers for delaying cases.
- 4.** Regular gender sensitivity training of FIA officials to create a safe space for victims to approach and report online harassment.
- 5.** Introduce automated systems for the purpose of filing online complaints to ensure that recourse is available to Pakistani citizens all over the country; such a complaint system should also allow for complainants to follow-up and obtain updates regarding the status of their complaint.
- 6.** Hire more prosecutors to speed up the disposition of cases, and ensure that FIA prosecutors comply with lawyers privately hired by the complainant.
- 7.** Establish an independent forensics body, that is housed outside the FIA premises, responsible for evaluating devices and providing third-party verification in relation to seized devices by the FIA to ensure transparency and to minimize the abuse of due process under S40 of PECA.
- 8.** Enforce S41 of PECA which guarantees confidentiality and obligates the authorized officers, particularly the Investigating Officers, to respect the confidentiality of victims, especially female complainants, when they come to provide evidence and record their statements.
- 9.** Implement S44 which provides for special training for Presiding Officers of the Court to prevent inconsistency in court decisions as well as to build the capacity of and train FIA officials so they are able to apply the provisions of the Act correctly.



**10.** Penalize and create SOPs regarding misuse of citizens data by government officials, which includes using it beyond the purpose it was originally collected for.

**11.** Mechanisms for penalizing officers for failure to follow proper procedure during investigation and prosecution.

**12.** Treat the publication of private information in breach of confidence or misuse of private information as civil wrongs rather than criminal offenses under Chapter II of the PECA.

**13.** Regulate information-sharing with foreign governments and entities by specific laws and subject to independent oversight, not solely based on a single provision namely S42 of PECA.

**14.** Take measures to ensure that FIA officials strictly comply with PECA Rules in particular S8 on Search and Seizure of property to ensure the chain of custody is intact.

### **About Digital Rights Foundation**

Digital Rights Foundation (DRF) is a registered research-based advocacy non-governmental organization based in Pakistan. Founded in 2012, DRF focuses on ICTs to support human rights, inclusiveness, democratic processes, and digital governance. DRF works on issues of online free speech, privacy, data protection and online violence against women.



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