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### **Recommendations from Legal Experts on Defamation Laws**

At present, three sets of laws on defamation exist, which carry criminal and civil penalties.

- a) Section 20 of the Prevention of Electronic Crimes Act, 2016
- b) Sections 499 and 500 of the Pakistan Penal Code, 1860
- c) Defamation Ordinance, 2002

At times, all three are invoked simultaneously in one case alone. With respect to defamation being used as a silencing tool when allegations of harassment and sexual violence are made, below are recommendations of various legal practitioners:

- Unless it is declared by a competent court of law that a complaint lodged by the victim of harassment is defamatory, the FIA must be restrained from taking any adverse action against the harassment victim on the assumption that the complaint of the victim is defamatory and the victim should be summoned to prove that the complaint was not defamatory.
- Till the time the complaint is proved defamatory and false, the judiciary should also exercise restraint in proceeding against the victim of harassment. Before proceeding with the main case, the Plaintiff must be asked to satisfy the court with the maintainability of defamation lawsuit and once the suit is held to be maintainable, only then notice of the suit is issued to the Defendant. The Courts should ascertain whether the complaint of harassment (which is not proved) was lodged with intent to tarnish the image and dent the reputation of person who is named in the complaint or it was lodged in good faith but the complainant has failed to substantiate the allegations with evidence.
- The FIA should make sure that the offence committed as a counter blast under Section 24 PECA by an accused person who is named in a complaint of victim of cyber crime is curbed. An action by FIA vis-à-vis offence under Section 24 of PECA committed by an accused as vengeance, it would encourage victims of harassment to come forward without any fear of online character assassination by the accused.
- In cases of harassment, if the accused has filed a defamation case, it should be stayed till such time there is a decision on the complaint of harassment filed by the victim
- Even if the complaint against harassment filed by a victim is unsuccessful, the trial court should be mindful that they should only act in clear-cut cases of malicious defamatory/false statements which have been repeatedly

disseminated. Filing of compliant, posting allegations on social media and repeating the same on a few occasions should not give rise to defamation.

- Trial court judges seized of the defamation matters should be given guidelines and should also be given the power to dismiss the case unless there is a reasonable and prima facie case of defamation. The victim of harassment should be spared the agony of going through full fledged trial.
- Trial court judge should proactively administer the trial and take judicial notice of any intimidation of any witnesses or tampering of evidence.
- Countries around the world are decriminalizing defamation in recognition of the chilling effect these laws have on the right to freedom of speech, a right guaranteed under Pakistan's Constitution. Such laws are being used in retaliation for raising issues of public concern, and the threat of prosecution under these laws deters open debate and expression. Despite the fact that the laws – with the exception of Section 20 of PECA - make an exception for true statements that are in the public interest, the fact that they enable criminal proceedings to be initiated against a person is sufficient to stifle free expression, as evidenced through the recent cases.

**Recommendations:**

- Amend Defamation Ordinance 2002 in light of the recommendations made above
- Decriminalize defamation by repealing Section 20 of PECA and 499 and 500 of the PPC (attached are the amendment bills with respect to this)

Submitted to the Senate Functional Committee on Human Rights by:

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