

Annual State of Digital Journalism in Pakistan:

Under Siege: Legislative, Judicial and Executive Actions Stifling Freedom of Expression and Right to Information



Institute For Research
Advocacy And Development

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By

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Acronyms

APNEC	All Pakistan Newspapers Employees Confederation
APNS	All Pakistan Newspaper Society
BPS	Basic Pay Scale
CBFC	Central Board of Film Censors
CLC	Civil Law Cases
COC	Council of Complaints
CPC	Code of Civil Procedure
CPJMP	Commission for the protection of Journalists and other Media Practitioners
CPNE	Council of Pakistan Newspaper Editors
EU	European Union
FATA	Federally Administered Tribal Areas
FBR	Federal Board of Revenue
FIA	Federal Investigation agency
FIR	First Information Report
FOE	Freedom of Expression
GDPR	General Data Protection Regulation
GSP+	Generalised Scheme of Preferences Plus
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IHC	Islamabad High Court
IMS	International Media Support
IPTV	Internet Protocol Television
IRADA	Institute for Research, Advocacy & Development
MoITT	Ministry of Information Technology and Telecommunication
NADRA	National Database and Registration Authority
NCPDP	National Commission for Personal Data Protection
OTT	Over the Top (Channels)
PBA	Pakistan Broadcasters Association
PDPB	Personal Data Protection Bill
PECA	Prevention of Electronic Crimes Act
PEMRA	Pakistan Electronic Media Regulatory Authority
PFUJ	Pakistan Federal Union of Journalists
PIC	Pakistan Information Commission
PIOs	Public Information Officers
PIDE	Pakistan Institute of Development Economics
PKR	Pakistani rupee
PLD	Pakistan Legal Decisions
PPPP	Pakistan People's Party Parliamentarians
PSP	Police Service of Pakistan
PTA	Pakistan Telecommunication Authority
PTI	Pakistan Tehreek-e-Insaf

RSF	Reporters Without Borders [Reporters Sans Frontières]
RTI	Right to Information
SCMR	Supreme Court Monthly Review
SCP	Supreme Court of Pakistan
SNCC	Social Network Complaints Commission(s)
SNP	Social Network Platforms
TV	Television
UK	United Kingdom
UN	United Nations
URL	Uniform Resource Locator
USA	United States of America

List of cases ...

1. Balochistan v. Azizullah Khan Memon (PLD 1993) SC 341.
2. PFUJ v. The President of Pakistan etc WP No 666 of 2022.
3. Ministry of Information Technology and Telecommunications v. C.M. Pak (Pvt.) Ltd., (PLD 2020) SC 551.
4. PEMRA v. ARY Communications Private Limited - (PLD 2023) SC 431.
5. Luqman Habib v. Federation of Pakistan (MLD 2021), Lahore High Court 1633.
6. Pakistan People’s Party Parliamentarians (PPPP) v. Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and 4 others - (PLD 2022) SC 574.
7. Ammad Yousaf v. the State and another (Crl. Petition No. 225 of 2023, Supreme Court).
8. M/s Fun Infotainment (Pvt) Limited/Neo TV, Lahore v. PEMRA (Civil Petition No. 5438 OF 2021, Supreme Court).
9. Messrs Labbaik (Pvt.) Ltd. V. Federation of Pakistan - (CLC 2023), Sindh High Court 398.
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15. Muhammad Azam Khan Swati v. Federation of Pakistan (PLD 2023) Islamabad High Court 184.

Executive Summary

IRADA’s “Annual State of Digital Journalism in Pakistan 2023” report meticulously examines legislative developments in Pakistan during 2023 shedding light on key acts impacting freedom of expression and access to information, the digital media landscape. Acts such as the Pakistan Electronic Media Regulatory Authority (PEMRA) Amendment Act and Official Secrets Amendment Act, while introducing some positive provisions, raise concerns about potential infringements on freedom of expression. The report delves into the impact of judicial decisions on freedom of expression and the right to information, emphasizing a nuanced landscape where courts both protect and impose restrictions. Interviews with former Senator Mr. Farhatullah Babar and Mr. Saroop Ijaz from Human Rights Watch provide insights into legislative challenges and recommendations for a more balanced legal approach.

The report also investigates the deteriorating relationship between the state and media from 2022 to 2023, outlining instances of government disdain for critical media, self-censorship, and violence against journalists. It covers specific incidents such as the ban on the film “Joyland” and scrutinizes actions by regulatory bodies like the Pakistan Telecommunication Authority (PTA) and PEMRA, emphasizing content restrictions, internet shutdowns, and censorship. Cases of journalist arrests involving the FIA raise concerns about press freedom, transparency, and due process. An interview with a legal expert and a serving police officer Mr. Kamran Adil highlights the need for streamlined authority, capacity building, and collaboration between the executive and civil society.

The report also provides an overview of the state of media and internet freedoms in Pakistan based on transparency reports and global indices. It uncovers a significant number of content removal requests from the Pakistani government to big tech platforms like Google, Meta, TikTok, and X (formerly Twitter). Indices such as Reporters Sans Frontier (RSF) Press Freedom Index and The Transparency International Index reflect a decline in press freedom and perceived corruption in Pakistan 2023. The European Union (EU) Generalised Scheme of Preferences Plus (GSP+) assessment acknowledges efforts to address media freedom but highlights persistent challenges. Freedom House reports consistently depict obstacles to internet freedoms, marked by government control, military influence, and threats to freedom of expression. The findings underscore persistent challenges and the urgent need for improvements in media and internet freedom in Pakistan.

Chapter One

Laws Affecting Right to Information and Freedom of Expression

In the twilight of its term in 2023, the Shahbaz Sharif-led federal coalition government pushed dozens of bills for passage in the Parliament during July and August 2023. Most of these bills were passed and enacted as laws of the land. These enactments introduced new laws or amended existing legislations. Many of these included provisions affecting access to information or freedom of expression. The PEMRA (Amendment) Act, 2023, the Official Secrets (Amendment) Act, 2023, the Army (Amendment) Act, 2023, and Criminal Law (Amendment) Act, 2023 (XXXVII of 2023) to amend the Prevention of Electronic Crimes Act (PECA) are the most relevant enactments for this report. The Federal Cabinet, in July 2023, also passed the E-Safety Authority Bill and Personal Data Protection Bill. However, these bills were not presented in Parliament for passage. In 2021, the Parliament passed the Protection of Journalists and Media Professionals Act and Sindh Provincial Assembly passed the Sindh Protection of Journalists and Other Media Practitioners Act. This chapter discusses these laws and bills to explain their impact on the right to information, freedom of expression and journalism in Pakistan.

Federal Legislation

The Pakistan Electronic Media Regulatory Authority (Amendment) Act 2023

The PEMRA (Amendment) Act, 2023, was enacted in August 2023.¹ The Amendment, several other provisions, introduced three new items – ‘authentic news’, ‘timely payment of salaries’ and ‘fair, transparent and independent rating’ for television channels – as well as a proposed change in.

The Amendment expands the preamble of the PEMRA Ordinance 2002 to “ensure timely payment of salaries to the electronic media employees working with the PEMRA licensees.” However, the amendment, while defining “timely payment of dues” provides statutory permission to the licensees to delay the salaries/dues for two months.² This appears to be a negation of general

¹ Pakistan Electronic Media Regulatory Authority Ordinance Amendment 2023. National Assembly of Pakistan. (n.d.). https://na.gov.pk/uploads/documents/64f06b244cd16_495.pdf

² See (VA) in the definition clause (section 2), added via the Amendment Act.

principles of wages, laid down in the Payment of Wages Act, 1936.³ The Amendment, though, provides a procedure to “receive and review complaints” relating to “payment of minimum wages policy” and “timely payment of salaries.” This process has the potential to cause further delay of a few more months before the matter is finally decided by the PEMRA.⁴ Moreover, any order of the PEMRA can be challenged at the High Court.⁵ This may cause further delay in ‘timely’ receipt of salaries.

The Amendment Act also defines the terms “disinformation” and “misinformation”.⁶ The Amendment requires PEMRA licensees “not to air disinformation.”⁷ Furthermore, the Amendment Act declares “any violation of the provisions of the PEMRA Ordinance 2002 or violation of Article 19 of the Constitution as a ‘severe violation.’”⁸ The Amendment Act provides a fine of ten million rupees on the licensee in case of any “severe violation”.⁹ This addition in the original law is problematic from the following aspects: (a) that it equates a legal provision with a constitutional provision; (b) that determination of “rights” is the exclusive jurisdiction of the constitutional courts. This provision gives this role to an administrative body, i.e., PEMRA. This is a clear disregard of the principle of separation of power; (c) that disinformation and misinformation are subjects of the Code of Conduct¹⁰, which is to be adopted voluntarily by the licensees. Moreover, the definitions of “disinformation” and “misinformation” are highly subjective and vague. Imposition of fine on violation of these vague terms is against the spirit of voluntary compliance of the Code of Conduct.

The Act has also amended section 27 of the Ordinance to empower the Authority to (arbitrarily) prohibit the alleged contents including an expression of a person and then may refer the matter to the Council for appropriate measures. Having this kind arbitrary power to prohibit an expression of a ‘person’ gives almost unbridled powers to curb the freedom of expression of every person in Pakistan. These provisions have adverse impact on the spirits of Article 19 and related Fundamental Rights as guaranteed in the Constitution.

As a positive development, the Amendment Act reduces discretion of the government in appointment of the Chairman PEMRA and introduces role of a parliamentary committee for this purpose.¹¹ However, discretion for appointment of private members in PEMRA and Council of Complaints remains with the federal government. It is therefore, suggested that same or similar process may also be introduced for appointment of remaining private members of the PEMRA and chairperson / members of Council of Complaints (CoC).

³ The Payment of Wages Act, 1936 Act, No. IV of 1936, Sections 4 and 5. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/49125/118534/F1024688921/PAK49125.pdf>

Section 5 of the Payment of Wages Act, 1936 requires the ‘establishment’ to pay wages before expiry of seventh day from the due date, if the establishment has less than one thousand employees. It, however, requires establishments, having more than one thousand employees, to pay wages within ten days from the due date.

⁴ The Amendment Act 2023 Section 26.

⁵ Ibid, Section 30A (Appeals) as inserted through

⁶ (ha) and (la) in the definition clause (section 2), added via the Amendment Act 2023.

⁷ See addition of clause (j) in Section 20 of the PEMRA Ordinance 2002.

⁸ See new insertion of clause (ua) in Section 2 of the PEMRA Ordinance 2002

⁹ The Amendment Act 2023, Section 29A.

¹⁰ Ministry of Information, Broadcasting and National Heritage. (n.d.). Electronic Media Code of Conduct 2015, Section 3 (i) https://www.pemra.gov.pk/uploads/legal/Code_of_Conduct.pdf

¹¹ The PEMRA Ordinance 2002, Section 6 (2A).

The Official Secrets (Amendment) Act of 2023

The Official Secrets (Amendment) Act of 2023 was notified in the Official Gazette on the 18th of August 2023. This is a historic development as the Official Secrets Act was enacted in 1923 by the British colonial government to control their Indian subjects. After 100 years of its enactment, an elected government in 2023 amended the Official Secrets Act, 1923, not to dilute its role in enforcing the veil of secrecy on governmental functioning but to reinforce a culture of secrecy. The Amendment seems to be a negation of transparency and the right to information, which are hallmarks of a democratic and open society.

This is evident from the fact that the meaning of “document” has been substantially broadened by amending the definition of “document” given in Section 2 of the Official Secrets Act of 1923. New definition covers not only traditional written papers but also unwritten, virtual and electronic instruments.¹² The law declares ‘wrongful communication, usage or retention of the document’ as a crime punishable death penalty or with imprisonment for a term which may extend to fourteen years.¹³ This vague and broad definition of “document” will reinforce the already prevailing culture and practice of secrecy in the official business. This also tantamount to defeating the spirit and purpose of the Constitutionally guaranteed ‘right to information.’¹⁴

The Amendment Act also defines the words “Enemy”¹⁵ and “Foreign Agent.”¹⁶ “Enemy” means “any person who is directly or indirectly, intentionally working for or engaged with a foreign power, foreign agent, Non-State Actor, organization, entity, association or group guilty of a particular act tending to show a purpose that is prejudicial to the safety and interest of Pakistan.” Moreover, mere suspicion of the above engagements by a person can make that person an ‘enemy or foreign agent’ under new section 4, subsection 2(b) of the Act. This extremely subjective and overbroad definition is open for misinterpretation and can be misused against any individual. This is particularly problematic for those Pakistanis who work for foreign missions, embassies or international humanitarian organizations.

The Amendment also declares ‘disclosure of identity of members, informants or sources of intelligence agencies’ as a crime punishable with imprisonment of up to three years and/or with a fine of up to one million rupees.¹⁷ This amendment has serious implications for journalists and beat reporters who undertake investigative journalistic stories relating to defence and security matters. This will also hamper citizens’ ability to access information about matters of all public interest as guaranteed in Article 19A of the Constitution of Pakistan.

Pakistan Army (Amendment) Act, 2023

The Pakistan Army (Amendment) Act, 2023 is another enactment which has critical provisions

¹² The Official Secrets (Amendment) Act 2023, Section 2(3).

¹³ The Official Secrets (Amendment) Act 1923, Section 5.

¹⁴ Constitution of Pakistan, 1973, Article 19A.

¹⁵ The Official Secrets (Amendment) Act 1923, Section 2, (8A).

¹⁶ The Official Secrets (Amendment) Act 2023, Section 4 (2) (b).

¹⁷ The Official Secrets (Amendment) Act 2023, Section 6A.

relating to access to information and freedom of expression. The Amendment has introduced section 26A (Unauthorized Disclosure) that declares ‘disclosure of information (“which is or may be prejudicial to the security and interest of Pakistan or the Armed Forces of Pakistan”) a crime punishable with rigorous imprisonment for a term up to five years. The trial of this crime shall be conducted in a military court. This is highly significant because the Army Act 1952 is applicable to civilians in certain cases as well.¹⁸

However, according to the Amendment, if the disclosure is made after seeking prior approval from the Chief of the Army Staff, or any officer duly empowered by him, shall not be deemed as unauthorized disclosure. The terms “prejudicial to the security and interest of Pakistan or the Armed Forces of Pakistan” are highly subjective and vague. Therefore, this provision can be misinterpreted to block proactive disclosure of certain information, which is required by law to be made public.¹⁹

Furthermore, the Amendment requires a trial of personnel who commit any offence under PECA, 2016²⁰ or commit criminal defamation under section 499 of Pakistan Penal Code²¹ in the military court. This is strange because special courts have already been functional under the PECA. In the presence of such special courts, authorizing the military court to try the same offences, if committed by personnel, tantamount to questioning the integrity of the normal judicial system.

Similarly, sessions courts should have the authority to judge all cases under Section 499 without any difference between military personnel and civilians. The right to a fair trial requires openness and transparency in the criminal trials. However, as a matter of practice, trials in the military court are conducted in a secretive manner and lack transparency. Therefore, the principles of fair trial and integrity of the judicial system seem to be compromised here.

Amendments in the Prevention of Electronic Crimes Act (PECA)

July 2023, the parliament passed the Criminal Laws (Amendment) Act (No. XXXVII). This Amendment, for the PECA 2016, defined a ‘child’ as a person below the age of eighteen years.²² The Amendment also authorizes ‘any authority’ to refer the complaint under the PECA for investigation.²³ The Amendment increases punishment for child pornography from ‘seven years imprisonment’ to a minimum of ‘fourteen and up to twenty years of imprisonment.’

The Amendment defines ‘online grooming, solicitation and cyber enticement’,²⁴ ‘commercial sexual exploitation of children’,²⁵ ‘use of information system for kidnapping, abduction or trafficking of

¹⁸ Pakistan Army Act, 1952, Section 2 (1) (d). It is pertinent to mention here that in a judgment delivered on October 23, 2023, the Supreme Court of Pakistan declared the said provision as ultra vires the Constitution and of no legal effect.” See (Jawad S. Khawaja vs Federation of Pakistan, etc., available here: https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_23102023.pdf).

¹⁹ See for instance, Section 5 of the Right of Access to Information Act, 2017.

²⁰ Pakistan Army (Amendment) Act 2023, Section 52B.

²¹ Ibid, Section 55C.

²² See clause (vi a) as inserted in Section 2 of the PECA, 2016 through the Criminal Laws (Amendment) Act, 2023.

²³ Ibid, clause (vii a).

²⁴ See section 22A as inserted in the PECA, 2016 through the Criminal Laws (Amendment) Act, 2023.

²⁵ Ibid, Section 22B.

minor²⁶, and ‘cyber bullying’²⁷ and provides punishment thereof. These insertions may have justification due to rising incidents of cyberbullying, online grooming, and online sexual exploitation of minors.

The Amendment also authorizes the police, besides the Federal Investigation Agency (FIA), to take cognizance of the offences under the PECA. Ironically, the Amendment provides a total period of 30 days as the maximum period for physical remand.²⁸ This 30-day period appears to be against the spirit of general criminal law, which allows 14-day remand at maximum.

Protection of Journalists and Media Professionals Act of 2021²⁹

Pakistan’s Federal Protection of Journalists and Media Professionals Act, 2021 is the first federal law of its kind in the world specifically for the protection of journalists. The Act promises “to promote, protect and effectively ensure the independence, impartiality, safety and freedom of expression of journalists and media professionals.”

The Act provides for the establishment of a body called “the Commission for the Protection of Journalists and Media Professionals.”³⁰ This Commission is mandated to, among other functions:

- (i) Produce an annual report on the state of media freedom and safety to be tabled before the Parliament through the Ministry of Human Rights;
- (ii) Determine whether an affected journalist is eligible for compensation and recommend the case for compensation to “any provincial compensatory framework already established by the provincial and federal governments”; and
- (iii) “Inquire into complaints of threats and acts of torture, killing, violent attacks, forced disappearance, arbitrary arrests, arbitrary detention and harassment.”

The Act also requires the federal government to ensure the protection of the right to life and protection against ill-treatment.³¹ The Act empowers the Commission to report to the federal government and recommend an appropriate course of action against the perpetrator(s) of these violations. Under the Act, media owners are required to provide life and health insurance coverage to each journalist or media professional under the Journalists Welfare Scheme.

Nevertheless, the Act seems to cover only a few aspects of the ‘3P [prevention, protection and prosecution]’ mechanism. In terms of the Prevention mechanism, the Act requires production of an annual report on the state of media freedom and safety and the provision of a compliant redress mechanism.³² As a Protection measure, the Act requires the Commission to “facilitate the provision of legal aid to aggrieved journalists” and ensure implementation of the Journalists’ Welfare

²⁶ Ibid, Section 22C.

²⁷ Ibid, Section 24A.

²⁸ See proviso to Section 30A (2) as inserted in the PECA, 2016 through the Criminal Laws (Amendment) Act, 2023

²⁹ This is part of the write-up, by the lead researcher of this report:

M. A. (2021, November 28). One step forward, Two steps back?: Dialogue. The News. <https://www.thenews.com.pk/tns/detail/911884-one-step-forward-two-steps-back>

³⁰ Protection of Journalists and Media Professionals Act 2021, Section 12. <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5hq-sg-jjjjjjjjjjjj>

³¹ Ibid, Section 3.

³² Ibid, Section 17.

Scheme. For Prosecution, the Act does not speak for the appointment of a 'special prosecutor' for the prosecution of crimes against media practitioners. However, it requires that the government "investigate and prosecute acts of abuse, violence or intolerant behaviour" against journalists, reporters and media professionals. The Act does not provide any sanction if the government fails to fulfil its obligations under Sections 3, 4 and 5.

On the contrary, Section 6(1) of the Act requires that in order to benefit from this law, "journalists and media professionals must respect the rights and reputations of others and not produce material that advocates national, racial, ethnic, religious, sectarian, linguistic, cultural or gender-based hatred, which may constitute incitement to discrimination, hostility or violence." Section 6(2) requires that "journalists and media professionals must not engage in the dissemination of material known by such an individual to be false." The most problematic part of this Act is Subsection 3 of Section 6. This subsection threatens that "journalists who fail to fulfill the obligations in Sub-section (1) and (2)" will be subject to criminal prosecution. A law to prosecute crimes against journalists speaks about prosecuting journalists.³³

Prevention of Electronic Crimes (Amendment) Ordinance, 2022

The federal government introduced the infamous Prevention of Electronic Crimes (Amendment) Ordinance, 2022 on February 19. This presidential ordinance had made Section 20 – an already problematic provision of PECA for free speech – a more draconian one by enhancing punishment from three years to five years imprisonment and making it a cognizable, non-bailable and non-compoundable offence. Besides, the ordinance had added the definition of "person", which includes "any company, association, or body of persons whether incorporated or not, institutions, organizations, authority or any other body established by the government under any law or otherwise.

Furthermore, the ordinance authorized anyone to file a complaint on behalf of any 'aggrieved' person, natural or legal, under the amended Section 20. Moreover, the ordinance removed immunity available to television programmes from the operation of the PECA.

The FIA, which is a federal agency operating under the Ministry of Interior, can arrest anyone (on a complaint of any real or fictitious/ anonymous person or without any formal complaint) whose social media post, a tweet, a WhatsApp message or an interview, a comment or a question in a television or radio programme was not according to the whims and wishes of those in power.

Nevertheless, the Islamabad High Court, in its order dated April 08, 2022, declared that "[t]he prevention of Electronic Crimes Ordinance, 2022 was promulgated in derogation of the Constitution and fundamental rights guaranteed thereunder." Therefore, the Court "declared [it] as unconstitutional, invalid beyond reasonable doubt."³⁴

³³ Ibid, Section 6.

³⁴ See IHC order dated 08-4-2022 in W.P.666/2022 available here:

https://mis.ihc.gov.pk/attachments/judgements/141387/1/PFUJ_v_The_President_of_Pakistan_etc_WP_No_666_of_2022_637850262052398997.pdf, last accessed on November 16, 2023.

In this Order, the Court also declared the offence under section 20 of the Prevention of Electronic Crimes Act, 2016 to the extent of the expression "or harms the reputation" and the punishment unconstitutional and invalid. As a result of this Order, the FIA dropped nearly 7,000 cases (inquires /actions) initiated under Section 20 of the PECA 2016. See daily Dawn report: <https://www.dawn.com/news/1684397>, last accessed on November 16, 2023.

Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules, 2021

The Removing and Blocking of Unlawful Content (Procedure, Oversight and Safeguard) Rules 2021 were formulated under Section 37(2) and 51 of PECA 2016. The Rules, which are impugned in the Islamabad High Court, attempt to define the terms “freedom of speech and expression.” The Rules, for this purpose, ‘define’ highly subjective terms such as “glory of Islam”, “security of Pakistan”, “decency and morality”, and “integrity or defence of Pakistan.”³⁵ These terms are given as limitations on the constitutional guarantee of freedom of expression in Article 19 of the Constitution of Pakistan.³⁶ Practically, under these Rules, the Pakistan Telecommunication Authority (PTA) shall have the power to remove or block any online content in the name of violation of these terms. In principle, it is the prerogative of the constitutional courts to interpret the meanings and application of these terms. Authorizing an administrative body to remove, block or issue directions for the removal or blocking of any online content is against the spirit of the principles of separation of power.³⁷

The Rules, in Chapter IV, provide an oversight mechanism for the ‘regulation of Internet service providers and social media companies.’ The Rules require all Service Providers, Social Media Companies and Significant Social Media Companies not to host, display, upload, publish, transmit, update or share any Online Content in violation of local laws.³⁸ The Rules also require all ‘Significant Social Media Companies’ to register themselves in Pakistan, establish offices in the country and appoint local authorized compliance and grievance redress officials.³⁹ Nevertheless, this Rule has serious implications for online freedom and privacy/security of online content producers in the country.

E-Safety Authority Bill, 2023⁴⁰

The federal cabinet of Pakistan in July 2023 approved a bill to constitute an E-Safety Authority, to regulate the establishment, registration and operation of Social Network Platforms (SNPs) throughout Pakistan. The bill claims to “promote online safety and prevent online harm.” This bill grants exclusive powers to the federal government the power to establish an E-Safety Authority in Pakistan and appoint or remove its chairman and 12 members.

The Authority shall regulate the establishment, registration, and operation of SNPs in Pakistan; regulate content on SNPs; block access to material that promotes, incites, instructs, and depicts abhorrent violent conduct; and prescribes fines for the contravention of the provisions of the Act or rules and regulations.

³⁵ Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguard) Rules 2021, Rule 3.

³⁶ The Constitution of Pakistan 1973, Article 19.

³⁷ See *Government of Balochistan v. Azizullah Khan Memon* (PLD 1993) SC 341.

³⁸ The Removing and Blocking of Unlawful Content (Procedure, Oversight and Safeguard) Rules 2021, Rule 2 (definitions of Service Providers, Social Media Companies and Significant Social Media Companies)

³⁹ Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguard) Rules, 2021, Rule 7.

⁴⁰ This part is taken from the write-up, by the lead researchers of this report, Factum Special Perspective: Online Safety or muzzling online free speech? NewsWire. (2023, October 18). <https://www.newswire.lk/2023/10/18/factum-special-perspective-online-safety-or-muzzling-online-free-speech/>

The bill empowers the federal government to establish Social Network Complaints Commission(s), or SNCCs, to receive and decide on complaints against any aspect of content or expression shared by Social Network Registration Holder(s). The federal government can also appoint ‘Social Network Appellate Tribunals’ to deal with appeals against the decisions of the SNCCs.

The Bill requires “online information and content delivery system such as web TV channels, YouTube channels (including vlogs), Netflix, Amazon Prime, Over the Top (OTT) Channels, etc.” to register as an SNP with the Authority. The SNPs also cover or include social networking sites or other such content made available for viewing over the internet, any cloud-based content distribution service that permits a person to become a registered user, establish an account, or create a public profile to allow the user to post and share user-generated content on platforms like Twitter, Facebook, Snapchat, Instagram, and Tik Tok.

The Bill proposes fines up to PKR 2 million for an SNP operator who violates or abets the violation of any of the provisions of the Act or Rules or Regulations therein. In case of repetition of the alleged violation, the person can be put behind bars for three years. Moreover, the bill proposes imprisonment of five years and a fine of up to PKR 3 million if an alleged violation is committed by a person who does not hold a registration to operate an SNP in the country.

Such unbridled powers will result in online censorship and the curbing of political dissent. This is evident from the fact that the PTA in Pakistan blocked more than a million websites and webpages between 2016 and 2020 under Section 37 of the PECA 2016. Prescribing criminal penalties against online free speech is highly problematic. In Pakistan, more than 25 journalists have faced criminal charges under PECA due to social media posts and other communications since its enactment.

Personal Data Protection Bill, 2023

The latest draft of the Personal Data Protection Bill (PDPB) 2023 was shared by the Ministry of Information and Technology and Telecommunications (MoITT) in June of 2023. One of the concerns with this draft and previous drafts were regarding the autonomy of the National Commission for Personal Data Protection (NCPDP). The draft states that the Commission is to be under the administrative control of the federal government while mandating the federal government to create policy directives, which undermines the scope and independence of the NCPDP.

In addition, the definition of ‘legitimate interest’ in section 2(u) allows data controllers to process data for any interest not expressly prohibited under the law, which is extremely wide and does not set a meaningful standard. Similarly, the term ‘public interest’ is left unexplained and since it is a complex and tricky concept, the definition of the term under Section 2(ff) causes more ambiguity and has the potential to be misused by data controllers. In another instance, the definition of ‘national interest’ is also a wide, ambiguous and subjective criterion that has the potential for misuse.

One of the most concerning aspects of the bill is the requirement of data localisation for data controllers, who could be based anywhere across the world. Currently, Pakistan lacks the

infrastructural capacity to provide cloud storage for local and international businesses, which makes the implementation of this requirement almost impossible. The bill fails to consider practical requirements such as the lack of electricity and energy supply in order to run such data centres. It also risks the data being leaked, or misused by those who may have access, for purposes that affect fundamental rights.

In addition, Section 4 lays down a broad and ambiguous set of exceptions as “specific situations/ use cases” which allows for the Commission to exempt the federal government from the law under these exemptions providing for undue discretion and arbitrary powers to the government that has serious potential for misuse. This is a pattern that can be seen across the draft.

While other aspects of the draft are beneficial if implemented, like the emphasis on obtaining consent from users for data processing, other conditions such as paying an “administrative fee” to access personal data would act as a deterring factor. This is important since according to international standards like the GDPR, users are not charged to access their data and it is a practice that is overall discouraged.

Provincial Legislation

The Sindh Protection of Journalists and Other Media Practitioners Act, 2021

Enactment of the Sindh Protection of Journalists and Other Media Practitioners Act, 2021, is another positive development for journalists in Pakistan. The law was passed by the Sindh Provincial Assembly on 28th of June 2021 and notified on 4th of August 2021. The act aims “to promote, protect and effectively ensure the independence, impartiality, safety, and freedom of expression of journalists and other media practitioners.”⁴¹ The legislation, though not an ideal one, is a good starting point towards a safe environment for journalists in the province.

The act requires the government to ensure protection of right to life, safety and security of journalists in the province.⁴² The act also provides for protection against disclosure of professional sources of information, communications, and correspondence.⁴³ It obligates on the government to “take necessary steps to protect journalists and media practitioners from harassment, violence, and threats of violence by any person or groups of persons or public or private institution or authority in both physical as well as online and digital spaces.”⁴⁴ The act specifically requires the government to develop and implement effective strategies for combating impunity for crimes against media while referring to the UN Action Plan for Safety of Journalists and Issues of Impunity.⁴⁵

⁴¹ See preamble of the Sindh Protection of Journalists and Other Media Practitioners Act, 2021

⁴² Ibid, Section 3.

⁴³ Ibid, Section 4.

⁴⁴ Ibid, Section 6.

⁴⁵ Ibid, Section 7.

The act provides for the establishment of “the Commission for the Protection of Journalists and Other Media Practitioners (CPJMP).” This fourteen-member commission has a heavy presence of government officials (four provincial secretaries) and representatives of media owners (nominees of All Pakistan Newspaper Society (APNS), Council of Pakistan Newspaper Editors (CPNE) and Pakistan Broadcasters Association (PBA)). There is only one nominee of the Pakistan Federal Union of Journalists (PFUJ) and one nominee of the All Pakistan Newspaper Employees Confederation (APNEC/APNS) in the Commission.⁴⁶

The Commission is tasked to entertain complaints of harassment, sexual harassment, violence, and threats of violence against journalists and media practitioners. The commission is empowered to take *suo moto* notice of attacks on journalists or media practitioners. The commission is empowered to provide legal assistance to journalists and media practitioners. The commission is required to create a website to enable online registration of complaints, and to provide updates and the status of the cases reported to the commission.⁴⁷

The act describes the duties of media owners as a third duty bearer in the domain of protection of journalists and media practitioners. The act requires employers to provide adequate insurance and training for journalists and other media practitioners, who may be at risk of being attacked, injured, or killed because of their work. The act also requires the stakeholders including PFUJ, APNS, CPNE, APNEC, PBA and civil society organizations to develop safety policies and protocols for journalists and media practitioners and to institute effective safety programs catering to different categories of journalists and other media professionals.⁴⁸

Balochistan Right to Information Act, 2021

The Balochistan Right to Information Act, 2021 was passed and enacted in February 2021, replacing the Balochistan Freedom of Information Act, 2005.

The act requires all public bodies to appoint designated ‘Public Information Officers’ (PIOs) in all their administrative departments, subordinate offices, districts, etc., to deal with the information requests.⁴⁹ Similarly, the act requires all public bodies to provide the requested information within 15 working days. However, information needed to save the life or liberty of a person is to be provided within two working days.⁵⁰ Moreover, the act obligates all public bodies to proactively disclose ‘in an up-to-date fashion and in a manner which best ensures that they are accessible’ to the public several categories of information being held by them.

The act, like the Right to Information (RTI) laws in other provinces and at the federal level, provides an institutional mechanism “The Balochistan Information Commission.”⁵¹ However, this Commission

⁴⁶ Ibid, Section 8.

⁴⁷ Ibid, Section 14.

⁴⁸ Sindh Protection of Journalists and Other Media Practitioners Act 2021, Section 15.

⁴⁹ Balochistan Information Act 2021, Section 6. Available on: https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/docdocx/2021-03-29_13:06:13_d8817.pdf, last accessed on November 28, 2023.

⁵⁰ Ibid, Section 11.

⁵¹ Ibid, Section 18.

shall consist of a chief information commissioner and three members. The chief information the commissioner shall be a retired senior government servant not below the rank of Basic Pay Scale (BPS) - 20. The other three members shall be the following:

- A person, who is qualified to be a judge of the high court;
- A person who is or has been in the service of Pakistan in BPS-20 or equivalent; and
- A person from civil society having experience of not less than 15 years in the field of mass communication, academic or right to information.

The commission, amongst several other functions, is responsible to: receive and decide complaints of applicants; set rules and standards for public bodies to manage records; determine the fee for information requests; compile guidelines for public information officers; publicise requirements of the act and rights of individuals therein; and monitor and report on compliance of the act by the public bodies. The commission has powers of the civil court as given under the Code of Civil Procedure (CPC), 1908.⁵²

Nevertheless, the composition of the commission is critical. Presence of a serving BPS-20 government official as a member of the commission will give rise to a 'conflict of interest' as the commission has to decide complaints against the government. Moreover, it will be difficult for this official to adjudicate a likely complaint against another government official who may be higher than him in the rank/authority. Factually, the government of Balochistan has yet to establish the commission and designate/notify PIOs in provincial departments. These actions were required to be completed within 120 days of the enactment of the law. In the absence of these institutional mechanisms, the law on paper is useless.

Asad Ali Toor Case under PECA

In September 2020, Islamabad-based journalist Asad Toor was booked under multiple sections of the PECA 2016 for allegedly “maligning state institutions”. The booked sections included Sections 505 (statements conducing to public mischief), 500 (punishment for defamation) and 499 (defamation) and of the Pakistan Penal Code and sections 37 (unlawful online content), 11 (hate speech) and 20 (offences against dignity of a person) of the Pakistan Electronic Crimes Act 2016. The alleged post was present on his “social media account” according to the complaint filed but it was never specified which post it was and what platform it was posted on. This led to Toor and his legal team being in the dark about the claims against him.

The complaint was registered by a resident of Rawalpindi named Ehtisham Ahmed who accused Toor of spreading negative propaganda and using derogatory language against the government institutions, including the Pakistan Army, even though it would never be known which post led to this complaint.

⁵² The Balochistan Information Act 2021, Section 19.

After Toor approached the Lahore High Court (Rawalpindi Bench) for quashing of the First Information Report (FIR) against him, the bench ruled in his favour after giving the FIA multiple opportunities to present proof against the accusations. The FIA failed to do so and the FIR was rendered as “infructuous” due to lack of evidence from the prosecution.

EXPERT INTERVIEW: Former Senator Mr. Farhatullah Babar⁵³

Questions:

Why are legislatures in Pakistan generally indifferent to the centrality of FOE and RTI when undertaking any kind of legislation? In recent years, most legislations relating to FOE and Media have increased restrictions rather than easing them. Why is this so? What basic step should be undertaken by relevant stakeholders in protecting and expanding free speech guarantees?

FB: Digital journalism in Pakistan is facing several challenges including no legislation in some critical areas, faulty legislation where legislation exists and finally non implementation of the provisions of the existing law. The baggage is mixed. Some legislations relating to freedom of expression and media have tended to increase restrictions. There also are legislations that if implemented should serve the cause of FOE and RTI like the recent legislation obliging media houses to pay wages within 60 days and the legislation on safety and security of journalists at the centre and in Sindh province. Some basic steps need to be taken in this regard:

- The IHC ordered sometime back that the PECA rules should be revisited in consultation with all stakeholders – these must be implemented.
- While it is true that no journalist has been convicted under PECA, it is also true that the coercive process itself is punishment.
- Vague summons and FIRs, threat of raids for search and seizure or arrest, and an unending trial period loom over them. It is like blasphemy accused languishing in jails for year enduring agonizing investigations and false prosecution before being finally acquitted.
- FIA has not laid its reports before the Parliament under Section 53 of the law. The Parliament also has failed in asserting itself in demanding implementation of this section.

The high courts normally tend not to “interfere” with investigation even while it is at this stage there is a lot of coercion. Article 10-A of the Constitution guarantees due process as a basic right. The courts have the powers and a duty to ensure protection of human rights of an accused both during investigations and trial stages. The courts have a great role in preventing the misapplication of the various provisions of the law such as warrants for search and seizure and other safeguards provided in it.

The PECA Act also has some structural issues. Journalists and activists have been charged under Sections 10, 11 and 20 specifically for speech that is said to be “anti-state.” Clearly Section 20

⁵³ Babar, Farhat Ullah, interviewed by Alam, Muhammad Aftab, Islamabad, November 23, 2023

has been grossly misused. Summons are issued and FIRs registered under them which is a non-cognizable offences. Some of the very serious angularities in the PECA 2016 and the rules framed under it are:

- Undue restrictions on online content;
- Too broad a definition of unlawful content and the need to define it more narrowly;
- Highly vague language on morality and national security and the need to remove it by replacing these terms precisely;
- The serious human rights implications of Section 37 of PECA and the need to pay heed to it;
- The unfettered powers it confers for content moderation.

Another serious issue is the invisible forces obstructing the implementation of the laws. The 2019 Supreme Court verdict in Faizabad dharna case has lucidly mentioned it “nebulous tactics” to silence the media and FOE.

The judicial academies have a great role in facilitating an understanding of the law and technology among judicial officers as provided in Section 44 (2) for in the law itself. Article 17 of the ICCPR specifically states the right to privacy. But there is no data protection law in Pakistan yet. The absence of Data Protection/ Privacy law also exposes journalists and citizens to gross misuse of PECA 2016.

Chapter Two

Courts Affecting Freedom of Expression and Right to Information

During the period under review, the Supreme Court of Pakistan (SCP) and high courts delivered several judgements, which will impact freedom of expression and right to information. These instances include: internet shutdown case, online objectionable material case, free speech on the floor of the Parliament, PEMRA related judgments and cases concerning right to information. The following part of the report provide briefs of all relevant judgments delivered by the SCP and high courts in the recent years.

Internet and Online Freedom

Ministry of Information Technology and Telecommunications Versus C.M. Pak (Pvt.) Ltd., - (PLD 2020 Supreme Court 551)

C.M. Pak Ltd. Pvt., a Pakistan Telecommunication Authority (PTA)'s licensee, challenged the federal government policy directives dated 26.12.2009 before the Islamabad High Court (IHC). In the policy directive, the government gave directives to the PTA to suspend internet signals and cellular phone services under specific circumstances. The IHC declared the policy directives and actions of the PTA 'to suspend internet service and cellular services' as illegal and ultra vires. This IHC order was challenged in the Supreme Court by the federal government.

The Supreme Court, while allowing the appeal, held that issuing policy directives to the public institutions by the government is the mandate of the government, and superior judiciary is not mandated to interfere in such policy matters. The Supreme Court also declared the power of the PTA to suspend cellular services periodically on the recommendations of the law enforcement agencies as legal and constitutional.

It is worth noting that access to internet has been recognized as a human right by the Human Rights Council of the United Nations (UN).⁵⁴ However, in 2022, AccessNow and #KeepItOn Coalition

⁵⁴ United Nations. (n.d.). The promotion, protection and enjoyment of human rights on the internet: United Nations. <https://digitallibrary.un.org/record/845728?ln=en>

documented 187 internet shutdowns in 35 countries.⁵⁵ Pakistan is among the countries where internet shutdown is quite frequent. According to AccessNow, during 2016-2021, the erstwhile FATA [federally administered tribal areas] region has faced the longest internet shutdown (2,026 days). “Internet shutdowns interfere not only with the rights to freedom of opinion and expression and access to information” but also have “severe negative impact on the economy, healthcare, education, and more.”⁵⁶ According to a study by the Pakistan Institute of Development Economics (PIDE), “a 24-hour suspension of internet services leads to a substantial financial setback of Rs1.3 billion.”⁵⁷

Luqman Habib Versus Federation of Pakistan (2021 MLD 1633), Lahore High Court

The petitioner alleged that highly objectionable content was being uploaded and shared on the different social media platforms, which defied Islam and disrespected Prophet Muhammad (peace be upon him) and his companions. Furthermore, they contended that the sacredness of the finality of the prophethood of the Prophet (peace be upon him) was also criticized in a derogatory demeaning manner.

In response, the court issued specific directions to the government, especially to PTA to curb the practice of defiling and ridiculing sacred religious personalities. The court also analyzed Article 19 of the Constitution and emphasized that the right to free speech is not an absolute right. It is a qualified right, and one of the conditions put on this right is ‘morality and sanctity of Islam.’ The court held that defiling and ridiculing sacred personalities of Islam cannot be allowed in the guise of free speech. “No doubt, the right to free speech is the hallmark of our Constitution. It is bedrock, but it cannot be expanded by any stretch of imagination to use it as a tool to defile and ridicule Islam and sacred personalities. Hurting the feelings of others is not a free speech,” it added.

Freedom of Speech (Privilege) on the Floor of Parliament

Pakistan People’s Party Parliamentarians (PPPP) Versus Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad and 4 others - (PLD 2022 Supreme Court 574)

The petitioner impugned the deputy speaker’s ruling wherein he disallowed voting on the motion of no-confidence against then Prime Minister Imran Khan, linking the said motion with an alleged conspiracy, in the Supreme Court of Pakistan. An objection was raised on the maintainability of the

⁵⁵ Keepiton: Fighting internet shutdowns around the world. <https://www.accessnow.org/campaign/keepiton/> as accessed on 10 November 2023.

⁵⁶ Keepiton: Frequently asked questions. Access Now. (2023b, February 21). <https://www.accessnow.org/campaign/keepiton/keepiton-faq/>

⁵⁷ The economic cost of internet closure. PIDE. (n.d.). <https://file.pide.org.pk/pdfpideresearch/ig-02-the-economic-cost-of-internet-closure.pdf>

case on the basis of Article 69 (1) of the Constitution, which protects and immunises the speeches, proceedings and debates that take place in the Parliament.

The court ruled that Article 66 of the Constitution primarily safeguards two essential rights: the right to free speech and the right to vote. This article stipulates that no member of the Parliament can be subjected to questioning or impeachment on account of his/her speech or vote in the Parliament. It is only the parliamentary proceeding which cannot be called into question in any court. The court further asserted that the right to free speech constitutes an integral part of the proceeding of the Parliament.

Freedom of Expression on Television / PEMRA

PEMRA Versus ARY Communications Private Limited - (PLD 2023 Supreme Court 431)

This case came up before the Supreme Court in the background of a TV drama named, *Jalan*, broadcasted on a TV channel, ARY. Some of the scenes in the drama were alleged to be objectionable, leading some members of the general public to file complaints with PEMRA to prohibit its transmission. PEMRA issued show cause notices and subsequently prohibited the drama from airing.

The court, while deciding the case, focused on the right to FOE and RTI. It was determined that PEMRA's role is not to restrict the right to free speech and information but instead it is mandated to enhance, regulate and promote these rights. The court says that the right to free speech begets all other rights. It is a fundamental human right that no one can have other rights unless he/she has the right to ask for other rights. The right to free speech and the right to information are complementary in nature they work in tandem. The prominence and significance of the right to free speech stands apart and distinguished from all other rights, as it serves as the conduit for the expression of all other rights. Without the right to free speech, the remaining rights would vanish automatically.

The court emphasized that the PEMRA's primary duty is to protect the public's right to free speech and access to information by regulating electronic media. The court held that PEMRA cannot take up such a complaint against media contents except with the prior approval and well-reasoned opinion of the Council of Complaint under the law.

Ammad Yousaf versus the State and another (Crl. Petition No. 225 of 2023, Supreme Court)⁵⁸

A criminal case was lodged against the petitioner (the main accused) by the Islamabad City Administration on the direction of the secretary of the Ministry of Interior due to expression of

⁵⁸ In the Supreme Court of Pakistan. (n.d.-a). https://www.supremecourt.gov.pk/downloads_judgements/crl.p._225_2023.pdf

views on a television program. The complainant accused the petitioner of abetting mutiny and inciting enmity among the rank and file of the armed forces. This case eventually reached the Supreme Court to determine the petitioner's fate.

The court asserted that Section 196 of the Pakistan Penal Code stipulates a proper mechanism for the government to file a case related to waging of war and promoting enmity etc., against a citizen. The court noted that this mechanism was missing in the case at hand and it appeared to be a case of malicious prosecution driven by political motives.

The court ruled that filing false and frivolous cases against the citizens, politicians and TV channel staff based on expressing views is tantamount to abridging the fundamental rights of free speech and information. The court said that media serves as a means to convey and receive information and express views. Prosecuting staff members of a TV channel undermines the right to free speech and right to information. Filing politically motivated cases fosters fear in society. Such cases make people fearful and anxious, creating a hostile environment for the media as well. It is at this juncture that free speech perishes, along with other essential rights. This judgment explains the scope of right to free speech and information by guarding against false and frivolous cases filed by the government against the citizens.

M/s Fun Infotainment (Pvt) Limited/Neo TV, Lahore Versus PEMRA (Civil Petition No. 5438 OF 2021, Supreme Court)⁵⁹

The matter originated with a complaint filed before the Council of Complaints (COC) of PEMRA alleging that the petitioner violated the Electronic Media (Programmes and Advertisements) Code of Conduct 2015 in a programme aired on its channel on March 08, 2021. After considering the reply of the petitioner, the COC in its meeting on April 01, 2021 found the contents of the programme to be violative of the Code of Conduct and recommended that a fine of Rs. 5,00,000/- be imposed on the petitioner. The said recommendation was approved by the chairman of PEMRA on April 29, 2021. The high court dismissed the appeal filed against the order of chairman PEMRA. The petitioner sought leave of the Supreme Court to appeal against the order of the high court.

The court explained that “[p]ublic bodies in whom discretion is vested are under an obligation to confine and structure it by the promulgation of decisional criteria so as to strike the best balance in the context between rules and discretion. [A]s the [PEMRA] Ordinance gives discretion to PEMRA to delegate its powers, responsibilities or functions subject to conditions imposed by rules and the power to make rules is conferred on PEMRA, the validity of the exercise of discretion will be judged by the same principles as the exercise of any other administrative discretion. The act of delegation must align with the statutory purpose. [T]he more important the power, responsibility or function being considered for delegation, the higher must be the “threshold” for PEMRA in deciding not to impose any conditions.” The court held that “the Chairman PEMRA did not have any validly delegated authority to approve the recommendation of the COC.” Therefore, the court converted this petition into an appeal and allowed the same.

⁵⁹ Supreme Court of Pakistan bench-III. (n.d.-b). https://www.supremecourt.gov.pk/downloads_judgements/c.p._5438_2021.pdf

Messrs Labbaik (Pvt.) Ltd. Versus Federation of Pakistan - (2023 CLC 398), Sindh High Court

PEMRA suspended the broadcasting license of a TV channel known as Bol TV under Section 30 of the PEMRA Ordinance, 2002, citing that the channel had ridiculed and disrespected judges of the superior judiciary in one of its programs called, Tajzia. The TV channel challenged the said action of the PEMRA before the Sindh High Court on the ground, inter alia, of freedom of speech, averring that criticism and the act of bringing the facts to light are protected under Article 19 of the Constitution.

The court analyzed and expounded upon Articles 19 and 19-A of the Constitution and held that these rights are not absolute, but rather subject to certain qualifications and conditions, including contempt of court. The court corrected the counsel of the TV channel that even these rights are not absolute in foreign jurisdictions as well, such as the UK and the US. The judicial interpretation of these countries has restricted the usage of these rights in an absolute manner and has put some restrictions on it. Hence, these rights are universally qualified and restricted. The court also referred to Article 69 and 66 of the Constitution that the speeches of the members of the Parliament are exempted from court proceeding but discussions regarding the conduct of the judges are prohibited in the Parliament.

The court suspended the decision of the PEMRA to revoke the license of the TV channel and directed the PEMRA to restore the license on the ground that this action was taken in the absence of rules. The court further directed the PEMRA to frame rules for taking such actions.

Hafiz Hamdullah Saboor Versus Government of Pakistan – (PLD 2021 Islamabad 305)

The National Database Registration Authority (NADRA) suspended the citizenship of a well-known politician, Hafiz Hamdullah Saboor. Feeling aggrieved by the decision, he challenged the said action of NADRA before the Islamabad High Court, alleging that it contravened the relevant laws and fundamental rights enshrined in the Constitution.

Pursuant to the suspension of his Pakistani citizenship, PEMRA also issued a restraining order to all TV channels, banning them from inviting and projecting the petitioner on talk-shows and programs. The petitioner also challenged this order before the Court. Restraining the petitioner from appearing on talk-shows was a blatant violation of Article 19 of the Constitution of Pakistan, which gives everyone the right to free speech.

The court held that PEMRA was not mandated by its laws to issue such a restraining direction to TV channels not to invite the petitioner as a guest speaker on talk-shows. The court declared the said action on the part of PEMRA as a misuse of authority and violation of Articles 19 and 19-A of the Constitution.

Freedom of Expression and Films

Moulvi Iqbal Haider Versus Federation of Pakistan through Secretary - (PLD 2023 Sindh 182)

The Sindh High Court was moved with a petition to prohibit the release of a film named, Joyland. The petitioner alleged that the said film depicted the story of a married man and a transgender woman, which is against the moral fabric of the society and teachings of Islam.

The court declined to grant the relief sought and opted not to ban the movie. Instead, the court held that it is not for the court to sit over judgment to decide morality. Once a movie has passed the ordeals of censors and the board has examined the contents of the movie from different perspectives including but not limited to morality, a high court is not mandated under Article 199 to interfere and make a moral judgment to abridge the right to free speech. In this background, the court dismissed the petition.

Freedom of Expression and Hate Speech

Azhar Abbas Haideri Versus Government of The Punjab - (PLD 2022 Lahore 278)

The deputy commissioner of Lahore issued an order that banned the petitioner from entering into and making speech from the jurisdiction of the district Lahore, on the ground that his speeches might have caused public disorder, incited hate and disrupted the law and order situation within Lahore. The petitioner challenged this order before the Lahore High Court on the grounds of right to freely practice religion and speak without restraint.

The court clarified that practicing religion and speaking freely are not absolute rights; rather they are qualified rights subject to reasonable restrictions. The court attempted to fix the reasonableness of restrictions on the freedom of speech. The court referred to a Supreme Court judgment wherein the court has held that reasonableness of restriction can be judged based on whether one's right to express thoughts is infringing on the right of another and disturbing his nuisance free life. The court said that one cannot be forced to listen to what he/she dislikes or does not want to listen to. The petition was dismissed as being not maintainable.

The judgment attempts to strike a balance between what amounts to free speech and what may be described as hate speech which may hurt the sentiments of the public at large. The judgment recognizes and acknowledges the imposition of reasonable restrictions concerning the boundaries of free speech.

Right to Information

Commissioner Inland Revenue Versus Jahangir Khan Tareen - (2022 SCMR 92)

In this case, the respondent/taxpayer alleged that the Federal Board of Revenue (FBR) failed to publish a notification in the official gazette, a duty it was obligated to fulfill. The court referred to the right to access to information and the relevant legislation governing this right. The court held that Right Access to Information Act, 2017, mandates that notifications under law or notifications having the force of law shall be published publicly so that the general public may become aware of them. The purpose is to keep the general public informed about the new developments by the state authorities.

This judgment requires the state institutions and officials to publish notifications and other documents that concern the general public. This ruling will make it easy for citizens to get official information and be aware of the new developments.

Mukhtar Ahmad Ali Versus the Registrar, Supreme Court of Pakistan - (Civil Petition No. 3532/2023, Supreme Court)⁶⁰

Mr. Mukhtar Ahmad Ali, a concerned citizen, filed an application to the registrar of the Supreme Court in 2019, requesting to provide certain information regarding, among other things, different vacancies and staff members of the Supreme Court. The request was declined which compelled the petitioner to approach the Pakistan Information Commission (PIC) under the Right of Access to Information Act, 2017, against the order of the registrar. This matter again came before the Supreme Court via the Islamabad High Court.

While adjudicating the matter in hand, the Supreme Court held that the Right of Access to Information Act, 2017 is not applicable to the Supreme Court as it is only applicable to public bodies and courts, etc., created under the law. The Supreme Court being created under the Constitution does not fall under the purview of the said Act. However, the Court declared that Article 19-A of the Constitution of Pakistan envisages a fundamental right to have access to information, and the said article does apply to all courts including the Supreme Court. The court ordered the registrar to provide the requested information to the appellant.

Muhammad Azam Khan Swati Versus Federation of Pakistan (PLD 2023 Islamabad 184)

Multiple FIRs/cases were lodged against the petitioner and he was unaware of all the cases. Whenever he obtained bail in one case, he risked being arrested in another. For the redressal of

⁶⁰ In the Supreme Court of Pakistan. (n.d.). https://www.supremecourt.gov.pk/downloads_judgements/c.p._3532_2023.pdf

this grievance and to avoid arrest after arrest, the petitioner approached the Islamabad High Court with requesting information about the total number of cases filed against him across the country.

This case was not filed under the Right of Access to Information Act, 2017. It was a writ of mandamus in which the petitioner had prayed to the court to direct the government to provide him with the information regarding all cases lodged against him. The petitioner relied on Article 149 of the Constitution (directions to provinces in certain cases) and pleaded that the federal government can issue direction to the provincial governments to provide the relevant information.

The court, after analyzing the said article and other relevant laws, held that no law comes to the aid of the prayer of the petitioner. Hence, the writ was dismissed as being groundless.

EXPERT INTERVIEW: Mr. Saroop Ijaz, Human Rights Watch (HRW)⁶¹

Why do courts in Pakistan generally pronounce adverse interpretations that assist in eroding rather than expanding FOE and RTI provisions?

Saroop Ijaz: Freedom of speech and right to information matters require the courts to decide between competing claims of the citizen and the state; the citizen seeking to exercise the right and the state wanting to deny it. In case of freedom of expression, the entire structure of constitutional guarantees and freedoms rest on it, since FOE is also the right to demand all other rights. There are several reasons which explain Pakistani courts acting as obstacles to free speech rather than protector of it. One major reason lies in historical roles of Pakistani courts and the alignment of the court with powerful elements of the state. In more recent times and particularly post the populist phase of the lawyers' movement, this is exacerbated by the courts also viewing themselves as the guardians of national interest, representatives of the will of the people: which they are not.

Why can't judges and courts reconcile with public interest on FOE related matters on the touchstone of constitutional guarantees?

Saroop Ijaz: Judges and courts have sadly viewed themselves as the final arbiters of public and national interest rather than being responsible for upholding and protecting fundamental rights. The fact that courts have used restrictive interpretations on FOE laws to shut down criticism of courts erodes their credibility to uphold it against other organs of the state. There is a fundamental mistrust of free speech in our post-colonial state structure, where the presumption is against free speech, and a citizen has to prove an exception: as opposed to it being the other way around. "Public interest" is viewed to conflict with free speech and regrettably, Pakistani laws including constitutional provisions use vague and overbroad language which can be subjective interpretations to curb free speech. Barring episodes in history, courts have viewed free press as an adversary and not an ally.

⁶¹ Ijaz, Saroop, interviewed by Alam, Muhammad Aftab, Islamabad, November 24, 2023

How can civil society movement for FOE be strategized for enforcements of constitutional guarantees?

Saroop Ijaz: One grave consequence of living in controlled democracy experiments is losing the ability to call things by their right name, to use euphemisms for euphemisms, to self-censor, to shuffle the feet and clear the throat before talking about what stares right in the face. Pakistan's civil society comes from a long and glorious tradition of resistance. However, living in hybrid models takes its toll and the first step for a civil society movement is to embrace FOE and make the demand for free expression loudly and clearly. FOE is the best guarantee of furthering public and national interest. Civil society and media must engage with political stakeholders since political participation, democracy and free expression are inextricably linked. The challenge right now is acute given the polarization within civil society and media. In the past, civil society and media came together on the single point agenda of free expression despite ideological, political and personal differences and that is a pre-requisite now. Any such movement should be broad-based, participatory and inclusive.

Is Article 19 of the Constitution of Pakistan, in its current formulation, a definitive guarantee or there is a room for improvement? How?

Saroop Ijaz: Article 19 of the Constitution of Pakistan is an important step towards enabling free expression. However, there remains significant room for improvement. The text of the article itself spends a few words on granting the right and then many words laying down the "clawbacks," i.e., where the right is restricted. The use of subjective phrases such as "morality" "decency" and others lay the foundation for the right to be subverted and denied. Article 19 should be brought in line with international standards and should recognize that freedom of speech and expression can be restricted only in exceptional and very narrowly defined circumstances. The discussion of the text of Article 19 is additionally important since the clawback provisions of Article 19 have been reproduced in almost all other laws which impact or can impact free expression.

Chapter Three

State Actions Affecting Freedom of Expression and Right to Information

The relationship between the state and media in Pakistan has always been tense, and in recent years (2022-2023), it has become increasingly alarming. The state is known to show consistent disdain for critical media, and the government's intolerance, coupled with intimidation tactics, has led to self-censorship and violence against journalists. In the past few years, social media, a last refuge for independent voices, has also been targeted. This atmosphere has not only hampered the media's ability to fulfil its duty of reporting but also poses a constant threat to the safety of media personnel. Attacks such as blocks, intimidation, arrests and abductions against journalists and media limit the public's access to important information, which is especially troubling during ongoing political and economic challenges.

Federal/Provincial Government Actions

In March 2023, the federal Ministry of Interior formed a task force to address a social media campaign against the Pakistan Army. The task force, consisting of officers from the FIA, PTA, and NADRA, aimed to monitor and counter the propaganda. Identified were eight TikTok accounts, 44 Twitter accounts, and over 50 Facebook accounts allegedly involved in spreading anti-army content.⁶²

Ban on entertainment?

In November 2022, the internationally acclaimed film "Joyland" faced a ban in Pakistan despite initially receiving approval from both provincial and federal censor boards for its release in August. However, the federal board withdrew its approval following a complaint from a lawmaker of a religious party, sparking a significant backlash on social media. While the federal ban was eventually lifted, the government of Punjab issued a notice prohibiting the film's screening in the province.⁶³ This incident underscores the complex dynamics between artistic expression, censorship, and religious sensitivities in Pakistan.

⁶² Social Media Campaign Against Army: Ministry decides to form Task Force. NNI. Brecorder (2023, March 24). <https://www.brecorder.com/news/40233152>.

⁶³ Punjab Govt bans joyland less than 24 hours after Federal Govt gives it the green light. Images - Gabol, I. (2022, November 17).. <https://images.dawn.com/news/1191186>.

Similarly, Punjab government in July 2023, following a familiar pattern, did not officially ban but opted to "not allow" the screening of the movie "Barbie" pending censor approval.⁶⁴ Eventually, the film was approved for release, but not without undergoing some cuts.⁶⁵

In another case, the film "Javed Iqbal: The Untold Story of a Serial Killer" experienced a ban imposed by the Punjab government in 2022, only to be later approved for screening in early 2023.⁶⁶

Furthermore, the film "I'll Meet You There" faced rejection by the Central Board of Film Censors (CBFC) a week before its scheduled release in Pakistan. The board cited reasons such as the film not reflecting true Pakistani culture, portraying a negative image of Muslims, and conflicting with the social and cultural values of Pakistan.⁶⁷

In 2023, the Punjab government initiated a crackdown on commercial theatres, extending its monitoring efforts even to theatres run by the Punjab Arts Council. The [alleged] aim was to eliminate performances deemed scandalous, obscene, and involving vulgar dances. As part of these measures, the home department issued show-cause notices to 23 actresses engaged in performances at commercial theatres in Lahore.⁶⁸

The Pakistan Telecommunication Authority (PTA)

PTA is given powers to monitor online content, block or remove objectionable material, and work with law enforcement for legal enforcement. PTA authorizes and implements temporary shutdowns for national security or public order reasons. PTA's Annual Report for 2022 states Pakistan has over 197 million telecom subscribers, with teledensity touching 90%, and 124 million broadband subscribers, with 56% penetration. According to PTA Pakistan has over 70 million social media users active by the end of 2023.⁶⁹

Content Management

Under Section 37 of the PECA, 2016, PTA is authorised to block the access or removal of any unlawful online content and information disseminated through any information channel in Pakistan.⁷⁰ In

⁶⁴ Gabol, I. (2023, July 21). "Barbie" not banned in Punjab, but not allowed to screen pending censor approval: Provincial information secretary. DAWN.COM. <https://www.dawn.com/news/1766002>

⁶⁵ Style, B. L. &. (2023, August 2). "Barbie" cleared for release in Punjab following "minor cuts." Brecorder. <https://www.brecorder.com/news/40255862>

⁶⁶ Grater, T. (2022, April 1). Banned Pakistani film "Javed Iqbal: The untold story of a serial killer" to world premiere as opening night of UK Asian film festival. Deadline. <https://deadline.com/2022/03/banned-pakistani-javed-iqbal-the-untold-story-of-a-serial-killer-world-premiere-uk-asian-film-festival-1234991731/>

⁶⁷ Staff, I. (2022, April 4). Pakistani-american actor Faran Tahir disappointed over ban of film 'I'll meet you there' in Pakistan. <https://images.dawn.com/news/1189861>

⁶⁸ Malik, M. (2023, August 22). Crackdown on obscene dances in commercial theatres. DAWN.COM. <https://www.dawn.com/news/1771445>

⁶⁹ PTA Annual Report 2022. PTA. (n.d.). https://www.pta.gov.pk/assets/media/pta_annual_report_2022_10012023.pdf

⁷⁰ Safe Use of Social Media: Online Safety Guide. PTA. (n.d.-b). https://www.pta.gov.pk/assets/media/pta_sm_guide_18-11-2022.pdf

2022, as many as 1.1 million URLs, including 187 mobile applications were blocked, while 8,709 content/URLs against contempt of court were processed by the PTA in 2022, 36,900 complaints processed against the defence of Pakistan, 78,119 complaints processed against the glory of Islam, 7,713 on defamation / impersonation, 905,009 on decency & morality, 40,536 on sectarian/hate speech, 10,219 on proxy and 6,464 miscellaneous complaints were processed.⁷¹ In February 2023, PTA blocked Wikipedia over their refusal to remove blasphemous content without elaborating on the content in question.⁷²

Internet/Network Shutdowns

Section 54 of the Pakistan Telecommunication (Re-organization) Act, of 1996 authorises the PTA to take temporary measures, including internet and network shutdowns, in the interest of national security and public safety.⁷³ As reported by AccessNow, an international platform defending and extending digital rights of people and communities at risk, between 2022 and 2023 PTA held six internet/network shutdowns across the country, as per directives from the government.⁷⁴

On September 1, 2023, PTA suspended mobile data services in Gilgit-Baltistan, amid religious tensions. The suspension lasted for 16 days. The government reopened the services on 16th September, however, it warned of strict legal action against individuals disseminating “obscene and hateful” content on the internet.⁷⁵

The Pakistan Electronic Media Regulatory Authority (PEMRA)

PEMRA is the regulatory body in Pakistan that oversees and regulates electronic media, including television and radio broadcasting. Since 2002, PEMRA has issued 3,899 licenses for cables, 140 for satellite TV channels⁷⁶, 269 for FM radio, and 26 for IPTV⁷⁷, one teleport licencing⁷⁸ and 36 landing rights permissions.⁷⁹ Recently, PEMRA formed committees to include WebTVs and OTT platforms

⁷¹ See PTA Annual Report 2022

⁷² Al Jazeera. (2023, February 4). Pakistan blocks Wikipedia citing “sacrilegious” content. <https://www.aljazeera.com/news/2023/2/4/pakistan-blocks-wikipedia-citing-blasphemous-content>

⁷³ Pakistan Telecommunication (re-organization) Act, 1996. (n.d.-b). https://www.pta.gov.pk/assets/media/pta_act_consolidated_footnotes_11012022.pdf

⁷⁴ Rosson, Z., & Felicia (2023, July 31). Internet shutdowns in 2023: A mid-year #KeepItOn update. Access Now. <https://www.accessnow.org/publication/internet-shutdowns-in-2023-mid-year-update/>

⁷⁵ Ali, J. N. | K. (2023, September 19). PTA restores mobile data services in GB. DAWN.COM. <https://www.dawn.com/news/1776666/pta-restores-mobile-data-services-in-gb>

⁷⁶ List of satellite TV licence issued by PEMRA. (n.d.). https://www.pemra.gov.pk/uploads/licensing/stv/list_of_licences_issued_stv.pdf

⁷⁷ List of internet protocol TV (IPTV) Distribution Service licenses issued by PEMRA. (n.d.-a). https://pemra.gov.pk/uploads/licensing/iptv/LICENCES_ISSUED_IPTV.pdf

⁷⁸ List of teleport service licences - PEMRA. (n.d.-c). https://pemra.gov.pk/uploads/licensing/tsl/teleport_licences_list.pdf

⁷⁹ List of licences - Pakistan Electronic Media Regulatory Authority. (n.d.-b). https://pemra.gov.pk/uploads/licensing/lrp/List_of_Licences_Issued_LR.pdf

like Netflix and Amazon Prime in broadcast media services.⁸⁰ However, between the years 2022 to October 2023, PEMRA issued 37 notices as reported in the media under the PEMRA's mandate to regulate the electronic media sector in Pakistan.

Censorship and Content Restrictions

PEMRA has issued numerous directives to regulate television channel content in Pakistan. These include restrictions on the coverage of hate speech, terrorism-related content, and specific events like rallies and public gatherings, such as suspension of the license of ARY News for broadcasting banned content featuring former Prime Minister Imran Khan. Furthermore, the regulatory body also prohibited any “offensive” discussions about judges of superior courts as well as state institutions such as the Pakistani military.

Impact on Journalists and Media Outlets

From 2022 to 2023 PEMRA issued orders prohibiting the mention of certain individuals, which included prominent journalists and politicians. The body also instructed media outlets to establish impartial editorial boards to prevent contemptuous remarks against state institutions, with non-compliance potentially resulting in license suspension.

In 2023, PEMRA issued an order naming 11 “proclaimed offenders”, including journalists and politicians from being mentioned in the media. Imran Khan's speeches got banned from broadcast for at least thrice in 2022-23.

Actions Against Broadcasted Content (Talk Shows, Dramas, etc.)

The authority banned the TV drama "Hadsa" and imposed a two-week ban on Shahid Masood's show for disseminating false news about aid to Turkey from the Sindh government.

Actions Against Cable Operators

PEMRA issued statements and orders to curb the broadcast of illegal Indian channels by cable operators. Conducting countrywide operations, regional offices carried out multiple raids, confiscating equipment and issuing show-cause notices to address these violations in years 2022 and 2023.

(Links of the notices issued by PEMRA are given in the annexure)

⁸⁰ Reporter, T. N. S. (2023, June 22). “PEMRA to launch crackdown on OTT platforms after Eid.” DAWN.COM. <https://www.dawn.com/news/1761090#:~:text=ISLAMABAD%3A%20Cable%20Operators%20Association%20of,as%20Netflix%2C%20after%20Eidul%20Azha>

The Federal Investigation Agency (FIA)

The FIA in Pakistan is a law enforcement agency under the Ministry of Interior. Its role extends to addressing issues related to online activities, and cybersecurity. As per the FIA Act, 1974, it is authorised to take action against individuals spreading “rumours and false information against state institutions” on social media.

FIA Act amendment

Federal government amended the Schedule of the FIA Act in 2022 to extend the agency’s authority to investigate the cases under Section 505 of the Pakistan Penal Code. This section deals with statements conducing to public mischief. Previously, only police were authorised to investigate the cases under this section. This section encompasses the publication or circulation of statements, rumours, or reports that could incite military personnel to mutiny or neglect their duties. Offenders under Section 505 may face a maximum imprisonment of seven years along with a fine.⁸¹

In 2022--23, the cases registered and pursued by FIA highlight a concerning pattern of press freedom issues and journalist harassment in Pakistan. Here are some key observations and facts:

Widespread Arrests of Journalists

A series of arrests involving journalists, raise questions about the freedom of the press in Pakistan. Arrests of Imran Riaz Khan, Aftab Iqbal, Muhammad Khalid Jamil, Shahid Malik, and others in 2023 alone suggest a crackdown on media professionals.

Charges Against Journalists

Journalists faced a variety of charges, including criticizing state institutions, abetting mutiny, spreading a provocative narrative against state institutions through social media, and involvement in tax records leaks. These charges raise concerns about the authorities' approach to press freedom and the handling of dissent.

Lack of Transparency and Due Process

Instances where journalists were reportedly "missing" or arrested without informing Pakistan Federal Unions of Journalists (PFUJ) point to a lack of transparency and adherence to due process in these cases. The arrests of Imran Riaz Khan and Shahid Malik, in particular, raise questions about the accountability and practices of law enforcement agencies.

⁸¹ Haq, R. (2022, November 1). Govt empowers FIA to act against social media posts against state institutions. DAWN.COM. <https://www.dawn.com/news/1718268>

Social Media Scrutiny

Journalists faced legal action for their activities on social media platforms. The massive crackdown on journalists and media after violent protests on May 9, 2023 in the aftermath of the arrest of former prime minister Imran Khan, is just one example.

Political Involvement

Cases involving PTI leaders and the government's actions against journalists reporting on the assets of a former army chief suggest a political dimension to these incidents.

Violence and Torture

Instances of raids without proper procedures and allegations of torture against journalists, as seen in the case of Mohsin Jamil Baig, point to potential human rights violations and a hostile environment for journalists.

(Links to the reports relating to FIA actions are given in the annexure)

Police Cases Against Journalists

The historical interaction between law enforcement agencies and the media within the Pakistani context has consistently been marked by discord. The state's apparent lack of tolerance towards critical media is evident through various occurrences of intimidation, arrests, and informal pressures.

The cases presented highlight several concerning trends and their impacts on the state of journalism in Pakistan:

Legal Pressures and Arrests

The use of legal measures, arrests, and charges against journalists like Fayyaz Zafar, Sabir Shakir, Moeed Pirzada, and others indicates a pattern of using legal instruments to suppress dissent and critical reporting.

Abductions and Disappearances

The abduction of Syed Muhammad Askari⁸² and the alleged involvement of police in disappearances suggests a climate of intimidation and potential threats to journalists' physical safety.

⁸² Correspondent, O. (2023, July 9). Daily jang reporter picked up from Karachi. Geo News. <https://www.geo.tv/latest/498098-daily-jang-reporter-picked-up-from-karachi>

Political Influence on Media Coverage

Charges against journalists related to political protests and detentions during political events indicate potential political interference in media coverage and attempts to control the narrative.

Arbitrary Arrests and Harassment

Arbitrary arrests, such as the case of Geo News producer Zubair Anjum,⁸³ and harassment of journalists reflect an environment where journalists are not immune to arbitrary legal actions and potential threats.

Detentions and Intimidation

Detentions of journalists like Zubair Anjum and individuals under the Maintenance of Public Order Ordinance, as seen with the case of the local journalist in Ghotki, contribute to an environment where expressing critical views may lead to legal repercussions, fostering self-censorship.

Threats and Harassment for Investigative Reporting

Journalists engaging in investigative reporting also face obstacles, potentially limiting the exposure of corruption or other issues of public concern. Threats and harassment faced by Saddia Mazhar for seeking information under the Right to Information laws point to challenges in investigative reporting and transparency efforts. The booking of Nasrullah Gadani for covering the eviction of displaced persons is another example. The defamation case against Majid Afsar and Ijaz Khan illustrates the similar risks journalists face when using social media to highlight issues of public interest.

(Links of the reports relating to police actions are given in the annexure)

EXPERT INTERVIEW: Mr. Kamran Adil PSP, Deputy Inspector General⁸⁴

How can various centers of official authority be streamlined for ensuring justice on fundamental rights issues?

Kamran Adil: The lines of authority and responsibility must be clearly drawn to streamline the system ensuring justice on fundamental rights issues. In the present arrangement, the ownership

⁸³ Ali, Dawn. com | I. (2023, June 6). Geo News Executive producer Zubair Anjum “picked up” in Karachi. DAWN.COM. <https://www.dawn.com/news/1758278>

⁸⁴ Adil, Kamran, interviewed by Alam, Muhammad Aftab, Islamabad, November 24, 2023

for providing justice has not been clearly established. The civil, criminal and administrative justice strategies must be invoked to proportionally respond to the grievances of the affected. Besides, the prosecution of criminalized acts should be decided on the quality of outcome. In addition, personal and professional matters be kept separate and no one should be allowed to use, his/her professional position for personal issues.

What basic capacity building measures be taken to manage the growing legal caseload?

Kamran Adil: The capacity building of the investigative officers, prosecutors and judges is a matter of basic concern. There are no specialized trainings and the system for monitoring is not in place. In addition, dedicated communications officers within public sector that can keep a track of institutional matters in collaboration with stakeholder members are also required. The legal caseload must be predetermined and standards in terms of quality and timelines must be set.

How can the executive and civil society help each other to tackle growing online violations against citizens?

Kamran Adil: The gap between the executive and the civil society must be bridged by institutional arrangements. Periodic meetings, follow up actions and trust building measures must be arranged between the executive and the civil society. The anatomy of civil society must also be closely examined as, most often than not, individuals try to substitute the civil society by treating professional issues as personal issues. Clear criteria for civil society identification must be determined to shape a more collaborative partnership between the executive and the civil society.

Chapter Four

International Chargesheet on State of Freedom of Expression and Right to Information

Google Transparency Report

The government of Pakistan made 23,360 requests for the removal of content on Google between June 2021 – June 2023.⁸⁵

Table 1: Content removal requests to Google by the Government of Pakistan (Jan 2021- June 2023)

Year	Requester	Number of Requests	Items Requested to Be Removed	% Removed-Legal	% Removed-Policy
2021	Consumer Protection Authority	1	12		
	Police	18	160	49	
	Information and Communications Authority	870	12468	83	2
	Government Officials	3	14	21	
	Court Order Directed at 3rd Party	1	1		
	Other	2	5		
	Police	9	73	66	
	Information and Communications Authority	582	7341	74	1
	Court Order Directed at Google	1	2		
	Court Order Directed at 3rd Party	10	20	10	

⁸⁵ Google. (n.d.). Google transparency report. <https://transparencyreport.google.com/government-removals/overview?hl=en>

	Other	2	2		50
2022	Data Protection Authority	4	26	54	
	Police	4	20		45
	Information and Communications Authority	477	4391	74	2
	Other	2	4		
	Data Protection Authority	1	1		
	Police	13	157	66	3
	Information and Communications Authority	429	4873	76	2
	Government Officials	1	13		
	Court Order Directed at 3rd Party	31	308	94	
	Other	8	10	20	40
2023	Police	1	6	100	
	Information and Communications Authority	407	4902	68	2
	Court Order Directed at 3rd Party	25	1069	1	
	Other	30	285	43	20

META Transparency Report

Content Restriction Based on Pakistani Law

Between January 2021 to June 2022, Meta restricted access in Pakistan to 12,001 items reported by the PTA for allegedly violating local laws. The following tables show the type of items restricted.⁸⁶ This included a restriction of 707 pages and groups, 5,440 posts and six profiles between January 2021 to June 2022 on Facebook alone. On Instagram, Meta restricted 476 accounts and 2,386 media content.

⁸⁶ META. (n.d.). Content restrictions based on local law. Transparency Center. <https://transparency.fb.com/reports/content-restrictions/country/PK/>

Table 2: Items removed by META (January 2021 - June 2022)

Type of Item	Number
Blasphemy, anti-religious	7787
Obscenity	2700
Sectarian Enmity	1064
Anti-judiciary	148
Other offences under PECA	62
Fraud, regulated goods violations	119
Terrorism	22

Government Requests for User Data

The Pakistani government made 5,320 user data requests between January 2021 to June 2022, out of which only 40% of requests directed to some information.⁸⁷

Table 3: Government requests to Meta for user data (January 2021-June 2022)

Types of Requests	No. of requests
Blasphemy, anti-religious	7787
Legal process requests	5057
Emergency disclosure requests	263
Users/accounts requested	7095
% of requests where some data was produced	40.15%
Total Requests	5320

TikTok Transparency Report

As per the TikTok Transparency Report 2021, Pakistan ranks second highest in the world, with 8.25 million video removals after the United States of America with 11.77 million removals, for not meeting community guidelines.

The table below shows data on the type and number of information requests by law enforcement agencies in Pakistan.

⁸⁷ META. (n.d.-b). Government requests for user data. Transparency Center. <https://transparency.fb.com/reports/government-data-requests/country/PK/>

Table 4: Information requests to TikTok by law enforcement in Pakistan 2022⁸⁸

Metric	Result
Percentage of Emergency Requests Where Some Data Was Disclosed	0.11
Percentage of Legal Requests Where Some Data Was Disclosed	0
Emergency Request - Accounts Specified	18
Emergency Requests	17
Legal Request - Accounts Specified	45
Legal Requests	30
Preservation Request Accounts Specified	3
Preservation Requests	3

The following table shows the type and frequency of requests by the Pakistani government.

Table 5: Data on government removal requests to TikTok 2022⁸⁹

Metric	Result
Removal rate	0.94
Accounts actioned due to (local) law violations	5659
Accounts actioned due to community guidelines violations	26
Accounts not actioned	50
Content actioned due to community guidelines violations	19034
Content not actioned	1274

X/Twitter Transparency Report

According to the X (previously known as Twitter) Transparency Report, there were 31 Information requests made by Pakistan in 2021, out of which zero requests were complied with. 15 of the requests were routine, the remaining 16 were categorized as emergency requests.⁹⁰ There were 1,100 legal demands with 52.5% compliance rate for the year 2021.

⁸⁸ TikTok. (2023, May 16). Information requests report. <https://www.tiktok.com/transparency/en/information-requests-2022-2/>

⁸⁹ TikTok. (2023b, May 23). Government removal requests report. <https://www.tiktok.com/transparency/en/government-removal-requests-2022-2/>

⁹⁰ X. (n.d.). Pakistan - Twitter transparency center. Twitter. <https://transparency.twitter.com/en/reports/countries/pk.html>

RSF Press Freedom Index

Pakistan has experienced a improvement in press freedom rating, from 157th to 150th out of 180 countries in 2022, according to the Reporters Without Borders Index.⁹¹ The improvement comes on the heels on the institution of two journalists’ safety laws – the the federal government and Sindh provincial government. However, the report underscores persistent challenges in the country, where a diverse media landscape coexists with substantial control by the political and military elite. Despite numerous media outlets, laws ostensibly designed to protect journalism are employed for government and military censorship. Regulators, influenced by the government, prioritize executive interests over the public's right to information. Privately-owned media, heavily dependent on state-sector ads, face financial repercussions and self-censorship when crossing established boundaries. Sociocultural complexities, especially in rural areas, further complicate media dynamics. Safety concerns persist, making Pakistan one of the most dangerous countries for journalists. The report highlights an ongoing struggle for press freedom, encompassing legal constraints, economic pressures, and pervasive threats to journalists' safety.

Figure 1: Index Graph by RSF

INDEX 2023		INDEX 2022	
150 / 180		▲ 157 / 180	
Score : 39.95		Score : 37.99	
POLITICAL INDICATOR	139 42.71	POLITICAL INDICATOR	152 39.57
ECONOMIC INDICATOR	136 37.25	ECONOMIC INDICATOR	143 31.92
LEGISLATIVE INDICATOR	130 48.11	LEGISLATIVE INDICATOR	131 53.26
SOCIAL INDICATOR	140 48.11	SOCIAL INDICATOR	152 47.43
SECURITY INDICATOR	176 23.57	SECURITY INDICATOR	168 17.75

source: RSF

⁹¹ RSF Press Freedom Index. Bienvenue sur le site de Reporters sans frontières. (2023, November 3). <https://rsf.org/en/country/pakistan>

Transparency International Index

The Transparency International Index, a gauge assessing global public corruption, assigned Pakistan a score of 28 among 100 countries in 2021, followed by a score of 27 in 2022. The report evaluates 180 nations based on their perceived levels of public sector corruption, encompassing factors such as human rights violations, including press freedom, freedom of speech, and right to information. Pakistan held the 140th position out of 180 countries in the 2021 rankings and maintained the same rank in 2022.⁹² Since 2012, Pakistan has seen a significant decline in rank by six places.

The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) Assessment (2020-2022)

The Fourth GSP+ Report, evaluating the implementation of 27 international conventions in beneficiary countries, including Pakistan highlighted the need for ongoing efforts to address challenges and fully implement human rights conventions in Pakistan.

GSP+ underscored Pakistan's efforts to address media freedom concerns through the Protection of Journalists and Media Professionals Act 2021 at the federal level. However, criticism emerged, particularly regarding Article 6 of the Act, which uses ambiguous terms that could potentially be exploited to suspend journalists' protection. The report pointed out that despite legislative advancements, journalists still face pressure, harassment, and limitations on reporting. Pakistan ranks low in global press freedom rankings, particularly impacting women journalists, said the report.

The occurrence of violent attacks and disappearances of journalists, and online trolls target those critical of the leadership. The report also notes restrictions on freedom of expression for political activists, human rights defenders, and elected representatives due to vague concepts in relevant laws. Overall, media freedom challenges persist in Pakistan, impacting both traditional and online journalism. It further highlighted the regulatory agencies blocking and restricting access to critical content on the internet and social media platforms, as well as mobile network suspension.⁹³

⁹² Corruption Perceptions Index 2021. Transparency International. (n.d.). https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf

⁹³ JOINT STAFF WORKING DOCUMENT The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of the Islamic Republic of Pakistan covering the period 2020-2022. Register of Commission documents. (n.d.). <https://ec.europa.eu/transparency/documents-register/detail?ref=SWD%282023%29363&lang=en>

Freedom House Report

Across the three Freedom House reports covering the periods from June 1, 2020, to May 31, 2023, a consistent narrative emerges concerning the state of internet freedom in Pakistan. The government, regardless of political changes, maintained a firm grip through tactics like shutdowns and arrests to suppress unwanted online speech. The introduction and implementation of the Removal and Blocking of Unlawful Content Rules expanded censorship powers, while military influence persisted, leading to media intimidation and selective restrictions on civil liberties. Challenges such as economic crises, power outages, and infrastructural limitations consistently hindered internet access.

The reports emphasize the need to diversify internet infrastructure and increase capacity. Political shifts, like the transition from the Imran Khan government to the Pakistan Democratic Movement coalition government in 2022, did not alleviate concerns, and tensions between political leaders, particularly Imran Khan, and the military led to heightened government controls. The overall picture reflects sustained obstacles to internet freedom in Pakistan, marked by governmental control, military influence, and continuous threats to freedom of expression and civil liberties.

Freedom On the Net Score 2021 ⁹⁴	25/100
Obstacles to Access	5/25
Limits on Content	13/35
Violations of User Rights	7/40

Freedom On the Net Score 2022 ⁹⁵	26/100
Obstacles to Access	6/25
Limits on Content	13/35
Violations of User Rights	7/40

Freedom On the Net Score 2023 ⁹⁶	25/100
Obstacles to Access	5/25
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