



Institute For Research
Advocacy And Development



MODERNIZING MEDIA LAW IN PAKISTAN

Review of Legal Frameworks Governing Media,
Cyberspace and Tech Sectors (2016 to 2025)

Muhammad Aftab Alam | Dr. Abdur Rauf Khatana | Adnan Rehmat

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REVIEW OF LEGAL FRAMEWORKS GOVERNING
MEDIA, CYBERSPACE AND TECH SECTORS

(2016 TO 2025)

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FOREWORD

About this Report

In recent years in Pakistan, the legal frameworks governing the media and tech sectors have undergone major transformation, with several new legislations enacted or amended, new regulations adopted and dozens of legal cases landing in various high courts and Supreme Court for adjudication and ending in varying new precedents.

This report is a comprehensive review of legal frameworks governing the media and tech sectors in Pakistan from 2016 to 2024, including documentation of the various changes that have materialised, often for the worse. It covers various aspects such as freedom of expression, privacy, right to information, artificial intelligence (AI), cybersecurity, and journalists' safety. This first-of-its-kind knowledge resource highlights the challenges, legal and constitutional frameworks, international obligations, and judicial interpretations related to these topics and changes.

This book should be approached as a supplementary companion to the first volume "Modernizing Media Law in Pakistan" produced in 2016, also by IRADA with co-authors including Muhammad Aftab Alam and Adnan Rehmat, covering the changed regulatory framework in the period 2002-15.

The co-authors of this report dedicate this knowledge resource to the citizens of Pakistan seeking safe and free online spaces for national conversations, journalists and media practitioners who in the pursuit of professional public interest journalism put their lives at extreme risk from multiple threat actors, women seeking equal opportunities of access and safe spaces online, tech entrepreneurs who are facilitating the digital transformation of Pakistani economy and human rights activists endlessly striving to safeguard and promote fundamental rights promised in the Pakistani constitution.

About the Authors

Muhammad Aftab Alam: He has over 22 years of experience in the field of law and policy with a special focus on media rights, transparency, digital freedoms and governance reforms. He has contributed to key research on media law and regulations, digital rights and freedoms, right to information and good governance, online and offline censorship, journalists' safety and labour rights. He is member of global networks like FOIAdvocates, ILAW and IMLA. He has co-founded several media and rights alliances including CRTI, SAMLA, DigiMAP, JDC, and PJSC. He has worked with organizations like Internews, IMS, DRI, FES, IFJ and RSF on different assignments. He is founder of the Institute for Research, Advocacy and Development and working as Executive Director of IRADA Foundation.

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AI	Artificial Intelligence
APNS	All Pakistan Newspapers Society
BPO	Business Process Outsourcing
CAGR	Compound Annual Growth Rate
CAT	Convention Against Torture
CCPR	Committee on Civil and Political Rights
CERT	Computer Emergency Response Team
CHRI	Commonwealth Human Rights Initiative
CPDI	Centre for Peace and Development Initiatives
CLD	Centre for Law and Democracy
CPJMP	Commission for the Protection of Journalists and Media Professionals
CPNE	Council of Pakistan Newspapers Editors
CNIC	Computerized National Identity Card
COC	Council of Complaints
CVD	Cyber Vigilance Division
DigiMAP	Digital Media Alliance of Pakistan
DNA	Deoxyribonucleic Acid
DPI	Deep-packet inspections
DRF	Digital Right Foundation
DTH	Direct-to-Home
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FAFEN	Free and Fair Election Network
FBR	Federal Board of Revenue
FGEHF	Federal Government Employees Housing Foundation
FIA	Federal Investigation Agency
FOTN	Freedom on the Net
GDPR	General Data Protection Regulation
GSMA	Global System for Mobile Communications Association
GSP+	Generalized Scheme of Preferences Plus
HRC	Human Rights Committee
HRCP	Human Rights Commission of Pakistan
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICPPED	Protection of All Persons from Enforced Disappearance
IFTA	Investigation for Fair Trial Act
IMS	International Media Support
IPDs	Institutions for Protection of Constitutional Democracy
IRADA	Institute for Research, Advocacy and Development

IT	Information Technology
ISI	Inter-Services Intelligence
MMfD	Media Matter for Democracy
NADRA	National Database and Registration Authority
NCCIA	National Cyber Crimes Investigation Agency
NCPDP	National Commission for Personal Data Protection
NICs	National Incubation Centers
NOC	No Objection Certificate
NPC	National Press Club
PECA	Prevention of Electronic Crimes Act
PEMRA	Pakistan Electronic Media Regulatory Authority
PFUJ	Pakistan Federal Union of Journalists
PLD	Pakistan Law Digest
PPC	Pakistan Penal Code
PTA	Pakistan Telecommunication Authority
PTM	Pashtoon Tahaffuz Movement
RSF	Reporters Sans Frontiers
SAARC	South Asian Association for Regional Cooperation
SDGs	Sustainable Development Goals
SECP	Securities and Exchange Commission of Pakistan
SMEs	Small and Medium Enterprises
TI	Transparency International
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organization
UPR	Universal Periodic Review
VPN	Virtual Private Network
WMS	Web Management System

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Table 1: Table of Cases

Courts	Freedom of Expression	Journalists Safety	Privacy	Right to Information	Information Disorder	Total
Supreme Court of Pakistan	13	x	03	04	06	26
Balochistan High Court	01	x	x	x	01	02
Islamabad High Court	08	02	x	03	06	19
Lahore High Court	06*	x	03	03	05*	17
Peshawar High Court	01*	x	x	x	01*	02
Sindh High Court	01	x	x	01	03	05
Total	30	02	06	11	22	71

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3. Criminal Law (Amendment) Act, 2023
4. Digital Nation Pakistan Act, 2025
5. Electronic Transactions Ordinance, 2002
6. Freedom of Information Ordinance, 2002
7. Investigation for Fair Trial Act (IFTA), 2013
8. Khyber Pakhtunkhwa Right to Information Act, 2013
9. Official Secrets Act, 1923
10. Official Secrets (Amendment) Act, 2023
11. Pakistan Telecommunication (Re-organisation) Act, 1996
12. Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2023
13. Personal Data Protection Bill, 2021
14. Prevention of Electronic Crimes Act, 2016
15. Prevention of Electronic Crimes (Amendment) Act, 2025
16. Protection of Journalists and Media Professionals Act, 2021
17. Punjab Defamation Act, 2024
18. Punjab Transparency and Right to Information Act, 2013
19. Right of Access to Information Act, 2017
20. Registration, Newspapers, News Agencies and Books Registration Ordinance, 2002
21. Sindh Protection of Journalists and Other Media Practitioners Act, 2021
22. Sindh Transparency and Right to Information Act, 2016

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Executive Summary

This report provides a comprehensive review of the legal frameworks governing the media and tech sectors in Pakistan from 2016 to 2024. It covers various aspects such as freedom of expression, privacy, right to information, artificial intelligence (AI), cybersecurity and journalist safety. These include both offline and online expression and free speech. The document highlights the challenges, legal and constitutional frameworks, international obligations, and judicial interpretations related to these topics.

In particular, the following areas are examined in detail:

Expression: The report discusses the issues and challenges related to freedom of expression, including censorship, self-censorship, and the impact of executive actions, including online digital expression. It covers the constitutional and legal frameworks governing freedom of expression in Pakistan, both offline and online, as well as international obligations and jurisprudence related to this topic. The document highlights that freedom of expression is not only a fundamental human right but also essential for democracy, progress, and truth-seeking. However, the legal framework governing freedom of expression in Pakistan is marred by problematic laws such as the Prevention of Electronic Crimes Act (PECA), 2016, and its amendments in 2023 and 2025. This report also discusses the mixed jurisprudence of higher judiciary around freedom of expression in Pakistan.

Safety: The report highlights the issues and challenges faced by journalists and other media professionals in Pakistan, as well as rights activists and political workers using the internet to communicate, including threats, attacks, and impunity. It discusses the legal and constitutional frameworks for journalist safety, including the Sindh Protection of Journalists and Other Media Practitioners Act, 2021, and the federal Protection of Journalists and Media Professionals Act, 2021. It also covers international obligations and jurisprudence related to journalist safety. Despite the presence of safety legislation, the level of impunity for crimes against journalists remains high. This report emphasises the need for effective implementation of these laws to ensure the safety of journalists.

Privacy: In the backdrop of a rapidly expanded digital sphere, internet space and social media platforms, the report addresses the issues and challenges related to privacy and surveillance, including mass surveillance systems and data breaches. It discusses the legal and constitutional frameworks for privacy and data protection, including the Personal Data Protection Bill 2021. The document also includes international

obligations and jurisprudence related to privacy. The Constitution of Pakistan guarantees the right to privacy, but there is no functional special law on privacy and protection of personal data. This report highlights the need for comprehensive data protection laws that align with global standards.

Access: This report covers the issues and challenges related to the right to information, including the implementation of right to information laws and proactive disclosure compliance. It discusses the legal and constitutional frameworks for the right to information, including the Right of Access to Information Act, 2017. The document also includes international obligations and jurisprudence related to the right to information. Despite the presence of right to information laws, the implementation remains weak, and the Official Secrets Act of 1923 continues to hinder transparency. This report emphasises the need for effective implementation of right to information laws to promote transparency and accountability.

Disorder: The report covers the critical issue of information disorder which has emerged as one of the major social challenges in Pakistan. This report discusses several legal instruments, administrative actions and technological solutions that have been introduced to 'counter information disorder' in the country. These include amendment in the PECA in 2025; defining of 'misinformation and disinformation' through amendments in PEMRA law in 2023; defamation law in Punjab; pre-qualification to benefit from journalists' protection law; and installation of cyber firewall, web-management system and deep packet inspection (DPI) system. The report also outlines the State's obligation to ensure an information environment that enables democratic participation, which includes promoting media pluralism and ensuring transparency by countering false narratives that undermine rights. However, there have been reports of misuse of legal and administrative actions in the name of curbing information disorder that are examined.

Key findings and highlights:

- 1. Freedom of expression:** The legal framework governing freedom of expression in Pakistan is problematic, with laws such as the PECA, 2016, and its amendments in 2023 and 2025 being highly critical for journalists and information practitioners, including citizens exercising their free speech right. The judiciary has taken a mixed approach, with some judges adopting a liberal stance while others emphasizing restrictions. This sends mixed signals to regulators and enforcers to the disadvantage of citizens, journalists and rights activists invoking the constitutional guarantees of freedom of expression.
- 2. Journalist safety:** Despite the presence of safety legislation, the level

of impunity for crimes against journalists in Pakistan remains high. The federal law, *Protection of Journalists and Media Professionals Act, 2021*, has yet to be implemented, and the *Sindh Protection of Journalists and Other Media Practitioners Act, 2021*, has been slow in delivering results. Effective implementation of these laws is crucial to ensure the safety of journalists. Because these laws were late in being enacted and operationalized, over 190 journalists have been killed in Pakistan between the years 2000 and 2025 while killers of only two convicted. Even after their enactment dozens have been killed or injured. Increasingly even journalists working for digital media platforms are facing the same kind of risks and threats as those working for mainstream legacy media.

- 3. Privacy vs surveillance:** The Constitution of Pakistan guarantees the right to privacy, even by 2025 there was no special law on privacy and protection of personal data in force even though the expanded digital space has enhanced risks for users. The *Personal Data Protection Bill 2021* remained under consideration until early 2025, but there were widespread concerns about its provisions. Comprehensive data protection laws that align with global standards are needed based on adequate consultations with relevant stakeholders. A *draft AI Policy*, issued in 2023, by 2025 remained without formal and meaningful consultations with stakeholders and non-operational, even though embrace and use of AI by society and economy expanded exponentially. This lack of clarity and certainly continued adversely affecting digital economy.
 - 4. Right to information vs secrecy:** The implementation of right to information laws – both at the federal and provincial levels – remains weak, and the Official Secrets Act of 1923 continues to hinder transparency. Executive offices and public bodies financed by taxpayers routinely defy mandatory provisions of the right to information laws to proactively disclose over a dozen categories of information in public interest. This wanton opacity culture frustrates both citizens who seek information and media which seeks to professionally fulfil its role of serving as a watchdog on the executive on behalf of the public. This has, in particular, adversely affected public interest journalism. Effective implementation of right to information laws is essential to promote transparency and accountability.
 - 5. Information Disorder:** Legal instruments to ‘counter disinformation’ in Pakistan like the PECA 2016, Punjab Defamation Act, 2025, Pakistan Electronic Media Regulatory Authority (PEMRA) Amendment Act, 2023, and Protection of Journalists and Media Professionals Act, 2021, are barring free
-

expression rather than synchronising information disorder to address it. Administrative and regulatory bodies including the PEMRA and the Pakistan Telecommunication Authority (PTA) along with the suspension of social media platforms, installation of cyber firewall, blocking of Virtual Private Networks (VPNs), banning reporting on sub-judice matters, suspension of transmission of television channels – these have proven to be censorship tools instead of managing information disorder in the country.

Overall, this exhaustive report provides a detailed analysis of the legal frameworks governing the media and tech sectors in Pakistan for the period 2016–24 by highlighting the challenges, legal and constitutional frameworks, international obligations, and judicial interpretations related to freedom of expression, journalist safety, privacy, and the right to information. The key findings emphasise the need for reforms to the existing laws governing free speech, media regulation and tech economy, introduction of comprehensive data protection laws to ensure the protection of fundamental rights in Pakistan and regulations for beneficial use of AI that are in compliance with constitutional guarantees of fundamental rights.



CHAPTER 1

INTRODUCTION

1.1 Sectoral Overview

1.1.1 Media / Digital Media Sector

Global System for Mobile Communications Association (GSMA) reports in 2024 that “[m]obile internet adoption continues to increase, with 57% of the world’s population (4.6 billion people) now using mobile internet on their own device. The number of people using their own smartphone to access the internet increased to almost 4.3 billion people by the end of 2023 (53% of the global population).”

The report also notes that “data consumption in low- and middle-income countries (LMICs) have seen the largest increases. With more consumers migrating to 4G and 5G, average data traffic per user continues to increase, reaching almost 13 GB per connection in 2023.” It further mentions that “[c]ommunications, social media and entertainment remain the most popular activities” for internet users.¹

Given the increase in use of mobile phones for social media and entertainment among the consumers, digital media have largely occupied the principal seat of the media industry. This is also because of its added advantage of accessibility and swiftness while at the same time its ability to serve as a platform for electronic media broadcast.² Reuters Institute’s Digital News Report 2024³ states:

- *News use across online platforms is fragmenting, with six networks now reaching at least 10% of our respondents, compared with just two a decade ago. YouTube is used for news by almost a third (31%) of our global sample each week, WhatsApp by around a fifth (21%), while TikTok (13%) has overtaken Twitter (10%), now rebranded X, for the first time. Although the platform mix is shifting, the majority continue to identify platforms including social media, search, or aggregators as their main gateway to online news.*
- *Concern about what is real and what is fake on the internet when it comes to online news has risen by 3 percentage points in the last year with around six in ten (59%) saying they are concerned.*
- *Worries about how to distinguish between trustworthy and untrustworthy content in online platforms is highest for TikTok and X when compared with other online networks.*
- *As publishers embrace the use of AI, there is widespread suspicion about how it might be used, especially for ‘hard’ news stories such as politics or war.*

1 The State of Mobile Internet Connectivity 2024, by GSMA, page 4-5 of 91, available at:

<https://www.gsma.com/r/wp-content/uploads/2024/10/The-State-of-Mobile-Internet-Connectivity-Report-2024.pdf>

2 Digital Media Regulatory Landscape in Pakistan 2022 by MMFD, page 5 of 20: <https://mediamatters.pk/wp-content/uploads/2022/10/Digital-Media-Regulatory-Landscape-in-Pakistan.pdf>

3 Reuters Institute’s Digital News Report 2024, page 10 & 11 of 167: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2024-06/RISJ_DNR_2024_Digital_v10%20lr.pdf

There is more comfort with the use of AI in behind-the-scenes tasks such as transcription and translation; in supporting rather than replacing journalists.

According to Statista – an online global data and business intelligence platform – Pakistan’s digital media market is experiencing rapid growth, with an increasing number of internet users and a surge in online content consumption. Digital media market in Pakistan is expected to witness a substantial growth in the coming years. By 2024, the projected revenue in digital media market in Pakistan is estimated to reach US\$689.30m.⁴

With 142.3 million fixed broadband subscribers and 139 million mobile broadband subscribers⁵, Pakistan is the 7th-largest population of internet users in the world.⁶ As per the estimates, Pakistan has around 57.63 million Facebook users, above 66.1 million YouTube users, 62.1 million Tik-Tokers, and 52.32 million WhatsApp users. Netflix, Amazon etc., are among the popular entertainment platforms. Most of the existing news media houses in Pakistan have started their digital new platforms as well.⁷

Moreover, there is a large number of non-legacy digital news media platforms including YouTubers and individual content producers in Pakistan. Out of these hundreds of digital media outlets, over 35 non-legacy independent digital media platforms in Pakistan have formed the Digital Media Alliance of Pakistan (DigiMAP) aimed at coordinating visibility and voice for this emerging and burgeoning ecosystem of public interest journalism practitioners.⁸

However, Freedom on the Net (FOTN) 2024 of Freedom House notes that global internet freedom has declined for 14th consecutive year. In three-quarters of the countries covered by FOTN, internet users faced arrest for nonviolent expression. Internet shutdowns and reprisals for online speech created even more perilous environments for people affected by several major armed conflicts around the world.⁹

1.1.2 Tech Sector

Pakistan is host to the third-largest number of freelancers working on the most popular web platforms for contractual jobs. Pakistan’s current freelance market consists of

⁴ Statista, accessed on December 17, 2024: <https://www.statista.com/outlook/dmo/digital-media/pakistan>

⁵ PTA website, accessed on December 17, 2024: <https://www.pta.gov.pk/category/telecom-indicators>

⁶ Statista, accessed on December 17, 2024: <https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/>

⁷ Pakistan Broadcasters Association (PBA), Digital Publishers, accessed on December 17, 2024: <https://d.pba.org.pk/textPage.asp?pageID=13>

⁸ Digital Media Alliance of Pakistan (DigiMAP), About US, accessed on December 17, 2024: <https://www.digimap.pk/about-digimap/>

⁹ Freedom on the Net 2024, the Struggle for Trust Online, published by Freedom House, available at: <https://freedom-house.org/report/freedom-net/2024/struggle-trust-online#the-struggle-for-trust-online>

more than one million individuals working in various specialized fields. Various reports from different sources have ranked the country quite high in terms of the growth of freelancing individuals as the industry can offer lucrative earnings at times. A few years ago, Pakistan's Information Technology (IT) industry Report stated that country's "IT industry is a well established destination in the global IT industry for outsourcing and investment."¹⁰

Pakistani IT companies have expertise in different IT services including high end, enterprise grade software development, systems integration, mobile apps, gaming, animation, consulting and Business Process Outsourcing (BPO) services such as telemarketing, technical support, medical transcription and billing.¹¹ Therefore, Pakistan's exports of IT grew by 47.4 percent to cross the \$2 billion mark for the first time in the country's history in FY2021. In absolute terms, the IT exports reached \$2.12 billion in 2020-21 as against \$1.44 billion in the preceding year.¹²

Pakistani startups raised almost \$277 million in the first half of 2022, surging 135% from \$117.6M over the same period of 2021. The number of deals also rose to 43, from 34. City-wise, Karachi topped the charts by a margin: \$90.9M across 19 deals, putting its share in total funding and deals at 87.6% and 81.8%, respectively. Meanwhile, Lahore raised just \$1M in a single round (24Seven.pk), the lowest total since Q1-2021. Meanwhile, only one deal each was raised by female-founded and co-founded startups: meqlQ's \$1.8M and Outclass's \$500,000.¹³

The ongoing growth of Pakistan's technology ecosystem is not entirely unexpected. Pakistan is a young country with a growing middle class. Sixty-four percent of the population is below the age of thirty, an additional 2.5 million middle-income households are expected to be established by 2025.¹⁴ In Pakistan, cellular subscribers have increased by four times in the three years between 2022 and 2024.¹⁵

Moreover, the improving security situation, increased mobile connectivity, and enabling policies implemented by regulators have transformed the technology sector. All of this means that the majority of the country's population is not only digitally native but also

10 Pakistan's IT industry Report 2020, page 9 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

11 Pakistan's IT industry Report 2020, page 9 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

12 Govt eyes \$3bln from freelancing IT exports by 2024, <https://www.thenews.com.pk/print/887910-govt-eyes-3bln-from-freelancing-it-exports-by-2024>

13 Startups raise \$104M amid VC funding slowdown, Data Darbar: <https://insights.datadarbar.io/startups-raise-104m-amid-vc-funding-slowdown/>

14 State of Pakistan's Technology Landscape and Startup Economy, page 1 & 2 of 12: <https://www.atlanticcouncil.org/wp-content/uploads/2022/09/State-of-Pakistans-Technology-Landscape-and-Startup-Economy.pdf>

15 Starting up: Unlocking entrepreneurship in Pakistan, page 10 of 32: <https://www.mckinsey.com/~media/mckinsey/featured%20insights/middle%20east%20and%20africa/pakistans%20start%20up%20landscape%20three%20ways%20to%20energize%20entrepreneurship/starting-up-unlocking-entrepreneurship-in-pakistan.pdf>

has the technical skills to develop and export technology to the world.¹⁶

Earlier, in 2020, Pakistan's IT industry Report claimed that "[o]ver the last 5 years, IT export remittances have increased by 137% at Compound Annual Growth Rate (CAGR) of 18.85%.¹⁷ Already, IT industry is among the top 5 net exporters of the country with the highest net exports in the services industries.¹⁸ The report also mentioned that Pakistan's IT & ITes-BPO exports in 2020 were estimated to exceed US\$5 billion, according to industry analysts." Furthermore, "Pakistan was ranked 5th most financially attractive location in the world for offshore services, according to A.T. Kearney's Global Services Location Index 2019."¹⁹

The report noted that, by 2020, "[t]here are more than 10,000 IT & ITes companies registered with Securities and Exchange Commission of Pakistan (SECP) comprising of both domestic and export-oriented enterprises. There [were] 500,000+ English-speaking IT & BPO professionals with expertise in current and emerging IT products and technologies, and over 25,000 IT graduates and engineers [were] being produced each year. The number of IT companies [was] expected to surge with the rise of entrepreneurship in the younger population of the country."²⁰

"The IT Industry in Pakistan comprises Small and Medium Enterprises (SMEs). For this reason, majority of the companies registered with Securities and Exchange Commission of Pakistan (SECP) are private limited companies, single member companies accounting for 98% of registrations with SECP (single member companies 2,100, private limited companies: 8,691)."²¹ "By 2020, in five National Incubation Centers (NICs) (Islamabad, Lahore, Peshawar, Karachi & Quetta) 440+ promising Startups had been inducted."²²

Digital Progress and Trends Report 2023 of the World Bank Group notes that Pakistan (30% growth) is among those countries that exported more than US\$1 billion in IT services, Indonesia achieved a whopping 41 percent annual growth, followed by 30 percent in Pakistan, 28 percent in Türkiye, 26 percent in Brazil, 23 percent in Serbia, 21

16 State of Pakistan's Technology Landscape and Startup Economy, page 1 & 2 of 12: <https://www.atlanticcouncil.org/wp-content/uploads/2022/09/State-of-Pakistans-Technology-Landscape-and-Startup-Economy.pdf>

17 Pakistan's IT industry Report 2020, page 7 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

18 Pakistan's IT industry Report 2020, page 8 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

19 Pakistan's IT industry Report 2020, page 7 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

20 Pakistan's IT industry Report 2020, page 7 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

21 Pakistan's IT industry Report 2020, page 12 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

22 Pakistan's IT industry Report 2020, page 19 of 30: <https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%27s%20IT%20Industry%20Report-Printer.pdf>

percent in Bulgaria and Ukraine, and 16 percent in China, Costa Rica, and India.²³

The government has formulated several policies and strategic plans relating to digital and cyberspace during this period. These actions include, but not limited to, the following:

- Digital Committee for the Digital Nation Pakistan initiative;
- Digital Nation Pakistan Act, 2025
- Cyber Security Strategy for Pakistan's Telecom Sector;
- The National Cyber Security Policy, 2021;
- Cyber Vigilance Division (CVD); and
- [Standard] Operating Procedures (SOPs) for handling complaints and disposing of unlawful content;

1.2 Purpose of the Report

All these developments require a comprehensive review and analysis to understand their impact on freedom of expression, right to information, digital rights, and online free speech. Therefore, this volume aim at producing research-based resource to advocate for modernizing legal framework keeping in view digitalization of media and freedom of expression space in Pakistan.

1.3 Scope of the Research

The research will discuss “intent” versus “application” of laws and administrative actions and study fact (technical side) and impact (analytical view) of the recent media-legal developments.

1.4 Framework of Analysis

While doing this review, the following key aspects will be used as guiding principles:

- Freedom of expression vs censorship (Online freedom of expression vs offline freedom of expression)
 - Journalists' safety
 - Privacy vs surveillance
 - Right to information / transparency vs secrecy
 - Information disorder / disinformation
-

This volume will cover following developments related to media (conventional and digital) in Pakistan since 2016:

- Issues and challenges (executive actions etc.)
 - Legal and constitutional framework
 - International obligations
 - Jurisprudence / related case law / judicial interpretation
-



CHAPTER 2

FREEDOM OF EXPRESSION VS CENSORSHIP (ONLINE VS OFFLINE)

2.1 Issues and Challenges (executive actions, etc.)

Freedom of expression is not merely one of the fundamental human rights but is also regarded as an essential and integral part of almost every human rights. The most significant rationale and manifestation of this right has appeared in the context individuals' response against the administrative and arbitrary prerogative of the government. The right to freedom of expression has deep historical roots, evolving through political philosophy, national Constitutions, and international legal frameworks. Philosophers such as John Milton²⁴ and John Stuart Mill²⁵ argued for free speech as essential to democracy, progress, and truth-seeking.

Reporters Sans Frontiers (RSF)'s Press Freedom Index (2024) ranks Pakistan at number 152 out of 180 countries. In 2023, Pakistan stood at number 150 out of 180 countries in this index.²⁶ Year 2022 was the worst for Pakistan when its ranking dropped by 12 points – from 145 in 2021 to 157.²⁷ The Global Impunity Index the Committee to Protect Journalists (2023) puts Pakistan among the top most dangerous countries in the world for journalists during past ten years.²⁸ The International Federation of Journalists (IFJ)'s confirms that [a]mid the volatility of the political mire, media freedoms continued to be tested on numerous fronts in Pakistan.²⁹

Pakistan scored only 35 out of 100 points in the Freedom in the World Report 2024, declaring the country as partially free in exercise of political and civil rights.³⁰ In 'FOTN 2024 Report' Pakistan has secured only 27 out of 100 points. This means that country's Internet is "not free".³¹ The Amnesty International (2023) reports that "in Pakistan, journalists, human rights defenders and critics of the government and military establishment were among those subjected to arbitrary arrest and enforced disappearance."³²

The US State Department's Country Report on Human Rights (2023) highlights that [m]edia organizations generally engaged in self-censorship, especially in reporting news regarding the military, religious extremism, and abuse of blasphemy laws. The government used a systematic, nationwide, content-monitoring and -filtering system

24 See general. Milton, John. Areopagitica, 1644. Vol. 1. 1868.

25 See also, Mill, John Stuart. "On liberty." (1885).

26 Reporters without Borders – Pakistan Report 2024: <https://rsf.org/en/country/pakistan>

27 RSF Global Press Freedom Index 2022: <https://rsf.org/en/index?year=2022>

28 Committee to Protect Journalist (CPJ) Global Impunity Index 2024: https://cpj.org/wp-content/uploads/2022/10/CPJ_2022-Global-Impunity-Index.pdf

29 IFJ (2024), South Asia Press Freedom Report, Artificial Intelligence: the fight to save media and democracy, IFJ, available at: <https://samsn.ifj.org/SAPFR23-24/>

30 Freedom House, Freedom in the World Report 2024, available at: <https://freedomhouse.org/country/pakistan/freedom-world/2024>

31 Freedom House, Freedom on the Net Report 2024: <https://freedomhouse.org/country/pakistan/freedom-net/2024>

32 Amnesty International Report (2023), page 42 of 417, para 2, available at: <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/pakistan/report-pakistan/>

to restrict or block “unlawful” content, including material it deemed un-Islamic, pornographic, or critical of the state or military forces.³³ Similarly, HRCP’s Annual State of Human Rights Report (2023) notes that [though] Pakistan has improved its position on the World Press Freedom Index. However, journalists continued to report censorship and self-censorship through the year.³⁴

Earlier in 2020, Media Matter for Democracy (MMfD), in its report on freedom of expression, found that journalists are frequently subjected to threats, intimidation, and attacks and there is widespread impunity afforded to the perpetrators of these threats and attacks. Similarly, the report mentioned that there is strong perception that Internet users are subjected largely to harassment, hate speech, coordinated digital attacks, and other forms of cyber crimes for the online expression of their opinions. [Therefore], Internet users avoid sharing opinions on topics, such as political, social, and religious issues, due to the fear of negative consequences.³⁵

Pakistan Freedom of Expression and Media Report 2024 of Freedom Network (2024) finds that [there is a] reduced tolerance for online dissent, especially stemming from political activity and free speech by citizens and journalists. [This has resulted in] shutting down mobile networks on election day [and] throttling of internet access. [There was] forced suspension of a popular key social media platform known as a dissent medium, and a raft of attacks and harassment of journalists and bloggers, including the murder of four journalists. [this has] significantly eroded the parameters of general freedom of expression in Pakistan.³⁶

Rashid (2024) adds that [d]espite constitutional guarantee of free speech, political and cultural factors have significantly restricted this right in Pakistan. Press freedom has been both bolstered and hindered by landmark court decisions. Societal conservatism and volatility have contributed to a rise in self-censorship.³⁷

33 US State Department (2023), Country Reports on Human Rights Practices: Pakistan, Section 2. Respect for Civil Liberties, available at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/pakistan/>

34 HRCP (2023), Annual State of Human Rights Report (2023), Page 15 of 321 – Key Issues: Freedom of expression, available at: <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2024-State-of-human-rights-in-2023-EN.pdf>,

35 MMfD (2020), Pakistan Freedom of Expression Report (2020), Page 3 of 63, available at: <https://www.cpd-pakistan.org/wp-content/uploads/2021/04/Pakistan-Freedom-of-Expression-Report-2020.pdf>

36 Freedom Network (2024), Pakistan Freedom of Expression and Media Report 2024: Erosion of free speech: The silencing of citizens, political parties and media, page 6 of 49, published by Freedom Network, available at: <https://www.fnepk.org/wp-content/uploads/2024/05/FINAL-MAY-3-Report-PDF.pdf>

37 Rashid (2024), Freedom of Speech and Expression in Pakistan, available at: https://www.researchgate.net/publication/380850368_Freedom_of_Speech_and_Expression_in_Pakistan

2.2 Freedom of Expression – Constitutional and Legal Framework

2.2.1 Constitutional Framework

Alam (2023) states that, in Pakistan, freedom of expression as a constitutional principle was first incorporated in the Objectives Resolution of 1949, which is now part of the Constitution of Pakistan as its preamble. The preamble states:

"Wherein shall be guaranteed fundamental rights, including...freedom of thought, expression...subject to law and public morality..."

Similarly, Article 19 of the Constitution of Pakistan, 1973 guarantees the right to freedom of expression. However, this right is *"subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence."*

Nevertheless, a plain reading of Article 19 of the constitution shows that this article gives right to freedom of expression in its first part and takes it away in its second part. It does so through attaching subjective and abstract notions like "glory of Islam," "integrity of Pakistan," "friendly relations with foreign states," "decency or morality," and "contempt of court" as "reasonable restrictions."

Alam (2023) wrote that [t]hese abstract notions become problematic and unfair when the state or vested interests justify the Pakistan Penal Code's (PPC) provisions defining 'offences relating to religion' as reasonable restriction in the "interest of glory of Islam" or provisions defining offences against "integrity or defence of Pakistan" that include colonial legacy-like Section 124A (sedition) as a reasonable restriction to protect "integrity or defence of Pakistan." Moreover, Security of Pakistan as defined in Article 260 of the constitution includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan *but shall not include public safety*.

2.2.2 Legal Framework

While the digital news media market in Pakistan is expanding since 2016, the State has introduced a number of legal, regulatory and administrative actions for control, governance and regulation of the sector. Following is a brief overview of these developments.

- (1) **The Prevention of Electronic Crimes Act, 2016** ("the PECA") was the first legislation on internet governance and online content regulation.³⁸ Earlier,

³⁸ The Prevention of Electronic Crimes Act, 2016 (ACT No. XL of 2016), available at: <https://nacta.gov.pk/wp-content/uploads/2017/08/Prevention-of-Electronic-Crimes-Act-2016.pdf>

a few selected provisions of the Telecommunication (re-Organization) Act, 1996 and the Electronic Transactions Ordinance, 2002 were in use to control / manage online content / traffic.

(2)

The PECA aimed to prevent electronic crimes in Pakistan. While defining several information, data and technology related terms, the Act also defines various online contents related offences. These include: “dishonest intent”, “[online] glorification of offences”, “cyber terrorism”, “hate speech”, “offences related to dignity and modesty of natural persons”, and “child pornography”. Beside covering electronic crimes electronic forgery and electronic fraud, tampering with communication equipment, unauthorised interception, the Act also defines the specialized kinds of cybercrimes such as cyber stalking, spamming, and spoofing.

Under its section 37, the Act empowers the PTA “to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission or incitement of an offence under this Act”.

The Act (section 39) provides investigation and prosecution process for these crimes and empowers the trial court (special court established under section 44 of the Act) to allow investigation officer / authorised office to “collect or record such information in real-time” for the purpose of any specific criminal investigation. The Act (section 42) also enables the Federal Government to extend cooperation to any foreign government, 24 x 7 network, any foreign agency or any international organization or agency for the purposes of investigations or proceedings concerning offences related to information systems, electronic communication or data, etc.

In 2018, the Federal Government notified the Prevention of Electronic Crimes Investigation Rules, 2018. In 2021, the Removal and Blocking of Unlawful Content (Procedure, Oversight and Safeguarding) Rule, 2021 were notified and, in 2023, the CERT Rules 2023 were introduced.

In 2023, the Parliament passed the **Criminal Law (Amendment) 2023** to cover online crimes relating children and women.³⁹ These crimes include: online grooming, solicitation and cyber enticement; Commercial sexual

39 Criminal Laws (Amendment) Act, 2023 (ACT No, XXXVIT of 2023), available at: https://www.na.gov.pk/uploads/documents/64f840c325916_768.pdf

exploitation of children; Use of information system for kidnapping, abduction or trafficking of minor; and Cyberbullying. While the Amendment allows the court to grant physical remand of an accused up to 30 days (section 30A), it requires in-camera trial of offences against minors (section 30C).

Federal Government, in April 2024, notified the National Cyber Crimes Investigation Agency (Establishment, Powers and Functions) Rules, 2024. The purpose of establishment of this agency was to transfer Cyber Crimes Wing and National Response Centre for Cyber Crime of the Federal Investigation Agency (FIA) to a separate body. However, in December 2024, the government put an end to the National Cyber Crimes Investigation Agency (NCCIA) and shifted the powers to investigate and prosecute cybercrimes back to the FIA.⁴⁰

The Parliament, in January 2025, passed the **Prevention of Electronic Crimes (Amendment) Act, 2025**.⁴¹ The Amendment (section 2A) provides for the establishment of the Social Media Protection and Regulatory Authority. The Authority (section 2D) shall comprise of a chairperson and eight other members including: Secretary Ministry of Interior, Chairman PEMRA and Chairman PTA); and five government-appointed private members – a journalist, a software engineer, an advocate, a social media professional and a private sector IT entrepreneur. The Authority (section 2B) is empowered to undertake several functions, including the following:

- *ensure online safety and rights of persons on social media platforms from any kind of harm;*
- *regulate the unlawful or offensive content on the social media platforms accessible from Pakistan;*
- *regulate enlistment of social media platforms;*
- *grant, renew, refuse, suspend and revoke enlistment of social media platform;*
- *to partially or fully blocking social media platform if it fails to comply with the provisions under this Act until the compliance is made;*
- *proceed on applications made on any contravention under this Act and take actions accordingly;*
- *issue directions to the relevant authorities to block or remove the unlawful or offensive content for the reasons to be recorded in writing for a period of thirty days; and*
- *initiate action on any contravention of the provisions of this Act or rules made thereunder on its own motion or on receipt of an application.*

⁴⁰ Dawn.com, accessed on December 17, 2024; <https://www.dawn.com/news/1878233>

⁴¹ The Prevention of Electronic Crimes (Amendment) Act, 2025 (ACT No. II of 2025), available at: https://www.senate.gov.pk/uploads/documents/1738226500_897.pdf

The Amendment (section 2Q) provides for the enlistment of social media platform with the Authority. Social media platform is defined (section 2 xxviiiib) as:

“(a) any person that owns, provides or manages online information system for provision of social media or social network service; or

(b) a website, application or mobile web application, platform or communication channel and any other such application and service that permits a person to become a registered user, establish an account, or create a public profile for the primary purpose of allowing the user to post or share user-generated content through such an account or profile or enables one or more users to generate content that can be viewed, posted or shared by other users of such platform but shall not include the licensees of Pakistan Telecommunication Authority.”

The Amendment (section 2R) also authorises the Authority to issue directions to a social media platform for removal or blocking of “Unlawful or offensive online content” if it:

(a) is against the ideology of Pakistan, etc.;

(b) incites the public to violate the law, take the law in own hands, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions;

(c) incites public or section of public to cause damage to governmental or private property;

(d) coerce or intimidate public or section of public and thereby preventing them from carrying on their lawful trade and disrupts civic life;

(e) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

(f) contains anything obscene or pornographic in contravention of any applicable law;

(g) is known to be fake, or false or there exist sufficient reasons to believe that the same may be fake or false beyond a reasonable doubt;

(h) contains aspersions against any person including members of Judiciary; Armed Forces, Majlis-e-Shoora (Parliament) or a Provincial Assembly; or

(i) promotes and encourages terrorism and other forms of violence against the State or its institutions.

The amendment also prohibits social media streaming / online reporting of expunged portions of the proceedings National Assembly and Senate.

Besides, the Amendment (section 2T) empowers the Federal Government to constitute Social Media Complaint Council to receive and process complaints made by persons, organizations and general public against violation of any provision of this Act as may be prescribed by regulations. Furthermore, the Amendment (section 2V) authorises the Federal Government to establish Social Media Protection Tribunals to hear appeals against the decision of the Authority (section 2W(2)). Moreover, the Amendment makes the NCCIA, de-notified in December 2024, part of the Act through section 29.

Digital Right Foundation (DRF - 2025) argues that the PECA Amendment 2025 provides overbroad and vague terms like “aspersions”, “complainant” and “person”. DRF questions the expansion of scope of term “social media platform.”⁴² Stakeholders have questioned several other provisions of the Amendment such as: Establishment, Powers, and Composition of the Social Media Protection and Regulatory Authority; Definition of ‘Unlawful and offensive Content’; Penalty for Fake or False information; Appointment of Social Media Complaint Council and Social Media Protection Tribunal; and Unbridled powers of the Federal Government.⁴³ “Its section 20 has been used to target individuals critical of the authorities” (Clooney Foundation – 2023).⁴⁴

IRADA(2021) highlights that “the [PECA] law has been the subject of concerns regarding the violation of digital rights, including the freedom of expression and freedom of the press.”⁴⁵ Alam, Rehmat & Naeem (2021) revealed that digital media freedoms were threatened in particular by the federal government’s move to enforce controversial and restrictive rules to regulate online content. The report also questioned the information ministry’s proposal to form a centralized media regulatory body that would conduct licensing, registration and content regulation of all types of media, including digital and social media.⁴⁶

42 DRF (2025), The Prevention of Electronic Crimes (Amendment) Act 2025: Analysis and Recommendations, available at: <https://digitalrightsfoundation.pk/wp-content/uploads/2025/01/The-Prevention-of-Electronic-Crimes-Amendment-Act-2025-DRF-Analysis-and-Recommendations.pdf>

43 AIC (2025), AIC Media Statement Amendments to the Prevention of Electronic Crimes Act (PECA), available at: https://aicasia.org/policy-advocacy/?sf_s=PECA, RISL (2025) Amendments to The Prevention Of Electronic Crimes Act, 2016: An Introduction, available at: <https://rsilpak.org/2025/2025-amendments-to-the-prevention-of-electronic-crimes-act-2016-an-introduction/>, HRW (2025), Pakistan: Repeal Amendment to Draconian Cyber Law, available at: <https://www.hrw.org/news/2025/02/03/pakistan-repeal-amendment-draconian-cyber-law>

44 Clooney Foundation Report (2023), Section 20 of Pakistan’s Prevention of Electronic Crimes Act: Urgent Reforms Needed, page 6 of 21, Published by Clooney Foundation for Justice, available at: https://cfj.org/wp-content/uploads/2023/10/Pakistan_PECA-Report_September-2023.pdf

45 IRADA (2021), Pakistan’s PECA Problem: curbing speech, not crime, page 01 of 33, published by IRADA, available at: <https://www.iradapk.org/wp-content/uploads/2023/05/PECA-Report.-Published-pdf.pdf>

46 Alam, Rehmat & Naeem (2021), Regulatory Repressions Amid Pandemic: State of Digital Media Freedoms in Pakistan 2021, page 01 of 60, published by IRADA, available at: https://www.iradapk.org/wp-content/uploads/2023/05/Report_State-of-Digital-Media-Freedom-in-Pakistan-2021.pdf

- (3) The Parliament, in 2023, passed the **PEMRA (Amendment) Act 2023**.⁴⁷ The Amendment introduces the role of a parliamentary committee in the process for selection of the chairman of the Authority and gives membership to PFUJ in the board of the Authority. The Amendment attempts to define the terms ‘disinformation’ and ‘misinformation’ and empowers the Authority to impose a fine up to ten million rupees for ‘severe violations’ of the PEMRA Ordinance and Article 19 of the Constitution of Pakistan. The Amendment also provide timeframe for payment of ‘dues’ of media workers by their employers.

IRADA (2023) states that “[a]cts such as the PEMRA Amendment Act, 2023 and Official Secrets Amendment Act, 2023 raise concerns about potential infringements on freedom of expression. Cases of journalist arrests involving the FIA raise concerns about press freedom, transparency, and due process.”⁴⁸

- (4) In 2024, Punjab Provincial Assembly passed the **Punjab Defamation Act** to make provisions in respect of defamation.⁴⁹ The Statement of Objective and Reasons of the Bill stated that this Bill “envisages legal protection from false, misleading, and defamatory claims made via print, electronic, and social media against public officials and private citizens. However, the law has several problematic provisions which have direct bearing on freedom of expression and media freedom.

The Act defines “Defamation” as “publication, broadcast or circulation of a false or untrue statement or representation made orally or in writing or visual form either by ordinary form or expression or by electronic or other modern medium, means or devices or through social media or any online or social media website, application or platform, which injures or may have the effect of injuring the reputation of a person or tends to lower him in the estimation of others, or ridicules him, or exposes him to unjust criticism, disliking, contempt or hatred, and such defamation shall also include comments, statements and representations targeted towards certain genders and minorities as contained in section 14 of this Act.”

The Act defines broadcasting” or “broadcast” as “the dissemination of writings, signs, signals, pictures and sounds of all kinds, including any electronic device, intended to be received by the public through social media websites,

⁴⁷ The Pakistan Electronic Media Regulatory (Amendment) Act, 2023 (ACT No LXII of 2023), available at: https://pemra.gov.pk/assets/uploads/legal/PEMRA_Amendment_Act_2023.pdf

⁴⁸ IRADA (2023), Under Siege: Legislative, Judicial and Executive Actions Stifling Freedom of Expression and Right to Information, published by IRADA, available at: <https://www.iradapk.org/wp-content/uploads/2024/01/State-of-indie-Journalism-report-2023.pdf>

⁴⁹ The Punjab Defamation Act, 2024 (ACT II of 2024), available at: https://punjablaws.punjab.gov.pk/en/show_article/UGAFMgAyUWF5Mg--

applications and platforms (including but not limited to Facebook, Instagram, X/twitter, WhatsApp, TikTok etc.), either directly or through the medium of relay stations ..."

According to the Act, "Journalist" is a "person who is professionally or regularly engaged by a newspaper, magazine, news website or other news broadcast medium (whether online or offline), and includes any person who creates and uploads social media news or current affairs content or otherwise has a substantial track record of freelancing for any newspaper, magazine, news website or other news broadcast medium."

The Act gives immunity to the Constitutional Offices from facing any criticism and comments from public as the law has made such criticism an actionable wrong. These Constitutional Offices are:

- *The President, Governor, Chief Justice of Pakistan and Judges of the Supreme Court, Chief Justice and Judges of the Lahore High Court, Prime Minister, leader of the Opposition in National Assembly, Speaker of the National Assembly, Chairman of the Senate, Chief Minister, leader of the Opposition in Provincial Assembly, Speakers of Provincial Assemblies, Chairman and members of Election Commission of Pakistan, the Auditor General of Pakistan, the Chairman, Joint Chiefs of Staff Committee, the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff.*

The Act (section 8) authorises the Punjab Provincial Government, in consultation with the Chief Justice of Lahore High Court, to establish Tribunals to adjudicate matters under this law. The Act (section 2) empowers the Tribunal to award minimum of three million rupees as "General Damages" at the time of granting preliminary decree. Moreover, the Tribunal can also award up to ten (10) times the quantum of the General Damages as "Punitive Damages" for the cases demonstrating malice, bad-faith or repeated conduct by the Defendant.

The Act requires the defendant to seek leave to appeal from the Tribunal to defend against the preliminary decree, issued against him on the application of the claimant. If the leave is not granted, the General Damages awarded with the preliminary decree shall come into effect automatically. The Act (section 12) bars making of comments or statements relating to any proceedings pending before the Tribunal. The Act waives the obligation of claimant to establish his reputation. However, it requires defendant to prove that the statement was not false.

Alam (2024) argued that the Defamation Act is designed to provide blanket immunity to the holders of top offices of the state against justified and true criticism also. He argued that many of the definitions such as “newspaper” “journalist” “editor” are highly problematic. The damages, provided in the law, are highly objectionable, particularly, when the tribunal / court is empowered to award decree to pay minimum three million rupees as General Damages without providing due right of reply the defendant and proper adjudication of the matter.⁵⁰

Furthermore, the law does not recognize two highly important and internationally recognized defences against the claim of defamation: one, tendering proper apology and an offer to publish the same by the defendant; and two, offering to print or publish a contradiction or denial in the same manner and with the same prominence by the defendant. The procedures for appointment of judges for tribunal to adjudicate the cases and adjudication are problematic.⁵¹

- (5) On 29 January 2025, the **Digital Nation Pakistan Act, 2025** got assent of the President of Pakistan, after its passage from the Parliament. The Act aims to facilitate transformation of Pakistan into a digital nation, enabling a digital society, digital economy, and digital governance.⁵² The Act (section 03) provides for establishment of the National Digital Commission, comprising of: Prime Minister of Pakistan; four provincial Chief Ministers; seven federal ministers in-charge for (i) Information Technology, (ii) Planning and Development, (iii) Finance, (iv) Commerce, (v) Interior, (vi) Economic Affairs, and (vii) Information and Broadcast ministries; Chairmen of Federal Board of Revenue (FBR); National Database and Registration Authority (NADRA); Chairman of PTA; Chairman of the Pakistan Digital Authority (to be created through this Act); and Governor State Bank of Pakistan.

Main functions of the Commission (section 05) include: approval of the National Digital Masterplan and its implementation plans, provision of strategic direction and governance to the [Digital Pakistan] Authority, and coordination with all relevant federal and provincial government entities, as well as regulatory bodies, ensuring a unified and collaborative approach to digital transformation across all levels of government. The Act (section 11) also outlines the National Digital Masterplan which “shall be a comprehensive strategic blueprint to transform Pakistan into a digital nation by fostering a digital society, digital economy, and digital governance.”

50 Alam (2024), Punjab’s flawed defamation law, published in The News, available at: <https://www.thenews.com.pk/print/1192866-punjab-s-flawed-defamation-law>

51 ibid

52 Digital Nation Act, 2025 (ACT No. 1 of 2025), as available at: https://www.senate.gov.pk/uploads/documents/1738226419_423.pdf

The Act (section 6) also provides for the establishment of Pakistan Digital Authority consisting of a Chairperson and two additional Members to be appointed by the Prime Minister. Key functions of the Authority include, but not limited to, the following:

- develop, implement, monitor and periodically update the National Digital Masterplan, including sectoral plans and implementation plans, to ensure alignment with, the strategic guidelines of the Commission;
- issue and enforce regulations, guidelines, and standards necessary to implement the Masterplan; facilitate coordination among federal, provincial and local governments, sectoral bodies, regulatory authorities and private stakeholders to ensure alignment with the Masterplan;
- establish a monitoring and evaluation framework for digital transformation projects and programs under the Masterplan and provide regular updates to the Commission on progress, compliance and proposed corrective actions;
- review plans and projects relevant to the Masterplan and recommend their approval to the Commission for public sector entities involving digital components, ensuring strategic alignment with the Masterplan;
- develop and enforce a National Data Strategy and comprehensive data governance framework within government entities and across public and private sectors.

The Act also (section 9) provides for the establishment of Oversight Committee to monitor and evaluate the performance of the Authority, compliance and alignment with the strategic objectives formulated by the Commission and make necessary recommendations to the Commission. This Committee shall consist of: Minister-in-charge of the Information Technology and Telecommunications Division; Secretary Information Technology and Telecommunications Division; Secretary Finance Division; Secretary Planning Division; a representative of the Special Investment Facilitation Council; and four independent members from the private sector with relevant experience.

The experts have criticised the enactment of Digital Nation Pakistan Act 2025. For example, Dar (2025) states that “the Act seems to be motivated by the need to consolidate the government’s ownership and control of the digitalisation process rather than on building on the clarity of the [Digital Pakistan Policy] 2018 and providing appropriate legal frameworks for implementing the digital policy goals already

articulated in it.”⁵³

Abbas et al (2022) write that successive promulgation of laws [relating to freedom of expression] curtail the access to information and add the element of national security in ordinary debates thus throttling the length and breadth of freedom of expression in the region.⁵⁴

2.3 International Obligations

Pakistan, like other states, is bound by various international human rights treaties and conventions that require it to respect and protect the right to freedom of expression and avoid unjust censorship. An overview of primary international legal instruments relevant to Pakistan’s obligations in this area is given below.

Universal Declaration of Human Rights (UDHR) serves as a foundational text in international human rights law. The Declaration provides everyone the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.⁵⁵ The States are, therefore, expected to respect and protect these rights under international law.

Although the UDHR is not legally binding, The Declaration is also regarded as customary international law, to which Pakistan is expected to adhere. Moreover, it has significantly influenced binding treaties like the International Covenant on Civil and Political Rights (ICCPR). The Covenant expressly and comprehensively provides the right to freedom of expression⁵⁶.

According to the ICCPR, everyone shall have the right to hold opinions without interference⁵⁷ and right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers.⁵⁸ However, the Covenant allows restrictions on this freedom only when necessary for the protection of national security, public order, public health, morals, or the rights of others. These restrictions must be provided by law and must be proportionate to the aim pursued. This means that censorship and limitations should not be arbitrary.⁵⁹

53 Dar (2025), Digital Confusion, published by Daily Dawn on March 08, 2025, available at: <https://www.dawn.com/news/1896580>

54 Abbas et al (2022), Comparative Analysis – Digital Media Regulatory Landscape, page 19 of 20, published by MMfD. Available at: <https://mediamatters.pk/wp-content/uploads/2022/10/Digital-Media-Regulatory-Landscape-in-Pakistan.pdf>

55 Universal Declaration of Human Rights, 1948. Article 19.

56 International Covenant on Civil and Political Rights 1966. Article 19.

57 ICCPR, Article 19 (1).

58 Ibid, Article 19 (2).

59 Ibid, Article 19 (3).

Thus, Pakistan is obliged under the ICCPR to allow freedom of expression while ensuring that any limitations or restrictions on speech must be lawful, necessary, and proportionate to achieving the stated aims.

Besides the International legal frameworks, Pakistan is also a member of the South Asian Association for Regional Cooperation (SAARC), which does not have a specific regional human rights Convention like the European Convention on Human Rights (ECHR), but it has endorsed other international instruments related to human rights.

Status of Compliance and Concerns

While international law recognizes freedom of expression, it allows restrictions under conditions including hate speech and incitement to violence⁶⁰, defamation and privacy rights, national security concerns, blasphemy laws and issues like digital censorship, misinformation, and online surveillance have posed new challenges to this right in the modern era.

Pakistan's obligations under international human rights law, particularly the ICCPR, require it to uphold the right to freedom of expression and avoid arbitrary censorship. However, in practice, there are significant challenges and limitations, with concerns about media freedom, the use of censorship laws, and the harassment of journalists. Pakistan must ensure that any restrictions on freedom of expression align with international standards, are based on clear, transparent laws, and are necessary and proportionate to protect legitimate public interests such as national security or public order.

Despite the country's obligations under international law, concerns about freedom of expression and censorship in Pakistan have been raised by international human rights organizations and media watchdogs. These concerns include the censoring of critical reporting, especially concerning government policies and security related actions. Moreover, Pakistan's **blasphemy laws** have been criticized by the liberal quarters for being used to suppress freedom of expression, particularly in cases involving individuals expressing opinions about religion. Journalists in Pakistan, particularly those reporting on sensitive political issues, often face threats, violence, and harassment. This has resulted in self-censorship among media professionals.

Pakistan, being a state party to the Covenant since June 23, 2010, has also accepted to submit its periodical compliance reports to be reviewed by Human Rights Committee (HRC).⁶¹ The country, however, is yet to accept the jurisdiction of the Committee pertaining to individual complaints and state parties' communications. Initially

60 UN's Rabat Plan of Action

61 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=en

Pakistan attached its Reservations on a number of Articles of Covenant including article 19.⁶²

In November 2024, the United Nations HRC, aka Committee on Civil and Political Rights (CCPR), issued its concluding observations on Pakistan's adherence to the ICCPR. The Committee expressed significant concerns regarding the state of freedom of expression in Pakistan and provided several recommendations,⁶³ as analysed below.

The Committee highlighted the misuse of laws such as the PPC and the PECA to criminalize defamation, which can suppress free speech. It recommended that defamation be decriminalized to prevent the stifling of legitimate expression. Concerns were raised about the PEMRA exceeding its mandate by censoring journalists and media outlets. The Committee pointed to the PEMRA Amendment Bill, noting its vague definition of "misinformation," which could be exploited to justify undue censorship.

The committee also noted, despite the enactment of the Protection of Journalists and Media Professionals Act in 2021, the Committee noted its weak implementation. It emphasized the need for establishing the necessary commission to oversee enforcement and called for investigations into threats, harassment, abductions, and violence against journalists and human rights defenders.

It expressed concern over internet blackouts, such as the four-day shutdown during the May 2023 protests, followed by disruptions leading up to the general elections. It urged Pakistan to cease undue measures that restrict online freedom of expression.

The Committee recommended the following measures to Pakistan for an immediate action:

- a. Ensure the right to freedom of expression both online and offline by repealing restrictive legislation and ending undue measures like internet shutdowns.
- b. Establish an independent body to oversee censorship decisions.
- c. Decriminalize defamation and prevent the misuse of sedition and counter-terrorism laws to silence dissent.
- d. Investigate and prosecute cases of enforced disappearances, torture, or killings of journalists and activists, ensuring victims receive reparations.
- e. Guarantee the safety and independence of journalists, human rights defenders, and civil society actors.
- f. Foster a pluralistic media landscape by implementing the Protection of

⁶² https://treaties.un.org/PAGES/ViewDetails.aspx?chapter=4&clang=en&mtmsg_no=IV-4&src=TREATY
"the provisions of Articles 3, 6, 7, 18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws";

⁶³ Human Rights Committee. Concluding Observation on 2nd Periodic Report of Pakistan. November 2024. https://digitallibrary.un.org/record/4068203?utm_source=chatgpt.com&v=pdf

Journalists and Media Professionals Act 2021 and establishing its associated commission.

The CCPR requested that Pakistan provide an update by November 8, 2027⁶⁴, on priority issues, including freedom of expression and the safety of journalists and human rights defenders. The government is yet to report back.

These observations underscore the urgent need for Pakistan to undertake comprehensive reforms to protect and promote freedom of expression, ensuring alignment with its international human rights obligations. It is pertinent to note that freedom of expression is a cornerstone of democratic societies and international human rights law. However, balancing this right with other societal interests remains a dynamic legal challenge, influenced by evolving political, technological, and cultural contexts.

2.4 Jurisprudence / Judicial Interpretation

The period under review also saw development of case law on the matters relating to media and freedom of expression.

In a *Suo Motu* case related to sit-in by a religious group / party, the Supreme Court held⁶⁵:

“Freedom of speech and expression and independence of the media was cherished by the people and guaranteed under the Constitution, however, there is no place in the public to propagate the commission of an offence or to incite people to resort to violence. Broadcasts could not encourage violence, extremism, militancy, or hatred.”

In *Suo Motu* Case regarding Islamabad-Rawalpindi Sit-in / Dharna, the Supreme Court held⁶⁶:

“Overt and covert censorship is unconstitutional and illegal. Nebulous tactics, such as issuing advice to self-censorship, to suppress independent viewpoints, to project prescribed ones, to direct who should be hired by media organizations is also illegal.

The Court further held⁶⁷:

“Issuing an edict or fatwa, which harms another or puts another in harm’s way, must be criminally prosecuted under the PPC, the Anti-Terrorism Act, 1997, and / or the Prevention of Electronic Crimes Act, 2016.

64 Human Rights Committee. Concluding Observation on 2nd Periodic Report of Pakistan. November 2024. https://digitallibrary.un.org/record/4068203?utm_source=chatgpt.com&v=pdf

65 *Suo Motu* Case No. 7 of 2017, PLD 2018 Supreme Court 72, page 76, para 6

66 *Suo Motu* Case No. 7 of 2017, PLD 2019 Supreme Court, 318, page 347, 354, para 39, 80

67 *Ibid*

In *Abdullah Malik versus Ministry of Information and Broadcasting*, Lahore High Court, held⁶⁸:

"Principle underlying a free, democratic society was that every individual had a right to decide what art he or she wanted or did not want. Similar freedom to create art must also be made available to the artists. Freedom of expression would also apply to artistic work presenting controversial and shocking ideas. Choice, however, remained with the society for rejection of certain expression of art forms that was controversial."

Similarly, Lahore High Court, in *Messrs LEO Communication (Pvt.) Ltd. versus Federation of Pakistan*, explained the nature, object, scope, and contours of fundamental right to freedom of expression. The Court held⁶⁹:

"The right to communicate and receive ideas, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written words, theatre, dance, music, film, through a newspaper, magazine, drama, or book is an essential component of the protected right of freedom of speech."

The Court further held:

"The concept of freedom of media is based on the premise that the widest possible dissemination of information from diverse and antagonistic sources is sine qua non to the welfare of the people."

While explaining nature and extent of fundamental right of freedom of speech and expression, the Court stated:

"The nature and extent of this freedom and fundamental right determines the quality and maturity of democracy in a country. The balance between the fundamental right of freedom of speech and expression on the one hand and public interest on the other hand, defines the outlook, mindset and tolerance of the people of any country."

The Court also attempted to define the term "Public Interest". It wrote⁷⁰:

"Public interest or collective community interest was a basket of various public interests including public morality, public order, public health, national security and foreign policy of the country besides fundamental rights of others. Public interest is general welfare of a populace considered as warranting recognition and protection and something in which the public as a whole had a stake." A thing is said to be in public interest if it contributes to the wellbeing of the general public.

⁶⁸ *Abdullah Malik versus Ministry of Information and Broadcasting*, PLD 2017, Lahore 273, page 286, para 12

⁶⁹ *Messrs LEO Communication (Pvt.) Ltd. versus Federation of Pakistan*, PLD 2017 Lahore 709, page 717-718, para 12-13

⁷⁰ *Messrs LEO Communication (Pvt.) Ltd. versus Federation of Pakistan*, PLD 2017 Lahore 709, page 718, 722, para 14, 18

The Court further mentioned⁷¹:

"[T]here is a thin line between in the public interest and against the public interest. The right balance and equilibrium has to be maintained between the two. For effective evaluation of the existence of public interest, we must filter the subject matter through our preambular constitutional values of democracy, freedom, equality, tolerance, social, political and economic justice, freedom of thought, expression, belief, faith, workshop and association. Efforts must be made to advance the frontiers of freedom by advancing inclusivity, diversity and plurality in our society. In this age of connectivity, the planet is now but a global village and we cannot shut ourselves to ideas, thoughts, art, culture and literature that is all around us."

"With this perspective, reasonable restrictions under the Constitution and prohibitions under the law are to be examined. Further, the restrictions must be substantive, real, proximate, tangible, and immediate and not remote, conjectural or far fetched

Lahore High Court, in Independent Newspapers Corporation versus Federation of Pakistan, while stopping PEMRA from issuing licences for Direct-to-Home (DTH), held⁷²:

"The fundamental right to freedom of speech and expression as enshrined in Article 19 of the Constitution means the right to express one's own convictions and opinions in any form or mode through all available mediums. This fundamental right is the catalyst of a democratic process where all citizens have the right to participate in the affairs of the country and is essential for guaranteeing the rule of law. Participation becomes meaningless where the citizen is not well informed on all sides of the issues, through a variety of opinions and outlooks.

"Freedom of expression and speech requires a free media to disseminate ideas and information through diverse and antagonistic sources. The role of a free media is critical in the democratic process since it is the primary medium through which information, ideologies, ideas and related content is made available to the viewer, which content will ultimately influence public opinion and decision making. In any democratic system it is therefore imperative that the media provide the public with information and the platform through which the freedom of expression can be exercised."

Islamabad High Court, while dealing with the application relating to enforced disappearance of a journalist from Islamabad Capital Territory, in Shahid Akbar Abbasi

⁷¹ Ibid

⁷² Independent Newspapers Corporation versus Federation of Pakistan, PLD 2017 Lahore 289, page 301, para 10

versus the Chief Commissioner Islamabad, held⁷³:

"Freedom of expression reaffirms other fundamental rights. No society can develop, prosper and progress by suppressing freedom of expression and free speech by ignoring impunity of crimes against journalists. Free speech is not confined to speaking but extends to listening to and respecting opinions of others. Suppression of free speech leads to regressive societies, encouraging extremism and eroding rule of law. It inevitably results in chaos and anarchy. Free speech is crucial for bringing about change, progress and prosperity."

In Moulvi Iqbal Haider versus Federation of Pakistan, Sindh High Court, while deciding about the film 'Joyland', held⁷⁴:

"In fact, much in the same way that prejudice to the "glory of Islam" may qualify as a reasonable restriction to freedom of speech and expression enshrined under Article 19 of the Constitution, Section 6 of the [Sindh Motion Picture Act, 2011] specifically envisages such as consideration as a ground for denying certification to a film. Additionally, Section 8 of the Act envisages the very same consideration as a possible ground for Provincial Government to decertify a film. [However], it does not necessarily follow that a film would be prejudicial to the "glory of Islam" merely because its theme or storyline does not strictly conform with the social and cultural norms."

The Court further held⁷⁵:

"Where a cinematic work has passed through the censors, who have examined its content and cleared it for release with an appropriate certification, an individual cannot be allowed to trump that decision through a Court proceeding based on his conception of morality. Indeed, it is not the function of the Court under Article 199 to make a moral judgement so as to curtail the freedom of speech and expression of a filmmaker, as safeguarded under Article 19 of the Constitution."

On the Contrary, the default position of the Court under Article 199 ought to be that of fully safeguarding the fundamental right by giving expansive interpretation to Article 19 as possible, and in the event of a restriction being imposed by the Board or any other authority that may be competent in that regard, testing the reasonableness of that restriction stringently, so as to ensure that the same is "reasonable" in the strictest conceivable sense."

Balochistan High Court, in Muhammad Ullah versus Saadullah, while deciding a constitutional petition relating to a criminal case filed against workers of Pashtoon Tahaffuz Movement (PTM) with the allegation of hateful speeches, order violation,

73 Shahid Akbar Abbasi versus the Chief Commissioner Islamabad, PLD 2021 Islamabad 1, page 5, para 4

74 Moulvi Iqbal Haider versus Federation of Pakistan, PLD 2023 Sindh 182, page 185, para 5

75 Moulvi Iqbal Haider versus Federation of Pakistan, PLD 2023 Sindh 182, page 186, para 8

promulgating, and promoting feelings of hatred amongst different regional groups and communities, held⁷⁶:

"No Doubt, the State has to prevent a person from doing any act to show that such action is expressly prohibited by law but provides the fundamental right to freedom of assembly, association, and speech, provided and protected under the Constitution of Pakistan."

The Court further held⁷⁷:

"Likewise, freedom of speech is protected under Article 19 of the Constitution, which means that every citizen shall have the right to freedom of speech and expression. There shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of glory of Islam or the integrity, security, or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, a commission of, or incitement of an offence."

Lahore High Court, while deciding about the constitutionality of Section 124-A (Sedition) of PPC, in Haroon Farooq versus Federation of Pakistan, held⁷⁸:

"In sum, our constitutional democracy enshrined fundamental rights which are conferred upon people and the most cherished of those rights is the right to freedom of speech and expression. There cannot be an abridgement of speech unless it falls within the strict confines of the exceptions to Article 19 of the Constitution. The doctrine of Trust and role of the Government as a trustee, the structure of constitutional democracy and new branch of IPDs [Institutions for Protection of Constitutional Democracy] conjointly bolster the greater need for free speech. This is of the essence of rule of law and [therefore] more closely to constitutionalism. There is little doubt that section 124-A is in significant tension with constitutionalism and constitutional democracy. We cannot define freedom of speech as freedom to say what is welcome to authority. This is precisely what section 124-A seeks to achieve."

"Thus, the power to restrict free speech and freedom of press is circumscribed and hedged in by the fields of legislation specifically mentioned in Article 19 itself. A law which seeks to suppress freedom of speech and press and does not fall strictly within one of the exceptions in Article 19, fall afoul of it and it ultra vires to that extent."

76 Muhammad Ullah versus Saadullah, PLD 2024 Balochistan 142, page 145-146, para 4-5

77 Ibid

78 Haroon Farooq versus Federation of Pakistan, PLD 2024 Lahore 637, page 664-665, para 52, 54

The Court also held⁷⁹:

“Article 19 and 19-A have to be read together to form a seamless web. Right to freedom of speech is incomplete without freedom of press and which in turn, secure the right to have access to information in all matter of public importance. The Constitution guaranteed freedom of speech of Article 19 and lest its significance be lost, enacted Article 19A to confer a right to have access information in all matters of public importance.”

Furthermore, the Court held⁸⁰:

“The only limitation that can be placed on a free press is one enumerated as exceptions to Article 19 of the Constitution and must be proportionate and no more than is necessary to promote the legitimate objective of the restriction. The offence of sedition in section 124-A travels beyond the limitation placed by Article 19 regarding role of press and its freedoms which must not be abridged on the misplaced notion that the government of the day can suppress political speech at will.”

On the other hand, while adjudicating the matter related to National Accountability Bureau versus Messrs Hudaibya Paper Mills Limited, the Supreme Court stated⁸¹:

“Media should not dilate on a sub judice case, rather should only accurately report the proceedings; however, once a judgement was announced it may be analyzed, evaluated or critiqued.”

In Khalid Aziz vs Pakistan Television, Peshawar High Court stated⁸²:

“Article 19 of the Constitution guaranteed freedom of speech but it also imposed certain restrictions and limitations and did not provide licence to any person to make personal attempts on an individual to disgrace his / her dignity and reputation. Print and electronic media were in no way vested with unfettered liberty and impunity to public and telecast any material which was prejudicial to interest of any person or harmed or caused damage to a reputation, honour, prestige of a person. Author or broadcast agency were not free to telecast anything for promotion of a company or corporation or on instruction of some quarter or according to its desire, but their freedom was subject to moral code of conduct and such reasonable restrictions as may be legitimately imposed under law in public interest and glory of Islam.”

79 Haroon Farooq versus Federation of Pakistan, PLD 2024 Lahore 637, page 666, para 58

80 Haroon Farooq versus Federation of Pakistan, PLD 2024 Lahore 637, page 673, para 69

81 National Accountability Bureau versus Messrs Hudaibya Paper Mills Limited, PLD 2018 Supreme Court 296, page 322, para 40

82 Khalid Aziz vs Pakistan Television, PLD 2017 Peshawar 115, page 129, para 19

Moreover, Islamabad High Court, in *Salman Shahid versus Federation of Pakistan*, held⁸³: (Translated from Urdu)

"The Constitution of Pakistan enshrines and guarantees fundamental rights to its citizens, including the inviolable right to life and the right to live with dignity. This Court is of the considered view that the citizenry of Pakistan cannot effectively avail themselves of their constitutionally guaranteed right to life unless the sanctity and inviolability of the most revered personality, the Holy Prophet Muhammad (Peace and Blessings Be Upon Him), are duly preserved and safeguarded.

Furthermore, Article 19 of the Constitution, while guaranteeing the right to freedom of speech, unequivocally subjects it to reasonable restrictions, including the preservation of the sanctity of Islam. Any act of omission or commission resulting in laxity, dereliction, or non-implementation of these constitutional safeguards constitutes a direct infringement upon the fundamental rights of the citizens of Pakistan, thereby vesting them with an unambiguous and unfettered right to seek relief before this Court."

The Court further held:

"Article 19 of the Constitution, while conferring the right to freedom of expression, concurrently imposes a corresponding duty upon its exercise. The communicative doctrine advanced in Article 19 and other constitutional provisions is inherently grounded in the teachings of the Qur'an, the authentic Hadith, and the noble tenets of the Seerat of the Holy Prophet (Peace and Blessings Be Upon Him). In this regard, the safeguarding of Glory of Islam is unequivocally guaranteed."

The Court also mentioned:

The fundamental duty of the media is to reform the ethical and moral character of the nation, and to lead the country's progress toward the developmental objectives enshrined in the Constitution of Pakistan. The media, as the interpreter of the public aspirations and desires codified in the Constitution, must not only serve as its spokesperson but also remain subservient to the ideological framework and objectives of this State. As a trustee of the nation and its people, the media is obligated to observe its fiduciary responsibilities—a duty of paramount national and constitutional importance. Moreover, its role must be in strict conformity with the moral values and principles incumbent upon the individual, the State, and every other institution."

Islamabad High Court, while deciding a constitutional petition relating to refusal of satellite tv licence due to security non-clearance of applicant in *Shoukat Ali versus Government of Pakistan*, held⁸⁴:

"The rationale for free speech is at least threefold. One, human beings have agency and can distinguish between truth and falsehood. Two, in a marketplace of ideas where all sorts of desirable and undesirable ideas are available, truth will eventually drive out falsity. And three, the standards for enforcing fundamental right to equality, dignity and liberty evolves over time. As dissenters challenge the existing ideas, social consciousness grows, the condition of human existence and rights improve and society progress.

Thus, it is in society's collective interest that the right to dissent be upheld, even though critical ideas might seem unpalatable. It is, therefore, in the state's own interest to tolerate ideas critical of it. Criticism of the state and its policies is a natural outcome of the democratic system of governance and does not produce a national security predicament. National security is a meaningful concept and must not be bandied about in a trivial manner or used as a prop to defeat fundamental rights of citizens, including the right to free speech and information. Further, the security of the state must not be projected by the state itself to be so fragile that critical speech of a level playing field for the media would shake its foundation.

Disagreeable or critical does not fall within the category of speech that is unprotected under Article 19 of the Constitution. The text of Article 19 cannot be used to rob the very freedom it seeks to protect.

The right to freedom of speech as guaranteed by Article 19 of the Constitution is not unconditional. The Constitution itself carves out categories of speech that are unprotected."

The Lahore High Court, in *Munir Ahmed versus Federation of Pakistan*, while deciding about the issuance of No Objection Certificate (NOC) for Aurat March in 2020, held⁸⁵:

"The rights conferred upon the citizens of Pakistan under Articles 15, 16, 17 and 19 [freedom of expression] are subject to any reasonable restrictions imposed by law."

Blasphemy / Religious Freedom

In *Tahir Naqash versus State*, while deciding a matter related to professing and practicing one's religion, the Supreme Court of Pakistan held⁸⁶:

"All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental

84 Shoukat Ali versus Government of Pakistan, PLD 2024 Islamabad 135, page 143, 144, 145 and 153, para 11, 12, 2038(vi)

85 Munir Ahmed versus Federation of Pakistan, PLD 2020 Lahore 528, page 533, para 23

86 Tahir Naqash versus the State, PLD 2022 Supreme Court 385, page 391, para 9 and page 392, para 10

rights under the Constitution including equality of status, freedom of thought, expression, belief, faith, worship subject to law and public morality.”

“To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grains of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic.”

The Court, while reflecting on offence under Section 295-C of the PPC, held⁸⁷:

“[To] constitute an offence under section 295-C of PPC (Use of derogatory remarks, etc., in respect of the Holy Prophet), there must be words spoken or written or by visible representation or any imputation, innuendo or insinuation, direct or indirect, which defiles the sacred name of the Holy Prophet (Peace Be Upon Him). What runs inside the mind of an Ahmadi, while reading the Kalima, does not constitute an offence punishable under section 295-C of PPC, unless there is some overt act on his part that defiles the sacred name of the Holy Prophet (Peace Be Upon Him).”

In *Salamat Mansha Masih versus State*, the Supreme Court of Pakistan, while deciding an application for post-arrest bail in case pertaining to 295-C of PPC (Use of derogatory remarks, etc., in respect of the Holy Prophet), held⁸⁸:

“Preaching of Christianity is not a crime, nor can it be made into one because of the fundamental right ‘to profess, practice and propagate his religion.’”

However, the Court mentioned⁸⁹:

“Irresponsible and sensational broadcasts and publications repeat what allegedly the accused had said or done; those repeating this may themselves be committing the same offence. Offences relating to religion are very serious offences. Therefore, utmost care must be exercised by all concerned that no injustice takes place.”

In *Azhar Abbas Haideri versus Government of Punjab*, Lahore High Court, while deciding a writ petition relating to professing one’s religion, held⁹⁰:

“The Article 20 of the Constitution [of Pakistan] laid down that every citizen shall have the right to profess and propagate his religion. However, this right of religion, professing and propagating thereof is not unbounded and absolute. Rather Article 20 of the Constitution has unequivocally stipulated that exercise of such right is always dependent and contingent on three factors, i.e., subject to law, public order and mortality. The significance of three qualifying criterions can be understood from the fact that from all other Articles of Part-II, Chapter 1 and 2 [of the Constitution,

87 Tahir Naqash versus the State, PLD 2022 Supreme Court 385, page 393-394, para 14

88 Salamat Mansha Masih versus State, PLD 2022 Supreme Court 751, page 758, para 7

89 Salamat Mansha Masih versus State, PLD 2022 Supreme Court 751, page 858, para 8

90 Azhar Abbas Haideri versus Government of Punjab, PLD 2022 Lahore 278, page 282-283, para 7-8

Article 20 is the only one which begins with the phrase “subject to law, public order and mortality.”

“The Qualifier phrase used in the beginning of the Article 20 of the Constitution further laid stress on the point that the given right is guaranteed and available to such extent that does not run contrary or cause prejudice to all these three[factors]. [These factors] strike a balance between individual freedom and collective liberties on the touchstone of mutual respect and forbearance and peace and tranquility.”

Islamabad High Court, in *Maulana Allah Wasaya versus Federation of Pakistan* while deciding about the matter related declaration / oath of being Muslim or non-Muslim in the nomination forms by the Election Act, 2017, held⁹¹:

“It is only in the fitness of things that Qadianis may be referred to as Ghulaman-e-Mirza/Mirzai etc., but not Ahmadis, which term / reference may confuse them with Muslim who believe in the finality of the prophethood of Hazrat Muhammad (PBUH). Qadianis should not be allowed to conceal their identity by having similar names to those of Muslims. [T]herefore, they should be either stopped from using names of ordinary Muslims or in alternative Qadiani, Ghulaman-e-Mirza/Mirzai or Mirza must form part of their names and the mentioned accordingly.”

The Court further held:

“State of Pakistan need to adopt certain procedures evolve scientific measures to know exact number of this minority. It becomes more essential when big number of this minority is concealing real identity and giving false impression of being Muslim.

Furthermore, the Court stated:

“Every citizen of the country has right to know that the person(s) holding the key posts belong to which religious community, the person(s) scheming syllabus for their children profess what religious beliefs, the person(s) formulating their policies tend to hold their beloved Prophet (PBUH) in what esteem, the person(s) believed to be the ambassadors and representatives of their Islamic ideology and interest to the rest of the world as diplomats propagate which ideology, and defender(s) in whose hands the defence of Islamic Republic of Pakistan rests belong to which religion?”

Contempt of Court and Freedom of Expression

In *Suo Motu Contempt Proceedings* against Mr. Daniyal Aziz, Federal Minister, the Supreme Court held⁹²:

“Fair comments about the general working of the Court made in good faith in the public interest and in temperate language without impugning the integrity or impartiality of a Judge would not amount to a contemptuous act. Purpose of

⁹¹ *Maulana Allah Wasaya versus Federation of Pakistan*, PLD 2019 Islamabad 62, page 223, 225, 226 para 76, 78, 81

⁹² *Criminal Original Petition No. 10 of 2018*, PLD 2018 Supreme Court 738, page 748, para 26

contempt proceedings is not to wreck vengeance, or it is never the question of ego or a judge to punish such person but to vindicate honour and dignity of the Court so as to keep and strengthen the confidence of the general public in the judicial system and to keep justice system far from pollution and obstructions."

Similarly, in another *Suo Motu Contempt Proceedings* against Mr. Talal Chaudhry, State Minister, the Supreme Court held⁹³:

"In exercising the Fundamental Right of freedom of speech and freedom of expression, if a citizen impinged upon and transgress the reasonable restrictions of law of contempt of Court, he would make himself culpable and liable to be proceeded against under the law for contempt of court. The rational of imposition of [sic] conditions on freedom of speech and expression as underlined by the Constitution itself is that the citizens while exercising such right have to maintain decency and decorum and[act] not in a manner, which will infringe upon the right of other citizens or transgress the mandate of law in relation to the working of State Institutions."

Furthermore, in the *Contempt Proceedings* against Senator Nihal Hashmi, the Supreme Court held⁹⁴:

"Offending words uttered by the accused in the speech were nothing but an effort to obstruct, interfere with and prejudice the proceedings pending before the Supreme Court and before a Joint Investigation Team. Words uttered by the accused in public were meant to interfere with, obstruct and prejudice the process of law, justice and Supreme Court and administration of law into disrespect, disrepute or hatred within the meanings of S. 3 of the Contempt of Court Ordinance, 2003."

In a *Suo Motu* proceedings regarding discussion in TV talk show about a sub-judice matter, the Supreme Court held⁹⁵:

"It is not uncommon for the media to sensationalize issues of public importance and deduce guilt before any substantive finding has been recorded against the person undergoing trial / investigation / inquiry, and where this result in the mere risk of substantial danger of the judges seized of the matter no longer remaining impartial, the right to fair trial of the person facing trial / investigation is irreparably lost."

The Court explained that:

"Essential element of fair trial was an impartial judiciary, and one could not turn a blind eye to the fact that comment on a sub judice matter in the media or any other widely circulated publication had at least the potential of having an indirect effect on the minds of the judges seized of a matter."

93 Criminal Original Petition No. 19 of 2018, PLD 2018, Supreme Court 773, page 780, para 12

94 Criminal Original Petition No. 154 of 2017, 2018 SCMR 556, page 563-564, para 6

95 *Suo Motu* Case No. 28 of 2018, PLD 2019 Supreme Court 1, page 20-21, para 9-10

The Court highlighted that:

"[W]e deem it expedient that strict guidelines be implemented to prevent any prejudicial comments on pending cases, as this will in no manner take away the freedom of the press / mass media / broadcasters and will only aid in upholding the rule of law and fair and impartial trial in the larger interest of justice."

In *Qazi Faez Isa versus President of Pakistan*, while deciding the fate of presidential reference against Justice Qazi Faez Isa, the Supreme Court, held⁹⁶:

"Under Article 204(2)(b) of the Constitution, the constitutional courts have power to punish any person who scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt. Publicizing a complaint or Reference and the allegations made therein, of which veracity is yet to be determined after inquiry by the Council, definitely tends to bring the Judge into hatred, ridicule and contempt, and thus attracts the provisions of Article 204 of the Constitution and the Contempt of Court Ordinance, 2003."

In a *Suo Motu Case (No. 4 of 2022)* regarding the grant of additional marks to Hafiz-e-Quran while admission in MBBS / BDS degree, the Supreme Court held⁹⁷:

"Constructive criticism serves the interest of the Judiciary as it helps improve its performance. The relationship between the litigant, who is a service-user, and Judiciary, which is the service-provider, should be collaborative with the common goal of improving the service. Forbidding criticism neither serves the interest of the people nor of the Judiciary. The Constitution grants every citizen the fundamental right to freedom of speech and expression and guarantees the freedom of press. Prohibiting the broadcast / broadcast of any content pertaining to conduct of Judges of High Court and Supreme Court is inexplicable. PEMRA's unsolicited media-gagging order brings the Judiciary into disrespect and disrepute as citizens will assume that it has been issued on the direction of Judges, with a view to cover discrepancies, illegalities and / or blemishes. Throating the media violates the Constitution and is unacceptable."

The Court further held⁹⁸:

"Judges adjudicate, and at times hold others to account. Therefore, it would be constitutionally, legally, morally and religiously indefensible to absolve Judges from accountability. PEMRA's complete prohibition to criticize judges offends the Constitution, law, morality and Islam."

96 *Qazi Faez Isa versus President of Pakistan*, PLD 2021, Supreme Court 1, page 256, para 76

97 *Suo Motu Case (No. 4 of 2022)*, PLD 2023 Supreme Court 387, page 396-397, paras 10, 12, 15

98 *Suo Motu Case (No. 4 of 2022)*, PLD 2023 Supreme Court 387, page 399, para 21

While adjudicating a matter relating to the contempt of court, Lahore High Court, in *Sikandar Hameed versus Muhammad Aslam Kamboh*, held⁹⁹:

"Jurisdiction to punish for contempt touches upon two Fundamental Rights of citizens, namely, "right to personal liberty" and "right to freedom of expression". Therefore, the contempt law should be most jealously and carefully applied, and [such] power is to be prudently exercised with the greatest reluctance. [The Court] if finds contempt of Court beyond condonable limits, then strong arm of the law must be used in the name of public interest and public justice."

In the *State versus Dr Firdous Ashiq Awan*, Islamabad High Court, while dealing with the contempt proceedings, held¹⁰⁰:

"Trial outsides the Court in any form which tend to influence the proceedings and determination in a pending matter would attract the offence of criminal contempt if the intent is to obstruct the administration of justice or divert the course of justice" Pre-trial or during or during trial publicity or acts relating to pre judging the outcome of pending proceedings also prejudice the determination of pending matter before the Court. The offence of criminal contempt will be attracted if the likely prejudice is substantial. It is not a condition precedent for the commission of criminal contempt that the alleged act had actually prejudiced determination, but it would be sufficient if the act tends to interfere with the administration of justice."

"The power relating to the law of contempt is applied with great reluctance but the only category of contempt which cannot be ignored is when the act tends to prejudice the determination of a pending matter because it has the effect of infringing the constitutionally guaranteed right of due process."

In *Kulsum Khaliq versus Inspector General of Police*, Islamabad High Court while disposing of a petition to initiate contempt proceedings, held¹⁰¹:

"Judges are entrusted with an onerous duty to serve the people through the fountain of justice, and they are, therefore, not immune from public scrutiny nor criticism. An independent judge would not be influenced nor affected in any other manner because of public criticism. The authority of a judge is not dependent on the words of the Constitution but, rather, rests on public respect and the confidence of the people. The exercise of power of contempt would be justified only if it in the public interest i.e., to protect the rights of the litigants during the proceedings or omission is calculated to interfere with the due administration of justice."

99 *Sikandar Hameed versus Muhammad Aslam Kamboh*, PLD 2020 Lahore 38, page 40, para 1

100 *State versus Dr Firdous Ashiq Awan*, PLD 2020 Islamabad 109, page 126, para 20

101 *Kulsum Khaliq versus Inspector General of Police*, PLD 2022 Islamabad 51, page 53, para 5

Islamabad High Court, in *State versus Imran Ahmed Khan Niazi (Magistrate Zeba case)*, held¹⁰²:

(Justice Athar Minallah): "It is well settled that in contempt proceedings the matter of placing the onus is totally different from a case under criminal law which presumes the innocence of the accused and places the burden on the prosecution to establish the charge against the latter beyond a reasonable doubt. However, in a contempt case, the onus is entirely upon the person charged to prove his innocent."

"It is settled law that taking action against a contemnor or accepting an apology is entirely a matter between the alleged contemnor and the court and thus subject to the latter's satisfaction. The question of tendering an apology would become relevant when the court, upon conclusion of the proceedings, is satisfied that the charge of contempt has been established and that no case is made out to extent the benefit of doubt. The 'satisfaction of the court' is thus the foundational principle in this regard. The apology may not be expressly tendered but the court may be satisfied that its bona fides stand impliedly established by the conduct or written submissions of this contemnor. The 'satisfaction of the court', therefore, cannot be restricted to any particular mode, form or nature of an apology. The court has to be satisfied that the contemnor regrettably acknowledges having committed contempt and such acknowledgement must appear to be bona fide. The court may, therefore, be satisfied even if an unconditional apology has not been tendered."

"The contemnor must not be influenced in any manner to tender an apology in a particular mode or manner because the statute expressly provides that in case of contempt truth shall be a valid defence. The attributes of grace, magnanimity and forgiveness, inherent to the status of a court, are definitely safeguard against conviction and sentencing for contempt when the curative effect of the proceedings becomes obvious."

(Justice Baber Sattar): "The mere fact that an alleged contemnor seeks to explain the context of action that attracts contempt proceedings will not be a basis to conclude that the apology accompanying such explanation and defence must be rejected for lacking bona fide. An apology tendered at the fag-end of judicial proceedings in a contempt matter, where the prospect of a conviction has crystalized would be deemed to be an afterthought and not an expression of "sincere and genuine remorse. However, to impose a requirement of furnishing an unconditional apology or an apology without any explanation or justification would not sit well within the explicit text of section 5(2) of the Ordinance and the explanation provided therein."

"The law of contempt backed by Article 204 of the Constitution and the provision of

the Ordinance reflect that the legislature has determined in its wisdom that speech, unless in temperate language and unless its content does not impute illegal motives to a judge and does not impugn the integrity and impartiality of the judge, would amount to contempt of court."

In *Sultan Ahmed versus Registrar, Balochistan High Court*, Supreme Court of Pakistan held¹⁰³:

"An unqualified apology tendered by the person accused of having committed the contempt of court necessarily means that he admits his guilt and submits the apology in the realization of the fact that he has done a wrong, for which he repents and seeks forgiveness. In cases where the accused tenders an unqualified apology, there remains no need of framing the charge and recording evidence."

Supreme Court of Pakistan, in contempt proceedings against Senator Fesal Vowda on account of his press conference at National Press Club (NPC), Islamabad, on 15.05.2025, held¹⁰⁴:

"The freedom of speech and expression and the freedom of the press, however, are not absolute and unfettered, as Article 19 mentions a few exceptions, including committing of contempt of court. Article 204 of the Constitution describes what constitutes contempt of court."

The Court also mentioned¹⁰⁵:

"[The] right to freedom of speech and expression and freedom of the press in Article 19 does not take precedence over the inviolability of the dignity of persons and the privacy of the home in Article 14, which incidentally is numerically a prior fundamental right. The exhilarating elixir of free speech and media freedom does not permit slandering anyone, including judges and courts."

Moreover, in the above matter (Criminal Petition No. 06 of 2024), the Supreme Court further held¹⁰⁶:

"Disagreement and discord have become all too pervasive, and it has permeated into people's behavior, ideas and beliefs with the quick, easy and widespread dissemination of falsehoods and slander. The legal tool which is used for recompensing the wronged and imposing heavy financial penalties remains underdeveloped and it is effectively stymied in Pakistan. Resultantly, defamation and spreading lies is not visited upon with consequences which may curtail them."

103 Sultan Ahmed versus Registrar, Balochistan High Court, 2023 SCMR 1955, page 1962, para 8

104 Contempt proceedings against Senator Fesal Vowda, Criminal Petition No. 06 of 2024, PLD 2024 Supreme Court 852, page 855, para 3

105 Contempt proceedings against Senator Fesal Vowda, Criminal Petition No. 06 of 2024, PLD 2024 Supreme Court 852, page 858, para 13, 14

106 Contempt proceedings against Senator Fesal Vowda, Criminal Petition No. 06 of 2024, PLD 2024 Supreme Court

1163, page 1166, para 3

2.5 Conclusion

State of freedom of expression in Pakistan has been quite dismal during past ten years. Online space in the country was declared as “not free.” Media adopted self-censorship while reporting on military, religious extremism, and abuse of blasphemy laws. Overall, tolerance for online dissent, especially stemming from political activity and free speech by citizens and journalists, has reduced. Though the Constitution speaks about fundamental freedoms and freedom of expression, it takes the same back through “reasonable restrictions imposed by law” for the notions like “glory of Islam,” “integrity of Pakistan,” “friendly relations with foreign states,” “decency or morality,” and “contempt of court”.

Legal framework governing freedom of expression in Pakistan is marred by a number of problematic laws. Beside the laws enacted before 2016, the PECA, 2016 as well as its amendments in 2023 and 2025, have proved to be highly critical for journalists and information practitioners. In addition, amendment in PEMRA provides fine up to ten million rupees for ‘severe violations’ of the PEMRA Ordinance and Article 19 of the Constitution of Pakistan. Similarly, the Punjab Defamation Act, 2024 defines the term ‘defamation’ in very broad manner and introduces role of executive in appointment tribunals for adjudication of defamation cases. The Act divides citizens into two categories; ordinary citizens and special citizens who hold certain public offices. It provides special treatment to the latter. The Digital Nation Pakistan, 2025 is designed to facilitate transformation of Pakistan into a digital nation, enabling a digital society, digital economy, and digital governance. However, it has been termed as consolidation of government’s ownership and control of the digitalisation process in the country.

Under the International Law, Pakistan is obliged to ensure freedom of expression while ensuring that any limitations or restrictions on speech must be lawful, necessary, and proportionate to achieving the stated aims. However, concerns have been raised about censoring critical reporting and country’s blasphemy law. Moreover, the CCPR issued its concluding observations on Pakistan’s adherence to the ICCPR, particularly about criminalization of defamation under PECA, overreaching of PEMRA and weak / no implementation of journalists protection law.

Jurisprudence of higher judiciary around freedom of expression in Pakistan has a mixed baggage. The perusal of reported judgments show that many judges have taken an expansive and liberal approach while adjudicating about the fundamental right to freedom of expression and speech. The Supreme Court of Pakistan has stated, *“Freedom of speech and expression and independence of the media was cherished by the people and guaranteed under the Constitution ...”* The Court also held that *“overt and covert censorship is unconstitutional and illegal.”*

Lahore High Court recognized that “principle underlying a free, democratic society was that every individual had a right to decide what art he or she wanted or did not want.” Similarly, the Lahore High Court acknowledged that the “right to communicate and receive ideas, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written words, theater, dance, music, film, through a newspaper, magazine, drama, or book is an essential component of the protected right of freedom of speech/”

The Lahore High Court also declared Section 124-A (Sedition) of PPC ultra vires to the Constitution. Islamabad High Court also underlined the importance of freedom of expression and termed that “no society can develop, prosper and progress by suppressing freedom of expression and free speech by ignoring impunity of crimes against journalists.”

Similarly, Balochistan High Court noted that “freedom of speech is protected under Article 19 of the Constitution, which means that every citizen shall have the right to freedom of speech and expression.” The Sindh High Court also stated that “it is not the function of the Court to make a moral judgement so as to curtail the freedom of speech and expression as safeguarded under Article 19 of the Constitution.”

However, many others have taken extremely conservative and narrow approach and emphasized more on the ‘restrictions’ than the freedom provided by Article 19 of the Constitution of Pakistan. For example, the Peshawar High Court stated that “print and electronic media were in no way vested with unfettered liberty and impunity to public and telecast any material which was prejudicial to interest of any person or harmed or caused damage to a reputation, honor, prestige of a person.” Islamabad High Court held that “Article 19 of the Constitution, while guaranteeing the right to freedom of speech, unequivocally subjects it to reasonable restrictions.” The Court also noted that the “right to freedom of speech as guaranteed by Article 19 of the Constitution is not unconditional.”

During the period under review, the Court decided several cases related to the religious freedom and blasphemy. The Supreme Court of Pakistan upheld the rights of religious minorities including freedom of thought, expression, belief, faith and worship. The Lahore High also recognized that “every citizen shall have the right to profess and propagate his religion.” However, the Islamabad High Court took a conservative approach in *Maulana Allah Wasaya versus Federation of Pakistan*, PLD 2019 Islamabad 62 and asked for religious profiling of Ahmadis in Pakistan.

The Supreme Court of Pakistan extensively used the instrument of contempt of court against 'criticism, threat or scandalization of the courts during this period. Three politicians were punished under the contempt of court. The Court asked for "strict guidelines to be implemented to prevent any prejudicial comments on pending cases..." Several politicians, journalists and media persons faced show-cause notices due to their comments and expression.

However, in *Suo Motu Case (No. 4 of 2022)*, the Supreme Court took totally opposite view and said that "forbidding criticism neither serves the interest of the people nor of the Judiciary." Lahore High Court and Islamabad High Court also took a lenient view on the issue contempt of court. Lahore High Court viewed that "the contempt law should be most jealously and carefully applied ..." Islamabad High Court held that "judges are entrusted with an onerous duty to serve the people through the fountain of justice, and they are, therefore, not immune from public scrutiny nor criticism."

Moreover, disagreement exists within the judiciary about recognition of "unconditional apology", extended by a contemnor, as a valid defence in contempt of court cases.



CHAPTER 3

JOURNALIST SAFETY

3.1 Issues and Challenges (executive actions etc.)

Freedom Network's Annual Impunity Report states that 2024 has proved one of the deadliest for journalists in Pakistan. "At least 57 cases of threats and attacks were documented against journalists, other media professionals and media institutions in the 10 months from November 2023 to August 2024 across all territories of Pakistan, including the four provinces, Islamabad, Gilgit-Baltistan and Azad Kashmir. At least 49 cases of violations were reported against journalists and eight against other media professionals (such as citizen journalists and non-editorial employees of news organizations). Women journalists were targeted in at least five of the total 57 violations against journalists in the period under review."¹⁰⁷ The level of impunity of crimes against journalists is quite high as less than 2% cases of crimes against journalists have been tried so far.

Rehmat et al (2022) mention that [t]he situation on the ground is that while Pakistan may have taken the first few right steps denoting forward movement on implementing the UN Plan of Action, the journalists in Pakistan continue to be victims of violence and crimes with near impunity. Even if journalists' safety laws are made and even if civil society finds a way to advance implementation of the UN Action Plan, there are unaccountable forces and actors that hinder the implementation of the UN Plan of Action in Pakistan to its full potential.¹⁰⁸

3.2 Legal and Constitutional Framework

3.2.1 Constitutional Framework¹⁰⁹

Article 4 of the Constitution of Pakistan recognizes right of all individuals to be dealt with in accordance with law. This Article, in its part 2, states, "*no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.*" It also mentions, "*no person shall be prevented from or be hindered in doing that which is not prohibited by law.*"

Furthermore, Article 9 of the Constitution of Pakistan guarantees that no one "*shall be deprived of life or liberty save in accordance with law.*" Moreover, Article 10 provides safeguards to everyone in Pakistan against illegal arrests and detentions. Through Article 10A, the Constitution of Pakistan also guarantees right to fair trial and due

¹⁰⁷ Rehmat (2024), Crime and Punishment in Pakistan's Journalism World: Impunity Report 2024, page 9-10 of 26, published by Freedom Network, available at: <https://www.fnppk.org/wp-content/uploads/2024/10/Freedom-Network-Impunity-Report-2024.pdf>

¹⁰⁸ Rehmat et al. (2022), UN Plan of Action on the Safety of Journalists and the Issue of Impunity in Pakistan (2012-22): A 10-year review of influence and impact, page 11 of 79, published by IRADA, available at: <https://www.iradapk.org/wp-content/uploads/2023/05/UN-Plan-of-Action-Assessment-Report-IRADA-2022.pdf>

¹⁰⁹ Constitution of Pakistan, 1973, available on: <https://www.pakistani.org/pakistan/constitution/part2.ch1.html>

process to everyone one in determination of civil rights and obligations or in criminal charges.

Besides, Article 18 of the Constitution of Pakistan recognizes right of every citizen to *"to enter upon any lawful profession or occupation"* and Article 17 provides right to every citizen *"to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality."* Similarly, Article 25 of the Constitution states that *"[a]ll citizens are equal before law and are entitled to equal protection of law."*

3.2.2 Legal Framework

In 2021, Sindh Provincial Assembly passed Asia's first special law on journalists' safety i.e., the **"Sindh Protection of Journalists and Other Media Practitioners Act, 2021"** in June 2021.¹¹⁰ The Act aims *"to promote, protect and effectively ensure the independence, impartiality, safety, and freedom of expression of journalists and other media practitioners."*¹¹¹ The Act, which was notified in the Official Gazette on August 04, 2021, requires, in section 3, the Government to:

- (i) take effective steps to ensure that every journalist and media practitioner's right to life, safety and security as provided under Article 9 of the Constitution are safeguarded;
- (ii) ensure that effective measures are taken to protect journalists and other media practitioners from acts of violence;
- (iii) take steps to ensure that counter terrorism or security laws are not utilized arbitrarily to hinder the work of journalists and other media practitioners;
- (iv) ensure that journalists and media practitioners can conduct their journalism work in conflict-affected areas without threats, intimidation, harassment, or fear of prosecution.

The Act (section 4) protects journalists and media practitioners against disclosure of professional sources of information, communications, against and correspondence. The Act (section 5) also protects journalists and media practitioners from unlawful or arbitrary restrictions on their ability to perform their work independently, and without undue interference. The Act (section 6) requires 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. Under section 7 of

¹¹⁰ The News International (2021). *PA once again adopts bill for journalists' protection*. The News. <https://www.thenews.com.pk/print/856548-pa-once-again-adopts-bill-for-journalists-protection>

¹¹¹ See Preamble of the Sindh Protection of Journalists and Other Media Practitioners Act, 2021, available on: <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XX%20of%202021.pdf>

the Act, the Government is responsible develop and implement effective strategies for combating impunity for crimes against media. These strategies may include:

- (i) monitoring and conducting investigations into cases reported by journalists and other media practitioners, their families, unions, media associations or civil society organizations working on the protection of life, safety and security of journalists and other media practitioners;
- (ii) coordinating policy and action between relevant government authorities at local, provincial, and federal level;
- (iii) coordinate with relevant stakeholders including civil society organizations, unions, employers, and media industry associations as well as government departments to implement best practices provided for in the United Nations Plan of Action on Safety of Journalists and the Issue of Impunity.

The Act provides for establishment of the “Sindh Commission for the Protection of Journalists and Media Practitioners.” The Commission shall consist of one chairperson, appointed by the Provincial Government. Four provincial secretaries – Secretary of Information Department, Secretary of Home Department, Secretary of Law Department and Secretary of Human Rights Department – shall be ex-officio members of the Commission. In addition to the above, there shall be seven non-official members of the Commission. These members shall be the nominees of: (1) Pakistan Federal Union of Journalists (PFUJ); (2) All Pakistan Newspapers Society (APNS); (3) Council of Pakistan Newspapers Editors (CPNE); (4) Pakistan Broadcasters Association (PBA), (5) Sindh Bar Council; (6) Human Rights Commission of Pakistan (HRCP)]; and (7) APNES. There shall also two Sindh Provincial Assembly members, nominated by the Speaker, part of the Commission.

The Commission (section 14) is responsible to decide the complaints in respect of acts of harassment, sexual harassment, violence, and threats of violence against journalists or media practitioners by any person or groups of persons or public or private institution or authority on the complaint of the aggrieved journalist. The Commission is also empowered to take Suo Motu notice of any attack on journalists or media practitioners. The Commission is required to report to the Government violation of the rights to life and safety of journalists and media practitioners by any person or groups of persons or public or private institution or authority and recommend appropriate course of action against the perpetrators of these violations. The Commission shall provide legal assistance to journalists and media practitioners as well.

Furthermore, the Commission shall create online complaints registration mechanism to provide updates and status of the cases reported to the Commission. The Commission shall also produce annual reports on the State of Safety and Security of

Journalists and Media Practitioners in the Province of Sindh province and submit the same to the Government through Information Department for submitting the same to the Provincial Assembly. Besides, the Act (section 15) requires the 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.

At the federal level, Parliament passed the **Protection of Journalists and Media Professionals Act, 2021** in November 2021. The Act got assent of the President of Pakistan on 1st of December 2021 and became a law. The Act is aimed “to promote, protect and effectively ensure the independence, impartiality, safety and freedom of expression of journalists and media professionals.”¹¹²

The Act (section 3) recognizes the “right to life and protection against ill-treatment” of journalists and media professionals. The law requires the Government “to ensure that effective measures are taken to protect journalists and media professionals against forced or involuntary disappearances, kidnapping, abduction or other methods of coercion.” It also requires the Government to “ensure that journalists and media professionals are allowed to carry out their work in conflict-affected areas within the country, without threats, intimidation, harassment or fear of persecution or targeting.”

The Act (section 4) also acknowledges protection of right to privacy and non-disclosure of sources by the journalists and media professionals. The Act (section 5) guarantees that journalists and media professionals shall not be subject to “any unlawful or arbitrary restrictions on their ability to perform their work independently and without undue interference. The Act (section 7) requires the Government “to take all steps to protect journalists and media professionals from all forms of abuse, violence and exploration through any medium (including electronic communications) at the hands of any person, institution (private or public) or authority.” Under the Act, the Government is responsible to ensure that every journalist, reporter, and media professional is protected against harassment.” The Government (section 11) is responsible to “develop and implement strategies for combating impunity” and “implement best practices provided for in the United Nation Plan of Action on Safety of Journalists and the Issues of Impunity.”

The Act requires the Government to establish the “Commission for the Protection of Journalists and Media Professionals (CPJMP), which shall consist of: a chairperson; one representative, each, of the Federal Ministries of Human Rights and Federal Ministry of Information and Broadcasting; a nominee of Pakistan Bar Council; four nominees of PFUJ; secretary of the NPC; secretary of Parliamentary Reporters Association; and

¹¹² See Preamble of the Protection of Journalists and Media Professionals Act, 2021 (ACT No. XXIII of 2021), available on: https://na.gov.pk/uploads/documents/61b31d5e82a88_380.pdf

secretary of Supreme Court Reporters Association. The Commission is allowed to co-opt any person having demonstrable knowledge of, or practical experience in, matter relating to journalism as a member.

The Commission (section 170) is responsible to: (on a petition or on its own motion) inquire into complaints of threats or acts of torture, killing, violent attacks, forced disappearance, arbitrary detention and harassment or negligence in the prevention of such violations; produce an annual report on the state of media freedom and safety, to be tabled before the Parliament; determine and recommend compensation for affected journalist or legal heirs of deceased journalist; and facilitate provision of legal aid to aggrieved journalists if the circumstances so required through the Legal Aid and Justice Authority. The Act (section 9) requires the Government to introduce “Journalists Welfare Scheme” for training and insurance for the journalists. Under the Journalists Welfare Scheme, media owners are responsible to produce comprehensive, written safety policy and protocol for journalists and media professionals.

Other than these two laws, Government of Punjab (province), in May 2023, constituted a committee, namely: **“Punjab Journalists Protection Coordination Committee”**.¹¹³ The Committee comprises of: (a) Deputy Inspector General (legal), Punjab; Representative of [Federal] Ministry of Information and Broadcasting; President, Lahore Press Club; President, Punjab Union of Journalists; President, PFUJ; Representative of PJSC, Punjab Chapter; Executive Director of Freedom Network; and any other co-opted member(s).

The Committee is empowered to:

- intervene whenever and wherever journalists come under attack in the province;
- facilitate investigation of attacks of the SP level;
- facilitate closer collaboration and cooperation between district police officials and journalists and their representative bodies to report any threat or attack against journalists and other media professional; and
- recommend any actions deemed necessary for protection of journalists to the provincial minister for information;

Nevertheless, Rehmat and Khattak (2023) argue that [p]resence of safety legislation does not equal automatic protection of impunity of crimes against journalists if their enforcement is not pursued as a priority through operationalization and resourcing. Report mentions that [c]rimes against journalists not only actually surged after the enactment of the two laws but, ironically, the highest cases of violations were

¹¹³ The News International (2023), *Punjab forms committee for protection of journalists*, published in The News, available on: <https://www.thenews.com.pk/print/1072997-punjab-forms-committee-for-protection-of-journalists>

in the two regions which had enacted journalists' safety laws for their geographical jurisdictions. The report argues that failure in improving safety of journalists was the fact that the federal government has not operationalized the law since its enactment in 2021.¹¹⁴

Alam (2021) terms the passage of the Protection of Journalists and Media Professionals Act, 2021 as a momentous development. However, he contends that Section 6(1) of the Act imposes a new era of pre-censorship as it requires "journalists and media professionals to 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." Furthermore, 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 Sub-section 3 of Section 6. This subsection in fact threatens that "journalists who fail to fulfil 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.¹¹⁵

3.3 International Obligations

Journalist safety generally comes within the ambit of a broader legal framework which remains applicable related to freedom of expression and to seek receive and impart information. However, the international community has, over the years, developed special mechanisms related to the safety and security of journalists. There are a number of international legal frameworks specifically addressing the safety of journalists, grounded in international human rights law, humanitarian law, and soft law instruments. These frameworks are aimed at ensuring the freedom of press by emphasizing the protection of journalists from violence and impunity for crimes against them.

UDHR establishes the fundamental right to freedom of expression, which includes the right to seek, receive, and impart information. Moreover, the ICCPR protects freedom of expression and right to information along with the right to life¹¹⁶ and prohibition against torture¹¹⁷ which remains applicable for the protection of journalists facing threats. More expressly, the HRC, which has the mandate to ensure the implementation of the Covenant by the States parties, clarifies that states must protect journalists

114 Rehmat and Khattak (2023), Crime and Punishment in Pakistan's Journalism World – one step forward, two steps back, page 6-7 of 34, published by Freedom Network, available at: <https://www.fnpc.org/wp-content/uploads/2023/10/PDF-FI-NAL-Impunity-Report-2023-4.pdf>

115 Alam (2021), One step forward, two steps back? Published in The News on Sunday, available at: <https://www.thenews.com.pk/tns/detail/911884-one-step-forward-two-steps-back>

116 ICCPR, Article 6.

117 Ibid. Article 7.

Journalists and the Issue of Impunity, adopted in 2012 by UNESCO, outlines concrete obligations for member states to ensure the protection of journalists, prevent attacks, and combat impunity for crimes committed against them. Key Obligations for Member States include¹²⁵:

- a. Member states must establish a safe and enabling environment for journalists to work without fear of violence or intimidation. Review and amend defamation, sedition, and anti-terrorism laws that are used to suppress press freedom. It must ensure national security laws do not criminalize legitimate journalistic activities and implement national protection mechanisms for journalists at risk.
- b. Promote awareness campaigns about journalists' rights and the role of free media in democracy. To this end the member states shall conduct training programs for law enforcement, judiciary, and media professionals on protecting journalists.
- c. To ensure protection from online threats and digital safety the states shall address online harassment, surveillance, and cyber threats against journalists. The protection of journalists' digital privacy and sources from unlawful surveillance must also be ensured.
- d. States are required to provide timely and effective protection to journalists under threat, including Rapid Response Mechanisms to establish hotlines and emergency response teams to support journalists facing threats. Moreover, the members are required to create safe houses or relocation programs for journalists under serious risk.
- e. Protection of Female Journalists is paid particular attention and the states are required to implement gender-specific protections for women journalists, who face sexual violence, online abuse, and harassment. They must ensure gender-sensitive investigations into crimes against female journalists.
- f. Ensure that state authorities, including police and military, respect journalists' rights and there shall not be any arbitrary arrests, detentions, and threats against journalists.
- g. One of the core obligations is ensuring accountability for crimes against journalists, such as murders, attacks, enforced disappearances, and threats. It is, therefore, imperative that the authorities must conduct prompt, impartial, and thorough investigations into attacks against journalists.
- h. In order to strengthen prosecutorial mechanisms to bring perpetrators to justice judicial reforms and legal accountability may also be ensured through independent judicial processes to investigate and prosecute crimes. To this end specialized units to handle cases related to journalist safety may be

¹²⁵ UNESCO. Plan of Action on the Safety of Journalists. https://mzv.gov.cz/file/977997/aPRILOHAun_plan_action_safety_en_1_.pdf

introduced.

- i. Finally, to ending impunity fully cooperate with UNESCO's monitoring mechanisms, including reporting on actions taken in response to killings of journalists. The states must adhere to UNESCO's "Impunity Accountability Mechanism" to track the progress of cases.

For a fuller implementation of aforementioned obligations member states are obligated to monitor violations against journalists and report progress to international mechanisms and maintain official statistics on attacks, arrests, and killings of journalists. It is recommended that the states may publicly report on steps taken to prevent and prosecute crimes against journalists and submit regular reports to the UN Human Rights Council's Universal Periodic Review (UPR) on journalist safety. Moreover, a meaningful engagement with journalist unions, press freedom organizations, and human rights groups may help improve the protections.

Status of Compliance and Concerns

Pakistan is legally bound by several international treaties, conventions, and resolutions that establish obligations to protect journalists, prevent attacks, and combat impunity. ICCPR (1966) which was ratified by Pakistan in 2010 while comprehensively providing freedom of expression¹²⁶ protects individuals including journalists from arbitrary killings or extrajudicial executions.¹²⁷ The Covenant also ensures prohibition of torture, physical abuse, enforced disappearances, or intimidation of journalists.¹²⁸ Right to liberty and security and prevention against arbitrary arrests or detention of journalists is also guaranteed.¹²⁹ Accordingly Pakistan is under an obligation to repeal laws that restrict press freedom while stifling scope of journalism.

Secondly, the Convention Against Torture (CAT) 1984 which was also ratified by Pakistan in 2010 prohibits torture, inhumane, or degrading treatment of journalists, including in police custody. Accordingly, the country was required to effectively criminalize torture under domestic law. The subject law in Pakistan¹³⁰ is deficient of investigating allegations of abuse against journalists by security apparatus. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is not ratified by Pakistan but bound by customary international law also protects journalists from abduction or forced disappearances by state or non-state actors. Pakistan is a party to all four Geneva Conventions wherein the prohibitions against the attacks on civilians, including journalists, during non-international armed conflicts is

¹²⁶ ICCPR, Article 19.

¹²⁷ Ibid. Article 6.

¹²⁸ Ibid. Article 7.

¹²⁹ Ibid. Article 9.

¹³⁰ Torture and Custodial Death (Prevention and Punishment) Act, 2022. <https://pakistancode.gov.pk/english/UY-2FqaJw1-apaUY2Fqa-apaUY2Npa5lqaQ%3D%3D-sg-jjjjjjjjjjjjjj>

ensured.¹³¹

UN Plan of Action on the Safety of Journalists & the Issue of Impunity (2012), to which Pakistan is a member specifically requires protection mechanisms for journalists at risk and calls for independent investigations into journalist killing. However, a number of legal barriers such as defamation, sedition, and anti-terrorism laws used to silence journalists (e.g., PEAC, 2016). Intelligence apparatus, militant groups, and political actors have been implicated in journalist harassment, abductions, and killings.

Moreover, weak enforcement, legal restrictions, and high impunity rates undermine compliance. Strengthening national legislation, investigative mechanisms, and judicial accountability is critical for Pakistan to fulfill its international obligations on journalist safety. The key Challenges and Gaps in protection of journalists include high levels of impunity for crimes against journalists and weak enforcement of international frameworks at the national level. The digital threats, surveillance, and online harassment of journalists continue to exist.

While an international legal framework exists to an extent, its implementation remains a major challenge. Strengthening national laws and enforcement mechanisms, coupled with international pressure, is crucial for ensuring journalists' safety.

3.4 Jurisprudence / Judicial Interpretation

Islamabad High Court, while dealing with the application relating to enforced disappearance of a journalist from Islamabad Capital Territory, in *Shahid Akbar Abbasi versus the Chief Commissioner Islamabad*, held¹³²:

"Perception of involvement of the State and its functionaries in crimes committed against a journalist extends the infringement to the fundamental rights of the public-at-large guaranteed under Articles 19 and 19-A of the Constitution. Any such perception, though it may ultimately be established to be wrong, obviously send a message to others that the target or purpose of the crime was to suppress free speech and threaten others from following suit. Nothing impedes the freedom of expression and free speech more than the fear or perception that the State and its functionaries, instead of protecting the fundamental rights guaranteed under Articles 10 and 19-A are involved or complacent in the impunity for crimes against its citizens, particularly those who are engaged in the profession of journalism. Freedom of expression reaffirms other fundamental rights. No society can develop, prosper and progress by suppressing freedom of expression and free speech by ignoring impunity of crimes against journalists."

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See Article 3, Common to all the Four Geneva Conventions of 1977.
Shahid Akbar Abbasi versus the Chief Commissioner Islamabad, PLD 2021 Islamabad 1, page 5, para 4

In *Rana Muhammad Arshad versus Federation of Pakistan*, Islamabad High Court held¹³³:

"Freedom of speech and expression is the most cherished human right and fortifies the other constitutional rights. The threat, whether real or perceived, of direct or indirect censorship because of functions performed by an independent journalist would amount to a breach of the constitutionally guaranteed rights under Articles 19 and 19-A of the Constitution. The duty of the State to protect the independence of the individual journalist and that of the occupation is a constitutional obligation because it is an integral part of Articles 19 and 19-A.

The Court further held:

"It is their [the Federal Government] constitutional duty to dispel any perception of inhibiting, limiting or restricting freedom of the press through abuse of coercive powers by the state functionaries. The Federal Government may consider proposing similar legislation [the Protection of Journalists Act, 2014] having object of providing an effective forum for redressing complaints of journalists, which relate to freedom of press. The Federal Government may also consider meaningful consultation with all stakeholders i.e., All Pakistan Newspapers Association, the Federal Union of Journalists and Council of Pakistan Newspapers Editors etc., regarding dispelling the perception of apprehensions and intimidation of independent journalists and abuse of coercive powers by public functionaries, particularly in relation to exercising powers under the Prevention of Electronic Crimes Act, 2016.

3.5 Conclusion

Constitution of Pakistan recognizes the right of all individuals to be dealt with in accordance with law. The Constitution also guarantees the right to life and liberty as well as right to enter upon any lawful profession or occupation. Despite this, Pakistan has been among the top-most dangerous in the world for practicing journalism for past many years. The level of impunity of crimes against journalists is quite high. Nevertheless, Pakistan is first country in Asia to enact special laws for protection of journalists and media professionals / practitioners. While the federal law has yet to be implemented, the Sindh law seems to be quite slow in delivering the results. Moreover, the Federal law imposes pre-qualifications to benefit from this enactment.

International law covers the issue of journalists' safety and impunity of crimes against them in several instruments. Particularly, the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity is a key document which Pakistan

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Rana Muhammad Arshad versus Federation of Pakistan, PLD 2021 Islamabad 42, page 46, 49 para 7, 11

is part of. The Plan of Action outlines concrete obligations for member states to ensure the protection of journalists, prevent attacks, and combat impunity for crimes committed against them. However, weak enforcement of laws, legal restrictions, and high impunity rates undermine compliance.

The Courts seem to be inclined towards journalists' safety and the issue of impunity. It was only Islamabad High Court in 2021 that pronounced two separate judgments, particularly, on the issue of journalists' safety. In one of two judgments, the Court recommended introducing special laws for journalists' safety. Later, the recommendation got materialized and the Protection of Journalists and Media Professionals Act was passed in November 2021.



CHAPTER 4

**PRIVACY VS
SURVEILLANCE**

4.1 Issues and Challenges (executive actions etc.)

On July 02, 2024, it was reported that the “[t]elecom companies operating in Pakistan are running a mass surveillance system which “enables interception of data and records of telecom customers” without any regulatory mechanism or legal procedures, on the orders of the PTA.”¹³⁴ Reportedly, Pakistan has completed a second trial run of firewall to block and filter unwanted content.¹³⁵ In August 2024, reportedly, government announced the implementation of an enhanced Web Management System (WMS) aimed at more effectively regulating and managing online content across the country. “The system is able to independently monitors, identifies, and blocks websites and mobile applications engaged in unlawful activities, personal data breaches, or content deemed harmful to national institutions.”¹³⁶

The [Federal] Ministry of Information Technology and Telecommunication, on July 08, 2024, issued a notification authorising the Inter-Services Intelligence (ISI) to intercept and trace calls within the domain of national security, under Section 54 of the Pakistan Telecommunication (Re-organisation) Act, 1996.¹³⁷ However, the notification was challenged in the Lahore High Court through a writ petition.¹³⁸ Members of the Constitutional Bench of the Supreme Court of Pakistan also observed that “*law does not permit everyone to engage in phone tapping*”.¹³⁹

Similarly, on March 27, 2024, it was reported that private data of around 2.7 million citizens was compromised or leaked from the records of NADRA between 2019 to 2023. A joint Investigation Team, comprising of representatives of various intelligence agencies completed its probe into the matter and submitted its report to Federal Ministry of Interior.¹⁴⁰ In February 2024, it was reported that the FBR “has averted a major attempt at data breach by timely stopping infection to the FBR’s computers through a USB device.”¹⁴¹ Head of the FIA, in 2018, reportedly said that “data from “almost

134 Dawn (2024), *The surveillance system keeping tabs on millions*, published by Daily Dawn, available on: <https://www.dawn.com/news/1843299>

135 The News (2024), *Second trial of firewall with DPI capability’ completed in Pakistan*, published by The News International, available on: <https://www.thenews.com.pk/latest/1220177-second-trial-of-firewall-with-dpi-capability-completed-in-pakistan>

136 Pakistan Today (2024), *Govt confirms implementation of enhanced web management system to regulate online content*, published by Pakistan Today, available on: <https://www.pakistantoday.com.pk/2024/08/30/govt-confirms-implementation-of-enhanced-web-management-system-to-regulate-online-content/>

137 Tribune (2024), *Govt authorises ISI to intercept calls and messages for national security*, published by Express Tribune, available on: <https://tribune.com.pk/story/2478140/government-authorises-isi-to-intercept-calls-and-messages-for-national-security>

138 Dawn (2024), *Phone tapping permission for ISI challenged in LHC*, published by Daily Dawn, available on: <https://www.dawn.com/news/1845094/phone-tapping-permission-for-isi-challenged-in-lhc>

139 Tribune (2024), *Law doesn’t allow everyone to engage in phone-tapping: CB*, published by Express Tribune, available on: <https://tribune.com.pk/story/2515257/law-doesnt-allow-everyone-to-engage-in-phone-tapping-cb>

140 Dawn (2024), *2.7m citizens’ data compromised over five years, probe finds*, published by Daily Dawn, available on: <https://www.dawn.com/news/1824026>

141 Business Recorder (2024), *FBR computer network: Major attack aimed at data breach thwarted*, published by Business Recorder, available on: <https://www.brecorder.com/news/40288054>

all” Pakistani banks was stolen in a recent security breach.”¹⁴² It was also reported in 2019 that database with a total of 69,189 Pakistani bank’s cards have shown up for sale on the dark web.¹⁴³

Iqbal, Sahar (2023) argues, “regulatory regime surrounding data privacy and protection in Pakistan has been torpid, with no specific statute in place to regulate the processing and transmitting of personal data.”¹⁴⁴ Amin, H. Muhammad and Hassan, Maira (2024) state, “[w]ith modern technology and tech giants constantly and blatantly violating the privacy of individuals, the need for data protection measures and appropriate frameworks is continuously increasing.”¹⁴⁵ DRF (2017) also argued, “the rapid and tremendous advancement in communication and information technologies has significantly impacted individuals’ ability to protect their digital identity allowing for pervasive collection of personal information, often without the knowledge or consent of the data subjects.”¹⁴⁶

4.2 Legal and Constitutional Framework

4.2.1 Constitutional Framework

Right to privacy (Article 14) is enshrined in the Constitution of Pakistan as a fundamental guarantee. Article 14(1) of the Constitution states, “[t]he dignity of man and, subject to law, the privacy of home, shall be inviolable.” Similarly, Article 8(1) of the Constitution of Pakistan provides that “[a]ny law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred [under the Constitution], shall, to the extent of such inconsistency, be void.” Therefore, right to privacy shall take precedence over any other inconsistent provision of the law.

4.2.2 Legal Framework

Pakistan does not have any privacy or data protection law. A draft of “**Personal Data Protection Bill 2021**” is circulating for consultation and deliberations.¹⁴⁷ The Bill aims “to regulate the collection, processing, use, disclosure, and transfer of personal data and additionally provides a data protection mechanism including the offences concerning

142 Dawn (2018), ‘Almost all’ Pakistani banks hacked in security breach, says FIA cybercrime head, published by Daily Dwan, available on: <https://www.dawn.com/news/1443970>

143 Security Affairs (2019), 70000 Pakistani Banks’ Cards with Pins Go on Sale on the Dark Web, published by Security Affairs, available on: <https://securityaffairs.com/81579/cyber-crime/pakistani-banks-cards-darkweb.html>

144 Iqbal Sahar (2023), Data privacy and protection in Pakistan, published in www.ibanet.org, available on: <https://www.ibanet.org/data-privacy-and-protection-in-Pakistan>

145 Amin, H. Muhammad and Hassan, Maira (2024), *Digital Privacy in Pakistan: Ending the Era of Self-Regulation*, page 22 of 52, published in sahsol.lums.edu.pk, available on: <https://sahsol.lums.edu.pk/sites/default/files/2024-05/Digital%20Privacy%20in%20Pakistan%20Ending%20the%20Era%20of%20Self-Regulation.pdf>

146 Digital Rights Foundation (2017), A Data Protection Law in Pakistan: Policy Recommendations by Digital Rights Foundation, page 1 of 15, available on: <https://digitalrightsfoundation.pk/wp-content/uploads/2017/10/Policy-Brief-for-MOIT.pdf>

147 Draft of the Personal Data Protection Bill, 2023 (volume 19523), available on: <https://moitt.gov.pk/SiteImage/Misc/files/Final%20Draft%20Personal%20Data%20Protection%20Bill%20May%202023.pdf>

the violation of data privacy rights of an individual."

The Bill (chapter II) proposes a framework for data processing, data collection, data retention and data integrity. The Bill (chapter III and IV) also proposes to provide framework processing of children's data and sensitive and critical personal data. The Bill (chapter V) provides rights of data subjects, which include: right to access, right to correction, right to withdrawal of consent, extent of disclosure, right to prevent processing likely to cause damage or distress, right to erasure, right to nominate, right to redressal of grievances, and right to data portability and automated processing.

The Bill (chapter VIII) proposes to establish the National Commission for Personal Data Protection (NCPDP) comprising of a chairperson and four other full-time members who shall be appointed on the recommendation of the Federal Government. The Commission (section 39) is responsible "to protect the interest of the data subject, enforcing the protection of personal data, precluding illegal activities, and misusing personal data, promoting awareness of data protection, and entertaining complaints of data." In addition, functions of the Commission include, but not limited to:

- (a) receiving and deciding complaints about infringement of personal data protection including violation of any provision of this Act;
- (b) examining various laws, Rules, policies, bye-laws, regulations, or instructions about the protection of personal data and may suggest amendments to bring the law in conformity with the provisions of the Act;
- (c) taking proactive steps to create public awareness about personal data protection rights and filing complaints against infringement of those rights, as per the provisions of this Act;
- (d) monitoring and enforcing the application of the provisions of this Act;
- (e) monitoring the cross-border transfer of personal data as per provisions of this Act.
- (f) monitoring technological developments and commercial practices that may affect the protection of personal data and promoting measures and undertaking research for innovation in the field of protection of personal data;

IRADA (2024) states, "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." It further says, "the term 'public interest' is left unexplained and since it is a complex and tricky concept." Similarly, "the definition of 'national interest' is also a wide, ambiguous and subjective criterion that has the potential for misuse. IRADA (2024) argues, "[o]ne 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. 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.”

The Investigation for Fair Trial Act (IFTA), 2013¹⁴⁸ is the law that provides a three-stage framework to allow surveillance of citizens online and regulates the actions of the intelligence agencies. The preamble of the law states:

“[a]n Act to provide for investigation for collection of evidence by means of modern techniques and devices to prevent and effectively deal with scheduled offences and to regulate the powers of the law enforcement and intelligence agencies and for matters connected therewith or ancillary thereto”

The three stage framework, as mentioned above, consists of: (i) minister-level permission to initiate application for monitor and undertake surveillance (section 6-7); (ii) judicial authorization for surveillance/interception (section 8 to 15); and (iii) oversight of application of the law by a ministerial level Review Committee – comprising of Federal Ministers of Defence, Interior and Law – and six-monthly review (chapter 6).

The Act (section 4) requires the applicant (Directorate-General Inter Services Intelligence, the three Services Intelligence Agencies, Intelligence Bureau and Police) to notify an appropriate officer not below BPS-20 or equivalent, to represent the said applicant for making an application for warrants under this Act. According to Section 14 of the Act, a warrant shall be issued for a period of not longer than sixty days and can be re-issued for another period of sixty days.

The Act (section 26) provides imprisonment of up to five years and fine up to ten million rupees if a person performing any functions under this Act fails to secure complete secrecy of the process or makes any disclosure which may compromise future capabilities of intelligence gathering. Moreover, the Act (section 29) allows filing of complaints of misuse of warrant or conducting the surveillance or interception beyond the scope of the warrant. The Act (section 33) enquires the Judge to ensure that, during the proceedings under this Act, no disclosure of any source or information or proceedings is made that may compromise the future capability of the applicant’s intelligence gathering.

The Act (section 34), prohibits misuse of Intercepted material and provides an imprisonment of up to five years and fine up to ten million for the violator of this provision. The Act (section 35) also prohibits unauthorized surveillance or interception and provides imprisonment of up to three years with fine for the person who carries

¹⁴⁸ The Investigation for Fair Trial Act, 2013 (ACT No. 1 of 2013), Gazette Notification available on: https://www.na.gov.pk/uploads/documents/1361943916_947.pdf

out any surveillance or interception except in accordance with the provision of this Act.

Alam (2018) asserted that [t]he surveillance, online tracking, interception of communication and wire-tapping by any agency without following the procedure given in IFTA are prima facie illegal and display of covertly collected information in contravention of IFTA a crime.¹⁴⁹

However, section 39 of **the PECA, 2016** allows for real-time collection and recording of data. It states:

"[i]f a Court is satisfied on the basis of information furnished by an authorised officer that there are reasonable grounds to believe that the content of any information is reasonably required for the purposes of a specific criminal investigation, the Court may order, with respect to information held by or passing through a service provider, to a designated agency as notified under the Investigation for Fair Trial Act, 2013 (I of 2013) or any other law for the time being in force having capability to collect real time information, to collect or record such information in real-time coordination with the investigation agency for provision in the prescribed manner."

Similarly, section 40 (Confidentiality of Information) of the PECA states:

"Notwithstanding immunity granted under any other law for the time being in force, any person including a service provider while providing services under the terms of lawful contract or otherwise in accordance with the law or an authorized officer who has secured access to any material or data containing personal information about another person, discloses such material information to any other person, except when required by law, without the consent of the person concerned or in breach of lawful contract with the intent to cause or knowing that he is likely to cause harm, wrongful loss or gain to any person or compromise confidentiality of such material or data shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both.

Provided that the burden of proof of any defense taken by an accused service provider or an authorized officer that he was acting in good faith, shall be on such a service provider or the authorized officer as the case may be."

Moreover, the PECA (section 42) allows the Federal Government to share "electronic communication or data or for the collection of evidence in electronic form" with

¹⁴⁹ Alam (2018) Snooping on citizens online, published in The News on Sunday, available at: <https://www.thenews.com.pk/tns/detail/565727-snooping-citizens-online>

any foreign government “24 x 7 network, any foreign agency or any international organization or agency for the purposes of investigations or proceedings. It also permits the government to “forward to a foreign government foreign agency or any international agency or organization any information obtained from its own investigations if it considers that the disclosure of such information might assist the other government, agency or organization etc.”

Furthermore, the **Regulation 4(5) of the Monitoring and Reconciliation of Telephony Traffic Regulation 2010**¹⁵⁰ requires all landing station and infrastructure licensee(s) to establish a monitoring system for the purpose of monitoring of telecommunication traffic (voice data) traffic (voice and data).

The Right of Access to Information Act, 2017¹⁵¹ is a federal law to provide for the right of access to information in transparent and effective manner, subject only to reasonable restrictions imposed by law. However, its section 7 excludes certain record from disclosure. This excluded / exempted record includes “(g) record relating to the personal privacy of any individuals” and “(h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third party.” Similar provisions are given the provincial right to information laws as well.¹⁵²

4.3 International Obligations

The right to privacy is a fundamental human right recognized in various international legal instruments. It protects individuals from arbitrary or unlawful interference with their personal life, communications, and data. An overview of the key international legal frameworks governing the right to privacy is given below.

The UDHR (1948) ensures, no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”¹⁵³ Though non-binding, the UDHR serves as an international custom and remains a foundational document influencing global human rights law.

150 Regulation 5 of the Regulation 4(5) of the Monitoring and Reconciliation of Telephony Traffic Regulation 2010, available on: <https://www.pta.gov.pk/assets/media/monitoring-telephony-traffic-reg-070510.pdf>

151 Section 7(g) and (h) of the Right of Access to Information Act, 2017 (ACT No. XXXIV of 2017), available on: <https://rti.gov.pk/SiteImage/Misc/files/The-Right-of-Access-to-Information-Act-2017-Gazette.pdf>

152 See Section 15 of the Balochistan Right to Information Act, 2021, Section 19 and 22 of the Khyber Pakhtunkhwa Right to Information Act, 2013, Section 13 of Punjab Transparency and Right to Information Act 2013, and Section 10 of the Sindh Right to Information Act, 2016

153 UDHR, 1948. Article 12.

The ICCPR (1966) protects individuals from arbitrary or unlawful interference with privacy, family, home, or correspondence and provides the right to legal protection against such intrusions.¹⁵⁴ Herein the Covenant obligates the State Parties to ensure privacy protections. The HRC, which monitors ICCPR implementation, has emphasized the broad interpretation of privacy, including digital privacy.¹⁵⁵

Regional Human Rights Frameworks such as the ECHR (1950) also provide the right to respect for private and family life, home, and correspondence.¹⁵⁶ The European Court of Human Rights (ECtHR) has interpreted this right expansively, covering surveillance, data protection, and online privacy.¹⁵⁷ Its precedents are obviously not binding but have sort of persuasive value for other jurisdictions.

Under the European Convention Framework, General Data Protection Regulation (GDPR) (2018) also sets a high standard for data privacy, requiring informed consent for data processing and granting individuals control over their personal data.

Moreover, the Convention 108+ adopted by the Council of Europe in 1981 and modernized in 2018 is regarded as the first binding international treaty on data protection, influencing global privacy frameworks.

Mass Surveillance and AI Challenges emerged in the light of cases like Schrems II which highlighted concerns over cross-border data transfers and government surveillance.¹⁵⁸ UN reports and resolutions stress the need for balancing national security with individual privacy. UN Special Rapporteur on Privacy: Continually assesses global privacy trends and issues recommendations.

Status of Compliance and Concerns

Pakistan's compliance with the aforementioned international obligations concerning the right to privacy, data protection, and surveillance presents a complex landscape marked by constitutional provisions, legislative developments, and ongoing challenges. Pakistan being a state party to international instruments such as UDHR and ICCPR recognizes the right to privacy in general and under Convention on the Rights of the Child, particularly safeguards children's privacy rights.

These commitments obligate Pakistan to align its domestic laws and practices with international human rights standards. Moreover, with increasing digitalization and

154 ICCPR, 1966. Article 17.

155 Human Rights Committee. General Comment No. 16 (1988).

156 European Convention on Human Rights 1950. Article 8.

157 See for instance, Big Brother Watch v. UK, Carpenter v. UK.

158 Schrems II refers to the Court of Justice of the European Union (CJEU) ruling in the case Data Protection Commissioner v. Facebook Ireland & Maximilian Schrems (C-311/18), delivered on July 16, 2020. The case challenged the legality of international data transfers from the EU to the U.S. under the EU-U.S. Privacy Shield framework.

surveillance, privacy protections are evolving, requiring a balance between security concerns and fundamental rights.

Similarly, the European Union (EU) has linked Pakistan's favorable trade status under the Generalized Scheme of Preferences Plus (GSP+) to progress in human rights, including privacy and freedom of expression. Recent legislative actions perceived as threats to these rights may impact Pakistan's trade benefits.

While Pakistan has made strides in recognizing and attempting to legislate the right to privacy and data protection, significant gaps remain in fully complying with its international obligations. Addressing these challenges requires enacting comprehensive data protection laws that align with global standards and implementing robust oversight mechanisms to prevent misuse of surveillance powers.

4.4 Jurisprudence / Judicial Interpretation

The Supreme Court of Pakistan, regarding the allegations levelled through a media briefing against Judge Arshad Malik, in *Ishtiaq Ahmed Mirza versus Federation of Pakistan* provided detailed requirements for evidentiary value of audio or video recording before the court of law. The Court held¹⁵⁹:

- *"No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.*
- *A forensic report prepared by an analyst of the Punjab Forensic Science Agency in respect of an audio tape or video is per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.*
- *Under Article 164 of the Qanun-e-Shahadat Order, 1984 it lies in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.*
- *Even where a court allows an audio tape or video to be produced in evidence such audio tape or video has to be proved in accordance with the law of evidence.*
- *Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.*
- *An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.*
- *The person recording the conversation or event has to be produced.*

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Ishtiaq Ahmed Mirza versus Federation of Pakistan, PLD 2019 Supreme Court 675, page 697, para 10

- *The person recording the conversation or event must produce the audio tape or video himself.*
- *The audio tape or video must be played in the court.*
- *An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.*
- *The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognizes such voice or person.*
- *Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.*
- *The voices recorded or the persons shown must be properly identified.*
- *The evidence sought to be produced through an audio tape or video has to be relevant to the controversy and otherwise admissible.*
- *Safe custody of the audio tape or video after its preparation till production before the court must be proved.*
- *The transcript of the audio tape or video must have been prepared under independent supervision and control.*
- *The person recording an audio tape or video may be a person whose part of routine duties is recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.*
- *The source of an audio tape or video becoming available has to be disclosed.*
- *The date of acquiring the audio tape or video by the person producing it before the court ought to be disclosed by such person.*
- *An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.*
- *A formal application has to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence.”*

While deciding the fate of presidential reference against Justice Qazi Faez Isa, the Supreme Court, in *Qazi Faez Isa versus President of Pakistan*, held:

“It is pertinent to mention that the guarantee under Article 14(a) [of the Constitution of Pakistan] is for the privacy of home and that too subject to law. Such privacy does not extend to the tax and property records of either the petitioner or his family members.”¹⁶⁰ (Justice Umar Ata Bandial).

"The [Income tax] Ordinance expressly provides for confidentiality of information recorded in the income tax returns of an assessee. The income tax officials, who are the custodian of the said information, are commanded under the law to jealously guard the same, and in case of any breach thereof, the offender is to face penal consequences under the Ordinance."¹⁶¹ (Justice Yahya Afridi)

"Privacy requires that all information about a person is fundamentally his own, only for him to communicate or retain for himself. The concept of private life includes the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with outside world."

"Privacy attaches to the person and not to the place where it is associated. Home under Article 14 of the Constitution is not only the physical house but the entire treasure of personal life of human being. The intrusion by the State into the sanctum of personal space, other than for a larger public purpose, is violative of the constitutional guarantees. Right to privacy is deeply intertwined with the right to life, right to personal liberty and right to dignity. This is a cherished constitutional value, and it is important that human beings be allowed domain of freedom that are free of public scrutiny and protected against "unwanted gaze" unless they act in an unlawful manner."

"Illegal and illegitimate surveillance, by both State and private actors, has the impact of intrusion into the private lives of citizens, not only violating their constitutional rights but also intruding on the very personhood, privacy and personal liberty of those surveilled. Surveillance has disparate impact, violating principles of non-discrimination and equality as enshrined in our Constitution. Surveillance and illegitimate intrusion into privacy impact the essential work that journalists, academics and activists do. Undue surveillance can lead to a chilling effect on those critical of State institutions and societal norms. Undue interference with individual's privacy can both directly and indirectly limit the free development and exchange."¹⁶²

"There is no law in the country that authorises any law enforcement or intelligence agency to pry into the privacy of home to dig out private family information through targeted surveillance, and to use against them to achieve various ends. Fundamental rights of privacy, personal liberty and dignity provide a bar against intrusion into the private life of a citizen through surveillance. Article 9 and 14 of the Constitution impose a constitutional obligation on State authorities to protect the privacy and personal freedom of the citizens unless the law expressly authorises them to do

161 Qazi Faez Isa versus President of Pakistan, PLD 2021, Supreme Court 1, page 207, para 46

162 Qazi Faez Isa versus President of Pakistan, PLD 2021, Supreme Court 1, page 231-232, para 30-32

otherwise in exceptional circumstances. In the absence of any law to the contrary, the rights to privacy and personal become absolute and stand to protect the privacy and personal freedom of the citizens.”¹⁶³(Justice Mansoor Ali Shah)

In Muhammad Nawaz versus Additional District and Sessions Judge¹⁶⁴, Supreme Court of Pakistan held:

“The conducting of the DNA [deoxyribonucleic acid] test of a person, without his consent, infringes his fundamental right to liberty and privacy guaranteed by Articles 9 and 14 of the Constitution.”

“The right to privacy involves the protection of individuals from unwarranted intrusion into their personal lives. It safeguards an individual’s personal information, communications, family life, and other aspects of their private sphere from unjustified interference by the government, organizations, or other individuals.”

“The unauthorized collection of someone’s DNA can be considered a violation of their privacy, autonomy and freedom because it involves the collection of sensitive personal information without their knowledge and consent. This intrusion can lead to potential misuse or unauthorized disclosure of the individual’s genetic information, which may have significant implications for their personal and professional lives.”

“Bodily autonomy is protected by both the fundamental rights; right to liberty and right to privacy. Individuals have a right to control their own bodies, make decisions about their healthcare, and refuse unwanted medical interventions. Unauthorized DNA collection could be seen as violating this principle, as it involves taking a sample of an individual’s biological material without their permission.”

Lahore High Court, in Mubashir Ahmad Almas versus province of Punjab, while adjudicating about the matter relating to shortage of graveyards in Lahore, held¹⁶⁵:

“There is no denial to this fact that dignity is the most sacred belonging and most valuable asset of every person regardless of his social or economic status in life and, therefore, one should never be deprived of the same, save in accordance with law. Similarly, and more importantly, the right to dignity of a person not only remains intact when his connection with the thread of life disconnects but by that moment his right to dignity gets more emphasized ...”

¹⁶³ Qazi Faez Isa versus President of Pakistan, PLD 2021, Supreme Court 1, page 236, para 38

¹⁶⁴ Muhammad Nawaz versus Additional District and Sessions Judge, PLD 2023 Supreme Court 461, page 466-477, para 5, 6, 10

¹⁶⁵ Mubashir Ahmad Almas versus province of Punjab, PLD 2021 Lahore 735, page 737, para 4

Supreme Cour of Pakistan, in Zameen Abid versus National Database and Registration Authority, while deciding a matter relating to identity registration of an orphan, held¹⁶⁶:

"The right to identity is a fundamental, non-derogable, independent and autonomous right which is rooted in human dignity and preserves each human's distinct existential interest. The Constitution of Pakistan does not expressly include a 'right to identity' as such and it is deduced from a range of positively recognized rights and principles of policy."

In Hafiz Awais Zafar versus Judge Family Court, the Lahore High Court held¹⁶⁷:

"The personal identity of a person comprises all those aspects of his profile which are significant to him. His personal identity begins from the moment of conception and going beyond the information such as date or birth, encompasses his personal attributes like biographical data, physical traits and significant social relations, such as ties to family members, culture or religion. In this view of the matter, the right to identity is associated with several other rights i.e., the right to a name, nationality, juridical personality, family and culture."

4.5 Conclusion

Privacy and data protection is major issue, being faced by the citizens, in general, and information practitioners, in particular, in Pakistan. Surveillance of online spaces is being conducted at mass level. Firewall, WMS and Deep-packet inspections (DPI) are quite common phrases being used by the state functionaries. Government has also authorized the ISI to intercept and trace calls within the domain of national security. On the other hand, there have been reports of stealing or leaking of data, being held by public and private bodies and organizations, of private citizens.

The Constitution of Pakistan guarantees that dignity of man and the privacy of home are inviolable. However, these seem to be abstract notions, so far. There is no special law on privacy and protection of personal data of citizens in the county. A Bill for personal data protection is under consideration for past may years. There are, nevertheless, a few piecemeal provisions in a few other laws which recognize privacy and sanctity of private data.

International law recognizes privacy and a fundamental human rights. A number of international and regional instruments speak about this right. Pakistan, being party to many of these instruments, is under obligation to align its domestic laws and practices with international human rights standards. EU has linked Pakistan's favorable trade status under the GSP+ to progress in human rights, including privacy and freedom of

¹⁶⁶ Zameen Abid versus National Database and Registration Authority, PLD 2022 Lahore 39, page 45, para 15

¹⁶⁷ Hafiz Awais Zafar versus Judge Family Court, PLD 2022 Lahore 756, page 760, para 5

expression.

Jurisprudence of Pakistani courts is quite elaborated when it comes to privacy and data protection. The Supreme Court of Pakistan has set a criterion for admissibility of audio / video recording in the court of law. The Court also declared that illegal and illegitimate surveillance, by both State and private actors, has the impact of intrusion into the private lives of citizens, not only violating their constitutional rights but also intruding on the very personhood, privacy and personal liberty of those surveilled. The Supreme Court also disallowed the unauthorized collection of someone's DNA without his consent. The Lahore High Court recognized the right to dignity of a person even after the death as well.



CHAPTER 5

RIGHT TO INFORMATION VS SECRECY

5.1 Issues and Challenges (executive actions etc.)

“Right to Information has a unique importance in promoting civil rights. This right cuts across all other rights that any state bestows to their citizens, e.g., rule of law, freedom of speech, right to representation, right to equal opportunities and consumer rights” (CPDI 2021).¹⁶⁸ “The right to information empowers citizens regardless of gender, socio-economic status, religion, age or disability. It is not only a right in itself, but also allows citizens to petition the state to actualize other rights as well” (PILDAT 2018).¹⁶⁹

“Pakistan was the first country in South Asia to frame a law on freedom of information, when it promulgated the Freedom of Information Ordinance in 1997 through a presidential order. The Ordinance, however, lapsed and was neither re-promulgated nor placed before the next elected parliament for legislation” (Salim-2024).¹⁷⁰ Later, it again became the first South Asian country to enact the Freedom of Information Ordinance (FOI) in 2002.

Pakistan stands at 29th number among 139 countries, having right to information legislation, in Global Right to Information Rating. Pakistan has secured 108 points out of total 150 points in this rating.¹⁷¹ Beside constitutional recognition of right to information under Article 19A, Pakistan, has five right to information laws: one at the federal level and four provincial laws.

Transparency International (TI-2024), in a recent study on implementation of right to information laws in Pakistan, has rated compliance of proactive disclosure provisions of right to information laws by 59 climate related public bodies.

Table 2: Proactive Disclosure Compliance

Unit	Score	Rating
Federal public bodies	0.54 / 1.00	Moderately Compliant
Punjab	0.60 / 1.00	Moderately Compliant
Khyber Pakhtunkhwa	0.46 / 1.00	Partially Compliant
Sindh	0.31 / 1.00	Partially Compliant
Balochistan	0.22 / 1.00	(below) Partially Compliant

Data Source: Transparency International

168 CPDI (2021), *Right to Information landscape in Pakistan*, published by Centre for Peace and Development Initiatives (CPDI), available on: <https://cpdi-pakistan.org/archives/20209#:~:text=Pakistan%20was%20the%20first%20South,infor-mation%20to%20citizens%20and%20journalists>.

169 PILDAT (2018), *Right to Information: Background Paper*, page 16 of 16, published by Pakistan Institute of Legislative Development And Transparency (PILDAT), available on: https://pildat.org/publications/Publication/FOI/RTILawfor-WomenMinoritiesCSOsandMedia_BackgroundPaper.pdf?

170 Salim (2004), *Freedom of Information*, published by Commonwealth Human Rights Initiative (CHRI), available on: https://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/pakistan/freedom_of_information.pdf

171 The RTI Rating, produced jointly by Centre for Law and Democracy (CLD) and Access Info, available on: <https://www.rti-rating.org/> and <https://countryeconomy.com/government/global-right-information-rating/pakistan>

Similarly, Free and Fair Election Network (FAFEN) has in its latest research (2024) reported that “[on] average, only 40% of the required information is available on the official websites of 40 divisions across 33 federal ministries.”¹⁷²

5.2 Legal and Constitutional Framework

5.2.1 Constitutional Framework

Pakistan is one of the countries where the right to information is guaranteed as a constitutional right. Article 19-A of the Constitution of states:

***“Right to information:** Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”*

5.2.2 Legal Framework

Pakistan has special laws on right to information, both, at the federal and provincial levels. These second generation of access to information laws were enacted after inclusion of Article 19-A in the Constitution of Pakistan through Eighteenth Amendment in 2010. The first of these laws (Khyber Pakhtunkhwa Right to Information Act, 2013) was enacted by the Provincial Assembly of Khyber Pakhtunkhwa in 2013. This was followed by the passage of Punjab Transparency and Right to Information Act, 2013 by the Punjab Provincial Assembly in the same year. The Sindh Provincial Assembly passed the Sindh Transparency and Right to Information Act in 2016. However, it took one more year for the Parliament to pass the Federal Right of Access to Information Act in 2017. Balochistan province, nevertheless, had to wait until 2021 to have the Balochistan Right to Information Act, 2021.

These second-generation right to information laws recognize the right of citizens to information. These laws require the public bodies to proactively disclose specific categories of information on their websites. These laws provide for the establishment of the Commissions to facilitate the process of access to information. These laws require all public bodies to notify dedicated officials / designated officials / information officers to receive and respond requests for information from the public. These laws specify timeline for response by public bodies on information requests.

FAFEN (2025) states that “Pakistan’s right to information trajectory also mirrors this duality of progress and persistent challenges. The federal Freedom of Information Ordinance 2002 was the first step, but it lacked teeth, adhering to what the Supreme

172 FAFEN (2024), *Transparency Report: An assessment of legally-required website disclosure by federal public bodies in Pakistan*, page 2 of 36, published by Free and Fair Election Network (FAFEN), available on: https://fafen.org/wp-content/uploads/2025/01/Right_of_Access_to_Information_Report_Jan-7-2025.pdf

Court, in a recent judgement, described as a “need-to know” approach instead of “right-to-know” framework. On paper, the Pakistani RTI laws now rank among the world’s most progressive; in practice, however, implementation remains weak.”¹⁷³

While comparing right to information legislation at the federal and provincial levels, Alam (2017) writes that the Pakistani right to information (RTI) scene looks dynamic. However, the fact of the matter is that all 'good' that has happened with regards to citizens access to information has happened only on paper. There is no utility of these laws unless the governments establish [effective] RTI Commissions as implementation mechanisms.¹⁷⁴

Beside these right to information laws, Pakistan still lives with colonial legacy of **the Official Secrets Act of 1923**.¹⁷⁵ The Act criminalizes access to certain information and provides punishment up to death penalty for violation of few of the provisions. Ironically, the Parliament amended the law in 2023 to make it further stringent and draconian.¹⁷⁶

Alam et al (2023) argue that “the Official Secrets (Amendment) Act of 2023 seems to be a negation of transparency and right to information, which are hallmarks of a democratic and open society. 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 to information about matters of all public interest as guaranteed in Article 19A of the Constitution of Pakistan.”¹⁷⁷

Besides, **the PECA, 2016** (section 3, 4 and 7 of Chapter 2) prohibit access to information system and information. Section 3 of the Act states:

"Whoever with dishonest intention gains unauthorized access to any information system or data shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to fifty thousand rupees or with both."

173 FAFEN (2025), *Strengthening the Right to Information in Pakistan*, page 1 of 4, published by Free and Fair Election Network (FAFEN), available on: <https://fafen.org/wp-content/uploads/2025/02/FAFEN-Policy-Brief-Strengthening-the-Right-to-Information-in-Pakistan-Feb-2025.pdf>

174 Alam (2017) RTI: Pakistan's case, published in The News on Sunday, available at: <https://www.thenews.com.pk/tns/detail/564569-rti-pakistans-case>

175 See text of the Official Secrets Act, 1923, as available on: <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap2W-sg-ijiiiiiiiiiii>

176 See text of the Official Secrets (Amendment) Act, 2023, as available on: [https://molaw.gov.pk/SiteImage/Downloads/Official%20Secrets%20\(Amendment\)%20Act.%202023.pdf](https://molaw.gov.pk/SiteImage/Downloads/Official%20Secrets%20(Amendment)%20Act.%202023.pdf)

177 Alam et al (2023), Under Siege: Legislative, Judicial and Executive Actions Stifling Freedom of Expression and
Right to Information, published by IRADA, available at: <https://www.iradap.org/wp-content/uploads/2024/01/State-of-indie-Journalism-report-2023.pdf>

Similarly, Section 4 criminalizes Unauthorized copying or transmission of data. It states:

"Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any data shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred thousand rupees or with both"

Section 7 of the PECA Act disallow copying or transmission of critical infrastructure data. The section says:

"Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any critical infrastructure data shall be punished with imprisonment for a term which may extend to five years, or with fine which may extend to five million rupees or with both."

5.3 International Obligations

The UDHR and as incorporated in the ICCPR – states that, ‘everyone shall have the right to hold opinion without interference and right to freedom of expression and this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers though any media’. Additionally, Sustainable Development Goals (SDGs) also include to “ensuring public access to information and protecting fundamental freedoms”.¹⁷⁸ Similarly, the ECHR¹⁷⁹, American Convention on Human Rights¹⁸⁰ and African Charter on Human and Peoples’ Rights¹⁸¹ also include protections for access to information. Moreover, the UN Convention against Corruption also encourages transparency and access to information in the public administration to fight corruption.¹⁸²

The scope of the subsequent obligations is further clarified and enhanced by the HRC while declaring that the right to information includes a positive obligation of states to make information accessible. The relevant public bodies within the States parties are accordingly responsible to ensure individuals’ access to the official documents.¹⁸³ The General Comment clarifies the scope, content, and limitations of Article 19 ICCPR, emphasizing that the right to information is a key component of the freedom of expression. The General Comment further prescribed that the right to information

¹⁷⁸ Sustainable Development Goal #16.10.

¹⁷⁹ European Convention of Human Rights 1950. Article 10.

¹⁸⁰ American Convention on Human Rights. Article 1969. Article13.

¹⁸¹ African Charter on Human and Peoples Rights, 1981. Article 9.

¹⁸² UN Convention against Corruption, 2003. Article 10.

¹⁸³ Human Rights Committee. General Comment No 34, 2011. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

applies to information held by public bodies and States have positive obligations to ensure access, especially on matters of public interest. The individuals may not need to prove a personal interest to access public information. It required the States parties to enact access to information laws and ensure effective implementation thereof. The subject laws must fairly and clearly define the procedures and timeframe to ensure effective access to information. The requisite legislation must also include the right appeal and related procedures in case of denial of the subject access. The Committee also urged the states to proactively disclose the information involving public interest.¹⁸⁴

Furthermore, the Committee emphasized the protection of journalists and media, bloggers, and others who disseminate information.¹⁸⁵ It required that the licensing systems should not restrict freedom of expression and States must investigate attacks against media actors. It is expressly maintained by the Committee that the right to information and expression also fully applies online and Internet access and digital expression should be protected. The restrictions on access to online content (e.g., blocking websites), therefore, must meet strict criteria.¹⁸⁶

Secrecy, which is apparently a crosscutting theme and is usually used to restrict the free flow of information. The Covenant has regulated the scope of restrictions on freedom of expression and the right to information. It maintained, *'the exercise of this right carries with it special duties and responsibilities and it may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary'*.¹⁸⁷ Some of the specific restrictions spelled out therein include the limitations defined to ensure the respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals.¹⁸⁸

Status of Compliance and Concerns

A substantial analysis of the standards suggests that the right can be restricted but only through narrowly defined conditions. Such restrictions must be provided by law for a legitimate aim (e.g., national security) and must be necessary and proportionate. Blanket restrictions (e.g., on state secrets, national security) are not allowed unless they meet strict conditions.

In November 2024, the UN HRC issued its Concluding Observations on Pakistan's second periodic report under the ICCPR. These observations addressed various human rights issues, including the right to freedom of expression and access to information. Key

¹⁸⁴ Ibid.

¹⁸⁵ Human Rights Committee. General Comment 34.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid. Article 19 (3).

¹⁸⁸ Ibid, Article 19 (3) (a) and (b).

Recommendations¹⁸⁹ Concerning the Right to information required from Pakistan to ensure access to information. The Committee urged Pakistan to end undue measures such as internet shutdowns. It further urged for the establishment of an independent body to oversee censorship decisions. The country was required to avoid further adoption of restrictive Laws.

5.4 Jurisprudence / Judicial Interpretation

In *Jurists Foundation versus Federation of Pakistan*, the Supreme Court of Pakistan, which deciding about the tenure of Chief of the Army Staff, held¹⁹⁰:

“Acts of the Parliament or subordinate legislation are public documents and must be readily available to citizens of the country subject to the exception provided under the Right of Access to Information Act, 2017. Those exceptions extend only to records relating to defence forces, defence installations or connected therewith and ancillary to defence and national security, and not to the Army Laws.”

Lahore High Court, in *Hakeem Muhammad Saeed versus Deputy Commissioner Vehari*, held¹⁹¹:

“RTI is based on the principle that information belongs to the people. It boosts transparency, which in turn strengthens accountability, reduces corruption and improves delivery of public services.”

“The premise of such fundamental right is based upon the concept that the citizens being taxpayers are real owners of public information held by the public bodies or government departments. Any citizen without any obligation of explaining his interest can seek information regarding any public matter / document from any public body / functionaries. His being only citizen of Pakistan is enough to constitute his cause of action. The public body can also not ask the reason for seeking such public information.”

On clause related to the proactive disclosure of information, the Court further held¹⁹²:

“[P]roactive disclosure is the most salient aspect of this [the Punjab Transparency and Right Information Act, 2013] law. In a civilized society, government institutions must fulfill this obligation to improve their credibility by taking public into confidence about their internal working and decisions including budget, expenditures, income, etc.,”

189 Human Rights Committee. Review of the 22nd Periodical Report of Pakistan on ICCPR. December 2024. <https://digitallibrary.un.org/record/4068203>

190 *Jurists Foundation versus Federation of Pakistan*, PLD 2020 Supreme Court 1, page 41, para 43

191 *Hakeem Muhammad Saeed versus Deputy Commissioner Vehari*, PLD 2020 Lahore 110, page 114, para 3 and page 115, para 5

192 *Hakeem Muhammad Saeed versus Deputy Commissioner Vehari*, PLD 2020 Lahore 110, page 118, para 13

On the effect of non-framing of rules / regulations, the Court held:

"So far non-framing of regulations is concerned, suffice it is to say that absence of same cannot have effect if rendering this right as nugatory, Therefore, even if no regulations are framed, this right is available to the citizens."

Islamabad High Court, while deciding the matter relating to prisoners' rights, in Khadim Hussain versus Secretary Ministry of Human Rights, held¹⁹³:

"The duty of the State to provide every prisoner with information regarding the letter's rights in general and the Jail Manual in particular is implicit in Article 19A because it owes him / her a duty of care. This fiduciary duty makes it mandatory for the State to keep the person in its custody informed about the rights provided under the Jail Manual."

Supreme Court of Pakistan, in Federal Government Employees Housing Foundation (FGEHF) versus Ghulam Mustafa, held¹⁹⁴:

"The affront to people is confounded when information with regard to distribution of State / Ummah' land is kept under the wraps. The people have every right to know what is given in the service of Pakistan and holding constitutional position. There is no quicker way to lose public trust than to shroud information in secrecy. To withhold such information from the people is unconstitutional. The 'right to information' is a fundamental."

Furthermore, the Court held:

"The constitutional goal of 'creating an egalitarian society' is undermined when public land furtively finds its way into private hands."

In Commissioner Inland Revenue versus Jahangir Khan Tareen, Supreme Court of Pakistan held¹⁹⁵:

"Bearing in mind, the Constitutionally guaranteed right as well as provisions of Right of Access to Information, 2017 and General Clauses Act, it is incumbent upon the FBR to monitor and ensure that all such Notifications issued under the law or having force of law should be published in the official Gazette and timely posted at FBR website / portal [for general public information] also. The non-publication of certain notifications in the official Gazette breeds and nurtures unnecessary litigation keeping aside the main controversy or nucleus of case."

193 Khadim Hussain versus Secretary Ministry of Human Rights, PLD 2020 Islamabad 268, page 288, para 20

194 Federal Government Employees Housing Foundation (FGEHF) versus Ghulam Mustafa, 2021 SCMR 201, page 286, 288, para 33, 35

195 Commissioner Inland Revenue versus Jahangir Khan Tareen, 2022 SCMR 92, page 104, para 14

The Sindh High Court, in *Saifan-uz-Zaman Khan versus Federation of Pakistan*, held (about commercial transactions in private domain)¹⁹⁶:

Right to information under Article 19-A of the Constitution was of immense value in promoting transparency by ensuring that citizens had knowledge of matters concerning public administration, but the same did not mean that commercial transactions in the private domain which did not have any direct nexus with matter of public administration be opened up for scrutiny before the court on touchstone of Article 19-A of the Constitution at behest of any member of public whose curiosity may be piqued."

In *Mukhtar Ahmed Ali versus the Registrar, Supreme Court of Pakistan*, while deciding an appeal against the decision of Islamabad High Court relating to request for information from Registrar of the Supreme Court of Pakistan, the Supreme Court of Pakistan held:

*(Justice Qazi Faez Isa)*¹⁹⁷: "What previously may have been a 'need-to-know' basis, Article 19 of the Constitution has transformed it to 'right-to-know'. The burden has shifted from those seeking information to those who want to conceal it. Access to information is no longer a discretion granted through occasional benevolence, but it is a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution.

Article 19A stipulates that information be provided 'subject to regulation and reasonable restrictions imposed by law'. However, there is no law which attends to the Supreme Court in this regard, nor has the Supreme Court itself made any regulations. Needless to state that if a law is enacted and / or regulations made, requests for information would be attended to in accordance therewith and in accordance with Article 19A.

Article 19A envisages the placing of 'reasonable restrictions' on the provision of information, but refusing to provide information is to be justified by the person, authority or institution withholding it."

*(Justice Athar Minallah)*¹⁹⁸: "The expression 'subject to reasonable restrictions' does not and cannot confer competence upon the legislature to abridge, impair, restrict or curtail the scope of the constitutionally guaranteed right by granting outright or indiscriminate expulsion to a public entity. [The] Supreme Court has not been expressly excluded from the definition of 'public bodies' under section 2(ix) *ibid*. The *Majlis-e-Shoora (Parliament)*, therefore, while promulgating the Act of 2017 could not have intended to take away or abridge the right under Article 19A by an outright and indiscriminate exclusion of the

196 Saifan-uz-Zaman Khan versus Federation of Pakistan, PLD 2017 Sindh 559, page 562, para 10

197 Mukhtar Ahmed Ali versus the Registrar, Supreme Court of Pakistan, PLD 2024, page 201, 203, para 13, 17, 18

198 Mukhtar Ahmed Ali versus the Registrar, Supreme Court of Pakistan, PLD 2024, page 204-205, para 2, 4

Supreme Court and thus barring a citizen from having access to information relating to its activities of public importance. Any interpretation of the Act of 2017, having the effect of giving immunity to the Supreme Court from exercise of the right of a citizen to have access to information would amount to abridging and taking away a constitutionally guaranteed right."

In *Qaiser Iqbal versus Province of Punjab*, the Lahore High Court, held¹⁹⁹:

"Proceedings carried out by the One Man Tribunal" were judicial proceedings, and the report so prepared was a public document, thus, the public had the right to have access to such report."

However, in the Intra Court Appeal filed by the Punjab Government in the above matter (*Qaiser Iqbal versus Province of Punjab*, PLD 2018 Lahore 198), a three member bench of the Lahore High Court held²⁰⁰:

"Right to information stemmed from the requirement that members of a democratic society should sufficiently informed so that they may influence intelligently the decision which may affect themselves. People have the right to know every public act, everything that was done in public way by their public functionaries and chosen representatives. Citizens' right to know the true face about the administration of the country in all matters of public importance was one of the most fundamental pillars of a democratic state. People were entitled to know the particulars of every public transaction, and acquire information in all matters of public importance and to disseminate it. Without information, a democratic electorate could not make responsible judgements about its representatives. Freedom of information was the only vehicle of political discourse so essential to democracy and it was equally important in facilitating artistic and scholarly endeavours of all sorts. Freedom of information, freedom of speech and expression and people's right to know, should therefore receive a generous support from all those who believe in democracy and participation of people in the administration and matters of public importance."

However, the Court also explained that the information can be withheld in certain cases. The Court states²⁰¹:

"Publication which would harm or was likely to cause harm to the "administration of justice" including "fair trial" under Article 10-A of the Constitution could be restricted and such restriction would be reasonable and valid under the law." [Therefore], public order was a reasonable exception under law to Article 19-A of the Constitution."

199 *Qaiser Iqbal versus Province of Punjab*, PLD 2018, Lahore 34, page 4, para 9

200 *Province of Punjab versus Qaiser Iqbal*, PLD 2018 Lahore 198, page 234, para 61 and page 239, para 67,

201 *Province of Punjab versus Qaiser Iqbal*, PLD 2018 Lahore 198, page 242, para 74 and 75

The Court further elaborated²⁰²:

"In regard to the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. Where the State was protecting information relating to a matter of public importance, the Court had to perform a balancing exercise between two competing dimensions of public interest, namely right of citizen to obtain disclosure of information which competes with the right of the State to protect the information on the basis of exception. Where the Court came to the conclusion on the balance and the principle of proportionality the disclosure of information would cause greater injury to the public interest, the Court would not allow the document to be disclosed."

In *Muhammad Azam Khan Swati versus Federation of Pakistan*, wherein the petitioner sought direction to the government to provide information about the pending cases in the province of Sindh and Balochistan as well as with the FIA, Islamabad High Court held²⁰³:

"Examination of first provision shows that it does not confer any right in any citizen / individual to seek information regarding pendency of cases. The legal right claimed by the petitioner in the instant petition to seek information does not exist, as Article 149 of the Constitution and Rule of Business, 1973 are general, empowering the Federal Government to issue direction generally and not person specific."

Lahore High Court, while explaining the meaning of 'public body substantially financed by the Government' as given in the Punjab Transparency and Right to Information Act, 2013, in *Lahore Gymkhana versus Punjab Information Commission*, held²⁰⁴:

"It is not necessary to measure the financing in percentage and the contribution of Government is not required to be more than fifty percent or having major portion or dominant and majority part but it is sufficient if the financial assistance is material and important or when such contribution is fairly large and it is having essential role in existence of an entity / body."

202 Province of Punjab versus Qaiser Iqbal, PLD 2018 Lahore 198, page 242, para 77

203 Muhammad Azam Khan Swati versus Federation of Pakistan, PLD 2023 Islamabad 184, page 188-189, para 7

204 Lahore Gymkhana versus Punjab Information Commission, PLD 2023 Islamabad 278, page 287, para 11

5.5 Conclusion

Constitution of Pakistan recognizes right to information as a fundamental right. Similarly, Pakistan has enacted right to information laws, both, at the federal and provincial levels. These laws require public bodies to proactively disclose their information on the websites to ensure 'free flow of information' in addition to requesting information. However, the country is moderately / partially compliant of these provisions according to several studies and reports.

On the other hand, Pakistan still has the Official Secrets Act of 1923, a draconian colonial legacy discouraging dissemination of information held by public bodies. Ironically, the law was made more stringent and harsher in 2023. Moreover, several provisions of the PECA also create hurdles in access to information from public bodies.

UN HRC in its Concluding Observations on Pakistan's second periodic report under the ICCPR addressed various human rights issues, including the right to freedom of expression and access to information. Key Recommendations concerning the right to information required from Pakistan to ensure access to information. The Committee urged Pakistan to end undue measures such as internet shutdowns. It further urged for establishing an independent body to oversee censorship decisions. The country was required to avoid further adoption of restrictive laws.²⁰⁵

Most of the higher courts in Pakistan have been quite generous in supporting people's right to information. However, many also tried to draw balance between sanctity of private information, commercial transaction in private domain, harm to administration of justice, defence installation and citizens' right to access to information under the law.

205 Human Rights Committee. Review of the 22nd Periodical Report of Pakistan on ICCPR. December 2024. <https://digitallibrary.un.org/record/4068203>



CHAPTER 6

**INFORMATION
DISORDER**

6.1 Issues and Challenges (Executive Actions etc.)

Wardle (2020) states, “[T]he promise of the digital age encouraged us to believe that only positive changes would come when we lived in hyper-connected communities able to access any information we needed with a click or a swipe. But this idealized vision has been swiftly replaced by a recognition that our information ecosystem is now dangerously polluted and is dividing rather than connecting us.”²⁰⁶ “[L]ies, rumours and propaganda are not new concepts. What’s new now is the ease with which anyone can create compelling false and misleading content, and the speed with which that content can ricochet around the world.”²⁰⁷

“[T]he complexity and scale of information pollution / [disorder] in our digitally connected world presents an unprecedented challenge. [This] information pollution contaminates public discourse on a range of issues”, Wardle and Derakhshan (2017) argued.²⁰⁸ “Whether it’s rumours, hoaxes, sophisticated and deliberately false or manipulated information, or simple misinterpretations, ‘information disorder’ divides societies and threatens our health and well-being.”²⁰⁹

Organizations like ‘First Draft’ advocate to use, instead of ‘fake news’, the terms disinformation, misinformation or mal-information, which appears to be most appropriate for this [information disorder] – propaganda, lies, conspiracies, rumours, hoaxes, hyper-partisan content, falsehoods or manipulated media.

- Disinformation is content that is intentionally false and designed to cause harm. It is motivated by three factors: to make money; to have political influence, either foreign or domestic; or to cause trouble for the sake of it.
- Misinformation also describes false content, but the person sharing doesn’t realize that it is false or misleading. Often a piece of disinformation is picked up by someone who doesn’t realize it’s false and that person shares it with their networks, believing that they are helping.
- Mal-information describes genuine information that is shared with an intent to cause harm. An example of this is when Russian agents hacked into emails from the Democratic National Committee and the Hillary Clinton campaign and leaked certain details to the public to damage reputations.²¹⁰

²⁰⁶ Wardle (2017), Understanding Information disorder, published by First Draft, available on: <https://firstdraftnews.org/long-form-article/understanding-information-disorder/>

²⁰⁷ Wardle (?), The Age of Information Disorder, published by datajournalism.com, available on: <https://datajournalism.com/read/handbook/verification-3/investigating-disinformation-and-media-manipulation/the-age-of-information-disorder>

²⁰⁸ Wardle and Derakhshan (2017), INFORMATION DISORDER: Toward an interdisciplinary framework for research and policy making, page 10 of 107, Published by the Council of Europe, available on: <https://rm.coe.int/information-disorder-to-ward-an-interdisciplinary-framework-for-research/168076277c>,

²⁰⁹ BBC Media Action (?), Tackling information disorder, published by BBC, available on: <https://www.bbc.co.uk/mediaaction/our-work/information-disorder>

²¹⁰ Wardle (2017), *Understanding Information disorder*, published by First Draft, available on: <https://firstdraftnews.org/>

Common and Nielsen (2021) wrote, “widespread concern over the credibility, quality, and veracity of information online underlines the need to address problems of disinformation and broader kinds of problematic information.”²¹¹ Nevertheless, it is said that there is no way to completely prevent the spread of misinformation, disinformation or mal-information. However, Common and Nielsen (2021) further state that countries with diverse and robust independent news media seem more resilient to disinformation. They make following recommendations that could help address various disinformation problems without jeopardising free expression and other fundamental rights and ensuring greater consistency, transparency, and accountability:

“The governments should:

- *mandate transparency reports documenting who does (and does not) engage in proven examples of good practice;*
- *provide direct and indirect funding support for independent fact-checking, media literacy, and news media;*
- *apply same standards of human rights protections to online conduct as are applied to offline conduct;*
- *enforce legal restrictions on online speech in a consistent and transparent way and ensure due process;*
- *ensure that legal restrictions on speech are clearly and precisely prescribed by law, only introduced where they are necessary to protect other fundamental values, and are proportional to the specific threat at hand.*

The Platforms should:

- *align their policies and processes with international human rights principles, and point out when they believe that these may be in potential tension with local laws*
- *share more information about their Country-Withheld-Content (CWC) programmes*

Oversight, transparency, and due process:

- *Greater transparency in how platforms engage in content moderation broadly, and around disinformation specifically, would be an important step. This includes greater transparency, including on the use of artificial intelligence in content moderation around disinformation.”*

[org/long-form-article/understanding-information-disorder/](https://www.reutersinstitute.politics.ox.ac.uk/news/how-respond-disinformation-while-protecting-free-speech)

211 Common and Nielsen (2021), How to respond to disinformation while protecting free speech, published by the Reuters Institute, available on: <https://reutersinstitute.politics.ox.ac.uk/news/how-respond-disinformation-while-protecting-free-speech>

In Pakistan, the government have introduced several legal instruments to ‘counter disinformation’ in the country. Administrative and regulatory bodies including the PEMRA and the PTA also have issued a large number of directives, notices and orders. These directives, notices and orders range between gagging order for certain content of TV channels, prohibition on use of social media by government officials, suspension of social media platforms, installation of cyber firewall, blocking of VPNs, banning reporting on sub-judice matters, to suspension of transmission of television channels.

During the period under review, PTA has, reportedly, “blocked around 1.3 million uniform resource locators (URLs) until July 19, 2024, for carrying “anti-Islam, indecent and immoral” content. The PTA, reportedly, has claimed that its web monitoring system had processed around 1.38 million URLs before blocking 93.84 per cent of them (1.303 million).” Following is the detail of categories / URLs blocked, as reported.²¹²

Table 3: Details of Content Blocked by PTA

Unit	Category of Content Blocked	Number of URLs Blocked
1	Against decency and immorality	1.02 million
2	Against glory of Islam	96,622
3	Against security and defence of Pakistan	91,889
4	For contempt of court	7,152
5	Defamation and impersonation	10,929
6	Proxy	10,250
7	Sectarian and hate speech	53,915
8	Others	10,791

Date Source: PTA

Following is the detail of platform-wise URLs blocking, as reported.

Table 4: Platform-wise Details of Content Blocked

Category of Content Blocked	Number of URLs Blocked
Against decency and immorality	1.02 million
Against glory of Islam	96,622
Against security and defence of Pakistan	91,889
For contempt of court	7,152
Defamation and impersonation	10,929
Proxy	10,250
Sectarian and hate speech	53,915
Others	10,791

Date Source: PTA

²¹² Dawn (2024), *1.3m URLs blocked over illegal content, reveals telecom regulator*; published by Daily Dawn, available on: <https://www.dawn.com/news/1869462>

Similarly, the Federal Ministry of Interior had submitted a written reply to the National Assembly in January 2025 about registration and prosecution of cybercrimes in Pakistan. As per news report, “since the year 2020, 7,020 accused have been arrested on cybercrime charges, with only 222 being convicted.” Here is the detail of cybercrimes convictions, as reported.²¹³

Table 5: Details of Crimes Reporting under PECA

CYBERCRIME CONVICTIONS 2020-24						
Years	Complaints	Verified	Enquiries	Cases	Accused Arrested	Conviction
2020	102,000	98,882	9,112	601	625	20
2021	115,868	80,803	15,766	1,224	1,306	38
2022	145,667	83,552	14,380	1,469	1,700	48
2023	152,136	82,396	18,012	1,375	2,007	92
2024	123,893	68,627	16,555	1,044	1,382	24
Total	639,564	414,260	73,825	5,713	7,020	222

Data Source: Federal Interior Ministry

6.2 Legal and Constitutional Framework

6.2.1 Constitutional Framework

Article 19 of the Constitution of Pakistan, 1973 guarantees the right to freedom of expression. However, this right is “*subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.*”

6.2.2 Legal Framework

The PECA is the key legislation relating to online information online content. The Act, in its unamended state, prohibits “glorification of an offence”, “cyber terrorism”, “hate speech”, “offences against dignity of a natural person”, and “offence against modesty of a natural person”.

The unamended Act (section 37) allows the PTA to “remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence.”

²¹³ Dawn (2025), *Cybercrimes conviction rate ‘very low’* published by Daily Dawn, available on: <https://www.dawn.com/news/1885210>

The Parliament passed amendments in the Act in 2025. The Amended Act terms the online content unlawful or offensive, if it:

- (a) is against the ideology of Pakistan, etc.;*
- (b) incites the public to violate the law, take the law in own hands, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions;*
- (c) incites public or section of public to cause damage to governmental or private property;*
- (d) coerce or intimidate public or section of public and thereby preventing them from carrying on their lawful trade and disrupts civic life;*
- (e) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;*
- (f) contains anything obscene or pornographic in contravention of any applicable law;*
- (g) is known to be fake, or false or there exist sufficient reasons to believe that the same may be fake or false beyond a reasonable doubt;*
- (h) contains aspersions against any person including members of Judiciary; Armed Forces, Majlis-e-Shoora (Parliament) or a Provincial Assembly; or*
- (i) promotes and encourages terrorism and other forms of violence against the State or its institutions.*

The Amended Act (section 26A) provides punishment of imprisonment up to three years and fine up to two million for intentional dissemination, publicly exhibition, or transmission of any ‘false or fake information.’”

IRADA (2021) highlights that “the [PECA] law has been the subject of concerns regarding the violation of digital rights, including the freedom of expression and freedom of the press.”²¹⁴

Alam (2023) states, “the PECA and, in particular, its Section 9 (glorification of an offence), Section 10 (cyber terrorism), Section 11 (hate speech), Section 20 (offences against dignity of a natural persona) and Section 37 (unlawful online content) are being defended as “reasonable [constitutional] restrictions.”²¹⁵

DRF (2025) argues that the PECA Amendment 2025 provides overbroad and vague terms like “aspersions”, “complainant” and “person”. DRF questions the expansion of scope of term “social media platform.”²¹⁶ Stakeholders have questioned several other

²¹⁴ IRADA (2021), Pakistan’s PECA Problem: curbing speech, not crime, page 01 of 33, published by IRADA, available at: <https://www.iredapkg.org/wp-content/uploads/2023/05/PECA-Report.-Published-pdf.pdf>

²¹⁵ Alam (2023), A tale of (un)fair treatment, published in The News on Sunday, available at: <https://www.thenews.com.pk/tns/detail/1053835-a-tale-of-unfair-treatment>

²¹⁶ DRF (2025), The Prevention of Electronic Crimes (Amendment) Act 2025: Analysis and Recommendations, available at: <https://digitalrightsfoundation.pk/wp-content/uploads/2025/01/The-Prevention-of-Electronic-Crimes-Amend->

provisions of the Amendment such as: Establishment, Powers, and Composition of the Social Media Protection and Regulatory Authority; Definition of ‘Unlawful and offensive Content’; Penalty for Fake or False information; Appointment of Social Media Complaint Council and Social Media Protection Tribunal; and Unbridled powers of the Federal Government.²¹⁷

The Removal and Blocking of Unlawful Online Content Rules 2021 (Rule 3) make the “freedom of expression and expression subject to “glory of Islam”, “security of Pakistan”, “public order”, “decency and morality” and “integrity or defence of Pakistan.”

Alam (2023) wrote that as per the Rule 3 of the Removal and Blocking of Unlawful Online Content Rules 2021, “security of Pakistan” is defined in Article 260 of the constitution which includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan, *but shall not include public safety.*²¹⁸ Furthermore, Alam (2020) contented that neither the PTA’s powers to block and remove ‘information’ nor of the national coordinator’s authority to issue binding instructions to block online content and acquire data or information from social media companies are in accordance with the principles set by the Supreme Court in this historic judgment.²¹⁹

In 2024, Punjab Provincial Assembly passed the **Punjab Defamation Act to make provisions in respect of defamation.**²²⁰ It defines defamation as:

“publication, broadcast or circulation of a false or untrue statement or representation made orally or in writing or visual form either by ordinary form or expression or by electronic or other modern medium, means or devices or through social media or any online or social media website, application or platform, which injures or may have the effect of injuring the reputation of a person or tends to lower him in the estimation of others, or ridicules him, or exposes him to unjust criticism, disliking, contempt or hatred, and such defamation shall also include comments, statements and representations targeted towards certain genders and minorities as contained in section 14 of this Act.”

[ment-Act-2025-DRF-Analysis-and-Recommendations.pdf](#)

217 AIC (2025), AIC Media Statement Amendments to the Prevention of Electronic Crimes Act (PECA), available at: <https://aicasia.org/policy-advocacy/?sf=s=PECA>, RISL (2025) Amendments to The Prevention Of Electronic Crimes Act, 2016: An Introduction, available at: <https://rsilpak.org/2025/2025-amendments-to-the-prevention-of-electronic-crimes-act-2016-an-introduction/>, HRW (2025), Pakistan: Repeal Amendment to Draconian Cyber Law, available at: <https://www.hrw.org/news/2025/02/03/pakistan-repeal-amendment-draconian-cyber-law>

218 *ibid*

219 Alam (2020), Controversial powers, published in The News, available at: <https://www.thenews.com.pk/print/632505-controversial-powers>

220 The Punjab Defamation Act, 2024 (ACT II of 2024), available at: https://punjablaws.punjab.gov.pk/en/show_article/UGAFMgAyUWFSMg--

Under section 3 of the Act, defamation shall be an actionable wrong. It states:

"Defamation actionable.- Subject to the provisions of this Act and any other law for the time being in force, defamation shall be a civil wrong and the person defamed may initiate an action under this Act without proof of actual damage or loss and, where defamation is proved, General Damages shall be presumed to have been suffered by the person defamed."

Alam (2024), argues that Punjab Defamation Act, 2024 is designed to provide blanket immunity to the holders of top offices of the state against justified and true criticism also. Many of the definitions such as "newspaper" "journalist" "editor" are highly problematic. The damages, provided in the law, are highly objectionable. Furthermore, the law does not recognize two highly important and internationally recognized defences against the claim of defamation: one, tendering proper apology and an offer to publish the same by the defendant; and two, offering to print or publish a contradiction or denial in the same manner and with the same prominence by the defendant. The procedures for appointment of judges for tribunal to adjudicate the cases and adjudication are problematic.²²¹

Rana et al (2022), while analyzing Pakistan's criminal defamation laws, highlighted importance of public accountability and questioned state's prosecution of citizen or journalist under the criminal defamation laws in cases of criticism of the state, its institutions and policies. This will compromise democracy and the public will be too scared to speak to or about their governments, and / or demand protection of their fundamental rights.²²²

The **PEMRA Amendment Act, 2023** defines "disinformation" as "*verifiable false, misleading, manipulated, created or fabricated information which is disseminated or shared with the intention to cause harm to the reputation of or to harass any person for political, personal, or financial interest or gains without making an effort to get other person's point of view or not giving it proper coverage and space but does not include misinformation.*" The Act defines "misinformation" as "*verifiable false content or information that is unintentionally disseminated or shared.*" Furthermore, the amending Act terms violation of PEMRA Ordinance or violation of Article 19 of the Constitution of the Islamic Republic of Pakistan as 'severe violation and provides a fine up to ten million on 'severe violation by any PEMRA licensee.

²²¹ Alam (2024), Punjab's flawed defamation law, published in The News, available at: <https://www.thenews.com.pk/print/1192866-punjab-s-flawed-defamation-law>

²²² Rana et al (2022), Criminalizing speech: a comparative analysis of Pakistan's criminal defamation laws, page 17 of 17, published by MMfD. Available at: <https://mediamatters.pk/wp-content/uploads/2022/10/Criminalising-Defamation.pdf>

IRADA (2023) states that [A]cts such as the PEMRA Amendment Act, 2023 and Official Secrets Amendment Act, 2023 raise concerns about potential infringements on freedom of expression. Cases of journalist arrests involving the FIA raise concerns about press freedom, transparency, and due process.²²³

The **Protection of Journalists and Media Professionals Act, 2021** (section 6) requires *“all journalists and media professionals not to engage in the dissemination of material known by such as individual to be false or untrue.”* The law also provides criminal prosecution for those who:

- fail to respect the rights or reputations of others;
- produce material that advocates national, racial, ethnic, religious, sectarian, linguistic, cultural, or gender-based hatred, which may constitute incitement to discrimination, hostility or violence; and
- disseminate material known by such as individual to be false or untrue.

Alam (2021) contends that Section 6 of the [Protection of Journalists and Media Professionals Act, 2021] imposes a new era of pre-censorship as it requires journalists and media professionals to 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. This section threatens the journalists with criminal prosecution if they fail to fulfil the obligations given in this provision.²²⁴

6.3 International Obligations

While right to information is understood as part of the broader right to freedom of expression, the issue of disinformation and information-disorder is a crosscutting theme emerging on the legal landscape of the freedom of expression and right to information. This results in an evolving legal tension between disinformation and the right to information in international human rights law. The right to information includes access to accurate information held by public bodies and protection from arbitrary restrictions, however, most of the administrative control on free expression is defined in the pretext of restricting disinformation.

The state has a positive obligation to ensure an information environment that enables democratic participation, which includes promoting media pluralism and ensuring transparency by countering false narratives that undermine rights. However, under

²²³ IRADA (2023), Under Siege: Legislative, Judicial and Executive Actions Stifling Freedom of Expression and Right to Information, published by IRADA, available at: <https://www.iradapk.org/wp-content/uploads/2024/01/State-of-indie-Journalism-report-2023.pdf>

²²⁴ Alam (2021), One step forward, two steps back? Published in The News on Sunday, available at: <https://www.thenews.com.pk/tns/detail/911884-one-step-forward-two-steps-back>

Article 19(3) of the ICCPR, any restriction must meet the prescribed test. Such as, the restriction must be based in law for a legitimate aim including national security, public order, or public health etc. Similarly, it must fulfil the criterion of necessity and proportionality. This means that vague or overly broad anti-disinformation laws can violate the right to information and expression. UN Special Rapporteurs on freedom of expression (e.g., David Kaye & Irene Khan) has warned against criminalizing disinformation, while urging states to promote media literacy and support independent journalism by avoiding vague laws that enable state censorship.²²⁵

The ECtHR also protected publication of controversial views despite their potentially misleading nature. The Court emphasized that access to a range of views even false or exaggerated ones is part of a democratic society.²²⁶ The Inter-American Court has also stressed that truth is often plural, and journalists should not be punished for failing to verify every detail, especially when acting in good faith.²²⁷

However, there does not exist any legally binding international Convention applicable in Pakistan regarding the regulatory framework for disinformation, however, the Budapest Convention on Cybercrime (officially the Convention on Cybercrime, ETS No. 185)²²⁸, adopted by the Council of Europe in 2001, is the first international treaty seeking to address Internet and computer crime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations. The core focus of the Convention mainly targets offenses against the confidentiality, integrity, and availability of computer systems and data, content-related offenses (notably child pornography) and offenses related to infringements of copyright and related rights.

The Convention does not explicitly address disinformation (i.e., false or misleading information spread with intent to deceive). However, some aspects may indirectly relate to combating disinformation, especially when disinformation involves illegal content or actions, such as hate speech or incitement to violence (depending on national laws). It also includes fraud or impersonation, use of malware or bots to manipulate public opinion, tools of disinformation involving cyber offenses, e.g. unauthorized access to systems to plant false information and data interference.²²⁹ The second Additional Protocol to the Convention, adopted in 2022, focuses on enhanced cooperation and disclosure of electronic evidence. While not about disinformation per se, it's relevant when tackling international cyber-enabled disinformation operations.

225 <https://www.amnesty.org/en/wp-content/uploads/2021/11/POL3047512021ENGLISH.pdf>

226 ECtHR, Şener v. Turkey (2000). <https://hudoc.echr.coe.int/eng?i=001-58753>

227 Inter-American Court. Herrera-Ulloa v. Costa Rica. 20 <https://globalfreedomofexpression.columbia.edu/cases/herrera-ulloa-v-costa-rica/> 04.

228 <https://www.coe.int/en/web/cybercrime/the-budapest-convention>

229 Ibid. Articles 2-5, 7 and 8.

6.4 Jurisprudence / Judicial Interpretation

Defamation

Peshawar High Court, in *Khalid Aziz vs Pakistan Television*, held²³⁰:

"In order to constitute defamation in a suit under the Defamation Ordinance, 2002, allegations levelled against a plaintiff should be false, baseless, and unfounded; the wording used and allegation levelled against a plaintiff should on the face of it be defamatory and derogatory in nature; and such allegations should have been published in widely circulated newspapers or spoken in large gathering and said publication made or wording used should have been with malice without any reasonable excuse and justification and such allegations should have been directly attributed plaintiff by specifically mentioning his / her name."

The Court further stated²³¹:

"When an untrue statement or a scene is broadcast, and added to an evil act of person, the law of defamation would plunge into the rescue of such a person."

In *Mohsin Abbas versus Air Waves Media (Pvt.) Ltd.*, Sindh High Court held²³²:

"Defence of "qualified privilege" is available to press and electronic media on principle that on matters of public importance they are under a duty to report same to public who have a corresponding interest to know the same. Defence of "qualified privilege" can be defeated if plaintiff proves that defendant was actuated by malice or that maker did not believe statement to be true or that he made statement with reckless indifference to its truth or falsity."

In *Meera Shafi versus Federation of Pakistan*, the Lahore High Court declared that Parliament was competent to enact Section 20 (Offences against dignity of a natural person) of the PECA, 2016. The Court held²³³:

"A bare reading of section 20 of the PECA shows that it encompasses a wide range of objectionable / offensive acts and "harm to reputation (defamation)" is only one of them. The contention that it stifles free speech is misconceived. As adumbrated, no body can be given a licence to defame another or do anything that may impinge on his dignity. [The] phraseology of section 20 is broad enough to cover not only defamation but also the use of offensive and derisive language."

The Court also declared that *"section 20 of the PECA is not unconstitutional. It is rather in conformity with Article 14 of the Constitution and promotes right to dignity enshrined*

230 *Khalid Aziz vs Pakistan Television*, PLD 2017 Peshawar 115, page 126, para 13

231 *Khalid Aziz vs Pakistan Television*, PLD 2017 Peshawar 115, page 130, para 19

232 *Mohsin Abbas versus Air Waves Media (Pvt.) Ltd.*, PLD 2020 Sindh 400, page 408, para 16

233 *Meera Shafi versus Federation of Pakistan*, PLD 2022 Lahore 773, page 806, para 35

therein.²³⁴

PEMRA / Content Regulations

Islamabad High Court, in NEO TV versus PEMRA, held²³⁵:

"Pakistan Electronic Media Regulatory Authority (PEMRA) was empowered to impose fine and suspend the licence of a broadcast media or distribution service where licensee had contravened any provision of Pakistan Electronic Media Regulatory Authority Ordinance, 2002 or the Rules and Regulations made thereunder."

The Sindh High Court, in Independent Media Corporation (Private) Limited versus Pakistan Electronic Media Regulatory Authority, held²³⁶:

Questions as to whether content contained "obscenity", "indecenty", or "vulgarity" were best suited to be answered by the appropriate forum which in the present case was the Council of Complaints under S.26 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002."

Islamabad High Court, in ARY Media Communications versus Government of Pakistan, held²³⁷:

"Comprehensive regulatory network exists under the umbrella of [Pakistan Electronic Media Regulatory Authority] PEMRA as well as Council of Complaints to ensure that the concept of Islamic way of life and the maintenance of moral standards as enshrined in objective resolution as well as Article 19 and 31 of the Constitution of Islamic Republic of Pakistan, 1973 are duly protected and adhered."

The Court further mentioned²³⁸:

"The law provides vast powers to PEMRA to take action against any licensee, which violates the terms of license, the provisions of Ordinance or the rules and regulations and even the directives issued by PEMRA. The consequence of violation ranges from suspension of license to imposition of fine by the competent authority."

The Balochistan High Court, in Independent Media Corporation (Pvt) Ltd versus Government of Balochistan, held²³⁹:

"Decision of the Authority [PEMRA] to impose a fine on the media group on recommendations of Council of Complaints in exercise of powers under S.29(6) of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 was for

234 Meera Shafi versus Federation of Pakistan, PLD 2022 Lahore 773, page 806, para 37

235 NEO TV versus PEMRA, PLD 2017 Islamabad 48, page 63, para 29

236 Independent Media Corporation (Private) Limited versus Pakistan Electronic Media Regulatory Authority, PLD 2017 Sindh 209, page 213, para 4

237 ARY Media Communications versus Government of Pakistan, PLD 2018 Islamabad 285, page 293, para 18

238 ARY Media Communications versus Government of Pakistan, PLD 2018 Islamabad 285, page 299, para 22

239 Independent Media Corporation (Pvt) Ltd versus Government of Balochistan, PLD 2019 Balochistan 27, page 32, para 8

violation of terms and conditions of licence. No criminal liability of the petitioner is dealt by the Authority. Thus, the FIR could not be quashed."

In Messrs Labbaik (Pvt) Ltd versus Pakistan Electronic Media Regulatory Authority, Islamabad High Court held²⁴⁰:

"Section 27 of the PEMRA Ordinance does not empower the respondent to impose such a prohibition on a television anchor or a program host. A prohibitory order under S.27 of the PEMRA Ordinance can be passed only against any "broadcast media or distribution service operator".

Islamabad High Court, in Hafiz Hamdullah Saboor versus Government of Pakistan, while deciding about the suspension of Computerized National Identity Card (CNIC) of Hafiz Hamdullah Saboor by the NADRA and ban imposed by PEMRA on his appearance in the television talk shows, held²⁴¹:

"The order of the Pakistan Electronic Media Regulatory Authority (PEMRA) whereby the TV channels have been restrained from inviting and projecting the petitioner in the programmes / talk shows, news, etc., was an obvious misuse of authority vested under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002. It was issued in derogation of the rights guaranteed under Articles 19 and 19-A of the Constitution."

Supreme Court of Pakistan, in PEMRA versus ARY Communications, held²⁴²:

"It thus appears that appointees to the COC [Council of Complaints] are to play an important role in the realm of regulations of electronic media in the country. Obviously, the process of making such public appointments should be designated and conducted in a way to ensure that the best people, from the widest possible pool of candidates, are considered and appointed to these positions."

"Open selection process allows for unexpected expression of interest. It prioritizes and helps discovering best possible candidates. The process, in turn, improves the governance and performance of the organization. In addition, such transparent process wins public confidence that appointees are selected on merit from a wide and inclusive pool of appetite."

"Making appointment to a public office is a sacred trust which is to be discharged justly and fairly in the best interest of public, based on a process that is fair, transparent, and non-discriminatory."

"Notable that the Chairperson and the Members of the COC shall be citizens of

240 Messrs Labbaik (Pvt) Ltd versus Pakistan Electronic Media Regulatory Authority, PLD 2020 Islamabad 343, page 350, para 24

241 Hafiz Hamdullah Saboor versus Government of Pakistan, PLD 2021 Islamabad 305, page 322, para 15

242 PEMRA versus ARY Communications, 2022 SCMR 1923, page 1928-1929, para 5, 6, 7, 9

eminence. The idea is that the composition of the COC shall consist of respected, qualified and experienced members of society who shall work independently under facilitation of PEMRA and take action on the complaints received against broadcast media and distribution service providers."

In a *Suo Motu* Case (No. 4 of 2022) regarding the grant of additional marks to Hafiz-e-Quran while admission in MBBS / BDS degree, the Supreme Court held²⁴³:

"Prohibiting the broadcast / broadcast of any content pertaining to conduct of Judges of High Court and Supreme Court is inexplicable. PEMRA's unsolicited media-gagging order brings the Judiciary into disrespect and disrepute as citizens will assume that it has been issued on the direction of Judges, with a view to cover discrepancies, illegalities and / or blemishes. Throating the media violates the Constitution and is unacceptable."

The Court further held²⁴⁴:

"Judges adjudicate, and at times hold others to account. Therefore, it would be constitutionally, legally, morally and religiously indefensible to absolve Judges from accountability. PEMRA's complete prohibition to criticize judges offends the Constitution, law, morality and Islam."

Supreme Court of Pakistan, in *PEMRA versus Messrs ARY Communications (Pvt) Ltd* held²⁴⁵:

"There is no bar on PEMRA under the PEMRA Ordinance to take notice, either on its own (suo motu) or on the information received from any source, of the alleged contraventions of any provisions of the PEMRA Ordinance, Rules, Regulations or Code of Conduct. Rules validly made to carry out the purposes of a statute are an integral part of the statute."

The Court further held²⁴⁶:

"The expression "obscene", "vulgar" and "offensive to the commonly acceptable standards of decency" as used in Section 27(a) of the PEMRA Ordinance, are actually interconnected. Only that form of expression can be said to be "obscene" or "vulgar", which is "offensive to the commonly accepted standards of decency. The important thing to understand is that the commonly acceptable standards of decency in a community is a "standard of tolerance, not taste". It is not what people the people generally think is right for them to see but what they would not tolerate others being exposed to it on the basis of the degree of harm to "public decency" or "public morality" that may from such exposure. Furthermore, the expression "commonly

243 *Suo Motu* Case (No. 4 of 2022), PLD 2023 Supreme Court 387, page 397, paras 12

244 *Suo Motu* Case (No. 4 of 2022), PLD 2023 Supreme Court 387, page 399, para 21

245 *PEMRA versus Messrs ARY Communications (Pvt) Ltd*, PLD 2023 Supreme Court 431, page 447, para 14

246 *PEMRA versus Messrs ARY Communications (Pvt) Ltd*, PLD 2023 Supreme Court 431, page 454-455, para 29

accepted standards of decency” must be understood to be the contemporary standards.”

PEMRA Licencing

Lahore High Court, in *Independent Newspapers Corporation versus Federation of Pakistan*, while stopping PEMRA from issuing licences for DTH, held²⁴⁷:

“Media ownership and its concentration are perceived as a direct threat to the elements of diversity and plurality of information. Concentration reduces the number of participants and creates larger economic units within the media market. Concentration also has a political dimension as it can promote certain interest groups over others and prevent the entry of new competitors in the market. Hence regulating media ownership becomes vital and in the public interest because it guarantees freedom of expression and speech through the dissemination of information.

Therefore, the regulator is required to harmoniously balance the open access safeguards with the concentration controls to achieve an efficient media market. Regulating media ownership and anticompetitive practices essentially mean to prevent a lesser number of independent owners of media enterprise from dominating and controlling the relevant media market. Therefore, in the context of both ownership regulation and competition regulation the control factor and the relevant market are significant.

The Court also stated²⁴⁸:

Horizontal integration can give rise to oligopoly and in extreme cases monopoly hence integration is regulated by capping the number of licenses a media enterprise can own in the same medium being broadcast, distribution or publication. On the other hand, vertical integration is caused when one media enterprise integrates within the electronic media to operate some other media enterprise. So, a broadcaster will integrate to operate distribution services or publication, or publication will integrate to operate broadcast media and so on in the same market.

Vertical integration includes cross ownership that is when a common entity will operate broadcast media as well as distribution service. Accordingly, vertical integration is of concern for PEMRA because if a smaller group of owners control a large share of the market through broadcast and distribution it will cause concentration of ownership, which in turn means reduction in diversity and plurality of content and the free flow of information. In this case, vertical integration refers to the ownership concentration of two important media enterprises, broadcast

²⁴⁷ *Independent Newspapers Corporation versus Federation of Pakistan*, PLD 2017 Lahore 289, page 303, para 12
²⁴⁸ *Independent Newspapers Corporation versus Federation of Pakistan*, PLD 2017 Lahore 289, page 308, para 18

media and distribution services. This ownership concentration has the potential to challenge the stated objectives of the regulator, hence it must be adequately regulated.

The Court mentioned²⁴⁹:

Technology will cross over into all mediums and compel the electronic media to interact at different levels. By prohibiting vertical integration vide the impugned Rules, PEMRA denies two specific media enterprises from becoming more efficient and effective in their job. It also means that both the prohibited media enterprises cannot vertically integrate to cut costs or improve efficiency, while other media enterprises can benefit from vertical integration.

Consequently, the effect of the impugned Rules is that by restricting two specific media enterprises from vertically integrating and allowing other media enterprises to vertically integrate undue concentration of media ownership is left unregulated because it is seen only in the context of integration between broadcast media and distribution services and not in the context of the relevant market.

This understanding of the requirements of Section 23(2) of the Ordinance is totally illogical and is not in furtherance of the objectives or purpose of the law because regulating ownership concentration means regulating ownership of all media entities operating within the electronic media so that a few media owners do not end up with a larger share of the market. In our opinion the mandate of the law was to cover all media enterprises especially since the objective is to create an efficient market which will offer a wide range of programmes, news, information and entertainment having plurality in content.

However, the Supreme Court of Pakistan, in *Mag Entertainment (Pvt) Ltd versus Independent Newspapers Corporation (Pvt) Ltd.*, reversed the decision of Lahore High Court in *PLD 2017 Lahore 289* and held²⁵⁰:

"It is clear that section 23 of the PEMRA Ordinance confers upon PEMRA a duty to ensure "that undue concentration of media ownership is not created in any city, town or area and the country as a whole." It is evident that having considered the relevant factors, PEMRA was of the view that vertical integration, which would come about as a result of the broadcasters being allowed to also hold distribution licences, would be detrimental to the public interest in that it would stifle choice which PEMRA is mandated to encourage.

²⁴⁹ Independent Newspapers Corporation versus Federation of Pakistan, PLD 2017 Lahore 289, page 318, para 27
²⁵⁰ *Mag Entertainment (Pvt) Ltd versus Independent Newspapers Corporation (Pvt) Ltd*, 2018 SCMR 1807

Therefore, PEMRA framed and amended the PEMRA Rules 2009 to exclude such vertical integration by means of Rule 13(4) whereby a broadcaster was barred from also holding a distribution licence. There is no violation of the respondent's fundamental rights by so doing; Article 18 of the Constitution allows for the regulation of businesses. This regulation may be in the form of licenses which carry certain conditions to protect the public interest. In this particular matter the public interest is best served by ensuring that the "media market" is one where genuine competition prevails. We cannot make a fetish of the respondent's purported fundamental right to compete for and acquire a distribution license in addition to its broadcasting license(s) at the expense of the broader public interest of genuine healthy competition and the resultant choice."

Islamabad High Court, while deciding a constitutional petition relating to refusal of satellite tv licence due to security non-clearance of applicant in *Shoukat Ali versus Government of Pakistan*, held²⁵¹:

"It is for PEMRA and PEMRA alone to consider the eligibility of an applicant within the criteria prescribed by and / or under the Ordinance or the disqualification of such applicant for purpose of section 25 of the Ordinance. Such exercise of public authority cannot be outsourced to the Federal Government or the ISI, the IB or any other intelligence agency or instrumentality of the Federal Government. [Moreover], PEMRA does not have the authority to fetter its discretion in applying the criteria for grant of licences prescribed by or under the Ordinance and render the exercise of its statutory authority contingent upon grant of prior approval from the Federal Government or an intelligence agency."

The Court further held:

"[the] Federal Government can only issue policy directions to PEMRA within the meaning of section 5 of the [PEMRA] Ordinance and not otherwise usurp the statutory and regulatory authority vested in PEMRA to issue licence and regulate licences, under the garb of issuance of security clearance or withdrawal of security clearance or otherwise."

The [PEMRA] Ordinance does not contemplate any role of intelligence and security agencies in the grant or revocation of licenses and carving out such role through exercise of delegated legislative powers is a fraud on the statute and inimical to the right of freedom of speech and information guaranteed by the Constitution."

However, Sindh High Court, in *ARY Communications Ltd versus Federation of Pakistan*, while deciding about cancellation of NOC, issued by Federal Ministry of Interior, for the

²⁵¹ *Shoukat Ali versus Government of Pakistan*, PLD 2024 Islamabad 135, page 151, 152 and 153, para 38(i), (ii), (iv), (v)

purpose of security clearance of ARY Communications Ltd, held²⁵²:

"Proviso of the [Regulation 9 and 9(2) of Pakistan Electronic Media Regulatory Authority (Television Broadcast Operations) Regulations, 2012] does not provide any space for PEMRA either to ignore or bypass the Ministry of Interior's decision; thus, it is binding on PEMRA. PEMRA's decision, which will be dependent on such decision, in fact, would not infringe the rights as it would only [be] obliged to complete a formality to cancel in absence of security clearance."

Nevertheless, the Court also held²⁵³:

"Reasonable restriction imposed by law [as mentioned in Article 19 of the Constitution of Pakistan], by no stretch of imagination means to condemn a person / entity without any justification and without hearing. [Therefore, before this] decision of Ministry [to cancel the NOC], the aggrieved party should have been heard and if that has not happened, and / or denied then this constitutes a cause and calls for a consequential remedy."

[Moreover,] the law requires something more than these statements originally presented by PEMRA. If the content of the programme is seditious or is of such magnitude that it formed a narrative as demonstrated, then under PEMRA Ordinance, 2002, it is the responsibility of the Council of Complaints to decide the veracity of such content. What is demonstrated in the reasons of the Ministry of Interior is prima facie the domain of the Council of Complaints."

Lahore High Court in Trade Serve versus PEMRA, while deciding about a matter related to licence renewal fee, held²⁵⁴:

"A bare reading of this [Article 73(3) of the Constitution of Pakistan] makes it clear that a licence fee or fee is not a tax and that licence fee is distinct from a fee or a charge for services rendered. Hence, it is not necessary that every licence have a quid pro quo. It is also not necessary that the licence fee or renewal fee be passed through a Money Bill"

The Court further held:

"[T]here must be correlation between the fee and the cost of administration under the relevant law. Essentially, the licence fee must commensurate with the cost of regulating although exact arithmetical equivalence is not expected. The licence confers a right on the licence holder to do something which it otherwise could not do and, in this case, PEMRA is required to regulate the licence holder to ensure compliance of the law and terms of the licence. Therefore, in terms of the

252 ARY Communications Ltd versus Federation of Pakistan, PLD 2024 Sindh 50, page 58-59, para 16, 17, 18

253 ARY Communications Ltd versus Federation of Pakistan, PLD 2024 Sindh 50, page 62, para 20

254 Trade Serve International (Pvt) Ltd vs PEMRA, PLD 2017 Lahore 563, page 571, 573, 580, 582, para 11, 13, 18,

Constitution, a licence fee can be regulatory in nature where the regulator imposes a fee for regulating the activities of the licence holder. In such cases, there is no quid pro quo"

Furthermore, the Court stated:

"[I]n terms of the Rules and Regulations, a clear process has been set out for renewal of a radio licence. The prescribed process does not contemplate rebidding for the licence. In these circumstances, rebidding for renewal purposes tantamount to issuance of a fresh licence which is clearly contrary to the statutory procedure."

"In these cases, since the licence fee is a regulatory fee, hence renewal means continuation of the licence fee plus cost of inflation. In such cases where the licence fee is regulatory, where no service or privilege is granted by the government authority and where the only purpose of the licence is regulatory meaning for enforcement of statutory requirements, then such a fee cannot be accusive."

However, the Supreme Court of Pakistan set aside the above decision of the Lahore High Court in *PLD 2017 Lahore 563* and held²⁵⁵:

"[I]n cases where bidding has been carried out in granting licences, the renewal fee for the same shall be the "prevailing applicable licence fee" for the respective areas and categories of licences sought to be renewed conjoined with the rate of inflation calculated as prescribed by the State Bank of Pakistan. The renewal licence fee would be the last bidding price determined by the bidding carried out and approved by PEMRA for the category and areas of FM radio for which renewal of licence is being sought plus the rate of inflation calculated as prescribed by the State Bank of Pakistan."

"[However], where after the grant of licence by PEMRA to licensee-respondent, there has been no bidding for the category and area of FM radio for which licence is sought to be renewed, then the renewal licence fee for the next term would be the bidding price approved by PEMRA in favour of the licensee-respondent plus the rate of inflation calculated as prescribed by the State Bank of Pakistan."

Telecom Regulations and Cellular Services Shutdown

While deciding about the legality and adjudicating about Federal government's directive to suspend cellular services in *CM Pak Limited versus Pakistan Telecommunication Authority*, the Islamabad High Court held²⁵⁶:

"Pakistan Telecommunication Authority (PTA) was not vested with power under S.54(2) of the Pakistan Telecommunication (Re-Organization) Act, 1996 to cause

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PEMRA vs Tade Serve International (Pvt) Ltd, 2020 SCMR 206, page 213-214, para 15, 20
CM Pak Limited versus Pakistan Telecommunication Authority, PLD 2018 Islamabad 243, page 250, para 13

suspension of mobile cellular service. Such provisions could only be invoked in eventualities described therein, i.e., (i) war or (ii) hostilities against Pakistan by any foreign power or (iii) internal aggression or (iv) defence or security of Pakistan. Apprehensions relating to public safety, law and order or happening of an untoward incident, could not attract S.54(2).

The Court further stated²⁵⁷:

"Federal government or Pakistan Telecommunication Authority was not vested with power or jurisdiction to suspend or cause suspension of mobile cellular services or operations on grounds of national security except as provided in S.54(3) of the Pakistan Telecommunication (Re-Organization) Act, 1996.

However, the Supreme Court of Pakistan, in *Ministry of Information Technology and Telecommunications versus CM Pak (Pvt) Ltd. (against the Islamabad High Court Judgement in reported as PLD 2018 Islamabad 243)* held²⁵⁸:

"[The policy directive] gives law enforcement authorities the power to forward written requests to PTA specifying the cellular services to be closed, the time and duration of closure and the specific area where such closure is to be implemented in case of significant threat of "hostilities against Pakistan by a foreign power" or internal aggression by terrorists / groups. Nothing in the Impugned policy directive contravenes any substantive provisions of S.54 of the Pakistan Telecommunication (Re-Organization) Act, 1996. Instead, it complements and strengthens the purpose of the Act by attending to national security situations that fall outside the ambit of Section 54(3)."

The Court further stated²⁵⁹:

"To curtail further escalation of damage / violence there was a legitimate need to suspend cellular services. These protective measures are taken on the request of law enforcement authorities in view of past experience of terrorist activities at similar events. If such events caused the issuance of the impugned direction, then the same would be in the public interest, reasonable, fair, consistent with the object of the law and therefore valid."

Furthermore, the Court held²⁶⁰:

"[I]t is not within the province of a Superior Court to strike down or interfere with decisions taken by Federal Government bodies pursuant to the policy directive

257 CM Pak Limited versus Pakistan Telecommunication Authority, PLD 2018 Islamabad 243, page 251, para 14
 258 Ministry of Information Technology and Telecommunications versus CM Pak (Pvt) Ltd, PLD 2020 Supreme Court
 551, page 557, para 6
 259 Ministry of Information Technology and Telecommunications versus CM Pak (Pvt) Ltd, PLD 2020 Supreme Court
 551, page 558, para 7
 260 Ministry of Information Technology and Telecommunications versus CM Pak (Pvt) Ltd, PLD 2020 Supreme Court
 551, page 558, para 8

dated 26-12-2009."

Cancellation of Declaration of Newspaper

Lahore High Court, in *Mir Abdul Razzaq versus DCO Gujrat*, held²⁶¹:

"District Coordination Officer could take cognizance of the issue on the application of Press Registrar involving violation of S.10 of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002 and thereupon after inquiry and affording an opportunity of hearing could cancel the declaration."

"District Coordination Officer had no authority to take up the matter himself and cancel the declaration of the appellant."

Furthermore, in *Amir Abbs Minhas versus Deputy Commissioner Chakwal*, the Lahore High Court held²⁶²:

"The District Coordination Officer / Deputy Commissioner empowered to authenticate a declaration has power to cancel the declaration as well. However, S.19(1) of the [Press Registration, Newspapers, News Agencies and Books Registration] Ordinance 2002 shows that District Coordination Officer / Deputy Commissioner can use the power of cancellation only when application in this regard has been moved by the Press Registrar himself. The District Coordination Officer / Deputy Commissioner has no suo motu power and he cannot initiate the action on the complaint on any other person apart from Press registrar."

The Court further held:

"The Authorities can regulate the 'profession or occupation'; however, while exercising these powers, authorities should be careful and must remain within the four corners of the law"

6.5 Conclusion

As elsewhere in the world, information disorder has emerged as one of the major challenges in Pakistan, posed by fast spreading information technology and inadequate application of right to information laws. Due to the enormity of disinformation, misinformation and mal-information, it is becoming difficult to distinguish between genuine information and false and fake information.

²⁶¹ *Mir Abdul Razzaq versus DCO Gujrat*, PLD 2017 Lahore 147, page 150, para 9 and page 152, para 13

²⁶² *Amir Abbas Minhas versus Deputy Commissioner Chakwal*, PLD 2021 Lahore 630, page 633, para 7 and page 634, para 8

In Pakistan, government has introduced several legal instruments, administrative actions, technological solutions etc., to ‘counter information disorder’ in the country. These include:

- amendment in the PECA in 2025 to criminalize certain online content;
- notification of social media rules for regulation of online content;
- defining of ‘misinformation and disinformation’ through amendments in PEMRA law in 2023;
- defamation law in Punjab;
- pre-qualification to benefit from journalists’ protection law; and
- installation of cyber firewall, web-management system and deep packet inspection (DPI) system.

The state has an obligation to ensure an information environment that enables democratic participation, which includes promoting media pluralism and ensuring transparency by countering false narratives that undermine rights. However, under Article 19(3) of the ICCPR, any restriction must meet the prescribed test. Such as, the restriction must be based in law for a legitimate aim including national security, public order, or public health etc.

Similarly, it must fulfil the criterion of necessity and proportionality. This clearly means that vague or overly broad anti-disinformation laws can violate the right to information and expression. UN Special Rapporteurs on freedom of expression (e.g., David Kaye & Irene Khan) has warned against criminalizing disinformation, while urging states to promote media literacy and support independent journalism by avoiding vague laws that enable state censorship.²⁶³

The Budapest Convention is the first international treaty seeking to address Internet and computer crime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations. The core focus of the Convention mainly targets offenses against the confidentiality, integrity, and availability of computer systems and data, content-related offenses (notably child pornography) and offenses related to infringements of copyright and related rights. However, the Convention does not explicitly address disinformation (i.e., false or misleading information spread with intent to deceive). Moreover, the second Additional Protocol to the Convention, adopted in 2022, focuses on enhanced cooperation and disclosure of electronic evidence. While not about disinformation per se, it’s relevant when tackling international cyber-enabled disinformation operations.

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<https://www.amnesty.org/en/wp-content/uploads/2021/11/POL3047512021ENGLISH.pdf>

In Pakistan, defamation is, both, a crime as well as a civil wrong. However, not much jurisprudence relating to this issue has emerged in recent years. Moreover, criminal defamation, given in PPC and the PECA, has been used frequently to silent public criticisms of people in power.

The courts, with a few exceptions, have recognized regulators' (PEMRA, PTA, etc.) powers to regulate the content in the broadcast sector as well as in cyberspace. On DTH licencing, the Lahore High Court allowed to include content producers among the bidders of DTH licences. However, the Supreme Court of Pakistan overruled this decision. Similarly, Islamabad High Court declared intelligence and security agencies have no statutory role in in the grant or revocation of licenses. However, Sindh High Court made it binding upon the PEMRA to abide by the decisions / directions (re: security clearance of licensees) of ministry of interior.

Similarly, the Islamabad High Court has held that the PTA has no power to cause suspension of mobile cellular service in the country. It said that the federal government or the PTA is not vested with powers or jurisdiction to suspend or cause suspension of mobile cellular services or operations on grounds of national security. However, the Supreme Court Pakistan ruled that law enforcement authorities have the power to forward written requests to PTA specifying the cellular services to be closed, the time and duration of closure and the specific area where such closure is to be implemented in case of significant threat of "hostilities against Pakistan by a foreign power" or internal aggression by terrorists / groups.



CHAPTER 7

RECOMMENDATIONS AND CHARTER FOR REFORMS

Based on the findings and analysis of the situational and legal contexts that govern the landscape in Pakistan of freedom of expression, media freedoms and cyberspace, outlined in the previous chapters, this report recommends that a “Charter of Media and Legal Reforms” be formulated based on these findings. The draft charter should be developed based on consultations among key stakeholders steered through the following sets of recommendations for key stakeholders:

Recommendations for Government and Policymakers

- 1. Reform and Strengthen Legal Frameworks:** Amend existing laws to better protect freedom of expression, privacy, and the right to information. Ensure that new legislation aligns with international human rights standards.
- 2. Implement Journalist Safety Laws:** Fully operationalize the Protection of Journalists and Media Professionals Act, 2021, and the Sindh Protection of Journalists and Other Media Practitioners Act, 2021. Establish the necessary commissions and ensure effective enforcement. Balochistan, Khyber Pakhtunkhwa and Punjab, as well as Azad Jammu and Kashmir and Gilgit-Baltistan should have similar laws for their respective jurisdictions.
- 3. Enhance Data Protections and Privacy Rights:** Expedite the passage of the Personal Data Protection Bill 2021 incorporating safeguards recommended by stakeholders and ensure it includes robust guardrails against unauthorized surveillance and data breaches.
- 4. Facilitate an Enabling AI Policy:** Expedite consultations with civil society on the draft AI Policy of 2023 and make it a framework centred on beneficial use of AI in compliance with constitutional protections and guarantees.
- 5. Promote Transparency:** Improve compliance with proactive disclosure provisions of right to information laws. Ensure that public bodies regularly update their websites with required information, including the list of categories of information outlined in the proactive disclosure clauses.
- 6. Combat Impunity:** Develop and implement strategies to combat impunity for crimes against journalists and all information practitioners, including women and minorities. Ensure thorough investigations and prosecutions of threats, attacks, and harassment. Government authorities should optimally avoid themselves becoming petitioners against citizens, journalists and civil society actors under PECA and other laws and regulations that restrict free

speech.

Recommendations for Media Organizations

1. **Adopt Safety Protocols:** Implement comprehensive safety policies and protocols for journalists, including training and insurance. Ensure that journalists working in conflict-affected areas receive adequate protection. Comply with provisions of the federal Protection of Journalists and Media Professionals Act, 2021, and the Sindh Protection of Journalists and Other Media Practitioners Act, 2021, especially obligations outlined for the media establishments.
2. **Promote Ethical Journalism:** Encourage journalists to respect the rights and reputations of others and avoid disseminating false information. Provide training on ethical journalism practices, countering disinformation and beneficial uses of AI tools and skills that strengthen ethical journalism.
3. **Support Investigative Journalism:** Provide resources and support for investigative journalism, particularly on issues related to government transparency, corruption, and human rights to restore the central mission of media being the guardian of public interest.
4. **Enhance Digital Security:** Invest in digital security measures to protect journalists from online harassment, surveillance, and cyber threats.
5. **Mainstream the digital media:** An irreversible digitalization of the society and industry makes it inevitable for media establishments, including media houses, press clubs and journalists' unions to acknowledge and facilitate recognition of formal information practitioners of the digital world – digital journalists – as full formal journalists and accord them the same rights as journalists and information practitioners associated with traditional media such as television, print and radio.

Recommendations for Civil Society Organizations

1. **Advocate for Legal Reforms:** Lobby for amendments to problematic laws that restrict freedom of expression and access to information. Advocate for the passage of comprehensive data protection laws. Formally ally with media industry, associations and practitioners as natural partners jointly and equally invested in protecting freedom of expression and right to information.
-

2. **Monitor Compliance:** Regularly monitor and report on the implementation of right to information laws and journalists' safety laws. Hold government and public bodies accountable for non-compliance because as long as media and information practitioners remain unsafe, media cannot be free cannot optimally serve public interest.
3. **Provide Legal Support:** Offer legal assistance to journalists and other media professionals facing threats, harassment, or legal challenges. Establish hotlines and emergency response teams.
4. **Raise Awareness:** Conduct awareness campaigns on the importance of freedom of expression, privacy, and the right to information. Educate the public on their rights and how to exercise them.

Recommendations for International Organizations

1. **Support Capacity Building:** Provide technical assistance and capacity-building support to government bodies, media organizations, and civil society groups in Pakistan to protect freedom of expression and right to information, including advocacy for enabling laws and regulations governing free speech spaces, including media and internet.
2. **Monitor Human Rights:** Continue to monitor and report on the state of human rights in Pakistan, particularly in relation to freedom of expression, privacy, and safety of journalists' and other human rights defenders' safety against intimidation, harassment and other harms.
3. **Facilitate Dialogue:** Encourage dialogue between the government, media organizations, and civil society to address challenges and improve the legal and regulatory environment to restore trust in information systems that are free from coercion and undue restrictions.
4. **Promote Best Practices:** Share best practices and successful models from other countries on protecting freedom of expression, privacy, and the right to information that allow open spaces and societies that respect diversity and encourage pluralism and inclusivity.

These recommendations should be aimed at creating a safer and more transparent environment for all citizens, journalists, information professionals, women and all kids of minorities including geographic, cultural, economic, ethnic, religious and ethnic.

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