On harassment S H M Y L A K H A N | 3/5/2020

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| INrecentyears,`harassment`hasbecome an integral part of our popular vocabulary.It is now discussed in mainstream media albeit often not with the nuance and sensitivity it deserves and fiercely debated in both private and public spaces. It is hard to imagine that, unlike other types of sexual and gender-based violence, harassment is a relatively new concept, both as a legal category and in the public imagination.Developed as a legal concept in the 1970s by scholar Catherine MacKinnon, harassment was conceived as a form of sexual discrimination. Laws on harassment were a triumph of second-wave feminism and its engagement with legal instruments as it reifies social inequalities and forces the law to acknowledge societal power structures.While all subjects are equal under the eyes of the law, progressive laws such as those on harassment force the neutral language of the law to acknowledge that society is, in fact, unequal and this understanding needs to be taken into account. Workplace harassment, for instance, acknowledges that workplaces are unequal and hierarchal, thus the ability of those in positions of power to harass, intimidate and silence subordinates is quite likely. This, coupled with the oppressions and structures of subordination inherent in patriarchal societies, makes women more vulnerable to harassment.In Pakistan, the movement behind the Protection against Harassment of Women at the Workplace Act, 2010, is an example of successful advocacy. The Alliance Against Sexual Harassment brought together women from all walks of life, and male allies, to work on the issue of workplace harassment. It is one of several gains made by the Pakistani feminist movement and its engagement with the law. The act makes it mandatory to have inquiry committees in each workplace and ombudspersons at the provincial and federal level.Recently, however, the ef ficacy of the law has been called into question. While it has become a cliché to trace a shift from the #MeToo moment, it is not inaccurate to say that the issue of harassment exploded in the public consciousness in the past three years.Testimonies of women across the world, including Pakistan, were thrust into the public discourse. It felt like a dam had burst.Suddenly, our newsfeeds were littered with the trauma of women who had been violated and silenced.While the #MeToo era has made leaps and bounds in terms of public awareness, the movement has been noticeably absent in its engagement with the law and its accompanying justice system. Many young feminists are either disillusioned with the law or view it as an obstacle rather than a tool forengagement. In the process of this disengagement, the inadequacies of the law have been laid bare.Glaringly, the law on workplace harassment takes a very narrow approach to defining gender, sticking to binaries of men and women to the exclusion of trans individuals whose bodies are often the site of this very violence. Additionally, the provision in the Pakistan Penal Code on Harassment (Section 509) only applies to women. These gender binaries reified in the law can lead to structural exclusions for those not given legal recognition, rendering the violence they experience as invisible.Secondly, feminist approaches to legal theory posit that laws need to take into account the lived experience of marginalised communities, and thus any law that places the burden of proof on women to prove their harassment ignores the realities of the discrimination or violence they experience. It is extremely difficult to provide cogent evidence in these cases because harassment often rarely leaves behind a neat paper trail and usually takes place when thevictim is most vulnerable and isolated.This question of standards of evidence often takes place in frantic tones and hyperbolic warnings, where weary men warn offloodgates of false testimonies as if women are lining up to pursue false cases in a system that already marginalises them. In fact, we need to have important discussions that dismantle the patriarchal legal constructs such as the `reasonable man standard`.Judges and lawyers need to develop precedents that place the hved experience of women at the centre and speak to the `reasonable woman standard` that incorporates the positionality of women, and the intersectionalities that define their lives, when adjudicating a case.As women across Pakistan take to the streets this Sunday to mark International Working Women`s Day, it is important to listen to experiences of the women who are marching each of them carrying a placard that has a story of harassment. The demands of the various Aurat Marches include safer workplaces and public spaces, where harassment is not merely an inevitability. Join them on March 8. Imagine what a safer, more just and equitable society could look like, one in which all of us are free from discrimination and violence.  The writer is a project manager at Digital Rights Foundation.Twitter: @shmyla  |