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## **Cybercrime as a Reflection of Real-World Offences: An Analytical Study of Investigation and Prosecution in Pakistan**

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### **ABSTRACT**

Article 14 of the Constitution of Pakistan, 1973 recognizes the right to privacy as integral to human dignity and freedom, a protection extended to cyberspace through the landmark Benazir Bhutto case, wherein surveillance, phone tapping and eavesdropping were declared unconstitutional. Despite this constitutional protection, Pakistan's legislative framework remains insufficient to address gender-based abuse online. Early efforts under the 2007 PECO lacked detailed definitions and proportional punishments for cyber harassment. The 2016 PECA introduced offences such as cyberstalking (Section 25), harm to dignity (Section 20), and offences against modesty and minors, including pornography (Sections 21–22). However, these provisions remain gender-neutral and fail to capture the full spectrum of online gendered abuse. Defamation laws (2002, 2004) further criminalize defamatory digital content but do not specifically address gendered harms. Other statutes, such as the Workplace Harassment Act, apply only in limited contexts, and PPC/CRPC provisions are largely confined to physical-world offences. Consequently, Pakistan lacks a comprehensive and gender-sensitive legal framework to effectively define, categorize, and penalize cyber-based gender abuse. Immediate legislative reform is needed to close these gaps.

**Keywords:** Privacy, Cyber Harassment, Peca, Gender-Based Abuse, Pakistan Law

### **Crucial Role of Digital Evidence in Criminal Justice System**

In modern times, the role of digital evidence in the Criminal Justice System and more specifically in the investigation of Electronic Crimes cannot be ruled out. The Superior Courts have also in multiple judgments emphasized the inevitable role of digital evidence in criminal investigation. When it comes to electronic crimes like cases of cyber harassment, the investigation cannot be carried out without considering the modern digital tools and devices used for tracking and extracting evidence. It is because any offence committed electronically/digitally cannot be investigated only manually.

### **Definition of Digital Evidence**

Black's Law Dictionary lays down the definition of digital evidence "Any computer-generated data that is relevant to a case. Included are email, text documents, spreadsheets, images, database files, deleted email and files and back-ups. The data may be on floppy disk, zip disk, hard drive, and tape, CD or DVD." The definition proposed by International Organization of Computer Evidence (IOCE) defines it as: "Information



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stored or transmitted in binary form that may be relied upon in court.”

### **Admissibility of Digital Evidence**

At first the digital evidence was not admissible in the court of law. The enactment of Electronic Transaction Ordinance 2002 paved a way for the admissibility of electronic evidence. According to which the court may take into account the evidence recorded in modern electronic devices such as mobile phone, camera, computer and USB. The court as it may deems fit can convict the criminal on the grounds of digital evidence if it is substantial and adequate to prove the charge. In the criminal law an amendment was made in Qanun -e- Shahadat Order 1984, article 164 which made the electronic evidence admissible in the court of law.<sup>132</sup> It states that the production of electronic evidence is admissible in the court of law.<sup>133</sup> It invested wide powers in the court regarding admission of the evidence.

Moreover, Qanun- e- Shahadat Order 1984 provided that the meanings of the terms used in Reference to electronic evidence such as expression automated, electronic, information, Information system, electronic documents, electronic signatures, advanced electronic signatures and security procedures shall be taken from the Electronic Transaction Ordinance, 2002, ETO.<sup>134</sup> Article 73 (explanation 3) of the Qanun-e-Shahadat order 1984 discusses the status of electronic evidence. The primary evidence be it a printout or other form of production of an automated information system if generated, stored, sent or received through electronic devices shall maintain its status as primary evidence.<sup>135</sup> Article 73, explanation 4 states that a printout or other output of automated information system other than mentioned in article 73, explanation 3 generated, stored, received or sent using electronic devices if conducted through all security procedures at the time of its generation, storage, receiving or sending shall also be treated as primary evidence. <sup>136</sup> Article 46-A lays down that the information of evidence stored, generated, received, sent or recorded through an automated information system while it is in working order is material and relevant to the case.

The electronic evidence produced into the court shall be authentic and dependable. Electronic

Transaction Ordinance 2002 deals with digital criminality and addresses the concerns on the admissibility of electronic evidence. Section 3 of Electronic Transaction Ordinance 2002 provided legal recognition to electronic evidence it stated that a document, record or information <sup>132</sup>Qanun-e- Shahadat Order 1984, Article 164. communication if available in electronic form shall be considered in effect, admissible, valid and legally recognized by court of law regardless of attestation of same by any witness. Section 5 of Electronic Transaction Ordinance, 2002 describes the reliability factors for digital evidence that should be original, unaltered, readable and capable to be displayed. There should be reliable evidence to prove its integrity.<sup>139</sup> Under section 9(3) - of the Punjab Forensic Science Agency Act, 2007 the digital evidence is only admissible in the court of law if supported by the forensic report of an analyst by provincial forensic science agency. The digital evidence should be the actual record of the events that happened or are likely to happen. It can be in the form of audio tapes or clipping and the person recorded should present the evidence in person into the court of law. The contents of the digital evidence should be clear to be presented into the court. It should be strictly relevant to the case.

Safe custody of the digital evidence should be proved and its source should be disclosed before the court of law. A formal application should be filed in the court of law by the person who wants to present digital evidence in the court of law for supporting his



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case.141 The last stage presentation of the digital evidence could be taken with suspicion by the court of law.

The order on criminal revision application in Hadi bux v/s state case settled the principles for the admissibility of forensic evidence made available through modern devices.

It is clear from what has been discussed above that the evidence law is now enriched with the practices of digital evidence. Especially the Electronic Transaction Ordinance does not only recognizes the admissibility of digital evidence in court proceedings but also directs the court to not reject the evidence solely on the ground that it is digital. The amendments in these laws have significantly revolutionized the methods of investigation and the nature of evidence in the court of law.

### **Analysis of case laws regarding cyber harassment**

It is usually hard to prove sexual harassment cases even when they're initiated online. It has been observed that mostly women are groomed online and are called to certain places where the perpetrator is in a powerful position and where he can abuse the victim easily. Offences such as rape, harassment and murder are sometimes initiated online and later perpetrated into the physical world as shown in the cases discussed below. They're usually conducted behind closed doors and away from the public eye when there are no witnesses. Perpetrators build secrecy about their actions and push women to self blaming by continuous victim-blaming. Because of Pakistan being a patriarchal society, there are certain prejudices that exist against women due to which women prefer not to report their abuse. A brief summary of cases discussed below to establish the relevance between crimes conducted in the real world and crimes conducted in the cyber world.

### **Summary of the Case of Usman Ibrar, etc v/s the State**

A famous case "Usman Ibrar, etc v/s the state" on the subject raised public outrage. An FIR was registered against a viral video that raised public outrage on social media. It can be clearly seen in that video that almost 5 to 6 people confined a young woman and a boy into a flat. They were forcefully stripping off the clothes of a young woman and were committing obscene acts with both of them. Both of them were detained under life threats.

Upon investigation the Iphone (in which the video was recorded) and the USB (in which the video was stored later) were taken into custody. The accused usman mirza who can be seen

extending life threats to the woman in the video was arrested.144

Under section 164 CRPC the statement of the victims was recorded. Forensic analysis was

conducted and the report was submitted inside the court. It proved the authenticity of the video and the voice matched with Usman Mirza who was the main accused in the case. Under section 173 CRPC report submitted by I.O.

### **Framing of charge**

The charge on the case mentioned above was framed under the following sections. Section 342 PPC 1860 which penalizes wrongful confinement. It states that anyone who wrongfully and without consent confines a person shall be punished with one year or fine that can extend to one thousand rupees or both. When a criminal force is directed to



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molest the dignity of a woman it is punished under 354 PPC with imprisonment or fine or both. Section 354(A) which specifies the crimes against women dignity and honor. Exposing a woman by stripping off her clothes and making it available to public view is punished with death or with imprisonment for life and fine. A woman was filmed without the consent containing such objectionable content can also be punished under this section.146

### **Case Analysis in the context of the modern digital age**

The Court has in the instant case, discussed in detail the use of modern devices as pieces of evidence and the significance of forensic reports of digital devices in such cases. After it was

proved by the prosecution that the videos related to the place of occurrence were not fake or tempered, the court shifted the onus of proof to the accused who failed to bring any substantial matter in his defense. Through this case law, it can be said with conviction that modern sources can be very effectively used as pieces of evidence to reach a just conclusion. This is a testament to the fact that cybercrimes against women in cyberspace can be curtailed and the protection of women can be ensured by bringing into use all the available modern means of investigation. The layman's meaning of public view was taken into consideration by the court. The Webster's Dictionary provided the definition of public as "belonging to, concerning, or pertaining to the people of a nation, state community, as a whole--known by, or open to the knowledge of all or most people, as he will make this information public", and view "as "a seeing or looking, as' in inspection or examination, in sight". The term broadly interpreted incorporates digital views of the public to accommodate the modern digital age.

Under Section 509(A) slander that is directed to damage the integrity of a woman and violates the privacy of a woman would be punished under section 509 PPC. Section 506 penalizes Criminal intimidation. It shall be punished with two years imprisonment or with fine or with both. A threat of such a nature that is likely to put someone's life, reputation or property at risk. It is maybe about imminent or future injury. Section 34 of Pakistan Penal Code, 1860 which criminalizes the criminal act performed by more than one individual in the same manner. Section 114 criminalizes the crime of abetment.

### **Decision of the court**

The accused was sentenced for lifetime imprisonment by session court. The HC court in appeal upheld the decision of the lower court and the appeal was dismissed.

### **Summary of the Case Tayab raza v/s the state**

In another case Tayab raza appellant v/s the state the accused was charged for sexually abusing a minor. It was established by the prosecution that the accused was harassing and intimidating the minor girls into the making of the porn content. The Flash drive containing such content was confiscated by police upon raiding his house. He was arrested by police after recording the statement of witnesses under section 161 of criminal procedural code. The statements of witnesses recorded by court confirmed the statement recorded by the investigation officer under section 161 of criminal procedural code. The minors also recorded their statement that they were sexually assaulted and were threatened by the accused to stay silent. The overwhelming amount of digital evidence was collected in support of the statement of the victim including a USB storage device which had data of the sexually explicit videos and pictures of minor girls.



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### **Framing of the charge**

The charge was framed “under section 375 which penalizes sexual offences, section 377 which criminalizes rape, section 377 that denotes the offence of sodomy, section 294 that provides 148 Usman Ibrar, etc. versus the State, etc. IHC, 2023, punishment for obscenity and for criminal intimidation mentioned in section 506”. The obscenity in public as provided under section 294 of penal code is punishable by three months imprisonment.150 Section 375 of penal code penalizes rape. Rape is defined as sexual intercourse committed to a woman, man or animal without their consent. The act of penetration committed against minor by a person who has gained maturity is also considered an act of rape. It is punished by imprisonment for life. Under section 376 of penal code, rape is punishable with death or imprisonment for life which should not be less than twenty five years and fine. Section 377 of penal code penalizes unnatural offences.152 Section 506 of Pakistan penal code criminalizes criminal intimidation which is punishable with two years imprisonment or fine or both.

### **Decision of the court**

The high court upheld the decision of the lower court and the appeal was dismissed and the lower Court sentence on capital punishment was converted into Rigorous imprisonment for life by the High Court.

### **Case Analysis**

The prosecution’s case had gained strength from the recovery of smartphones, USB, and computer. The same articles were sent for analysis and the forensic report further established the case that the videos were genuine. From the perusal of the whole judgment, it becomes evident that the conviction of the accused would have been much more difficult if not impossible, without the forensic reports of the recovered digital devices. This again underscores the significance of the modern digital devices in meeting the ends of justice and guaranteeing a safe and secure cyberspace for the women.

### **Conclusion**

When a woman is harassed in online space it’s usually expected out of her that she should be smart enough to deal with the abuse which is not only irrational but against the fundamentals of the constitution of Pakistan which guarantees the right to freedom of expression and the right to live with dignity. Pakistan has ratified international instruments such as UDHR, CEDAW and ICCPR which provides guidelines to signatory states to enact laws for the protection of individual’s life, security and freedom of expression. Pakistan is far behind in updating laws for protections of rights on cyberspace. The cyber world depicts the real world. The trends of gender abuse in the real world can also be observed in cyber space. It’s high time that Pakistan should introduce a uniform system to deal with abuse of rights on cyber space. An immediate response team should be developed to deal with harassment cases online which should provide awareness and remedy to the victims. It should take down the Ids of the harasser immediately and refer the case to the authorities. A clear difference between having an opinion, invasion of privacy and freedom of expression shall be established through laws. A new code for the prevention of cyber harassment that covers the lacunas present in existing legislation should be adopted by parliament. This chapter provides an analysis on laws for the protection of women against harassment and how the application of laws



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that deal with the protection of women in the real world can be extended to cyber space.

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127 “Saher Iqbal, the right to be forgotten. Accessed at: <https://www.ibanet.org/the-right-to-be-forgotten-in-Pakistan>”

128 Prevention of electronic crimes Act, 2016.

131 Defamation Ordinance, 2002. Sec 3.

Qanun- e- Shahadat Order 1984. Art. 2(e) explanation.

138 Electronic Transaction Ordinance 2002, Sect. 3.

139 Ibid; Sec 5

140 Ibid; Qanun-e-Shahadat Order, 1984”. Sec. 9(3), Sec 59 “A person appointed in the Agency as an expert shall be deemed as an expert appointed under section 510 of the Code and a person specially skilled in a forensic material

Criminalproceduralcode,ActVof1898”,Sec.510. „Report of Chemical Examiner, Serologist etc,“Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or any Serologist, fingerprint expert or firearm expert or the pharmacist or chemist or forensic scientist or handwriting expert appointed by Government, or of the Chief Chemist of the PakistanSecurityPrinting Corporation,

Limited. upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code : Provided that the Court may, if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made”.

Qanun-e-Shahadat Order, 1984”. Sec.59, “ Opinions of experts, “When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity Of handwriting or finger impressions, or as to authenticity and integrity of electronic documents made by or through an information system, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger,

impressions or as to the functioning, specifications, programming and operations of information systems, are relevant facts.Such persons are called experts”.

141Hadi bux v/s the State Criminal Revision Application No. D-23 in the High Court of Sindh, Hyderabad, 2021.

Available at: <https://caselaw.shc.gov.pk/caselaw/view-file/MTU3NDE3Y2Ztcy1kYzgz> Muhammad Naeem and another v. The State and others (Supreme Court 669 PLD 2019).

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Pakistan Penal Code, 1860

Sec. 377, Unnatural offences: “Whoever voluntarily has carnal intercourse against the



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order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”.

Ibid;

Sec. 506, “And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both”.