

## **The Digital Paradox: Cyber Harassment of Women in Pakistan under Workplace Harassment Act 2010 and Prevention of Electronic Crime Act 2016**

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### **ABSTRACT**

In preview of the Constitution of Islamic Republic of Pakistan, The Protection against Harassment of Women at the Workplace Act 2010 is a delayed legislation to ensure the provision of a secured workplace for women in Pakistan while, our country is responsible to respond the international requirements of ILO and CEDAW conventions in respect of women protection and women empowerment. Unfortunately, the implementation of this Act remained in question in public as well as in the private sector since its promulgation. On other hand, the revolution in digital communication has entirely changed the dynamics of professional environment globally. In Pakistan issue of cyber harassment at workplace is addressed by two key laws i.e., Workplace Harassment Act 2010 and Prevention of Electronic Crime Act 2016. This study firstly, condenses the factors due to which harassment law remained failed to serve its purpose in letter and spirit. Secondly, this insight provides critical analysis of effectiveness and interplay of these laws in addressing the issues, including their overlapping yet distinct domains, recognizing potential skirmishes, enforcement challenges and gapes in implementations. Thirdly, it evaluates whether existing legislations are compatible enough to contest the evolving nature of workplace cyber harassment in a rapidly digitizing world. At the end, this paper

concludes with recommendations to enhance legal coherence and improve workplace protections against cyber harassment in Pakistan, emphasizing need for robust enforcement strategies, alertness campaigns and policy transformations.

**Keywords:** Harassment of Women, ILO, CEDAW conventions, cyber harassment, Workplace Harassment Act, Electronic Crime Act, skirmishes, policy transformations.

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## **1. INTRODUCTION**

The Protection against Harassment of Women at the Workplace Act 2010 commonly known as Workplace Harassment Act provides a legal framework to combat harassment in organizational spaces while Prevention of Electronic Crime Act 2016 commonly known as PECA enunciates provisions to address online offences including stalking, defamation, and cyberbullying [1]. Statistics collected by different public and private organizations reveal that the dream of equal participation of women in every sphere of national life, as promised by the Constitution of Pakistan 1973, could not be expounded, even after passing more than half century of the enactment of constitution. Sexual harassment of women is considered one of the main reasons behind this slit [2]. An alarming report in this regard is published by Human Rights Commission of

Pakistan, according to which 91 percent working women have to face sexual harassment at domestic workplace. According to this report, this is a common spectacle in our homeland that working females have to bear verbal as well as physical sexual harassment on their job places, discouraging them to work for employment and contribute into the national economy. Statistics tells us that this phenomenon has polluted the professional working environment as hostile and exploitive for women [3]. Digital communications have transformed this phenomenon into a new era of challenges, enabling harassers with easy access to their targets. Cyber harassment in the modern workplace has emerged a significance concern for employers as well as employees. This is an extended form of harassment by using digital platforms like social media, massaging apps and emails etc. This swing from physical to digital harassment has emerged complexities to modern

workplace dynamics, demanding compatible legal frameworks to certify protection in both physical and virtual spaces [4].

The Protection Against Harassment of Women at the Workplace Act 2010 had emerged to combat this challenge as a federal law which was extended to the whole of Pakistan [5]. Referring The ILO Declarations on Philadelphia of 1944, Discrimination (Employment and Occupation) Convention in 1958, harassing woman at workplace is an international issue for which 172 countries including Pakistan ratified various conventions under International Labor Organization (ILO), wherein principle of non-discrimination as to race, creed or sex to exercise right to do work in an environment of self-respect and freedom for their spiritual and material well-being in the world of work, was widely affirmed by all the ratifying countries [6]. Despite all of such national as well as international commitments our homeland could not get success at its optimum level to provide a conducive and decent working environment for women, so that they can groom professionally rather their performance and mental

health due to sexual harassment is adversely affected [7]. PECA was promulgated in 2016 to criminalize various forms of cybercrimes including digital harassment like online defamation, cyberbullying and cyberstalking [8]. Although the scope of both the laws are distinct but intersection of these laws is critical addressing this phenomenon that blends both virtual as well as physical harassment [9].

Encapsulated by the history and wisdom of this law, this paper first aims to analyze the status of implementation of the Workplace Harassment Act and the obstacles on the way to its implementation. It lists the factors due to which the Executive bloc of this country remained failed to get the expected results of legislation. It critically analyzes this law to highlight its flaws due to which this law could not be as successful as was needed and aimed at. Secondly, this study explores the efficacy of two primary laws i.e. The Protection Against Harassment of Women at the Workplace Act 2010 and Prevention of Electronic Crime Act 2016, in dealing with the cyber harassment at workplace, highlighting

their areas of overlap, gaps and strengths. The research also insights into how these legal frameworks can be harmonized to combat harassment at workplace in a progressively digitalized world.

## **2. RESEARCH METHODOLOGY**

The research draws on a diverse range of sources, including academic thesis, articles, legislation, and other materials as a secondary source of research, from around the world. Accordingly proper citations provided throughout.

## **3. WISDOM AND HISTORICAL PERSPECTIVE OF ANTI-HARASSMENT LAWS IN PAKISTAN**

The end of the Second World War was a new horizon to develop the modern world we are living in. Feminist movements took fast momentum throughout the world. By the end of twentieth century, situation in this regard was entirely changed and women related issues became a powerful subject to be discussed nationally and internationally, especially in developed countries [10]. The family system of our society

enunciates that female are taught from their childhood that they have face unwanted sexual advancement with tolerance as a routine matter. Women whether young girls or mature aged ladies, all of them have to bear several types of sexual demands by the opposite gender everywhere and specially at workplace. Consequently, it can be observed that women in Pakistan are living their lives under anxieties and depressions [11]. It is a strange reality that contrary to our religious and moral norms, our homeland is one of the topmost countries browsing and downloading the sex related materials on internet. Researches tell us that Pakistan is experiencing an increasing tendency in an inquisitive behaviors for information about sex among the people of Pakistan specially in adults viz a viz an increasing rate of different health problems like mental stress and sexual frustration while various forms of sexual harassment in professional environment or in labor market can be observed like trying to touch women's body with malice intention, inviting or demanding sexual intercourse, passing sexual comments, starring etc. According to Pakistan National Report

1995, the aforementioned factors are severely affecting the proper role of women into the attainment of national objectives and destroying the organizational system of Pakistan [12]. United Nations report 2013 tells us that there is an increase of 6% in total number of women working in non-agriculture sector and going out of their homes for their livelihood [13] while on other hand different statistics indicate that risk probability of sexual abuse is intact at workplace that needs special measures to deal with at national and international level [14]. Sadly, women are facing sexual abuse in every profession in all types of government departments, private corporate sector, and small business organization. As articulated by reports harassment at workplace are various forms like playing lecherous songs, statements, vulgar jokes, proposal, touching, showing vulgar pictures etc. [15]. It is an obvious consequence that women facing harassment have low level of job satisfaction with poor work performance as compared to those not facing such abuses as concluded by Merkin and Shah in their study conducted on Pakistan and U.S.A

working women. This phenomenon affects the mental health of victim women [16]. Resultantly, they are less motivated to their jobs. It is also observed that they avoid going to their workplaces by getting unusual sick leaves. Disturbances in their personal life are also part of this sequence [17].

Pakistan emerged this law as the Protection Against Harassment of Women at Workplace Act 2010, after adopting code of conduct for gender justice to combat this alarming situation of sexual harassment at workplace and to establish a safe working environment for women. It prohibits all types of gender discrimination or promotions at workplace based on sexual actions [18]. This law is constituted on the principle of gender equality in respect of right to earn their livelihood without fear of being harassed as promised in the constitution of Pakistan and in order to fulfil our obligations towards Human Rights Declaration, ILO's conventions on workers' rights and United Nation's Convention for Elimination of all forms of Discrimination against Women [19]. All the public and private organizations are legally required to establish their internal mechanism of

complaint/inquiry/appeals to follow the code of conduct under this law with the aim to create a working environment free of any kind of sexual abuse [20].

#### **4. EVOLUTION FROM OFFLINE TO ONLINE ABUSE OF HARASSMENT**

With the increasing reliance on technology in workplaces, physical and digital spaces have become borderless. This has given rise to cyber harassment, a form of transgression that involves using digital platforms to harm others. Examples include sending intimidating messages, sharing inapt content, or engaging in cyberstalking and cyberbullying. Unlike physical harassment, which often occurs in face-to-face communications, digital harassment can be enacted anonymously, intensifying its impacts, and making it tougher to address. This transition drowns unique challenges. Victims often find it more offensive, as it can reach them outside of traditional office hours and even into their private lives. The permanence of digital content and the ease of propagation further aggravate the psychological toll on victims.

#### **5. PROTECTING WOMEN FROM HARASSMENT: VIRTUES OF THE 2010 ACT**

The amended 2010 Act defines its core term “Harassment” in Section 2(h) as under:

“Any unwelcome sexual advance, request for sexual favors, stalking or cyber stalking or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including gestures or expressions conveying derogatory connotation 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 or discrimination on the basis of gender, which may or may not be sexual in nature, but which may embody a discriminatory and prejudicial mind set or notion, resulting in discriminatory behavior on the basis of gender against the complainant”.

This Act was assent by the President of Pakistan as a federal law on 9<sup>th</sup> March 2010 to come into force at once for the entire country with the preamble of protection of women against harassment at workplace. As discussed

above, this law was highly needed for so many objectives including the social prosperity, economic growth, combating gender discrimination, woman empowerment viz a viz contentment of international obligations. A separate legislation for the rights of women is in line with the requirements of CEDAW and Article 23(1) of UDHR [21]. Interestingly, we have adopted the definition of “Harassment” as provided by CEDAW as a token of our international legislative obligation, but the picture does not get completions in this perspective because ILO Convention 100 requires equal wage for both the genders. Our Act is completely silent on this international requirement of equal remuneration, hence not fully parallel to the objectives of the ILO Convention. Neither this legislation encounters the aforementioned subject, nor any separate law has been framed to ensure equal remuneration level for men and women. On the other hand, there is ILO Convention 111 which required a broader perspective i.e., a complete elimination of discrimination at employment and occupation between women and men. In this regard, this law

only deals with the issue of harassment at the workplace while the objective of ILO Convention 111 is vast and purposeful in nature. It encapsulates all types of discriminations including sexual harassment. It also includes discrimination based on cast, creed, color, religion etc. However, this Act is a healthy addition towards women security and women empowerment viz a viz state’s constitutional responsibility [22].

The protection against harassment of women at workplace Act 2010 contains 13 sections with a code of conduct in its schedule.[23] Its main ingredients are the definitions, role and powers of Inquiry Committee, role and powers of Ombudsman, major and minor penalties, responsibilities of employer [24]. This law was constituted as Federal law but after the 18<sup>th</sup> Amendment, the captioned subject of this law has devoted to the provincial jurisdiction as laid down in the verdict of High Court in Saleem Javed vs Federal Ombudsman case, where it is cleared that federal ombudsman has only jurisdiction within the federal territory [25]. Whereas section 1 of this Act states that it extends to whole of

Pakistan. This law revolves around a single word termed as “Harassment” and conceptually its definition [26] is vast in compliance with the CEDAW Committee’s General Recommendation No. 19 [27] It reveals two main actors having judicial powers to incorporate this law i.e., Inquiry Committee [28] and Ombudsman [29] Both of the

aforementioned actors enjoy the judicious powers constituted in this legislation. Further this Act imposes some responsibilities on the employer which are especially important for the effective implementation of this law in preview of its true spirit [30]. The scheme of this law is depicted below :

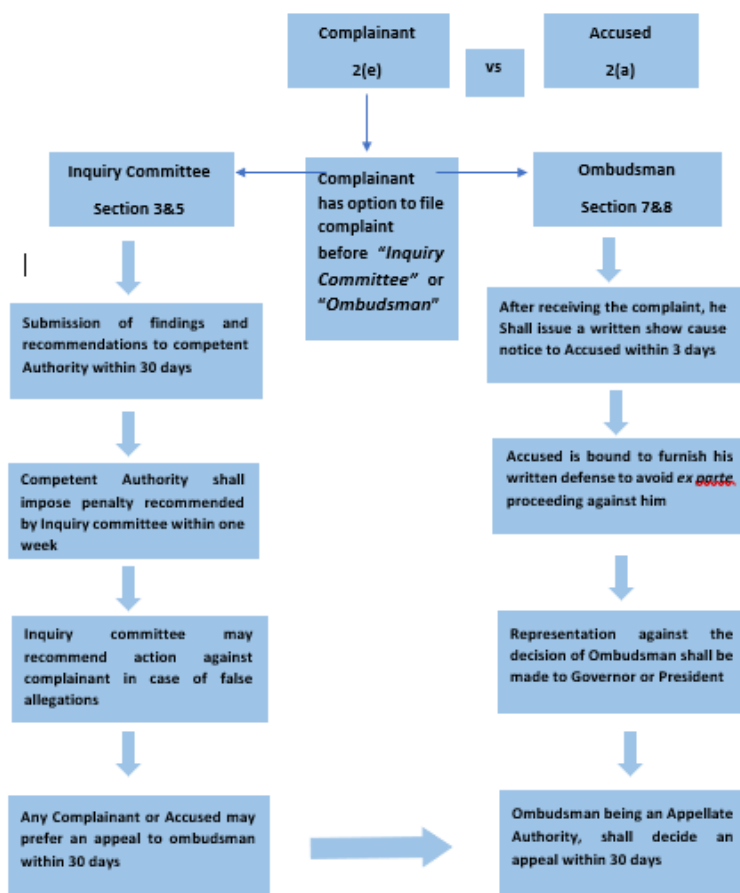


Figure.1: Scheme of The Protection Against Harassment of Women Act 2010[31]

## 6. GAP BETWEEN LAW AND REALITY: SOCIAL OBSTACLES AND ADMINISTRATIVE FAILURE

Promulgation of any law does not mean a guarantee of protection of women rights or a complete elimination of

harassment at job places and end of gender discrimination. Combating such issues in the society may be considered as ongoing war like a continuous effort, especially a society like Pakistan with a complexed hierarchy and weaker rule of law. Legislation of this Act was a first step to settle the direction on the

way its implementation with the establishment of relevant infrastructure, institutions and awareness programs with sensitization and training. Unfortunately, we have failed to achieve the objectives of this law and could not provide a secured working environment to women on their job positions. Today, after more than eleven years, we are standing in the state of asking questions about the optimum level of its implementation in preview of its preamble and historical factors [32]. As for as subject of feminism is concerned, our homeland can be classified into two groups leading this issue i.e., Modern Islamic Feminist Group and Secular Islamic Group. Both groups are almost two opposite extremes for each other, making our social setup as a diversified society in this perspective. Modern Islamic Group looks religion at first for all the solutions of women related problems and of the view that Islam guarantees best to deliver the all types of women's right including protection of women from harassment and gender-based discriminations at workplaces. While the second group is considered secular in their approach, declaring themselves humanist and encounter the women protection issues to be dealt in preview of human rights regardless the norms and principles laid down by the religions [33] Starting from this division of ideologies, the social chemistry of our society is one of the complex societies of the world due to various traditions, customs and

conventions based on culture, region, and religion [34]. Accordingly, implementation of the Protection Against Harassment of Woman at workplace Act is not an easy job to do and achieving its objectives would remain a hard target for the law enforcements [35] Women of every age including young girls are facing sexual harassment in their daily life at about every place of work, education or traveling and the percentage is as alarming as more than 80% [36]. But conventionally they are brought up to keep silent about this. Our social format does not encourage their voices most of the time women are eventually blamed at the end of the story and victimized by sanctions imposed by their own families. This social phenomenon badly increases the harassers to exploit women at workplace as many times as they can. Eventually the law seems helpless to serve its purpose [37]. As for as awareness regarding the enactment of this law is concerned, in 2013 an interesting survey was conducted in Karachi by interviewing 200 working woman about the Protection Against Harassment of Women Act 2010. Although they were having knowledge about rights of women, but they were ignorant about the proper implications of this enactment [38]. Research conducted in Lahore in 2011, clearly tells that working woman were not aware of this legislation to protect them at job places, wherein 71% of the women workforce in public and private sector were asked

about this Act, out of which 55% were of the view that sexual harassment is a punishable crime [39].

## **7. CYBER HARASSMENT UNDER PREVENTION OF ELECTRONIC CRIME ACT 2016 (PECA)**

The legislation was promulgated to criminalize digital wrongdoings and

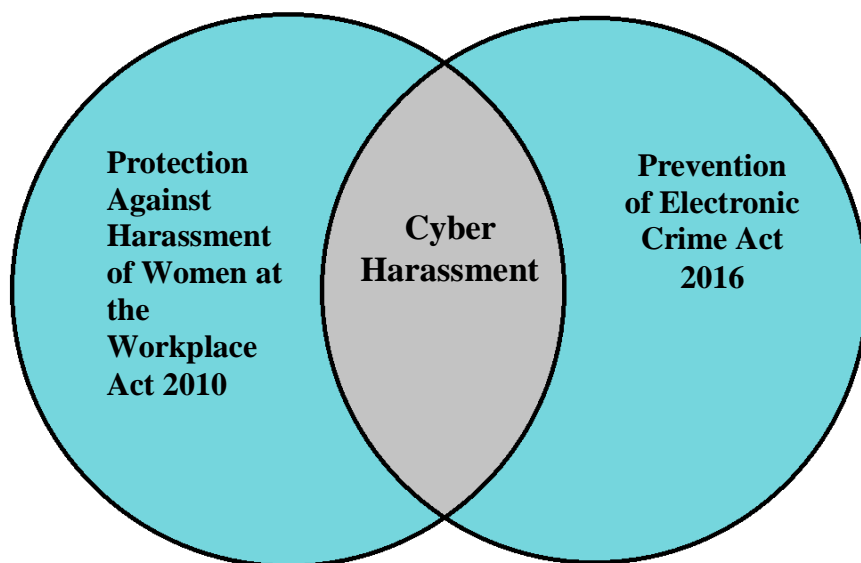
encapsulates instrumental provisions dealing with the crime of cyber harassment which is increasingly prevalent phenomenon at professional places [40]. The Cyber wing of Federal Investigation Agency (FIA) has jurisdiction to investigate and prosecute all types of cybercrimes under PECA 2016 [41]. Overture of key section in this reference are produced below

**Table 1: Overture of key section**

<b>Section</b>	<b>Overture</b>	<b>Punishment</b>
3	It criminalizes the act of unauthorized access to an information system or data.	Imprisonment which may extend to 3 months or with fines which may extend to Rs.50000 or with both [42].
4	It criminalizes the act of unauthorized copy to an information system or data	Imprisonment may extend to 6 months or with fine which may extend to Rs.100000 or with both [43].
16	The section prohibits unauthorized use of identity information in general, but it certainly happens with women at workplace by the harassers.	Imprisonment which may extend to 3 years or with fine which may extend to Rs.5000000 or with both [44].
20	The provision covers offence against the dignity of a natural person. It is a wide scope section which criminalizes all types of harm to the reputation of a natural person or acts of intimidation by using digital platforms and electronic communication systems. Harassers at workplaces use to do both the wrongs.	Imprisonment which may extend to 3 years or with fine which may extend to Rs.1000000 or with both [45].
21	This area of PECA 2016combats electronic crimes against the modesty of a natural person including harming a natural person or his reputation or taking revenge or creating hatred or blackmail.	Imprisonment which may extend to 5 years or with fines which may extend to Rs.5000000 or with both [46].
24	Cyber stalking with a malicious intention to coerce or intimidate or harass a person, is a subject of this section.	Imprisonment which may extend to 3 years or with fine which may extend to Rs.1000000 or with both

Significantly, both the legal frameworks aim to protect individuals from harassers but there is overlapping interplay between both the key laws:

## 8. INTERPLAY BETWEEN TWO KEY LAWS



**Figure 2. INTERPLAY BETWEEN TWO KEY LAWS**

- Sending harassing messages through email, WhatsApp or by using any kind of digital platform or electronic communication system to colleagues at workplace, can be prosecuted under both the laws [48]. Victims of harassment stay on an uncertain point whether to the inquiry committee of his organization or under Workplace Harassment Act 2010 or cyber

wing of FIA under PECA. This confusion can be consequential for delay, jurisdictional conflicts and perhaps dismissal of cases. Unfortunately, both legislations are silent in this regard [49]

- Stalking or cyberstalking come in the ambit of “harassment” under amended section 2(h) of Workplace Harassment Act [50] whereas section 24 of PECA 2016 defines and incriminates cyberstalking without considering

its expression in the definition of harassment of Workplace Harassment Act. This confusion can be consequential for delay, jurisdictional conflicts and perhaps dismissal of cases. Unfortunately, both legislations are silent in this regard [51].

## **9. OVERCOMING LEGISLATIVE INADEQUACIES AND IMPLEMENTATION BARRIERS: STRATEGIES FOR ANTI-CYBER HARASSMENT LAWS IN PAKISTAN**

The effectiveness of any law depends upon how good it is made. Secondly, how seriously, executive block of a country took it to implement, thirdly how our judicial system narrates it for adjudication, lastly effectiveness of any law depends upon the moralities of a society for whom law is made. Despite the promulgated laws, cyber harassment is an increasingly prevailing phenomenon at workplaces. Referring the inadequacies of these legislations, there are complexities and challenges in the effective implementation of anti-harassment laws.

This Workplace Harassment Act revolves around the term “Harassment.” It can be critically discussed from two different perspectives. Talking about its scope, this definition is too vast. Any kind of

Bona fide move by a working colleague can be encountered under the shadow of this definition. Working or personal differences exists naturally which cannot be deemed as sexual harassment, but it can be seen it the past decade of this enactment that complainants filed complaints based on the charge which is not subject of this law [52]. Hence this definition cannot be considered a perfectly customized definition compatible to our complex social system viz a viz to the intention of the legislature [53]. Secondly, this definition and the Act as whole do not discuss the previous personal relationship between the accused and complainant. Friendships and love affairs between men and women at workplaces are quite common whereas the probability of some sexual relationship cannot be ruled out. This definition provides an open gate for complainant while very narrow for accused to defend or to proceed against fake or planted complainant [54]. Hence there is a dire need to constitute customized legislation fitting to rational chemistry to our complex society, with a balanced approach. Current contemporary digital age requires that “cyber harassment” may be well defined in anti-harassment laws to set the principles of its criminalization.

The Workplace Harassment Act facilitates complainant with the option to file a complaint before the Inquiry Committee or Ombudsman while Ombudsman is an appellate authority

against the decision of Inquiry Committee. Legislature did not provide any mechanism of stopping or transferring any parallel proceedings. As for as filing an appeal is concerned, if the complainant files complaint directly to ombudsman, only one forum will remain to file an appeal before President. Hence such confusion may be clarified, and such mechanism may be updated accordingly by the legislature. Whereas cyber harassment can be prosecuted under both the laws. The victim of harassment stays on an uncertain point whether to the inquiry committee of his organization or under Workplace Harassment Act 2010 or cyber wing of FIA under PECA. This confusion can be consequential for delay, jurisdictional conflicts and perhaps dismissal of cases. Unfortunately, both legislations are silent in this regard.

According to section 5(3) of The Workplace Harassment Act, if the Inquiry Committee finds that complaint cyber-harassment is false and based on the mala-fide intention of the complainant then the committee will recommend action to ombudsman against the complainant whereas it is not provided in the law that how ombudsman will proceed on such recommendation. Further no specific punishment against such a complainant is given to be awarded on the charge of false complaint. On other hand, this violates the basic principle of adjudication and principle of equity.

This is like giving a further chance to a liar who tried to spoil the professional career of an innocent. The inquiry committee may be vested the power to act against such complainants for smooth and instant justice. Specific penalties may be framed for false complaints.

In the eve of cyber harassment both the laws must be self-speaking on collection, preservation, and presentation of digital forensic evidence. In this perspective, depositing evidence and the right to cross-examine are the two main aspects of fair adjudication. The Workplace Harassment Act on these two aspects.

The Workplace Harassment Act does not give the answer to the question that who will be responsible for monitoring the effective implementation of this law. Every legislation needs continuous follow-up to get its satisfactory results. The Constitution of a body to ensure monitoring and prepare reports regarding the effective implementation of this law is very much needed.

Execution of section 11 of the Workplace Harassment Act highlights the responsibility of employers curtails the chances of harassment and monitoring the working environment in this regard. The requirement of the captioned section may immediately be ensured in public as well as in the private sector in letter and spirit.

The Cyber-Wing of FIA seems handicap in dealing with cybercrime

cases due to huge volume of cases, lack of resources, modern technology, and expertise, causing delay and defective investigations.

Strengthening institutional capacity such as better training for inquiry committees and increased resources for FIR are highly needed.

Fear of retaliation and social stigma have vehemently discouraged victims of cyber-harassment to proceed against the harassers. States should come up with awareness programs to constitute a mature society to effectively combat against cyber harassment.

Cyclosis the process for filling and investigating complaints to minimize delay viz a viz emerging workplace-customized cyber harassment policies to complement the legal frameworks

## **10. CONCLUSION**

Our homeland took about 63 years to constitute a law for the protection of women at against harassment at workplace after passing through so many international conventions. Besides constitutional obligation this legislation was also a token of fulfilling an international responsibility regarding women empowerment. This law ensures a healthy participation of women in the economic development of a country and towards economically self-sufficient family system. The emergence of digital era has created so many forms of opportunities for harassers and vulnerabilities for

victims. Th Prevention of Electronic Crime Act 2016 was disseminated, to combat all types of cybercrimes including cyber harassment. However, at first these laws contain legislative flaws and secondly their overlapping dimensions have created confusions of many dimensions such as jurisdiction, procedure, and prosecutions. Furthermore, effective implementation of both the key legal frameworks against cyber harassment remained in question. Consequently, harassers took benefits and victims remained vulnerable. There is a dire need for legislative improvement in this law viz a viz practical steps for its rational implementation.

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