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Protection of Women against Sexual Harassment-Social Barricades and Implementation of Laws in Pakistan

By Malieka Farah Deeba¹

Abstract

Sexual harassment infringes the fundamental human rights of women. It restricts the most important segment of society from demonstrating their full potential and their right to work and attain equal opportunity. The quantum of this behaviour in a society can only be evaluated when women in general are fully aware of the nature of this behaviour and the legal protection available. Sexual harassment is an ambiguous term for many; when hearing of an incident of sexual harassment, many might not understand exactly what crime has been committed. Under which category does it fall? What if the complainant is lying? Pakistan has enacted special and general laws to fight the epidemic of sexual harassment. This article presents the appraisal and implementation of all the prevailing laws related to sexual harassment of women in Pakistan. It examines the hurdles, restraints, and resistance women have faced during the course of adjudication and determination of such matters due to various factors including social barricades that persist in this society. This qualitative and quantitative study examined whether the prevailing laws sufficiently cover the full nature, scope, and underlying themes of sexual harassment through implementation, by analyzing the procedures adopted at the time of implementations. I also explored whether sexual harassment is really a form of discrimination and what prevailing laws should entail to combat the practice and whether the law is generally accepted by the social community because of certain intrinsic differences. The study also recommended changes and additions to the existing methods and procedures in the laws, policies, and guidelines and implementations and examined how rampant sexual harassment is in the workplace, and whether employers address harassment through policies, training, and acting on complaints.

Keywords: Sexual harassment, Awareness, Pakistan law, Social barricades, Changes and addition, Implementation

Introduction

“Sexual harassment” is a form of gender discrimination (Murrel et al. 1995). It is an outcome of the harasser’s perceived power of position whose masculine actions, words, and

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gestures seek sexual favour either as a quid pro quo or by way of intimidating or overawing the victim, creating a hostile environment (Rospenda et al. 1998), and often causing the victim anxiety, depression, and humiliation (Lopez, 2009). Survey results in the USA indicate that high numbers of women report experiencing harassment on the job, with estimates ranging from 40% to 90% of working women (Peirce et al. 1997). Despite the fact that the perpetration of sexual harassment is pervasive in almost in all parts of the world, we see a very small number of formal complaints by women. This is notwithstanding the legal regimes for protections against sexual harassment and psycho/social counselling which have long been established in the political dispensations of many countries, if not in all. Most of the time, though, women² uncomfortably endure it as one of the compulsory aspects of work interactions with male colleagues. One may blame this apathy on the part of women on their intrinsic psychological, emotional, and social upbringing which often encourages them to be reclusive instead of raising their voices. Others may argue that it is due to extrinsic factors such as legal and institutional designs which are insensitive to the nature of perpetration and the embodiment of patriarchal mindsets, and indifferent to the social cost of filing complaints and often breed uncertainty as to outcomes of complaints. Nonetheless, the end result is that women are generally reluctant to come forward with allegations of sexual harassment, even in developed countries, and Pakistan is no exception. The irony is that many still blame women for such wrongs (Maqsood, 2018). Women who speak the truth of the heinous offenses committed against them are often ridiculed, embarrassed, and casted away. The impact of a centuries old patriarchal mindset is so deep that it has even altered their own perception. Even in many cases, women themselves are not convinced about a person's inappropriate demeanour. Due to this normative social influence, women—despite being victims of such behaviour—tend to reclude themselves instead of pursuing the matter, let alone filing formal complaints under the law. They know that sadly the social cost of raising one's voice against such acts is too high (Pietsch, 2015). Pakistan is comparatively a country where using the word “sexual harassment” with reference to women would be odd enough for the society that most of the time it makes it difficult for the victim to report the occurrence (Miller, 2017, Johnson et al. 2016, Hebert, 2007).

This article presents the appraisal and implementation of all the prevailing laws related to sexual harassment of women in Pakistan and the hurdles, restraints, and resistance women face during the course of adjudication. It also examines the determination of such matters due to various factors including social barricades that persist in the society because of long existing ethnicity and societal norms (Tinkler, 2012). Through qualitative and quantitative data, the study explores the choices available in criminal and civil law for the redressal of grievances of the victims within the institutions. The study also illustrates the knowledge of the women/victims about the legal remedies and protection available, social cost of filing complaints, the magnitude of the evil, and number of complaints filed both under civil and criminal law. This study will advance knowledge of the prevailing general and special laws on the subject and their implementation, while keeping in view the factors that hinder their applicability and acceptance in society.

² While this paper revolves around the harassment of women and the laws related to women, given the broad concern of feminist thought for gender diversity, the same laws also cover harassment of men and the trans community. Although this is out of the purview of this research, it is important to recognize that men (at lower rates) and the trans community (at higher rates) experience harassment.

Concept of Sexual Harassment-Historical Evolution

The term sexual harassment was coined for the first time in the mid-1970s and later became widely recognized as a form of gender discrimination (Nagasaila, 1991). The perpetration of the act has existed since the start of the history of mankind, but even though the concept is contextualized in academic circles, it is still ambiguous to the large segment of society. The first time the comprehensive phrase was given to the phenomenon of ‘sexual harassment at work’ was by an American Journalist, author, and feminist Lin Farley who was then teaching a course at Cornell University on ‘women and work’ in the mid-1970s (Siegel, 2003). The terminology made its public appearance in 1975 and became part of English diction (Wishnietsky, 1991) when Farley testified about her work at Cornell before the Commission on Human Rights of New York City. “Sexual harassment of women in their place of employment is extremely widespread,” she told the panel, according to a 1975 *New York Times* report (Swenson, 2017, para. 6). She continued, “It is literally epidemic”. Thereafter, the term “sexual harassment” remained a constant subject of discourse and analysis in the area of gender discrimination.

Development of Regime for Protection against Sexual Harassment in Pakistan

Many attempts were made to uplift the status of and mainstreaming of women in national life; amongst pertinent ones is the special provision in Constitution of Pakistan 1973 (the Constitution) for uplifting of women. Pakistan also became signatory to the International Convention on Economic, Social and Cultural Rights of Women (ICESCRW), and Women’s Human Rights and the Convention on Elimination of Discrimination Against Women (CEDAW) 1979 and is also member country of International Labour Organization (ILO). In particular, Article 7 of ICESCRW recognized women’s right to fair working conditions and protection from sexual harassment in their place of work. Then, under CEDAW, it was enjoined upon the states to put in place effective measures for the prevention of discrimination against women. Finally, sexual harassment was formally recognized as gender discrimination at an international arena in 1993 in a seminar at Manila under the auspices of ILO. Pakistan also became a signatory of the Beijing Declaration and Platform for Action in 1995. All these conventions require the member states to ensure equal opportunity for women; ILO, CEDAW, and Beijing Declaration, in very clear terms, enjoin states to put effective measures in place to protect women against the menace of sexual harassment so that women may freely participate in national life, particularly economic development. Therefore, Pakistan—under national and international obligations—was obliged to make its municipal legislation consistent with the provisions of the said conventions.

As noted above, the typical sexual harassment legal regime was evolved in the West; Pakistan, while recognizing the international obligations under the said conventions, rediscovered its roots in the fundamental constitutional rights and guarantees for women such as rights of inviolability and dignity of women, gender equality, and duty of state to take steps to ensure full participation of women in all spheres of national life, as laid out in the Constitution (Raza, 2007).

Sexual Harassment as Crime under Pakistan Penal Code

A number of laws have been promulgated in Pakistan to uplift the status of women and to provide protection against insults to women’s modesty and sexual harassment in the workplace. Though many countries (including US, UK, France etc.) have not yet recognized sexual harassment at workplace as a criminal offense, Pakistan has categorized sexual harassment in the

workplace not only as a civil wrong but also a criminal offense. Section 509 of Pakistan Penal Code 1860 (PPC) has been amended vide Criminal Law (Amendment) Act, 2010, providing two kinds of offences. The first one is “insulting the modesty of women” (which is not the subject of this article and will not be discussed any further) and the other one is causing sexual harassment in the workplace (Section 509 PPC). Section 509(ii) defines sexual harassment as:

[whoever] 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 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.

As per 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 workplaces, private gatherings, or homes.” Whereas Explanation 2 enlarges the scope of the workplace, which means:

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

Section 509(ii) is very broad and captures the wide spectrum of conducts and actions of a sexual nature. It also encapsulates sexual harassment in the workplace which not only includes public places such as markets, public transport, streets or parks etc., but also private places such as private gatherings, or homes. Through a nuanced look at this definition, we also see another important aspect of the broader scope of the offense under Section 509(ii), that it covers sexual harassment at the workplace (i.e., connecting with job situation or job-related functions as well as general sexual harassment without any reference of the workplace or relating to one’s job).

Criminal Law Procedure

Under the Criminal Procedure 1898 (CrPC) Sexual Harassment is a non-cognizable offense, and as result police cannot arrest without a warrant from the magistrate. It is also compoundable (capable of being settled privately) between parties but with the permission of court (Schedule II of CrPC). The offense has also been categorized as bailable, meaning that the bail of the accused will be admissible as a matter of right and not at the discretion of the Court. The usual process is initiated when First Information Report (**FIR**) is lodged in the police station by the

victim or any other person who witnessed the occurrence in the precincts of which offence or part of the offence is committed. The concerned Police officer will then conduct an initial inquiry and record initial statements of witnesses, and if he finds that a plausible case is made out, he will formally start investigating the matter by examining the complainant and any other witnesses and record their statements. If necessary he will get the warrant issued with approval of the magistrate, arrest the accused, and within twenty four hours present him before the concerned magistrate for physical remand which can be a maximum of up to 14 days. During the physical remand, the police interrogate the accused, and once the remand period ends, the accused will be granted bail (as the offense is bailable) and released from police custody. Then the prosecution department of the police submits challan in which all the applicable provisions of PPC, along with the facts, is laid before the court. The court considers the facts of the case and will either discharge the accused when there is no probability of conviction or will charge sheet the accused. If the accused pleads guilty, then he will be convicted there, but, if he pleads not guilty, formal trial under CrPC starts. Initially, the prosecution leads the evidence thereafter, the accused presents his defense. Once the evidence is closed, the court—after hearing the detailed arguments of parties—pronounces the judgement in either of the binary options: conviction or acquittal. If any of the party is not satisfied with the judgement of the trial court, then a first appeal will lie to Sessions Court. Any party not satisfied with the decision of the first appellate court, a second appeal will lie to the High Court. In case any of the party makes a case that any question of interpretation of constitutional provisions is involved, then a further appeal may be filed before the Supreme Court.

The Protection of Women in the Workplace Act, 2010

While Section 509 of the PPC is general criminal law of the land on harassment of women at workplaces and any person may have recourse to remedies available under general law, Parliament, in order to strengthen the regime, has created a parallel dispensation by enacting a special legislation: “The Protection against Harassment of Women at the Workplace Act, 2010” (the “Harassment Act”).

The main objective of the Harassment Act, as laid out in Statement of Objects and Reasons, 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”, and “its essence has also been borrowed from the principles of Islam which assures women’s dignity”³.

Section 2(h) of the Act defines harassment 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 is made a condition for employment.

The definition encompasses four different conducts, actions which should give rise to any of the four consequences. If we juxtapose both the definitions in the PPC and the Harassment Act, other

³Though no independent scholarly research exists to prove that there was any correlation between the “essence” of typical sexual harassment as gender discrimination at the workplace and the concept of “women’s dignity” as a “principle of Islam”.

than “sexually demeaning attitude” (which also constitutes sexual harassment under the Harassment Act) and general sexual harassment without any link with employment (which is offense under the PPC), both the definitions are almost mirror clauses which cover both *quid pro quo* as well as hostile environment sexual harassment. Under the Harassment Act, sexual harassment is also a penal action and penalties are in the form of disciplinary actions against the accused which include minor penalties such as censure, withholding of increment, compensation etc., and major penalties such as reduction in lower post, removal or dismissal from service, fines etc. These penalties are akin to penalties under “Efficiency and Discipline” rules of employees in an organization with a combination of fines. Therefore, the aim and scope of the Harassment Act covers formal sectors of the economy such as government organizations, corporations, companies, and firms where formal service structure is provided. However, informal sectors such as sole proprietorship, small business places such as restaurants, shops or women labourers and peasants in villages—which constitute a major chunk of the labour force in Pakistan—practically cannot take any benefit of the legislation.

Quasi-Judicial Procedure under the Sexual Harassment Act

The Act sets out a brief and flexible substantive and procedural framework to deal with cases of workplace sexual harassment, encompassing preventive measures, to the filing of initial complaints, and then to the final conclusion of the matter. It gives the Complainant the choice to either lodge complaint with the committee at the organization level, constituted under Section 3 of the Act (the Inquiry Committee) or with the Federal or Provincial Ombudspersons (Section 8). The organization is required to constitute the Inquiry Committee of three members, amongst which one should be a female. 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 Collective Bargaining Agent. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within, as described above. A Chairperson shall be designated from amongst them. The Act enjoins on management of every organization to appoint and designate a competent authority which shall impose penalty as per the recommendation of the Inquiry Committee.

The broader parameters of procedure to be adopted for the inquiry and decisions have been set out in Section 4 and rules made under Section 13 of the Act. However, subject to provisions of the Act and rules made thereunder, the Inquiry Committee shall have the power to regulate its own procedure for conducting inquiry, whether adversarial, inquisitorial, or a mix of both, and for the fixing place and time of its sitting (Section 4). However, a careful reading of Sections 4 and 5 of the Act leads us to conclude that the nature of proceedings of the Inquiry Committee is more inquisitorial in nature (i.e. not only parties can adduce evidence in respect of their respective claims and defenses, but such committee can probe the facts on its own by examining witnesses and collecting evidence). It is within the powers of the Inquiry Committee to summon witnesses, call for documents, examine places etc. The proceedings, information, and documents produced or acquired during the course of proceedings shall be kept strictly confidential (Rule 7). Besides, the Act lays down an aggressive timeline to be followed for conclusion of matters under the Act. For example, the maximum time from initial complaint to final conclusion of the matter will be about four months (not including the time that may be taken by the President or Governor to decide on representation against the order of the ombudsperson; though later this paper will separately propound that representation before President/Governor was required at all, and if so, under what

circumstances). Once findings have been reached through the inquiry process, the Inquiry Committee will give recommendations to the Competent Authority of the organization who shall be bound to make orders as per the recommendation. The accused or the complainant, if not satisfied with the decision of the Competent Authority, may prefer an appeal before the ombudsperson who shall decide the appeal within 30 days. Feeling aggrieved by the order of the ombudsperson, any party may file representation to the President or Governor of the province who may make appropriate order on such representation.

As the complainant/victim has the option to file the complaint directly to the ombudsperson, the same summary procedure is to be adopted as that of the Inquiry Committee except that, upon complaint, the accused person will be issued a show cause notice, which clearly shifts the initial burden on him to prove that he is innocent (Section 8). Under the Act, the ombudsperson has been vested with the power of civil court to summon witness and compel production of record/information or enter any premises for inquiry and can grant injunction and order arrests of the accused in case he/she does not appear for hearing. Though the ombudsperson has the power of High Court in respect of contempt of court, it does not have the power to punish any one for perjury. Once the case is decided, there is further process available in the form of Appeal/Representation to the President/governor. Under supervisory jurisdiction, the High Court may also take up by the aggrieved party.

The Harassment Act and rules made thereunder are silent when it comes to standards of proof required for the inquiry Committee or ombudsperson, on the touchstone of which it may decide to inflict the punishments on the accused. Similarly, in view of civil liability to be determined under the Act, the law is also silent as to how burden of proof will be determined in the given circumstances, though requirement of issuance of show cause notice to accused by ombudsperson alludes to shifting of initial burden to him. In this regard, neither the Act, rules made thereunder, nor any ruling of higher courts of Pakistan are available for the guidance of Inquiry Committees. If no baseline rules are framed to guide the Inquiry Committee or ombudspersons and this procedural gap is left murky or at the discretion of Inquiry Committee or ombudsperson, there is a risk that decisions will be rendered on a variant, legal, and procedural basis and will lead to overturning of decisions by the courts on the procedural lacunae. The victim, who will have already suffered through the lengthy process, may end up remediless. This will cause their trust in the system to be shaken, and considering these impediments, many will prefer to remain silent. Needless to mention that vide Eighteen Constitutional Amendment to the Constitution passed in April 2010 (one month after the passage of the Act), a new fundamental right Article 10-A (Right to fair trial) was incorporated, ensuring that “for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process”. Therefore, any procedure touching upon determination of civil or criminal liability under the Act as well as CrPC has to be in conformity with the principle enunciated under Article 10-A of the Constitution. The Act does not provide any rule for investigation. The time period for adjudication is fixed. There is no monitoring mechanism to seek information or exercise supervision of the Inquiry Committees. There is no central data from the Inquiry Committees constituted under the Act. There is no special background training of the staff of the ombudsperson.

Methodology

First and the foremost, throughout the work of this article the analysis and observations were made from the actual cases probed by the inquiry committee (of which the author is

Chairperson) of a Higher Education Institution (HEI) constituted under the Harassment Act. In-depth analysis has been made in light of that experience in order to highlight the problems in the investigation of the cases due to social impediments that undermine the implementation of the law in its true spirit. In this regard, special workshops were also conducted in the year 2017, 2018, and 2019 for the female administrators, academicians, and for female students within the HEI to get hands on knowledge about different experiences of the women in their daily professional and academic interactions with their male colleagues, professors, and bosses/seniors. The main reason to conduct these workshops was to inculcate in working women, including students, the understanding of sexual harassment and how to deal with such predatory behaviour. The data was also collected through anonymous surveys that included female students, teachers, and women from a broad spectrum of work areas, such as bureaucrats.

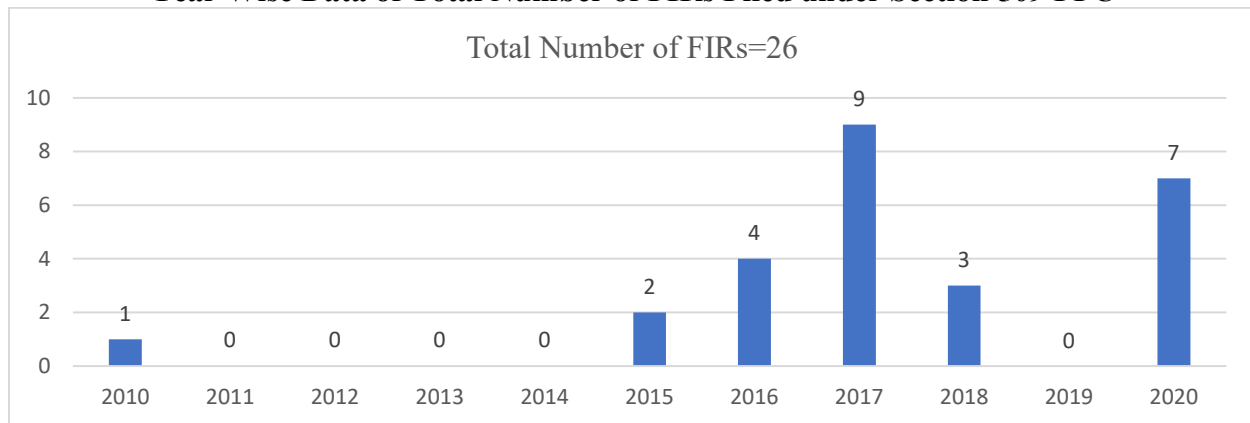
As a sample, data from the last ten years of the First Information Reports (FIRs) filed under Section 509 Pakistan Penal Code in police stations of Lahore, a provincial metropolitan city, which stretches over 1,172 square kilometers with a population of over twelve (12) million, was collected. Similarly, the last ten years' data of the complaints filed under the Harassment Act from the office of federal Ombudsperson was gathered for analysis.

A qualitative ethnographic research study was conducted by short interviews of the participants. Thirteen female officials were approached for interview, and out of them twelve were available for the interview. Accordingly, the interviews were conducted between July 2019 and February 2020. Semi-structured data was collected—informal sitting with the participants and discussing open ended questions.

Enigma of Implementation Regime

The nature, scope, and type of sexual harassment laws including procedures for adjudication have been outlined in detail above; it is imperative that now efficacy and efficiency of the implementation regime under the CrPC and the Harassment Act is objectively evaluated. First and foremost, we need to establish what the quantum of perpetration is in general and then see how many of those victims have had recourse to the criminal law remedy. In this regard, it was found that no independent data was available in Pakistan to establish overall percentage of sexual harassment cases in Pakistan. Therefore, the author conducted a survey of working women from various walks of life by distributing google survey forms. In order to make the survey more robust, the author also conducted ethnographic surveys that included face-to-face interviews with various women. Generally, women are reluctant to disclose the ordeals they face, however, when provided with a conducive, confined, and safe environment where they share the strength of same gender, almost everyone had a terrible story to voice on sexual harassment. Now, in order to see how many victims have approached police for redressal of grievance in the last ten years since the new law was promulgated, it was noted that there was no data available in Pakistan. The survey results show that only 1% of women who were subject to sexual harassment sought criminal remedy. To further confirm the above fact, the author selected Lahore, a metropolitan city in the Province of Punjab, which stretches over 1,172 square kilometers with a population of over twelve (12) million and a relatively high crime rate. The following data was made available from the office of Inspector General of Police, Punjab:

Year Wise Data of Total Number of FIRs Filed under Section 509 PPC



The above data shows startling figures. In the ten-year period from 2010 to 2020, only twenty-six cases were reported by way of FIRs. A further breakup shows that from 2010 to 2014 only one was reported, in 2015 two, in 2016 four, in 2017 (highest) nine, in 2018 three, in 2019 zero, and finally in 2020—until August—only seven FIRs were registered in different police stations of Lahore. Further, it is noteworthy that the above data is in respect of both offenses under Section 502 of PPC (i.e., “insulting the modesty of women” and “sexual harassment at workplace”). Therefore, one may assume that the actual number of sexual harassment FIRs would be even less than the above number. It is to be noted here that after FIR there is a lengthy process of trial, and it might be the case that not a single conviction was made on this charge. However, as the number of FIR is so low, there is no need to examine the conviction rate as it would not have any significant impact on our analysis.

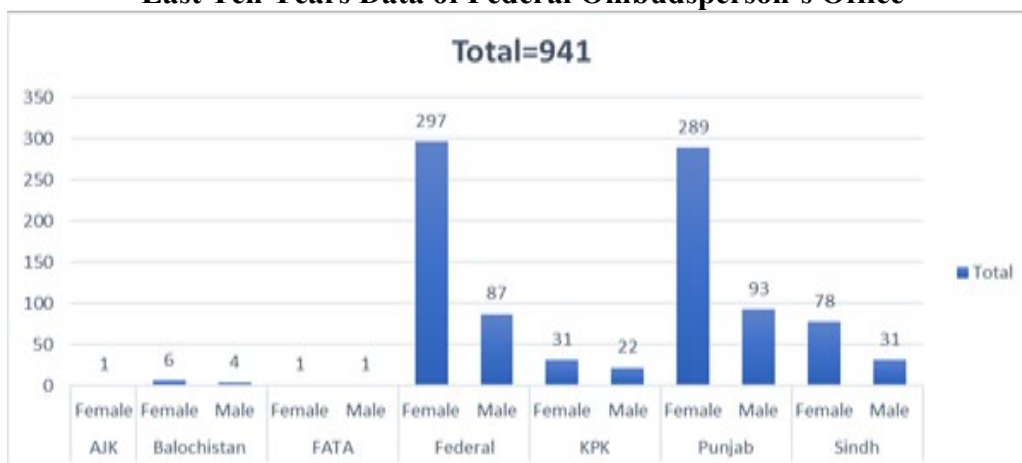
The above trend clearly demonstrates that, despite significantly high percentages of sexual harassment incidents at work places or otherwise, women are not comfortable seeking remedies under the redundant criminal law regime. There are many factors which contribute to deterring women to seek remedy through the conventional criminal law regime. First, the procedure as provided in the CrPC is quite cumbersome, tedious, and problematic as it does not match with the unique nature of offenses. Secondly, the standard of proof under PPC and CrPC is set very high since victim’s testimony is not sufficient and the law requires independent evidence, which is not possible in most of the cases of sexual harassment. Hence, the general impression is that the perpetrator will be set free very soon. The benefit of doubt, one of the cardinal principles of criminal law, is always available to the accused. In these cases, collection of evidence is very difficult due to clandestine ways of perpetration, as a result of which the accused will always be in an advantageous position. Moreover, the majority of judges, police, and court staff are males with the same stereotypical patriarchal mindset that is pervasive in society. The social culture in Pakistan is such that males of the families have full control over women. Therefore, in most cases they would not allow their mothers, daughters, sisters, and wives to bring such matters to light, which, in their stereotypical perception, would harm their honour and respect in society. The author, while dealing with cases of sexual harassment, found that the victims were not only subjected to sexual harassment but also physically assaulted by the accused. A fit case for criminal prosecution was made out, but the victims were completely reluctant to take these matters to ordinary police stations or to file complaints with the departmental sexual harassment committee. Therefore, one may fairly conclude that, given Pakistan’s social outlook in which women are discouraged to visit police stations and courts, the tedious and male dominated process, as briefly

outlined above, is surely a recipe for a non-starter regime. Even if a woman finds the courage to initiate the process, she will surely be exhausted in the lengthy process of inquiry, investigation, trial, and appeals.

In sum, the nature of the act of sexual harassment—its characteristics, nuances, and scope—is different from other offenses; therefore, it requires a different regime for adjudication. Because the same tedious and lengthy procedures and the same standards and principles of criminal law have been applied to this issue, the effectiveness of this has been rendered questionable. Nevertheless, still making sexual harassment an offense is one of the key accomplishments in the criminal law of Pakistan, a milestone that has not yet been achieved even in many developed countries.

On the other hand, if we analyse data available from the Federal Ombudsperson office, which also includes all the data from all the provinces and Azad Jammu & Kashmir under the Harassment Act, we again notice the same trend.

Last Ten Years Data of Federal Ombudsperson’s Office



The data of the last ten years collected from the Federal Ombudsperson’s office shows that out of the total 941 cases filed from all over Pakistan (including male or female), 703 cases were filed by females. Further, area wise breakup shows that that 297 cases in Islamabad, 280 cases in Punjab, 1 case in AJ&K, 6 cases in Baluchistan, 1 case in Fata, 31 cases in KPK, and 78 cases in Sindh 78 were filed. The year 2019 witnessed the highest number of cases in ten years, with 202 cases.

With respect to complaints at the institutional level, again, no central data is available in Pakistan. However, the author has access to record and direct experience of her own institution, where in the last ten years only 7 formal complaints were filed, and, in most of these cases, occurrences of sexual harassment were found to have been committed, and the perpetrator was proceeded against in accordance with the law.

A careful analysis of the data of the Federal Ombudsperson and the trend in sample institution reveals that, in last ten years, the number of cases were far less in comparison to the survey data, which shows a relatively high percentage of incidents of sexual harassment.

Factors Influencing the Decision of Victim to Pursue Remedies

In order to determine why women were reluctant to seek remedies available under the PPC and Harassment Act, a special survey was conducted in which pertinent questions (shown in the following table) were disseminated to a wide range of working women including students.

Do you know that any law or institutional framework for implementation exists in Pakistan to provide protection against sexual harassment at workplaces/academic institutions?	
Received Responses	197
No	84 (42.6%)
Yes	113 (57.4%)
Whether your organization/academic institution has adequately disseminated the information of such laws and institutional frameworks?	
Received Responses	197
No	125 (63.5%)
Yes	72 (36.5%)
Have you ever experienced sexual harassment at your workplace or during your academic years? If yes, what course of action did you adopt for redressal of grievance?	
Received Responses	197
No	128(65.1%)
Civil Remedy	4 (2%)
Criminal Remedy	2(1%)
Both	1(0.5%)
None	62(31.5%)
If you have chosen (None) in the above question, what was the basis for your decision?	
Received Responses	61
Social Pressure	8(13.1%)
It's not worth the time and efforts	10(16.4%)
No trust in the law and its implementation regime	17 (27.9%)
All Above	26 (42.6%)
In case you experience sexual harassment, what course of action will you chose for redressal of grievance?	
Received Responses	197
Civil Remedy	35 (17.8%)
Criminal Remedy	14 (7.1%)
Both	88 (44.7%)
None	60 (30.5%)
If you have chosen (None) in the above question, what was the basis of your decision?	
Received Responses	57
Social Pressure	8 (14%)
It's not worth the time and efforts	8 (14%)
No trust in the law and its implementation regime	17 (29.8%)
All Above	24 (42.1%)

In response to the question “*Do you know that any law or institutional framework for implementation exists in Pakistan to provide protection against sexual harassment at work places/academic institutions?*” of the total 197 forms received, 113 returned with the answer “Yes” and 84 with “No”, thus about 42.6 percent did not even know that any legal institutional framework exists in Pakistan. To the question “*Have you ever experienced sexual harassment at your workplace or during academic years? If yes, what course of action did you adopt for redressal of grievance?*” out of 197, 62 (31.5%) answered that they did not have any recourse to remedies available. Then in response to the question “*If you have chosen (None) in the above question, what was the basis for your decision?*” out of 61 total received, 8 (13.1%) said its due to social pressure, 10 (16.4%) answered it is not worth the time and effort, 17 (27.9%) were of the view that they don’t have trust in the law and its implementation regime, and 26 (42.6%) answered that all of the above factors were the basis for their decision to not to have recourse to any remedy available.

The above responses of the participants were all in respect to past instances. In order to gauge what trend will be followed in future, further questions as to possible future instances were asked. Accordingly, in response to the question “*In case you experience sexual harassment what course of action will you chose for redressal of grievance?*” out of 197 responses received, 35 (17.8 %) said they will go for civil remedy, 14 (7.1%) said for criminal remedy, 88 (44.7%) said they will go for both civil and criminal remedies and 60 (30.5%) answered that they will go for none of the remedies available at all. Then a further question was asked as to “*If you have chosen (None) in above question, what is the basis for your decision?*” In response, 8 (14 %) said it will be due to social pressure, 8 (14 %) were of the view that it’s not worth time and effort, 17 (29.8%) answered that they have no trust in law and its implementation, and 24 (42.1%) said that all of these three factors will be the basis for their decision to not seek any remedy.

While working as Chairperson of the inquiry committee, the author has also experienced people secretly asking about the reputation of women complainants, whether they, as per the social standards, were decent, reasonable women or not. They would ask whether inquiry committee had checked about her previous “character” to decide the matter, and whether she wears hijab (Islamic veil) or is a modern woman. These standards have nothing to do with the occurrence of sexual harassment but show pre-conceived notions about the character of women and the patriarchal mindset that is pervasive in society. During the investigation of the institutional complaints, and after conducting various community workshops on the subject, the researcher was surprised to know that such mindsets were so deeply entrenched in everyday life that women barely notice it. The fact of the matter is that none of them ever complained about such unacceptable behaviour to the management, and other superior authorities did not stop the harasser.

A large number of women say that they have experienced sexual harassment, but only a small percentage (estimates range between 1% to 2%) discussed the incident with their colleagues and friends. The reluctance to report such incidents was largely due to fear of social stigma attached with these complaints, similar to instances where rape victims, who are mostly women, are blamed for the wrong done to them. Then there is fear of humiliation in case the victim loses the battle. In one case, the complainant, a young PhD student, withdrew her complaint against her professor at the initial stage, citing the pressure of her family as her reason for doing so; her father was upset and thought she was subjected to harassment because she used to wear makeup. He would not tolerate if his daughter was seen pursuing a case of “sexual”⁴ harassment, as the taboo connotations of “sexual” should not appear with his daughter’s name.

⁴ Throughout the paper, some words are framed by double quotation marks, my emphasis, to underscore their overly tabooed, sarcastic, or stigmatized use in Pakistani society or for their legal or social context.

In order to muster courage to pursue a complaint, women bear the backlash that follows speaking up against the harasser. They are branded as being “overly sensitive” and “attention seekers”. During the workshops, another frustrating thing I noticed was the lack of awareness even in working women about the demeanour and its treatment under the law; the state has not done enough in disseminating information as to the nature of the act of sexual harassment and remedies available against such predatory behaviour.

In this regard, one on one interviews were also conducted with various students, professors, and professionals working in reputed organizations. Specific questions were asked as to their perspective on sexual harassment laws in Pakistan and its implementation. This was a qualitative ethnographic research method that included face to face interviews and participants’ observation. The method was used to get the first hand information from the participant to have in depth knowledge of different categories of behaviours and the responses. The main focus of interviews was to ask questions of their general understanding about sexual harassment and their personal point of view about the knowledge and implementation of the prevailing legislations. Moreover, they also asked why the implementation of such laws become so onerous that the actual stakeholder either could not get the remedies or if they are not convinced about its implementation, application, and its benefits to the society at large. Other questions were: What are those societal circumstances that convince an educated victim to keep quiet and show reluctance to highlight the issue? Why does a woman continue working in such a toxic and exploited environment for years without reporting? What specific behaviour of the society, according to the victim, was a big factor for hiding behaviour of the harasser? The interviews were conducted in detail, and the gist of such interviews is captured below:

- There was clear consensus that sexual harassment is rampant, and a woman has to face this ordeal time and again.
- Due to patriarchal mindsets, social taboos, and misplaced notions of religion or considering the sexual harassment regime a “western agenda”, males are not ready to take it seriously.
- Girls fear that if they file complaints on sexual harassment, their parents would not allow them to continue with their jobs/studies.
- Generally, there is no evidence available, and victims think that it will be too difficult to prove the allegations, and in case they fail it will put them in awkward position, hence they do not make a complaint.
- It is very stressful and puts the victim under immense mental pressure and agony.
- Sexual harassment of female lawyers in Islamabad’s lower courts is rampant which is why many women leave the profession.
- Since the position of harasser in the organization is high, there will be the least possibility that any action will be taken against him; hence no complaint.
- Laws are not going to bring any difference if the behaviour of the society does not change. We have to change the thinking of the society for women.
- There is dearth of understanding of the concept of and skill to deal with cases of sexual harassment, even amongst the lawyers who fight cases before the ombudspersons, due to which many accused get benefits.
- Effort, money, and time are too big a cost for initiation and follow up with complaints.

Recommendations

Considering the above analysis, the author is of the view that though road ahead is still bumpy, following these actions may make the implementation of laws relating to sexual harassment more effective:

In order to make criminal remedy more effective, keeping in view the unique nature of this offence, special dispensation should be created for the purposes of investigation and adjudication, such as specialized tribunals. If that is not possible, then radical changes are required in the implementation regime. For example, a normal trial process is too lengthy; it is imperative that for the offense of sexual harassment, amendments in law should be made where Summary Trial should be conducted. This will not only reduce the time and effort, but will also encourage the victims to use criminal law as a remedy. Similarly, the cases of sexual harassment should be marked to female judges so that there is less likelihood of the judge having preconceived notions of acceptable behaviour.

The survey data shows that a lot of cases are not filed due to fear of retaliation and social stigma attached with the cases. For example, due to primitive mindsets, there is a rampant culture of victim shaming. Apprehension of the victims may be addressed by providing legal protection to the victim with a robust monitoring mechanism during and after the proceedings. Another way of addressing social stigmatization is that the proceedings of such cases should be held in camera so that there is no fear of social stigma. There is need to launch aggressive awareness campaigns so that culture of victim shaming is gradually forsaken.

The Harassment Act was conceived for formal workplaces with standard employer-employee relationships. However, most of the women in Pakistan work in non-traditional work settings such as agricultural, domestic and home-based work. They may approach the ombudsperson directly or file a criminal case. But both are impractical remedies due to socioeconomic constraints. They do not have resources to fight cases nor have they easy access to formal institutions. On the other hand, for such informal sectors there is also no protection in labour laws, and sexual harassment laws provide only a tenuous coverage. Hence, the harm they suffer is double. It is therefore necessary that a state should come forward to fill the gap by providing an enabling environment so that adequate network of INGOs may extend help to such women. As the author has found through personal interactions, even members of Inquiry Committees and judges suffer from patriarchal biases and have preconceived notions of an idiosyncratic concept of modesty. The appointment of such members or judges should not be done in a prototype/mechanical manner. Rather, a comprehensive pre-screening process should be developed at the organizational level and only those members should be appointed who have a significant understanding of the subject and know the techniques to handle such cases.

Since the legal regime under the Harassment Act primarily focuses on formal sector of economy, the institutional design is available only in metropolitan cities. On the other hand, it has been noted that many small or medium size cities have large industrial and other economic activities, and a huge number of women are employed there. However, strangely ombudspersons' offices are only available in metropolitan cities. Therefore, in order to provide relief for all, particularly for working women in villages, all the district judges should be designated as district ombudspersons and adequate provisions should be made to curb the menace at that level.

A special endeavour should be made to identify vulnerable groups such as educational institutions (schools), and special dispensations should be created for them. In the wake of recent cases in the very prominent private sector schools in Lahore city, it is imperative that such cases are dealt under special dispensation and strict monitoring should be done as a preventive strategy.

As highlighted in interview data, women have been found to be generally reluctant to file complaints against top bosses as they fear that no one can punish the top tier of the organization particularly when the Inquiry Committee is also subordinate to them. From the structural point of view, it is quite logical for them to think that way. The Inquiry Committees—being subservient to management—will always be prone to be influenced when one of the top bosses is complained receives a complaint against them. Therefore, in order to allay such concerns, it will be expedient that such Inquiry Committees, once appointed by the competent authority of the organization, should have fixed terms and be put under direct supervision and control of relevant ombudspersons. Besides Federal Government may prescribe in the rules that preferably two female members should be included in Inquiry Committee with female as its head and once it is appointed, its term should be fixed (for example for three years) and it should be subject to supervisory control by the ombudsperson during its term. These steps will undoubtedly raise the confidence and trust of women employees in the impartiality and integrity of Inquiry Committee, and provide a congenial atmosphere to victims during proceedings.

As noted, in both criminal and civil dispensations, multiple appeals and representations are permissible, which needs to be curtailed to one, otherwise the effectiveness of the legal regime will be compromised which will deter the complainants from coming forward. The patriarchal mindset is pervasive in Pakistan and its organizations. There is no concept of pre-screening of members of the Inquiry Committee. It was noticed by the author time and again that even male members of the Inquiry Committee would approach the matter with inherent bias, would not appreciate the victim's perspective, and even initially would consider the conduct of the accused as "stereotyped notions of acceptable behavior", or brand the complainant as "overly sensitive". This mindset itself poses inherent challenges in determination of the matters on the merit.

As the case law in Pakistan is in a rudimentary stage, it will be appropriate for the Federal Government to fill the vacuum by amending its rules, providing clear guidelines to the Inquiry Committee and ombudspersons with respect to standard and onus of proof during course of the proceedings. In this regard, recourse may be had to US or UK courts' decisions where elaborative jurisprudence has evolved through judicial pronouncement, especially standards of "balance of probabilities" or "preponderance of evidence", and in respect of applicability of the doctrine of "reasonable women" as against "prudent men".

Conclusion

The institutional setups created by these legislations are outwardly promising and encouraging for women. These legislations are ground breaking for a country like Pakistan and uphold and affirm the action of the state party on accession of Convention on the Elimination of All Forms of Discrimination against Women. Although not many court cases or organizational complaints have been made, with the resonation of the term sexual harassment in Pakistan's civil and criminal law regime, a clear realization has been noted at the state level for the elimination of the felony. Although there is still a large number of the community that does not agree with the laws that define and substantiate the nature of the act, there are steady campaigns of awareness by the institutions, media, and public at large. However, for law to be preventive and able to reshape social attitudes towards sexual harassment, successful implementation and robust monitoring is necessary. In Pakistan, cultural norms around what is expected of women, disproportionate power relationships, gender biases in the workplace, and lack of facilitating atmosphere are the main reasons of the problem. For meaningful progress to be made, we will have to look beyond just one

time attempt of law making. Laws are effective when society is prepared to embrace them with true understanding of the notion behind enactment. The need to engrave the role of women in the prevailing social norms towards progressive society is imperative. In order to have substantial economical contribution of women, it is most significant that the workplaces and external mechanisms such as tribunal of ombudspersons should have a strict, timely, and efficient mechanism and a supportive environment for women. The implementation of sexual harassment laws will only have the required acceptability when employers or the corporate regulators will comprehend the nature of the crime and understand the physical, emotional, psychological, economic, and ethical damage of sexual harassment, sexism, and sexual discrimination, whether in the form of quid pro quo harassment or creating hostile work environments for the victim.

It may be too early to say the tide is turning when it comes to penalizing sexual harassment, but ripples have certainly been created. How far these ripples extend and whatever cultural shifts they may lead to can only be judged in time, but setting precedents and drawing clear lines regarding what is and what is not acceptable behaviour in the workplace is an important start.

Last but not least, Pakistan's legislation on sexual harassment has awakened from a long slumber, however, a lot more needs to be done in terms of reform and eradicating social barriers so that women may feel free to file complaints whenever they are subjected to predatory behaviour in the workplace. The number of complaints filed with the institution, which are responsible to implement the laws such as ombudspersons' offices and police stations, shows a clear distrust of women in the system. Even institutional level complaints do not match with the actual number of cases. There is dearth of awareness of sexual harassment remedies. Various social problems are creating bottlenecks in the implementation of laws. Such laws and institutional designs, along with the awareness campaigns and other tools for women empowerment, can curtail the menace of sexual harassment effectively.

References

- Pollack, W. (1990). Sexual Harassment: Women's Experience vs. Legal Definitions. *Harvard Women's Law Journal*, 13, 35-86.
- Nagasaila, D. (1991). Sexual Harassment as Sex Discrimination. *Economic and Political Weekly*, 26(34), 1965-196
- Swenson, K. (2017, November 27). Who coined the term 'sexual harassment'? *The Day*.
- Fitzgerald, L. Swan, S. Fischer, K. (1995). Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment. *The Society for the Psychological Study of Social Issues*.
- Murrell, A. J., Olson, J. E., & Frieze, I. H. (1995). Sexual harassment and gender discrimination: A longitudinal study of women managers. *Journal of Social Issues*, 51(1), 139-149. <https://doi.org/10.1111/j.1540-4560.1995.tb01313.x>
- Gruber, J. (1998). The Impact of Male Work Environments and Organizational Policies on Women's Experiences of Sexual Harassment. *Gender and Society*, Vol. 12, No. 3 (June. 1998), 301-320
- ROSPENDA, K. M., RICHMAN, J. A., & NAWYN, S. J. (1998). Doing power. *Gender & Society*, 12(1), 40-60. <https://doi.org/10.1177/089124398012001003>
- MacKinnon, C., & SIEGEL, R. (Eds.). (2004). *Directions in Sexual Harassment Law*. New Haven; London: Yale University Press. Retrieved July 14, 2020, from www.jstor.org/stable/j.ctt1npg6x.
- Welsh, S., Carr, J., MacQuarrie, B., & Huntley, A. (2006). "I'm Not Thinking of It as Sexual Harassment": Understanding Harassment across Race and Citizenship. *Gender and Society*, 20(1), 87-107. Retrieved July 16, 2020, from www.jstor.org/stable/27640867.
- Sable, Marjorie & Danis, Fran & Mauzy, Denise & Gallagher, Sarah. (2006). Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students. *Journal of American college health: J of ACH*. 55. 157-62. 10.3200/JACH.55.3.157-162.
- Hibert, L.C. (2007). Why Don't "Reasonable Women" Complain About Sexual Harassment? http://ilj.law.indiana.edu/articles/82/82_3_Hebert.pdf.
- Raza, F. (2007). Reasons for the Lack of Women's Participation in Pakistan's Workforce. *Journal of Middle East Women's Studies*, 3(3), 99-102, doi:10.2979/mew.2007.3.3.99.
- Maqsood, A. 2018, November 19, Sexual harassment in Pakistan. We ourselves tell the women not to be silent but while they speak up, we tell them to keep silent, *Daily Times*, <https://dailytimes.com.pk/323651/sexual-harassment-in-pakistan/>.
- Chaudhuri, P. (2008). Sexual Harassment at the Workplace: Experiences with Complaints Committees. *Economic and Political Weekly*, 43(17), 99-106.
- Lopez, S., Hodson, R., & Roscigno, V. (2009). Power, Status, and Abuse at Work: General and Sexual Harassment Compared. *The Sociological Quarterly*, 50(1), 3-27, Retrieved August 17, 2020, from www.jstor.org/stable/40220119.
- Tinkler, J. (2012). Resisting the Enforcement of Sexual Harassment Law. *Law & Social Inquiry*, 37(1), 1-24.
- Houser, K. 2014, November 24, Why women are reluctant to report sexual assault, https://lancasteronline.com/opinion/why-women-are-reluctant-to-report-sexual-assault/article_858b62b6-70f2-11e4-a479-e393b97e3aaf.html.
- Pietsch, N. (2015). *Barriers to Reporting Sexual Harassment*. Learning Network Brief (26). London, Ontario: Learning Network, Centre for Research and Education on Violence Against Women and Children, <http://www.vawlearningnetwork.ca/>.

- Yousaf, R., & Schmiede, R. (2016). Harassment Act Implementation in Higher Education Institutions. *Open Journal of Leadership*, 5, 8-19, <http://dx.doi.org/10.4236/ojl.2016.51002>.
- Johnson, S. Kirk, J and Keplinger, K. 2016, October 04, Why We Fail to Report Sexual Harassment, <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment>.
- Farley, L. 2017. I Coined the Term 'Sexual Harassment'. Corporations Stole it. *The New York Times*.
- Miller, C. 2017, April 10, It's Not Just Fox: Why Women Don't Report Sexual Harassment, <https://www.nytimes.com/2017/04/10/upshot/its-not-just-fox-why-women-dont-report-sexual-harassment.html>.
- Jatoi, B. 2018, February 8, Sexual harassment laws in Pakistan, For meaningful progress to be made we will have to look beyond just law making, <https://tribune.com.pk/story/1628822/sexual-harassment-laws-pakistan>.
- Draucker, C.B., (January 31, 2019) "Responses of Nurses and Other Healthcare Workers to Sexual Harassment in the Workplace" *OJIN: The Online Journal of Issues in Nursing*, Vol. 24, No. 1, Manuscript 3. DOI: 10.3912/OJIN.Vol24No01Man03.
- Bongiorno, R. Langbroek, C. Bain, P. G. Ting, M. and Michelle K. Ryan, M.K. Why Women Are Blamed for Being Sexually Harassed: The Effects of Empathy for Female Victims and Male Perpetrators, *Psychology of Women Quarterly*, 2020, Vol. 44(1) 11-27, <https://journals.sagepub.com/doi/pdf/10.1177/0361684319868730>.
- Ebrahim, S. Liu, L. 2020, March 10, Not Just Pretty Faces, They Have Powerful Voices Too: Celebrity Discourse and the #MeToo Movement, *Europe Now*, <https://www.europenowjournal.org/2020/03/09/not-just-pretty-faces-they-have-powerful-voices-too-celebrity-discourse-and-the-metoo-movement/>.
- #MeToo: Students who spoke about sexual harassment in Lahore school getting threats, 2020, July 17, <https://www.thenews.com.pk/latest/686182-metoo-students-who-spoke-about-sexual-harassment-in-lahore-school-getting-threats>.
- The world Bank Data: Labor force participation rate, female (% of female population ages 15+) (modeled ILO estimate), International Labour Organization, ILOSTAT database. Data retrieved on June 21, 2020. <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>.