



PAKISTAN'S PECA PROBLEM: CURBING SPEECH, NOT CRIME



Five years of the cybercrimes law:
A review of the impact of PECA on journalists and
human rights defenders

Muhammad Aftab Alam

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Institute for Research, Advocacy and Development

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ACRONYMS

ETO	Electronic Transaction Ordinance
FIA	Federal Investigation Agency
FIR	First Information Report
FOE	Freedom of Expression
ICT	Islamabad Capital Territory
IHC	Islamabad High Court
IMCEW	Inter-Ministerial Committee for the Evaluation of Websites
IRADA	Institute for Research, Advocacy and Development
JDC	Journalists Defence Committee
MNA	Member National Assembly
MOHR	Ministry of Human Rights
MOITT	Ministry of Information Technology and Telecommunication
PBC	Pakistan Bar Council
PECA	Prevention of Electronic Crimes Act
PECO	Prevention of Electronic Crimes Ordinance
PEMRA	Pakistan Electronic Media Regulatory Authority
PPC	Pakistan Penal Code
PPP	Pakistan People's Party
PTA	Pakistan Telecommunication Authority
PTI	Pakistan Tehreek-e Insaf
RTI	Right to information



EXECUTIVE SUMMARY

1

PAKISTAN'S PECA PROBLEM: CURBING SPEECH, NOT CRIME

The Prevention of Electronic Crimes Act (PECA) 2016 completed five years of its enactment in year 2021. From the time the law was in its draft stage to throughout its implementation period so far, the law has been the subject of concerns regarding the violation of digital rights, including the freedom of expression and freedom of the press.

During these past five years, the Pakistan Telecommunication Authority (PTA) has used the law to block thousands of websites in the country¹ and journalists who are active on social media have found themselves in the crosshairs of the cyber offences defined in the law.² The role of the Federal Investigation Agency (FIA), tasked with law enforcement duties under PECA, has also been criticized for misuse of the law.³

The five-year anniversary of PECA offers a unique vantage point to review the law, its enforcement and the way it affects democratic values and fundamental freedoms in the country. This research study, published by the independent civil liberties advocacy group Institute for Research, Advocacy and Development (IRADA), looks at the impact of PECA on the right to freedom of online expression exercised by journalists and human rights defenders.

The report's findings are based on a desk review of around 20 instances of cases and inquiries conducted under PECA against journalists and human rights defenders related to their online journalism or social media expression. The study also relied on structured interviews with human rights defenders, lawyers and politicians to determine how these stakeholder groups viewed PECA and its implementation in the context of freedom of expression.

The following are the major findings of this research study:

- **Cases without causes:** Many cases initiated against journalists under PECA were cancelled by the courts due to lack of evidence,

¹ <https://www.dawn.com/news/1507590>

¹ <https://www.aljazeera.com/news/2021/11/2/pakistan-journalists-targeted-cyber-crime-law-press-freedom>

¹ <https://www.dawn.com/news/1637905>



which indicates that these cases might have been based on frivolous accusations designed to intimidate and harass journalists.

- **Intimidation, not intimation:** Notices for summons issued by the FIA were often the first indication of the existence of a PECA-related case or inquiry against a journalist but in most cases, these notices neither revealed the nature of the accusations nor supplied sufficient information for the journalists to prepare their defense. The Islamabad High Court has taken stern notice of this practice in response to strategic litigation petitions filed by journalists.
- **Domination of defamation:** The Section 20 of PECA, which deals with criminal online defamation, and Sections 499 and 500 of the Pakistan Penal Code, which also deal with criminal defamation, were the most widely cited charges against the journalists in cases related to their online expression. The criminal defamation sections carry fines and a jail term.
- **Reform or ruin:** Human rights defenders working on digital rights issues suggested the cybercrimes laws should be reformed as it was negatively affecting freedom of expression in Pakistan by pushing Internet users towards self-censorship, criminalizing free speech, curbing online dissent, limiting pluralism in public discourse and restricting people's access to information.
- **Political persecution:** Most politicians surveyed for this report indicated that they felt the prosecution of online speech had increased since PECA's enactment and that the cybercrimes law was being used as an instrument of censorship with journalists especially being the target of the law's misuse.
- **Legal lacunae:** Lawyers polled for this research almost unanimously called for PECA to be either repealed or radically amended in light of constitutional freedoms. The lawyers, however, appreciated the role of the higher judiciary and said the courts appeared to be receptive to arguments in favor of digital rights and freedom of expression in connection with PECA.

The study also offers the following recommendations:

- **Reforms through dialogue:** A government-civil society dialogue that espouses the principle of multi-stakeholder-ism might be a good place to start for reviewing the adverse impact and legal problems with the cybercrimes law. Such a dialogue could pave the way for honest and frank discussions on figuring out the contours of a progressive law

that upholds digital rights and online freedom of expression while protecting citizens from online harms.

- **Decriminalize online defamation:** The PECA online defamation section is unnecessary because Pakistan already has other legal provisions for it. At the very least, the online defamation section of PECA should be decriminalized. As shown by the case studies presented in this research report, the online criminal defamation charge is most frequently used against journalists in what may seem like attempts to intimidate them and discourage them from independent and critical reporting online.
- **Improve investigation procedures:** The FIA must abide by the orders of the Islamabad High Court to ensure that its investigation procedures are transparent, follow due process, and align with constitutional guarantees for free speech and freedom of the press. This may require training for investigating staff and review of procedures and protocols.

CHAPTER ONE:

ABOUT PECA 2016



Background

Legislation around cybercrimes started in Pakistan around two decades ago. The Electronic Transaction Ordinance (ETO), passed in 2002, was the first legislative instrument to deal with electronic crimes in the country. The primary purpose of this Ordinance was to facilitate documents, records, information, communications and transactions in electronic form and to provide the accreditation certification for service providers.⁴

Within five years of the passage of the ETO, the use of the Internet gradually increased in Pakistan, transforming the online space from a niche medium used for emails and small data transfers to a place where citizens could access information and express their opinions. But the increase in Internet activity also drew the attention of the government, which set about to monitor online expression with the formation of the Inter-Ministerial Committee for the Evaluation of Websites (IMCEW) in 2006.

The IMCEW was given the authority to issue directions to the country's telecom regulator, the Pakistan Telecommunication Authority (PTA), to block allegedly 'blasphemous, anti-state, anti-religion and sexually explicit' online content. The move's objective seemed to be to impose a governmental control over online spaces which were expanding the choices that the citizens now had to exercise their freedom of expression and their right to access information.⁵

The rise of social media and communication apps also gave birth to a new variety of online crimes, such as spamming, identity theft, hacking and stalking. Many aspects of this new crop of cybercrimes were not covered

⁴ <https://www.iiu.edu.pk/wp-content/uploads/downloads/journals/ilr/volume1/num-3/Article-2-Vol-1-No-3-140119.pdf>

⁵ <https://sujag.org/nuktanazar/1747?fbclid=IwAR3Vhk8ozA1GyJWXXUWTlVAOyopatEX15hnOPA9YWhY2tyNQqa7bjAnXvAo>

under the ETO.⁶ In 2007, the military ruler Pervez Musharraf promulgated the Prevention of Electronic Crimes Ordinance (PECO) apparently to give legal cover to the prosecution of these new cybercrimes, but the ordinance was also reportedly used to block anti-government blogs.⁷ Since presidential ordinances lapse after four months unless they receive parliamentary approval, the same ordinance was extended three times — In May 2008, September 2008 and February 2009 — before it lapsed. In July 2009, newly elected President Asif Zardari promulgated a similar ordinance, titled PECO 2009, which also lapsed in November 2009 owing to the lack of parliamentary support.⁸

Still, between 2006 and 2014, the IMCEW blocked many online platforms including YouTube, Facebook, Wikipedia, Flickr and thousands of other websites. In December 2014, the Islamabad High Court restrained the committee from blocking websites.⁹ The court's ruling, however, could not stop the federal government from introducing the draft of a highly controversial law called the Prevention of Electronic Crimes Act (PECA) in 2015. This draft bill was passed by Parliament in August 2016 in spite of strong opposition from digital rights activists.¹⁰ The objective of PECA, as mentioned in its preamble, is "to prevent unauthorized acts with respect to information systems and provide for offences related thereto." However, local and international organizations have termed the law "very problematic as it, among other things, criminalizes dissent online and stipulates harsh punishments for criticism" of religion, military and judiciary.¹¹

The Problematic Provisions of PECA

Since its enactment, the PECA has proved to be a tool for the authorities to curb online freedom of expression. According to the State of Digital Media Freedom Report 2021, "Digital media freedoms were threatened in particular by the federal government's move to enforce controversial and

⁶ <https://www.iiu.edu.pk/wp-content/uploads/downloads/journals/ilr/volume1/num-3/Article-2-Vol-1-No-3-140119.pdf>

⁷ <https://escholarship.org/content/qt14x2s9nr/qt14x2s9nr.pdf?t=oc5k82>

⁸ Ibid.

⁹ <https://www.dawn.com/news/1151146>

¹⁰ <https://sujag.org/nuktanazar/1747?fbclid=IwAR3Vhk8ozA1GyJWXXUWtlvAOyopatEX15hnOPA9YWhY2tyNQqa7bjAnXvAo>

¹¹ <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4246&file=English Translation>



restrictive rules to regulate online content” under PECA.¹² Similarly, the Pakistan Media Legal Review 2020 noted that “13 incidents of actions under the PECA against journalists or human rights activists have been reported in 2020.”¹³ Moreover, Freedom Network’s Annual Impunity Report 2021 stated that “Section 20 of PECA is the most frequently invoked provision against journalists.”¹⁴ Section 20 deals with criminal defamation online. Even though the entire Act needs a thorough review, the following provisions of PECA appear to be the most problematic with regards to freedom of expression online. The text below is quoted directly from the Act.

“Section 9: Glorification of an offence – (1) Whoever prepares or disseminates information, through any information system or device, with the intent to glorify an offence relating to terrorism, or any person convicted of a crime relating to terrorism, or activities of proscribed organizations or individuals or groups shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to ten million rupees or with both.

Explanation. – For the purpose of this section “glorification” includes depiction of any form of praise or celebration in a desirable manner.

Section 10: Cyber terrorism. – Whoever commits or threatens to commit any of the offences under section 6, 7, 8, 9, where the commission or threat is with the intent to,

- (a) coerce, intimidate, create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
- (b) advance inter-faith, sectarian or ethnic hatred; or
- (c) advance the objectives of organizations or individuals or groups proscribed under the law, shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine which may extend to fifty million rupees or with both.

¹² <https://irada.org.pk/wp-content/uploads/2021/10/State-of-Digital-Media-Freedom.pdf>

¹³ <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>

¹⁴ <https://www.fnkp.org/wp-content/uploads/2021/11/FINAL-Impunity-Report-2021.pdf>

Section 11: Hate speech. – Whoever prepares or disseminates information, through any information system or device, that advances or is likely to advance interfaith, sectarian or racial hatred, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Section 20: Offences against dignity of a natural person. – (1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both....

Section 37: Unlawful online content. – (1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to any offence under this Act.

(2) The Authority shall, with the approval of the Federal Government, prescribe rules providing for, among other matters, safeguard, transparent process and effective oversight mechanism for exercise of powers under sub-section (1)....”

As noted above, Section 37 of PECA gave powers to the telecom regulator PTA to remove or block websites, which it often did arbitrarily. When one such enforcement action was challenged in court in 2019, the Islamabad High Court declared that PTA’s blocking actions were a flagrant violation of constitutional rights and due process.¹⁵ The high court also ordered the PTA to notify within three months the rules to regulate online content, which it was required to do under Section 37 of PECA but had failed to do in three years.

Most likely in a response to the court order, the government reportedly approved the Citizens Protection (Against Online Harm) Rules in January

¹⁵ <https://tribune.com.pk/story/2061933/1-pta-not-empowered-block-website-ihc>

2020, but kept them under wraps. When news broke of the existence and nature of the rules in February 2020, civil society groups, journalists, media stakeholders, the legal fraternity, political parties and the international digital rights community noticed that the rules created more risks for online freedoms and strongly denounced the rules.¹⁶ The government suspended the rules after the reaction and announced to launch a consultative process, which was boycotted by local civil society organizations.¹⁷

Despite the concerns from digital rights advocates, the government notified a new version of the rules in October 2020, with the new title of Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020.¹⁸ A number of organizations challenged the vires of the PECA as well as the October 2020 version of the rules in the Islamabad High Court. As the legal proceedings went on, the Attorney General appeared before the court in January 2021 and said the government will review the rules to address their concerns.¹⁹ After the Attorney General held a public consultation on the matter and shared his suggestions with the government, a new committee was formed in March 2021 with the human rights minister as chair to discuss the online content regulation in detail with relevant stakeholders.²⁰

This committee helped create a new draft of the rules in June 2021, which offered minor changes to its preceding documents and failed to completely alleviate the longstanding concerns about online free expression, data privacy, and procedures.²¹ The Ministry of Information Technology and Telecommunication presented this draft to the federal cabinet, which approved it in September, and the rules were notified for enforcement by the ministry in October 2021.²² Meanwhile, the Islamabad High Court has continued its hearings on the petitions filed to challenge the legality of the rules.²³

¹⁶ <https://www.digitalrightsmonitor.pk/pfuj-civil-society-revoke-social-media-rules/>

¹⁷ <https://www.dawn.com/news/1537755>

¹⁸ <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>

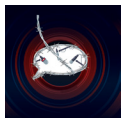
¹⁹ <https://www.thenews.com.pk/latest/779580-federal-government-tells-ihc-that-it-will-review-social-media-rules>

²⁰ <https://www.thenews.com.pk/print/812477-govt-forms-committee-on-social-media-rules>

²¹ <https://www.digitalrightsmonitor.pk/new-draft-of-controversial-social-media-rules-introduced/>

²² <https://www.dawn.com/news/1651977>

²³ <https://www.thenews.com.pk/print/910950-amicus-curiae-ihc-seeks-opinion-on-new-social-media-rules>



An Appraisal of PECA and Its Rules

In *Government of Balochistan v. Azizullah Memon*, the Supreme Court of Pakistan upheld every Pakistani citizen's right to access justice and termed the handing over of adjudication of rights and trial of offence to the executive officers or administrative bodies as a way of "blocking the road of free access to justice."²⁴ The judgment essentially indicated that no executive body, authority or committee, whether it is statutory or non-statutory, can have powers to decide the rights of the people and conduct trials of offences. This prerogative rests exclusively with the judiciary. However, an examination of Section 37 of PECA and its associated rules shows that these appear to contradict the Supreme Court ruling.

Section 37 of PECA authorizes the PTA to 'adjudicate' the right of freedom of speech and right to information with respect to online content.²⁵ The PTA basically decides whether or not any piece of online content is against the restrictions of speech borrowed by PECA from Article 19 of the Constitution of Pakistan. This decision about the legality of speech should be the sole prerogative of the judiciary, not the telecom regulator. Courts can take these decisions based on trial proceedings where the accused get a chance to be heard, but the PTA's process is marked with a lack of transparency. Moreover, the constitution of Pakistan does not envisage adjudicating powers for a regulatory body such as PTA. Giving this authority to PTA then is what the aforementioned Supreme Court judgment considered equivalent to blocking the road of access to justice.

The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules, 2021, which have reached their current form after several iterations during the past two years, still appear to be beyond the limits of their parent law – PECA, 2016. For example, the rules seem to violate PECA protections for data privacy and restrictions of intermediary liability by compelling service providers to share decrypted data with the authorities on demand and imposing fines for non-compliance.²⁶

²⁴ PLD 1993 Supreme Court 341

²⁵ This discussion is based on the author's original article, which first appeared in The News International on March 22, 2020: <https://www.thenews.com.pk/print/632505-controversial-powers>

²⁶ <https://moitt.gov.pk/SitelImage/Misc/files/Removal%20Blocking%20of%20Unlawful%20Online%20Content%20Rules%202021.PDF>

Investigation Agency and Cybercrime Courts for PECA

Section 29 of the PECA mandates the federal government to either establish or designate a law enforcement agency for investigation of offences under this law. The government, through the Prevention of Electronic Crimes Investigation Rules, 2018, designated the Federal Investigation Agency (FIA) for this purpose. According to the FIA's Annual Administration Report 2020, the agency is dealing with 16,905 inquiries under the PECA.²⁷ As per the report, the agency disposed of 9,073 inquiries while 7,336 inquiries are still pending. FIA has converted 496 inquiries (only 3% of the total inquiries) into cases for further investigation.

Similarly, FIA is investigating 1,473 cases; these include cybercrime cases that predate PECA. The report states that 22 cases (a mere 1.4%) have been disposed of. FIA has filed challan in 373 cases (25%) and 1,083 (73%) cases are still under investigation.

Section 44 of the PECA requires the federal government, in consultation with the Chief Justice of respective High Courts, to designate presiding officers of the courts that will try offences under the PECA. The government issued a notification in March 2017 and designated 27 courts in Sindh, four in Punjab and two courts each in Khyber Pakhtunkhwa, Balochistan and the Islamabad Capital Territory. According to the FIA Annual Administration Report 2020, there were 1,096 cases filed before these courts. Out of these cases, convictions were delivered in only 19 cases (less than 2%) and the accused were acquitted in 88 cases (8% of the total 1,096 cases). Around 85% of the cases were still pending before these courts.

The PECA Section 40 requires the establishment of or designation of a forensic laboratory, independent of the investigation agency, to provide expert opinion before the courts or for the benefit of the investigation agency. However, no such "independent" lab has been established or designated by the federal government yet, five years after the passage of the law.

²⁷ <https://www.fia.gov.pk/files/publications/522413583.pdf>



Examining PECA

The problems related to the original legal formulation of PECA, the controversy surrounding its associated rules for online content regulation and the poor implementation of the law make it necessary to examine the way the law has affected two important stakeholders of online freedom of expression: journalists and human rights defenders.

This research study provides a quick review of the PECA cases related to expression that involved journalists. The case studies included in the report are intended to help stakeholders understand the problems posed by PECA to independent journalists, including the threat of criminal defamation and the intimidation tactics used by law enforcement officials. The cases also offer a glimpse into the way strategic litigation has helped raise concerns about freedom of online expression in front of the higher judiciary and the way the courts have replied in connection with fundamental rights. The research also provides perspectives from digital rights groups, politicians and lawyers about the major concerns regarding PECA and suggestions to resolve them.

CHAPTER TWO:

RESEARCH METHODOLOGY

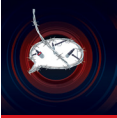
This study relied on a mix of desk research and key informant interviews to explore the impact of PECA on the online expression of journalists and human rights defenders.

The desk research focused on cases where journalists or lawyers had either been accused under PECA for cyber offences related to online speech or where they used PECA provisions to protect their reputation from defamation or cybercrimes. A total of 20 cases were examined. Details about the cases, including the background, charges and outcome, were documented. These cases were initiated between 2016 and 2021. Brief case studies based on 10 of these cases were included in the report.

Structured interviews were conducted with key informants from three separate sets of stakeholders of online regulation: representatives of civil society organizations working on digital rights, representatives of political parties, and members of the lawyers' community involved in PECA-related court cases. All interviews were conducted between October and December 2021 and the information was analyzed for discussion.

Four leading digital rights organizations were considered for the interviews. Each of these organizations has remained involved with research and advocacy on progressive Internet governance in Pakistan. These organizations were also at the forefront of civil society advocacy efforts in 2016 to bring about a cybercrimes law that protected civil liberties and have since monitored the implementation of PECA closely. They are also currently engaged in the attempts to ensure that rules framed under PECA's Section 37 do not undermine digital rights.

Respondents from political parties were interviewed to get their opinion about the effectiveness of PECA and the possibility of reforms in the law to address concerns raised by digital rights activists. All political parties in Pakistan now use social media channels to connect with their supporters as well as with the media and therefore PECA's provisions and other restrictions on online expression affect the political actors too. Interview requests were sent to leaders of four mainstream political parties, out of which three responded. Interviews for this study were conducted with



representatives from the ruling Pakistan Tehreek-e Insaf and the opposition parties, the Pakistan People's Party and Awami National Party.

Lawyers are an important stakeholder group for the implementation of PECA as they represent both accused and complainants in cases related to cybercrimes and online expression. Therefore, the study included the opinions of lawyers, who have experience of representing citizens in court in cybercrime cases, about legal issues surrounding PECA and the response of the judiciary.

CHAPTER THREE:

PECA CASE STUDIES

The research looked at instances where PECA and its associated investigative procedures were invoked in connection with the online expression of journalists and human rights defenders. These instances occurred from the time after the enactment of the law in 2016 up until December 2021. The research identified at least 20 cases or inquiries in which journalists were charged or summoned by the authorities on the basis of their online activity as well as cases initiated by journalists under PECA to seek justice. Some of these instances that involved digital news outlets, digital journalists and journalists working for legacy news media are discussed as case studies in this section.

It was observed that the following sections of various laws were deployed in the PECA cases against journalists reviewed for the study. The following list shows an overall summary of the charges altogether, in no particular order. It does not mean that these charges were levelled in each case.

- PECA: Section 10-A (Cyber terrorism)
- PECA: Section 11 (Hate speech)
- PECA: Section 20 (Offences against dignity of a natural person – otherwise known as defamation)
- PECA: Section 37 (Unlawful online content)
- Pakistan Penal Code: Section 499 (Defamation)
- Pakistan Penal Code: Section 500 (Punishment for defamation)
- Pakistan Penal Code: Section 505 (Statements conducing to public mischief)
- Pakistan Penal Code: Section 109 (Punishment of abetment (of any offence))
- Pakistan Penal Code: Section 34 (Common intention, for example for criminal act done by several persons)
- Pakistan Penal Code: Section 469 (Forgery for purpose of harming reputation)
- Pakistan Penal Code: Section 509 (Insulting modesty or causing sexual harassment)
- Pakistan Penal Code: Section 298 (Uttering words with deliberate intent to wound religious feelings)



- Pakistan Penal Code: Section 506 (Punishment for criminal intimidation)
- Telegraph Act: Section 29 (Sending fabricated message)

These charges show that cases against journalists often included provisions from both PECA and the Pakistan Penal Code. This means that journalists have to contend with two sets of criminal defamation charges.

The key trends of the outcomes of these PECA cases or inquiries are noted below:

- Many cases were cancelled by the court due to lack of evidence, which indicates that these cases might have been based on frivolous accusations designed to intimidate and harass journalists. One example of this was when a court cancelled a case of alleged cyber terrorism, defamation and hate speech against journalist Shahzeb Jilani for lack of evidence in 2019 but the journalist had already suffered the loss of employment and reputational harm during the short span of the court proceedings.
- FIA notices were often the first indication of the existence of a case or inquiry against a journalist but on most occasions, these notices did not reveal the nature of the accusations and did not supply sufficient information for the journalists to prepare their defense. However, one positive development was the intervention by the Islamabad High Court, which ordered the FIA to reconsider its approach towards dealing with cybercrime investigations and advised it to ensure respect for freedom of the press in its practices.
- Some PECA cases were under process at the time of the research and therefore their outcomes are as yet unknown.

Some of the reviewed cases are selected below for brief discussion in the form of case studies to show the effects of PECA.

1 - The Case against Shahzeb Jilani

Karachi-based broadcast journalist Shahzeb Jilani, who was working at the time for a TV talk show on Dunya News, was charged under PECA and the Pakistan Penal Code for alleged anti-state statements in 2019.

Background: In April 2019, the FIA reportedly initiated an inquiry against journalist Shahzeb Jilani after an FIR was filed against him over alleged

remarks against state institutions.²⁸ The petitioner, Maulvi Muhammad Iqbal Haider, had submitted an application to FIA against Mr. Jillani.²⁹ The FIR claimed that during episodes of the Dunya News show “Dunya Kamran Khan Kay Saath”, Mr. Jillani had responded to some questions with statements that allegedly defamed the military.³⁰

Charges: On the basis of the complaint, the FIA booked Mr. Jillani on three charges under the Pakistan Penal Code, including defamation, and three charges under PECA, including cyber terrorism and defamation.³¹

Outcome and significance: The case against Mr. Jillani was perhaps the first high profile case in which a journalist was charged under PECA. Even though the accusations against him were based on comments issued during a television broadcast to which the cybercrime law does not apply, FIA proceeded with the case. The charge of cyberterrorism against the journalist was especially problematic. More dangerous was the fact that the accusations were related to Mr. Jillani’s journalism work and his opinions expressed on a talk show.

While the journalist community raised voice in favor of Mr. Jillani and condemned the use of PECA to suppress independent journalism, Mr. Jillani’s employer Dunya News fired him from the job. A Karachi court granted him pre-arrest bail, which was later extended as the case lingered on with the FIA investigation officer not appearing before the court.³² Eventually the Karachi local court cancelled the case against Mr. Jillani for lack of evidence. The PECA case against Mr. Jillani revealed that the cybercrimes law could be used to intimidate journalists for their news work and perhaps discourage them from following stories related to national security issues. While the trial showed that the accusations against him lacked any basis, the allegations and charges themselves were enough to force Mr. Jillani out of his job. He eventually left Pakistan and now works as a journalist abroad.

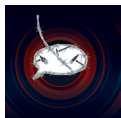
²⁸ <https://nayadaur.tv/2019/04/fia-initiates-inquiry-against-shahzeb-jillani-over-remarks-against-stateinstitutions/>

²⁹ <https://www.dawn.com/news/1483196/cyber-terror-case-against-journalist-cancelled-lawyer>

³⁰ <https://www.dawn.com/news/1476700>

³¹ <https://www.dawn.com/news/1483196/cyber-terror-case-against-journalist-cancelled-lawyer>

³² <https://www.dawn.com/news/1476700>



2 - The Case against Arshad Sulehri

Before journalist Rana Arshad Sulehri died in 2021, the final year of his life was marred by interference and intimidation by the FIA.

Background: Mr. Sulehri, an Islamabad-based journalist, was reportedly harassed by FIA officials in 2020 in connection with a cybercrime inquiry supposedly linked to his social media activity. He was asked to appear before the FIA for an investigation through an undated notice received in October 2020, but he was never informed of the charges or accusations against him.³³ His house was also allegedly raided by FIA in the days following the notice.³⁴

Charges: Not disclosed by FIA.

Outcome and significance: The Journalist Defence Committee of the Pakistan Bar Council helped Mr. Sulehri to file a writ petition in the Islamabad High Court against the FIA notice. The high court restrained the FIA from harassing Sulehri and asked it to explain why Mr. Sulehri was not informed of the nature of his alleged offence in the notice as well as explain under what authority the undated notice was issued followed by the alleged raid on his house.³⁵ In a subsequent hearing, the FIA informed the court it had only visited Mr. Sulehri's house to verify his address, after which the court ordered the FIA to submit a detailed report.³⁶ FIA then sent Mr. Sulehri another summons, as it had been allowed by the high court to do so, and Mr. Sulehri appeared before the investigating officer to share a detailed reply to the notice.³⁷

In November 2020, the High Court disposed of Mr. Sulehri's petition after FIA's detailed report stated that it had no incriminating evidence against the journalist.³⁸ The High Court declared that the FIA's action against Mr. Sulehri "definitely amounted to an abuse of exercise of powers under the PECA" and directed the FIA to formulate guidelines for its investigative officers in pursuance of cybercrime investigations, especially in cases related to journalism.³⁹ The court also made observations about the importance

³³ <https://twitter.com/Matiullahjan919/status/1311680101680021504>

³⁴ <https://twitter.com/mhaiderimtia/status/1314175027491811329>

³⁵ Ibid.

³⁶ <https://twitter.com/PBCJDC/status/1316724690287763456>

³⁷ <https://twitter.com/PBCJDC/status/1319198345810804738>

³⁸ <https://twitter.com/mhaiderimtia/status/1314175027491811329>

³⁹ Ibid.

of freedom of the press, stating that the “most effective accountability of the state and its powerful elite is through an independent and responsible press”.⁴⁰ The FIA actions against Mr. Sulehri once again showed that PECA powers are rife for misuse to intimidate and harass journalists. The writ petition in the case led to the landmark high court judgment that has set a precedent for the use of investigative powers by the FIA in PECA-related cases.

3 - The Cases against Asad Toor

Islamabad-based journalist Asad Toor found himself accused in three PECA-related complaints in 2020-21, two of which are discussed here while the third ongoing case is discussed separately later in the report.

Background: The first FIR against Mr. Toor was registered at a Rawalpindi police station in September 2020 by a resident Hafiz Ehtesham Ahmed, who accused Mr. Toor of using derogatory language against government institutions, including the army.⁴¹ In May 2021, the FIA issued a separate notice to Mr. Toor on the complaint of a citizen Fayyaz Mehmood Raja who accused Mr. Toor of levelling allegations against State institutions in his YouTube videos and tweets.⁴²

Charges: In the 2020 FIR, Mr. Toor was charged with Sections 11, 20 and 37 of PECA and Sections 499, 500 and 505 of the Pakistan Penal Code. The 2021 FIA summons notice sent to him was under Section 160 of the Code of Criminal Procedure which carries a penalty for non-compliance, and even though it did not specify any PECA charges, the notice mentioned that the inquiry was regarding defamation.

Outcome and significance: Mr. Toor acquired protective bail from the Islamabad High Court with regards to the 2020 FIR.⁴³ Lawyers from the Journalists Defence Committee approached the Rawalpindi bench of the Lahore High Court on behalf of Mr. Toor to argue that the FIR was registered illegally and maliciously.⁴⁴ The Lahore High Court ruled in November 2020

⁴⁰ Ibid.

⁴¹ <https://www.dawn.com/news/1579824>

⁴² <https://www.dawn.com/news/1626757>

⁴³ <https://tribune.com.pk/story/2264243/lhc-grants-one-week-protective-bail-to-journalist-asad-ali-toor>

⁴⁴ <https://tribune.com.pk/story/2266171/lhc-seeks-punjab-police-report-on-fir-registered-against-journalist-asad-ali-toor>



that the FIR was infructuous.⁴⁵ With regards to the 2021 FIA notice sent to Mr. Toor on the complaint of Mr. Raja, the journalist petitioned the Islamabad High Court, which suspended the notice reportedly on the grounds that it was issued without completing the formalities.⁴⁶ The suspension of the notice meant that the FIA could not initiate criminal proceedings against Mr. Toor if he did not comply with the summons. It is unclear if the FIA continued with its inquiry after the suspension of the notice or not.

However, both the 2020 FIR and the 2021 complaint against Mr. Toor were significant because these referenced his social media activity, including his news videos on YouTube, as the basis for the defamation allegations. The 2020 FIR was also significant because it included sections from the PECA but was registered by police, which does not have jurisdiction over cybercrimes and this also led to the FIR being declared infructuous by the court. Furthermore, the 2021 FIA summons notice had the same issues about which the Islamabad High Court had ordered FIA to amend its behaviour in the Arshad Sulehri case of 2020, so the precedent set in that case may have helped in the suspension of this notice against Mr. Toor.

4 - The Case against Absar Alam

Absar Alam, a senior journalist and former chairman of the Pakistan Electronic Media Regulatory Authority, was accused of high treason in 2020 and charged with defamation under PECA and sedition under the penal code in an FIR.

Background: Naveed Ahmad, a lawyer and the president of the Insaf Lawyers Forum which is a lawyers' group associated with the ruling party Pakistan Tehreek-e Insaf, filed a complaint with police in Jhelum that Mr. Alam had allegedly used derogatory language against State institutions in his tweets and other social media posts, which was allegedly tantamount to treason.⁴⁷ The police registered an FIR against Mr. Alam in September 2020. Charges: Mr. Alam was charged in the FIR with Section 20 of PECA along with Sections 499, 505, 131 and 124 A of the Pakistan Penal Code. The last two sections deal with abetting mutiny and sedition respectively.

⁴⁵ <https://www.dawn.com/news/1590944>

⁴⁶ <https://www.dawn.com/news/1627250>

⁴⁷ <https://twitter.com/AbsarAlamHaider/status/1304467803072847873>



Outcome and significance: Since the FIR had a PECA section in it and dealt with social media activity, it was transferred to the FIA.⁴⁸ In March 2021, the FIA sent him a summons notice in connection with the earlier FIR regarding his allegedly anti-state tweets; Mr. Alam challenged the notice through a writ petition in the Islamabad High Court.⁴⁹ The court suspended the summons notice.⁵⁰ During this while, Mr. Alam also survived an assassination attempt in April 2021.⁵¹ In September 2021, the additional attorney general informed the court that the FIA had closed its inquiry against Mr. Alam after finding that the inquiry did not fall under PECA Section 20 dealing with online defamation.⁵² The FIA also admitted that initiating an inquiry against Mr. Alam was a mistake, after which the high court clubbed Mr. Alam's petition with identical petitions about the "highhandedness" of FIA cybercrime officials.⁵³ In November 2021, the court asked the FIA to submit a detailed report regarding the FIA's powers under PECA after consulting all stakeholders.⁵⁴ The case against Absar Alam was significant because his online expression and critical commentary about national politics was used to target him first through legal means and then with violence. The response from FIA in court again showed that the law enforcement could not find any substance to prosecute the individual but the complaint, police case, notice and court proceedings were perhaps by themselves instruments of intimidation.

5 - The Case against Azharul Haq Wahid

Lahore-based reporter Azharul Haq Wahid spent two months in jail during his trial without conviction on charges under PECA.

Background: The FIA lodged an FIR against Mr. Wahid, who worked as a reporter for Channel 5 and Khabrain newspaper, in January 2020 on the allegations that he had posted anti-state and defamatory material about the government and State institutions on Facebook and made mockery of the national anthem.⁵⁵

⁴⁸ <https://pakistanimpunitywatch.org/profile/absar-alam-2/>

⁴⁹ <https://www.dawn.com/news/1613657>

⁵⁰ <https://www.brecorder.com/news/40076629/ihc-suspends-fias-summon-to-absar-alam>

⁵¹ <https://dunyanews.tv/en/Pakistan/598148-Renowned-journalist-Absar-Alam-survives-assassination-attempt->

⁵² <https://nation.com.pk/21-Sep-2021/fia-tells-ihc-case-against-ex-chairman-pemra-closed>

⁵³ <https://www.dawn.com/news/1647524/ex-pemra-chairmans-petition-against-fia-disposed-of>

⁵⁴ <https://dailytimes.com.pk/836821/ihc-seeks-details-of-fias-powers/>

⁵⁵ <https://www.dawn.com/news/1528913>

Charges: Mr. Wahid was charged under Sections 11 and 20 of PECA and Section 505 of the Pakistan Penal Code.

Outcome and significance: FIA arrested Mr. Wahid when he went to record his statement and received his three-day physical remand from a judicial magistrate on 17 January 2020.⁵⁶ He was later sent on a judicial remand and an Additional District and Sessions Judge also denied him bail.⁵⁷ The Lahore High Court finally granted him bail on 27 March 2020 after he had spent two months in custody.⁵⁸ The court observed that the requirements and procedure for inserting Section 505 of the Pakistan Penal Code had not been followed in the case. While the FIA counsel claimed the authorities had evidence about Mr. Wahid's offence, the journalist's lawyer told the court that FIA had failed to conduct a forensic analysis of Mr. Wahid's cellphone and computer during the two months.⁵⁹ Mr. Wahid's case remains under trial. His case is significant because it has not completely gone away even though he is out of prison now. Mr. Wahid was kept in custody while on trial and denied bail twice initially on the requests of FIA, which has so far been unable to prove its case against him despite confident claims.

6 - The Case against Bilal Farooqi

Plainclothesman accompanied by police picked up journalist Bilal Farooqi from his house in Karachi. He was later told it was due to a PECA case.

Background: On 11 September 2020, print journalist Bilal Farooqi was detained by police from his home on the pretense that they wanted him to participate in a survey of tenants and taken to a police station.⁶⁰ Police later also confiscated his cellphone device from his house. It was later revealed that a Karachi resident Javed Khan had accused Mr. Farooqi of publishing anti-military and sectarian content on Facebook and police had apparently registered an FIR on 9 September against him.

Charges: Mr. Farooqi was charged with PECA Sections 11 and 20 and Sections 500 and 505 of the Pakistan Penal Code.

⁵⁶ <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>

⁵⁷ <https://www.dawn.com/news/1531303/journalist-denied-bail-in-hate-material-case>

⁵⁸ <https://www.urdupoint.com/en/pakistan/lhc-allows-bail-to-journalist-izhar-ul-haq-875828.html>

⁵⁹ <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>

⁶⁰ <https://www.dawn.com/news/1579118>



Outcome and significance: Mr. Farooqi's abduction created outrage among the large journalism community in Karachi, forcing the Karachi police chief to confirm that he was being detained at the Defence police station. The political pressure created by journalists and civil society members, who took to social media in solidarity with Mr. Farooqi, helped in getting him released late on Friday night. Mr. Farooqi appeared before a judicial magistrate the next morning where the police filed a revised charge sheet in which the Pakistan Penal Code sections had been removed. The judge grilled the investigating officer on the case but allowed him two weeks to submit a proper investigation report.⁶¹

Later police reportedly included defamation sections from the penal code in the charge sheet but a judge dismissed the case on the grounds that police did not have jurisdiction to register cases under PECA law, according to information available with Freedom Network. Mr. Farooqi's ordeal was the first of three PECA-related incidents that took place in the month of September 2020; it was followed by the cases against Mr. Toor and Mr. Alam that were discussed earlier. In all three cases, police violated its jurisdiction to charge journalists with PECA sections and eventually all three incidents were disposed of in favor of the journalists. However, these incidents reinforce the intimidation angle of legal prosecution using PECA. In the case of Mr. Farooqi, it appears that the police detained him without an arrest warrant and even might have deceived him in order to detain him. The timely support from the journalist and legal communities online and offline helped secure his release. This begs the question that what would be the fate of lesser known or less well-connected journalists who may not have a support network to call for justice if they are unfairly targeted with PECA.

7 - The Case of Lahore Journalists Detained

Lahore-based journalists Amir Mir and Imran Shafqat were detained separately by the FIA on the same day and slapped with PECA charges.

Background: On the morning of 7 August 2021, FIA cybercrime officials in Lahore detained journalist Amir Mir as he was leaving his house in his car and confiscated his electronic devices, according to information available with Freedom Network. Mr. Mir, who runs an online news outlet called

⁶¹ <https://www.dawn.com/news/1579284>

Googly News, was reportedly taken to the FIA office and interrogated. Another journalist, Imran Shafqat, who runs his own YouTube current affairs channel, was also picked up by the FIA the same day and interrogated in the same FIA office separately.

Charges: The two journalists were charged with Sections 469, 500, 505 and 509 of the Pakistan Penal Code and Mr. Mir was also reportedly charged with Sections 11 and 20 of PECA.

Outcome and significance: One of the journalists claimed they were asked to tender an apology for allegedly working against the national interest and defaming the State institutions, accusations that the journalists denied. The two journalists were released the same day on a surety bond.⁶² FIA claimed that the investigations against the journalists would continue. There has been no update on the cases against them. However, in September 2021, the Islamabad High Court took notice of the incident while hearing its ongoing petitions about harassment of journalists by the FIA and reprimanded the authorities for their conduct.⁶³ The cases against the two journalists are significant because both were working on digital platforms (most notably, YouTube) and their abduction-style detention and subsequent hours-long interrogation by the FIA indicates the heavy-handedness of law enforcement authorities. Their cases are also peculiar because this time the FIA inserted Pakistan Penal Code provisions among the charges. In earlier cases, it was mostly the police crossing its jurisdiction to add PECA sections to an FIR.

8 – The Case against Bilal Ghauri

Bilal Ghauri, a writer and YouTube journalist, was accused of defamation under PECA.

Background: The FIA sent a summons notice to Mr. Ghauri, who used to contribute to daily Urdu newspaper Jang and also runs his news channel on YouTube, in June 2021.⁶⁴ The notice ordered Mr. Ghauri to appear at the FIA office for a hearing in two days' time but it did not specify the accusation

⁶² <https://www.thenews.com.pk/latest/874774-fia-releases-journalists-amir-mir-and-imran-shafqat-on-personal-bond>

⁶³ <https://www.digitalrightsmonitor.pk/islamabad-high-court-orders-action-against-fia-officers-for-arresting-two-journalists-in-lahore/>

⁶⁴ <https://www.ifj.org/es/centro-de-medios/noticias/detalle/category/press-releases/article/pakistan-fia-summons-journalist-for-critical-reporting.html>

against him. It only mentioned that there was a complaint against Mr. Ghauri filed by Syed Abbas Mohiuddin, a politician from the Attock district of Pakistan's Punjab province and a member of the provincial assembly.⁶⁵

Charges: The FIA notice failed to specify the charges or accusations. The charges against Mr. Ghauri may apparently deal with defamation.

Outcome and significance: Mr. Ghauri challenged the FIA notice in court, which suspended the notice. There is no case against him at the moment but the Islamabad High Court continues to hear his petition in connection with other petitions about the behavior and procedures of FIA in dealing with journalists in PECA-related cases.⁶⁶ This case again shows that despite the Islamabad High Court's 2020 ruling in which it ordered FIA to reconsider its investigation approach in dealing with cybercrimes cases especially related to journalists, the FIA has continued its practice of issuing vague summons notices to journalists.

9 – The Notice to Balochistan Voices

The digital news website Balochistan Voices received a notice from PTA about alleged content violations.

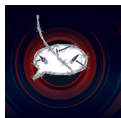
Background: On 23 August 2021, the PTA in an emailed notice informed the digital news website Balochistan Voices that someone had accused its web content of defaming State institutions and spreading rumors. No specific articles published by the website were mentioned in the notice.

Charges: The notice referred to Rule 6 (2) of the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020 and Section 37(1) of PECA.

Significance and outcome: The editor of Balochistan Voices replied to the notice asking PTA to specify which particular news content was allegedly found to be objectionable. But the PTA did not reply back. However, this is a significant development because earlier PTA used to block or remove online content in the country without prior notice to the website administrators. But now it seems it has at least started sending notices to publishers. It is

⁶⁵ Ibid.

⁶⁶ <https://www.dawn.com/news/1632437>



also important to note that the PTA enforced the 2020 version of the Rules by referring to it while there was pending litigation in the Islamabad High Court about the unconstitutionality of the rules. The 2020 Rules for online content regulation have now been repealed and replaced with a 2021 version.

10 – The Case of Shiffa Yousafzai

Journalist and morning talk show host Shiffa Yousafzai moved the FIA cybercrime wing against another journalist for allegedly defaming her.

Background: In March 2021, journalist Asad Toor reportedly published videos on his YouTube channel in which he allegedly subjected Ms. Yousafzai to personal attacks based on her professional work.⁶⁷ Ms. Yousafzai approached the FIA in March to complain about the “defamatory remarks” on the basis of which FIA issued a summons notice to Mr. Toor.⁶⁸

Charges: Section 20 of PECA

Outcome and significance: In May 2021, Mr. Toor challenged the FIA notice in the Islamabad High Court, which suspended the notice citing that it was not issued properly and did not disclose the specific accusations against Mr. Toor.⁶⁹ However, Ms. Yousafzai through her lawyer approached the high court in June, at which point the court clarified that it had only suspended the notice but not stopped the FIA from investigating the matter further. The case is ongoing.⁷⁰ It is significant because the investigation and potential trial could likely set a precedent for justice in instances of online defamation and other digital threats faced by women journalists in Pakistan. Otherwise, except in one other reported instance⁷¹, women journalists have not trusted FIA with their complaints and instead chosen to issue collective statements about the digital attacks they are targeted with on social media.⁷²

⁶⁷ <https://womeninjournalism.org/cfwij-press-statements/pakistan-cfwij-condemns-the-targeted-personal-attacks-on-shiffa-yousafzai>

⁶⁸ <https://www.globalvillagespace.com/shiffa-yousafzai-harassment-case-ihc-directs-fia-to-conduct-inquiry-against-asad-ali-toor/>

⁶⁹ <https://www.dawn.com/news/1627250>

⁷⁰ <https://www.dawn.com/news/1632437>

⁷¹ <https://www.digitalrightsmonitor.pk/journalist-reports-online-violence-to-fia/>

⁷² https://twitter.com/benazir_shah/status/1293450054309744646?lang=en

CHAPTER FOUR:

HUMAN RIGHTS DEFENDERS SPEAK UP

Four human rights defenders working with digital rights organizations in the country were polled to seek their opinions about the impact of PECA on freedom of expression. The respondents also offered suggestions about bringing about improvements in the cybercrimes law.

All four interviewees agreed that PECA was **negatively affecting freedom of expression** in Pakistan in the following ways:

- Pushing Internet users towards self-censorship;
- Criminalizing free speech;
- Curbing online dissent;
- Limiting pluralism in public discourse;
- Restricting people's access to information.

One human rights defender stated that **cybercrimes have not reduced** under PECA. Instead, the respondent said, the **prosecution of online free speech has increased** and it is easier to charge journalists for their online freedom of expression now. In the context of freedom of expression, the respondent suggested that reforming the law might help to address the challenges posed by PECA.

Another digital rights activist agreed that PECA is increasingly being used to prosecute against online expression and being used to censor online speech. The activist was of the opinion that PECA sections that negatively affect freedom of expression should be abolished and suggested that in the law a **distinction be made between hate speech and free speech**. The activist also urged for reforms in the law.

One respondent who works on issues of digital rights said PECA has made it easier for the authorities to charge journalists with cyber offences based on their online activity, including news reporting and sharing of opinions. The respondent said the prosecution of online expression has increased under the law and PECA has created the unique situation where **criminalization of online speech by a content regulator** (PTA) is facilitated by a special law enforcement agency (FIA), which is unlike the arrangement for other



content regulators, such as the broadcast media regulator PEMRA.

The respondent also saw PECA as a tool of censorship on the Internet. In addition to abolishing problematic sections of PECA and making a better distinction in the law between hate speech and free speech, the respondent also suggested that the **search-and-seizure** clauses of PECA should be amended. The respondent said the law should have more clarity on hate speech, procedures for data **surveillance**, and the **protocols for data sharing** with foreign countries. PTA should not have the blanket authority to block online content, the respondent said, adding that the law should not allow **data retention** by technology companies for a period of more than six months.

Another digital rights advocate interviewed for the study said PECA should be abolished entirely as it has been unable to stem the tide of cybercrimes and has only caused an increase in the prosecution of online speech as well as criminal cases against journalists for their online expression.

All interviewees agreed that **engagement between civil society and government** was needed to amend the existing PECA law. Most interviewees also suggested that stakeholder alliances should be established with the aim to recommend reforms in PECA. Half of the interviewees stated that advocacy should be conducted for the **decriminalization of online free speech** in order to improve the PECA law and protect online freedom of expression in Pakistan.

CHAPTER FIVE:

POLITICAL PERSPECTIVES

Politicians from different political parties were also asked to offer an evaluation of the effects of PECA on freedom of expression and suggest options for resolving the problems posed by the law. Four politicians belonging to three political parties responded to the questionnaire, which had the same questions that were asked of the human rights defenders.

All politicians agreed that PECA is being used as an instrument of censorship. Most of the politicians also felt that PECA was promoting online self-censorship, curbing online dissent, and limiting pluralism in the public discourse because of the criminalization of online expression.

One politician, who is also a Member National Assembly (MNA) from Pakistan People's Party, said PECA has not caused a reduction in cybercrimes but the prosecution of online free speech has increased since the law was enacted. The political leader agreed that it was **easier to charge journalists for crimes based on their online expression under PECA.**

Another politician interviewed for the study said PECA is detrimental to online speech because **prosecution of expression has increased since the law's passage** and the online speech of journalists is easier to target through legal means now.

Both these politicians suggested that only those sections of PECA that negatively affect free expression should be abolished, hate speech should be distinguished from free speech in the law and PECA reforms should be brought about.

One politician, who belongs to the ruling party Pakistan Tehreek-e Insaf (PTI) and is an MNA, said under PECA, the content regulator PTA is supported in the criminalization of online speech through the FIA, which is unlike other media regulators such as PEMRA and the Press Council. The politician said PECA is also negatively affecting freedom of expression by restricting people's access to information and said only those **sections of PECA should be abolished that undermine freedom of expression.**



Another PTI MNA who responded to the study questionnaire agreed that under PECA, the prosecution of online free speech has increased and that the law should be reformed.

Most of the politicians who responded for the research study called for advocacy on the decriminalization of online free speech and suggested better government-civil society engagement for bringing about amendments to PECA. Half of the political leaders also advised the **formation of stakeholder alliances for PECA reforms** to help improve the state of online freedom of expression in the country.

CHAPTER SIX:

LEGAL OPINION



In 2020, the Pakistan Bar Council formed the Journalists Defence Committee to provide pro bono legal aid to journalists who were facing charges under PECA for their online journalism or expression.⁷³ The committee's lawyers have represented several journalists in PECA-related cases during the past two years. As part of this research study, some lawyers from the committee were interviewed to share their experiences of dealing with PECA cases, especially when defending against expression-related charges, and the role of the judiciary with regards to the cybercrimes law. Four lawyers responded to the research questionnaires and their responses are discussed below.

One lawyer said the **abuse of due process and abuse of law are two key challenges** faced in representing individuals, especially journalists or human rights defenders, who have been charged with offences under PECA in relation to their online speech or social media activity. Another lawyer said the **complicity of law enforcement officials and inconclusive investigation findings** also complicate matters. The lawyer said cases are often used to intimidate journalists to prevent them from performing their duties. According to another lawyer who responded to the questionnaire, the lack of intent and will on part of the State institutions to enforce the fundamental rights guaranteed under Article 19 (freedom of speech) and Article 19-A (right of access to information) of the Constitution create an additional challenge to representing individuals in PECA cases.

In response to a question about the judiciary's treatment of PECA cases, all the respondent lawyers said the **judiciary was receptive to arguments in favor of digital rights and freedom of expression**. One lawyer especially praised the role of the Islamabad High Court and said it had authored a landmark judgment in this regard. Another lawyer said the judiciary has been "impeccable" in "ensuring the due process as regard to prosecution under PECA".

In terms of the suitability of PECA to address issues such as hate speech and disinformation, the lawyers said PECA is not "well-legislated" with a lot of

⁷³ <https://www.dawn.com/news/1582417>

lacunas, it was not promulgated to mitigate hate speech and disinformation, and it has curtailed the freedoms of expression and information more than anything.

All the lawyers had strong views about the future and fate of the cybercrimes law. They said the law requires various amendments. One lawyer said PECA should be repealed with a subsequent conclusive legislation which should be in consensus with constitutional provisions while another lawyer was of the opinion that the cybercrimes law should be struck down or repealed in its entirety. One lawyer also said the enactment of PECA is unnecessary and not useful.

CHAPTER SEVEN:

RECOMMENDATIONS

Based on the review of PECA and its implementation during the five years since its enactment, it is clear that PECA has negatively affected the situation of online freedom of expression in Pakistan. At the same time, the law has been unable to fulfil the promises the legislators made at the time of its passage in terms of the protection it would offer to Pakistani Internet users from cyber offences, as is evident by the small number of complaints that the FIA has been able to process.

On the other hand, journalists have found themselves disproportionately targeted under PECA for their digital journalism, social media commentary and online opinions. The advent of the rules for online content regulation under PECA during the past two years has further increased concerns about the misuse of the law to curb online expression on social media. In the light of the above discussion, the research study offers the following recommendations:

- 1. Enact PECA reforms through government-civil society dialogue:** As indicated in the interviews with digital rights advocates, lawyers, and politicians, none of the stakeholders are especially happy with PECA in the current form and almost all expressed a desire to see the law either scratched or amended. A government-civil society dialogue that espouses the principle of multi-stakeholder-ism might be a good place to start for reviewing the adverse impact and legal problems with the cybercrimes law. Such a dialogue can be facilitated by the Ministry of Information Technology and Telecommunication and the Ministry of Human Rights as well as digital rights groups. It could pave the way for honest and frank discussions on figuring out the contours of a progressive law that upholds digital rights and online freedom of expression while protecting citizens from online harms.
- 2. Decriminalize online defamation from PECA law:** The PECA online defamation section is unnecessary because Pakistan already has civil and criminal laws for defamation and does not require another provision to cater to the Internet exclusively. However, at the very least, the online defamation section of PECA should be decriminalized. It currently carries a three-year imprisonment term and, as shown by the



case studies presented in this study, the online criminal defamation charge is most frequently used against journalists. Many of these cases were eventually struck down by court because of lack of evidence, which might indicate that the criminal defamation section of PECA is probably being used as a sword above the heads of digital journalists to intimidate them and discourage them from independent and critical reporting online.

- 3. Improve FIA cybercrime investigation procedures:** The FIA must abide by the orders of the Islamabad High Court to ensure that its investigation procedures are transparent and follow due process rather than being arbitrary tools of intimidation. The FIA should conduct professional, technical and sensitivity training for its cybercrime officials, especially investigative officers, to align their attitudes and working with the principles emphasized by the high court in its order pertaining to the conduct of FIA in cybercrime cases related to journalists. In fact, these practices should not just be limited to journalists but should also be extended to all citizens of Pakistan as they deserve the right to fair hearing and access to justice.

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2. Strengthening local empowerment *through* devolution of powers
3. Strengthening governance through accountability and transparency
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