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Regulating Digital Expression: A Critical Appraisal of the Prevention of Electronic Crimes (Amendment) Act, 2025, and its Impact on Civil Liberties in Pakistan

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Abstract

The Prevention of Electronic Crimes (Amendment) Act, 2025, which amends the Prevention of Electronic Crimes Act (PECA) 2016 by redefining cybercrime and establishing four new regulatory bodies, has drawn considerable criticism in Pakistan. The amendments were enacted with little parliamentary debate or stakeholder consultation. Civil society, journalists and legal experts are of the view that the law may allow the executive to go beyond its limits and harm constitutional freedoms, especially the right to freedom of expression, the right to privacy and the space for political opposition. The government, on the other hand, presents these reforms as a necessary response to the growing problem of cybercrime and online disinformation. The paper combines doctrinal analysis with a Critical Legal Studies (CLS) lens. The state presents these reforms as necessary steps against the growing menace of cybercrime and electronic disinformation. The paper critically evaluates whether these measures enhance digital rights or are simply instruments of surveillance and control in an increasingly securitised context. It contributes to scholarship on technology law and civil liberties in postcolonial nations by situating the amendments within debates on digital authoritarianism, legal instrumentalism, and constitutionalism.

Keywords: PECA 2025, digital rights, privacy, article 19, constitutionalism, chilling effect
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1. INTRODUCTION

The Prevention of Electronic Crimes (Amendment) Act, 2025, which can also be referred to as PECA Amendments 2025, has supplemented the definitions of cybercrimes and established four new institutions to monitor digital speech. The legislation has been subject to criticism by the citizens, the media, and the legal experts who believe that the legislation has done little, in effect, to prevent the spread of cybercrime and digital misinformation. Among the chief concerns is that the amount of public input in the process was too little, which raises the question of the democratic quality and transparency of the legislative process (Aslam et al., 2025). The federal government believes that the changes are necessary to prevent the distribution of fake information and safeguard digital integrity. Critics, however, argue that the changes may result in censorship and the repression of dissent (Digital Rights Foundation, 2025). Thus, a fundamental legal question arises: do the 2025 changes help safeguard digital rights and prevent the spread of fake information, or do they give the

executive the authority to suppress political opposition, popular discourse, and press freedom in the country?

These problems are dealt with in this paper in a critical legal framework which discusses socio-political power structures involved in digital regulation. First, it subjects the PECA Amendments 2025 to a doctrinal and legislative analysis. Second, it identifies the gaps in Pakistan's legal regime regarding data protection. Third, it provides a comparative review of international legal standards and jurisprudence. Finally, it gives recommendations on policy changes and legislative changes to make Pakistan accountable to its constitutional protections and international human rights obligations. The amendments mark a significant shift in Pakistan's digital regulatory landscape. They add four new regulatory bodies to the Act and redefine several key terms. Nevertheless, the Act suffers from structural and doctrinal weaknesses that jeopardise constitutionally guaranteed freedoms, particularly freedom of expression and the right to due process (A. Khan, 2025).

2. VAGUE AND OVERBROAD DEFINITIONS

One of the strongest criticisms of the PECA Amendment 2025 is that its definitions are vague and too broad, which creates real difficulties in the prosecution and adjudication of cybercrimes. (Digital Rights Foundation, 2025). The amendment changes the meaning of the term 'complainant' to a person who is a victim or has a 'substantial reason to believe' that an offence has been committed. This makes it very easy to make a criminal complaint. A relaxed definition invites frivolous and speculative grievances and can make the law fodder for the misguided. Also, the broader definition of "person", which now means a natural person or a body politic or corporate. This enables state officials and private organizations to initiate criminal actions against citizens, and to establish a hierarchical system of enforcement that undermines civil rights and democratic accountability. Section 26A, which prohibits the spread of false and fake information, is one of the most controversial provisions. It reads as follows:

"Whoever intentionally disseminates, publicly exhibits, or transmits any information through any information system, that he knows or has reason to believe to be false or fake and likely to cause or create a sense of fear, panic or disorder or unrest in general public or society shall be punished with imprisonment which may extend up to three years or with fine which may extend to two million rupees or with both." (Prevention of Electronic Crimes (Amendment) Act, 2025, s. 26A)

This provision does not pass the three-pronged test of legality, necessity, and proportionality that has been set by Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) (Human Rights Committee, 2011). First, the provision is not certain legally since the words such as fear, panic, disorder, and unrest are undefined and subjective in nature. Second, the measure is unnecessary in a democratic society, as the existing civil and defamation laws offer less restrictive means of addressing misinformation. Lastly, punishing such a widely defined offence with imprisonment does not

pass the proportionality test. On an international level, this legislation would most probably be considered incompatible with the laws of freedom of expression. In Garrison v. Louisiana (1964), the U.S. Supreme Court warned against criminalising false statements about public officials without proof of actual malice, which helped to preserve healthy public discourse, at least on governance matters. Likewise, in United States v. Alvarez (2012), the Court held that false statements are not, by that fact alone, excluded from constitutional protection. The PECA Amendment, which does not require proof of intent to cause harm or malice, puts real-life political speech and investigative journalism in jeopardy. Furthermore, the wording provides too much room for manoeuvre for the authorities to determine what is false, and what fake, content is. This has a chilling effect on freedom of speech and promotes a selective application particularly against dissenting views and journalists and political dissent (Khilji, 2025; Sheraz et al., 2025). In Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416), in relation to Article 17, the Supreme Court decided that laws which abridge fundamental rights must be specific and rationally related to the legitimate aim which the law is trying to pursue. The 2025 amendments do not meet this criterion. They leave their operative terms undefined, which might make Pakistan's digital legal system a tool of surveillance and control. That would be in violation of Article 19 of the Constitution of Pakistan, 1973, and Article 19(3) of the ICCPR.

3. OVERREGULATION AND RETALIATORY DEFINITIONS: GROWING STATE OVERSIGHT OVER DIGITAL EXPRESSION

A basic tenet of a democratic legal system is that criminal law should be limited and drafted so precisely that it cannot be abused or misapplied. The PECA (Amendment) Act 2025, however, departs from this principle by introducing legal constructs which are ambiguous and expansive. Such ambiguities create vistas of disproportionate encroachment of rights that are, according to the constitution, secured freedoms, in particular, freedom of speech and information access. Law language that was declared illegal and unconstitutional by a prior ruling and was thought to be outdated is brought to life by the introduction of the term, aspersion (section 2(1) (iiia)), which means spreading false and harmful information which damages the reputation of a person. In its landmark ruling in Pakistan Federal Union of Journalists v. President of Pakistan, decided by Chief Justice Athar Minallah, the Islamabad High Court struck down the 2022 Ordinance and the words “or harms the reputation” in section 20 of PECA 2016 (Naseer, 2022). The court also pointed out that the laws should not be aimed at protecting the individuals, and especially the ones in high positions, against harsh criticism. It noted that any restriction of such expression in the name of safeguarding the so-called reputation is not aligned with the principles of the democratic system and Pakistan’s obligations under the ICCPR. The Islamabad High Court also held that the free exchange of information and ideas is the most crucial aspect of running a democratic society, and that any law that suppresses speech,

especially critical speech, is unconstitutional in nature. Despite this jurisprudential progress, the PECA Amendment reiterates a similarly troublesome language, an act of retrogression by the legislature that can easily undo the gains made on digital rights. Equally problematic is the broadened definition of social media platforms in section 2(1) (xxviiib), which includes any person that owns, provides, or manages information, or a website, application, platform or communication channel or any other such application and service that allows the user to use the social media. This broad generalisation radically extends the regulatory domain of the state. The government gains too much latitude to control and censor internet communications by categorising any form of media, such as private messaging services as well as non-conventional mediums, such as social media. A further element of ambiguity that gives discretion to the authorities is the introduction of a novel word, communication channel, which gives room to understand even encrypted messaging applications such as WhatsApp or Signal, as being covered by PECA regulations. This risks exposing private communications to state control, thus violating the constitutional guarantee of privacy under Article 14 of the Constitution. Furthermore, this extension of power corresponds to the recent measures like the governmental blocking of X (previously Twitter) and increased monitoring of Virtual Private Network (VPN) use. With the modified structure, VPNs can now be blocked or restricted, even though they have a valid purpose of providing secure communication, whistleblower protection, and overcoming censorship in totalitarian internet settings. Any blocking of VPNs would issue a direct challenge to the right to access information and would impede digital literacy, particularly where political issues are involved (Aslam et al., 2025).

From a comparative perspective, democratic jurisdictions such as the European Union have opposed such extensive controls. They have instead prioritised transparency, the autonomy of the users, and judicial protection when controlling digital platforms. The fact that Pakistan has left these normative standards is a threat to the process of connecting the digital governance regime to other recognised human rights practices globally. These legislative trends in a conclusive impact reveal that a systematic propensity of the executive to transgress reaches heights where the Supreme Court of Pakistan has cautioned against, as in Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), which supported legal precision and reasonableness in matters touching upon human rights. Conversely, the PECA Amendment 2025 places state-centred security concerns ahead of citizen-centred freedoms where digital expression is considered as a danger rather than a democratic requirement.

4. REGULATORY OVERREACH AND INSTITUTIONAL CAPTURE

The PECA Amendment of 2025 inserts three new chapters, 1A, 1B and 1C, into PECA 2016. Chapter 1A establishes the Social Media Protection and Regulatory Authority (SMPRA), which will act as the principal regulator of

online spaces in place of the Pakistan Telecommunication Authority (PTA). The powers granted to SMPRA are quite broad: it can regulate unlawful or offensive content (Section 2B (e)) and oversee the enlistment and registration of social media platforms (Section 2B (f)), grant or suspend such enlistment (Section 2B (g)), block platforms (Section 2B (h)), issue the content removal orders (Section 2B (l)) and take the suo motu action (Section 2B (t)). Such an institutional re-formation is a radical centralisation of regulatory power which functions with few checks and balances. Jurisprudentially speaking, the transfer of such discretionary and open-ended authority to executive appointees, without notable judicial limits, is quite problematic in the light of Articles 4, 9, 10A and 19 of the Constitution of Pakistan, which uphold the elements of due process, legal certainty and freedom of expression. The words employed in the delineation of the powers of SMPRA are unclear and so broad that they may be used, at the whim of those in power, against political opponents or critics under the excuse of offensive or unlawful content.

These concerns are accentuated by the composition of SMPRA which has been outlined in Section 2D. The fact that the Chairperson and five of the eight members are appointed by the federal government makes the regulatory body susceptible to political influence and institutional capture, a concept often condemned in critical legal studies as a violation of the rule-of-law principles in favour of executive expediency. The lack of judicial and parliamentary control mechanisms will further increase the chances that SMPRA will not act as an impartial arbiter but rather as an instrument of state control over digital discourse. This setup is directly opposed to international human rights norms. According to the United Nations Human Rights Committee (2011), any limitation on freedom of expression must meet three conditions: legality, legitimacy, and necessity. Regulatory activities and laws need to be designed in a very minimalist way, spelled out, and must meet a valid purpose. In comparison, the imprecise meaning of the words of PECA as to fake information, unrest, and incitement does not conform to the legal certainty norm.

These uncertainties contravene the rule of nulla poena sine lege, under which no individual is supposed to be punished under a law which is vague or exceedingly discretionary. Further, section 2C, which grants SMPRA the authority to accept complaints and act upon them promptly including the blockage or deletion of content, provides a quasi-judicial system without due process of the law. No reference is made to the adversarial hearings, the rights of appeal, and/or protection against the unjustified removal of content. The consequences are especially terrifying to the independent press, the minority political voice and civil society actors, which historically have been the earliest victims of poorly written cyber laws in Pakistan (Anwar et al., 2024). The critical legal tradition warns of the recent proliferation of the executive authority in the name of technological regulation particularly in the postcolonial nations whose governance is frequently authoritarian in the name of legality. The PECA Amendment gives SMPRA wide, vague, and even unaccountable powers, thereby depriving the process of democracy and

constitutional responsibility. It is a paradigmatic instance of how digital regulation can be instrumentalised to serve the purposes of political suppression, being disguised in the normative discourse of public order and national interest.

To put it briefly, the government is entitled to control the digital ecosystem, but in a transparent and accountable manner that respects the rights of people. As currently designed, SMPRA fails to meet such standards and would become a tool of censorship rather than protection, which is not only against the constitution of Pakistan but also against the international standards which the country must adhere to under the ICCPR.

5. DISCRETIONARY AUTHORITY AND EROSION OF DUE PROCESS

One of the major weaknesses of the PECA Amendment 2025 is its persistent neglect of procedural fairness. The amendment does not provide a mechanism for adversarial hearing or for affected people to be heard before regulatory or punitive measures are enforced. This contravenes Article 10A of the Constitution of Pakistan, which guarantees due process. The regulatory authority can act as it wishes without procedural safeguards such as notice, hearing and the right of appeal, whereas domestic constitutional law as well as international law requires a regulatory authority to act in a way that is fair to the affected person. These broad discretionary terms bestowed on SMPRA concerning the enlistment or suspension of social media platforms in the absence of a procedural framework are of grave concern in the suppression of political opposition.

The termination of judicial consideration and objective fact-finding of content through labelling as aspersion, false information, offensive content and categories also permits state censorship in the guise of legality and is thus highly problematic under critical legal theory analysis. Section 2B (v) provides the authority with the power to do any other activity that can be described as ancillary, incidental, or consequential to its current powers. This is not only overbroad but may also amount to excessive delegation, because it allows SMPRA to operate beyond clearly defined statutory limits, whereas delegated powers should operate within clear and well-defined limits. The enabling clause is an open-ended one, which undermines the intent of the legislation, and allows an overreach of the executive, which is contrary to the democratic constitutional design of Pakistan. The Supreme Court of Pakistan has repeatedly held that any restriction on the fundamental rights must be limited, reasonable and legally grounded. The landmark case of Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) establishes that any restriction of a democratic right cannot be used as a weapon to control politics and must not be administered as a means of oppression.

This is a judicial dictum that strengthens the opinion that the new discretionary powers granted to SMPRA particularly without procedural safeguards, are prohibited by the Constitution. In addition, centralisation of executive control is further enhanced with the fact that policy directives issued

by the federal government are binding on SMPRA (section 20). This power concentration also destroys freedom of action of the regulatory authority and erases the pretence of independence as this would effectively turn SMPRA into an instrument of the state to direct or manipulate the regulatory decisions politically or ideologically.

This violates Article 19 of the Constitution and Article 19 of the ICCPR, by which Pakistan, as a state party, is bound. The UN Human Rights Committee (2011) has made clear that freedom of expression includes the right to seek, receive and impart information in whatever medium one desires and any measure should meet the requirements of legality, necessity, and proportionality. The PECA Amendment fails all three tests. To sum up, the legal system introduced by the PECA Amendment 2025 marks the further degradation of due process and a dangerous increase in executive discretion, with potentially disastrous consequences for democratic rights. The changes are part of a larger trend in postcolonial legal authoritarianism; whereby direct repression is regularly substituted with the use of vague legal systems. The amendment should also be studied critically for its potential to destabilase Pakistan's fragile democracy in the name of regulating cyberspace.

6. INSTITUTIONAL CAPTURE AND PROCEDURAL DEFICIENCIES

PECA Amendment 2025 establishes a regulatory framework through which these matters are to be administered. One of its features is the establishment of Social Media Protection Tribunals, which are to address disputes concerning content. However, further critical examination reveals that their practices and organisation have severe flaws that damage the autonomy of the courts, access to justice, and the separation of powers. Each tribunal consists of three persons: a Chairman who has been, or is qualified to be, a judge of a High Court, and two other persons who are experts in the field of journalism and software engineering. Although such a hybrid composition seems to be technocratic, it is marked by a high concentration of the executive power since all the appointments are done only by the federal government. Such a process of appointment, which does not incorporate any independent and judicial participation, leaves people concerned regarding institutional capture, which involves adjudicative bodies being encroached by the executive. Such a structure contradicts the concept of judicial independence, which is a vital component of constitutionalism. It might make these courts an instrument of state coercion rather than courts of justice.

The tribunals are also immensely powerful including the capacity to control the content, levy punishment, and censor without the major scrutiny of the courts. It is a breach of the principle of separation of powers as defined in the Constitution of Pakistan since the legislative, executive, and quasi-judicial powers are concentrated in one body. It goes against Article 10A that ensures the right to a fair trial and due process of law, as well. The tribunals in effect are granted the authority to serve as judge, jury, and executioner although it bypasses the judicial institutions that have been mandated in the constitution.

Moreover, under section 2X of the Amendment, decisions of the tribunal can be appealed only to the Supreme Court of Pakistan.

This bypasses the High Courts, which exercise constitutional jurisdiction under Article 199, and systemically distorts the appellate procedure. It practically denies the citizens the right to the multi-layer appellate review, making access to justice imaginary to a common litigant because of the financial, logistical, and procedural impediments. Such a tribunal model not only reduces the role of the judiciary in the institution but also goes against international standards of law. According to the UN Human Rights Committee, the tribunals that are performing judicial functions are required to be independent, unbiased, and created through a law, and the right to appeal should be available and functional (Human Rights Committee, 2007). By vesting all appellate jurisdiction in the Supreme Court, the amendment eliminates an important judicial examination that would have otherwise served as a checkpoint against the arbitrary or politically driven decisions. It is also disturbing that criminalization of indeterminate and vague speech acts has become a common practice.

The amendment imposes a maximum prison term of three years for the dissemination of false and fake information which is likely to cause fear, panic, disorder or unrest among the public. The punitive provision is not legal, it is a principle of criminal legal theory, it has to be specific, it has to be predictable, and it has to not be random. The words fear, panic and unrest are not specific and can be considered biased, and it gives the government the right to inflict punishment on dissenting thought in the guise of maintaining order. Jurisprudentially in line with the Human Rights Committee, such imprecise penal provisions fall foul of Article 19(3) of ICCPR, which requires that restrictions on speech be provided by law and be necessary and proportionate. The excessive criminalization of unclear expression and the elimination of judicial checks suggest that there is a systematic shift to legal authoritarianism, with the dressing of digital regulations. It creates in its turn a structural crisis of constitutionalism and democratic responsibility, as the state institutions are re-targeted not at serving the people, but at watching them, regulating them, and suppressing them.

7. PROCEDURAL DEFICIENCIES AND THE THREAT TO JUDICIAL INDEPENDENCE

The amendment of PECA 2025 suggests the establishment of Social Media Protection Tribunals to hear the offences related to the contents under the Act. Organizationally, every tribunal consists of three individuals with one of them being the Chairman, who has been, or is qualified to be, a High Court judge and the other two with knowledge in journalism and software engineering. Nonetheless, the fact that the powers of appointment are concentrated in the hands of the federal government raises serious issues of politicisation and institutional impartiality. Such one-sided form of appointment without any independent vetoing or judicial process undermines the impartiality of the tribunal and opens the possibility of quasi-judicial

functions being subjugated.

The fact that the tribunal has the power to control the content in the digital space including imposing fines and the interpretation of the offence without any significant judicial review is against the constitutional rules of separation of powers. With such a structure, the judiciary has been successfully taken out of its constitutional responsibility as stipulated in Articles 175 and 199 of the Constitution while the tribunal acts as both judge and executioner. According to Kennedy (2002), as bureaucratic organisations take on a few governmental duties, the probability of the rights abuses grows exponentially and in politically sensitive cases like digital expression, they are bound to occur. These tribunals can act as tools of repression, instead of tools of justice delivery, because of their structure. Their design reflects what critical legal theorists describe not as an administrative failure but as a planned approach to promote government overreach and curtail constitutional liberties.

This arrangement compromises Article 10A in the Constitution which gives every person the right to fair trial and due process which includes the right to an independent and impartial tribunal. Also, Section 2X of the Amendment provides for only one appeal from the decisions of the tribunals to the Supreme Court, within 60 days. This type of limitation of the appellate jurisdiction of the High Court is an exception to the usual judicial review regime and highly limiting in terms of access to justice. The Supreme Court, which is already overburdened by public interest litigation, constitutional litigation and other litigation, is simply not able to be the Supreme Court to all cases generated by the tribunals under PECA. This process ignores both the monetary and procedural limitations of the common litigants and practically precludes meaningful redress in the process of appeal. The substantive vagueness of criminal clauses is another problem.

The amendment outlaws the spread of such fake and false information that results in the feeling of fear, panic, disorder, or unrest, and this is punishable by imprisonment of not more than three years. This language is indeterminate in nature and does not comply with the principle of legal certainty which is one of the main principles of legal practice in both domestic and international human rights law (Human Rights Committee, 2011). The imprecise nature of the terms of fear, panic, and unrest places general discretionary power in the hands of the tribunal or regulatory bodies, allowing them to classify the dissident talk as a criminal offence at their own will. Article 19(3) of International Covenant on Civil and Political Rights (ICCPR) to which Pakistan is a party, sets out the proportionality test, under which any restriction on expression in a democratic society must be necessary and serve a legitimate aim. The PECA Amendment 2025 fails this test as it lays down excessive penal punishments for ill-defined offences and infringes on the safeguards for procedural protection against misuse. Combined, the tribunal system proposed by the PECA Amendment is an inverted legal and structural version of democratic accountability.

This shows an authoritarian approach to content regulation, rather than consideration for the harm done online, by avoiding judicial bodies and by

limiting appeals and relying on unclear and overly punitive criminal provisions. The critical legal scholars believe that such legal frameworks frequently serve to legitimise power and not to restrict it and thus violate the rule of law and constitutional safeguards.

8. INSTITUTIONAL OVERREACH AND THE NORMALIZATION OF EXECUTIVE SURVEILLANCE

A very significant change in this PECA Amendment 2025 is that the Cyber Crime Wing of the Federal Investigation Agency (FIA) has been replaced by a new agency called the National Cyber Crime Investigation Agency (NCCIA). Judicial checks and constitutional responsibility, as well as the sustainability of proceedings, are serious issues to be raised legally and politically in this institutional transformation. The wholesale transfer of the FIA's investigative powers and pending case backlog to NCCIA is likely to exacerbate the problems instead of fixing them. A new, undefined legal role institution can lead to case overloads, breaks in the continuity of investigations, and cause confusion as to whether the institution of protection applies to the procedures. In terms of administration, sudden changes in institutional structures, without sufficient transitional mechanisms and an understanding of what is being changed in the law, affect the element of legal security, a fundamental principle of the rule of law. More to the point, it is the concentration of all the investigatory authority in the executive branch without giving the means through which the courts can review or examine such powers on their own, which puts at stake the principle of checks and balances.

As designed, neither the structure nor the activities of the NCCIA are subject to judicial control. This model of executive dominance discredits institutional independence of the investigation and facilitates politically driven investigations and discriminatory enforcement of the cybercrime laws. The amendment further allows the investigative cooperation of the NCCIA with the intelligence agencies thereby providing legal cover to the surveillance practices that were considered ultra vires in the past. Section 30, as substituted by the 2025 act, now expressly permits joint investigation teams to seek assistance from any intelligence agency, thereby giving statutory cover to a practice that previously lacked a clear legal basis. Such a legislative turnaround is a clear example of the phenomenon of the juridification of repression that has been defined by the critical legal theorists as the act of re-engineering law in such a way that it is not used to check the power of the state, but rather it is a way to legitimise the arbitrary expansion of the scope of state authority.

By this amendment, the institutional surveillance and investigation apparatus is not subject to popular and judicial scrutiny, and further entrenches the logic of the security state, which places priority on executive discretion rather than on individual rights and democratic accountability. These developments are extremely concerning considering Article 10A (right to fair trial) and Article 14 (inviolability of dignity and privacy) of the Constitution of Pakistan, 1973. The amalgamation of executive and intelligence capabilities in one of the new and unaccountable authorities essentially breaks the balance of

norms of liberty and security. It is also an indicator of reverse direction in legal evolution, according to which institutional change is defined by dictatorial needs, and not by participatory or constitutional loyalty.

Therefore, the design of the NCCIA and the latitude it may be working with has to be perceived not as a technical and bureaucratic adaptation, but as a deep change in the design of digital governance. The amendment bypasses judicial authority, permits intelligence cooperation, and institutionalises executive primacy, placing PECA in danger of becoming an instrument of surveillance administration, contrary to constitutional protections and the democratic principle of the rule of law.

9. LEGISLATIVE SHORTCOMINGS AND THE IMPERATIVE FOR A DATA PROTECTION REGIME

The amendments to the Prevention of Electronic Crimes Act (PECA) in 2025 were adopted through a process that was clearly not transparent, consultative, or democratic. This lack of consultation with the affected stakeholders, legal professionals and civil society participants indicates that legislative authoritarianism is increasingly characteristic of digital lawmaking in Pakistan. As critical legal theorists observe, the type of legal process also reveals its political role: when law is made in a rush, it is usually made on behalf of the already powerful instead of on behalf of the common good. The urgent issue is the fact that in regard to the amendments, no substantial data protection system was introduced even at the time when the surveillance authority and the means of getting access to data are proliferating. Although the reforms described by the government are presented as the requirements to stop misinformation and threats related to digitalization, the government also omits the fact that a strong legal apparatus is necessary to safeguard the informational and personal autonomy of the citizenry.

According to Tarana (2025), the legislation has failed to offer any protection to users, making them vulnerable to identity theft, unauthorised surveillance, and digital profiling, as illustrated by the Careem data breach (The Express Tribune, 2018); yet none of these concerns has been addressed in line with international data privacy and cyber governance standards. However, jurisdictions such as the European Union (through the General Data Protection Regulation) and India (through its Digital Personal Data Protection Act, 2023) have moved in the right direction to recognise data privacy as a fundamental digital right. Pakistan, however, currently lacks a comprehensive data protection law despite numerous requests by legal and human rights organisations. Such a deficiency is not only a legislative lapse; it is a structural inability to defend the right to informational self-determination which is increasingly becoming a component of preservation of dignity, autonomy and democratic participation in the digital era.

Such legislative negligence is reflected in sections 31 and 32 of PECA 2016 (E. A. Khan, 2022). These provisions allow investigating officers to obtain user data without a prior court order, so that the state is free to access digital conversations. Not only is there a procedural deficiency with this

authority, but it directly goes against the constitutional guarantee of privacy in Article 14 of the Constitution of Pakistan, 1973. In Mohtarma Benazir Bhutto v. President of Pakistan (PLD 1998 SC 388), the Supreme Court held that the right to privacy is connected to the rights to free speech and liberty, and that any invasion of privacy not authorised by law amounts to an abuse of fundamental rights. PECA, however, converts into law the very warrantless surveillance against which the Court has cautioned on numerous occasions. The nature of the executive agencies holding the surveillance power, without judicial or external checks, indicates a current trend in the governance of cyberspace in Pakistan. In that respect, this amendment is more of a control tool than a regulatory change, which reveals the intrinsically coercive character of digital law in the authoritarian environment. The risks of such neglect of the legislature have already been demonstrated in sections 31 and 32 of PECA 2016.

From a constitutional and policy perspective, the lack of a data protection structure coupled with the intensified cybercrime investigation procedures makes the legislation unjust as well as dangerous. The unregulated expansion of the state authority without proper legal protection of the interests of the data subjects raises significant questions concerning the principles of proportionality, legality, and necessity as the key to the rights-based governmental justice. The PECA Amendment 2025 does not only disregard the issue of data protection, but it also actively undermines the fundamentals of digital constitutionalism in Pakistan.

10. INTERNATIONAL FRAMEWORK

Different nations use diverse laws and systems to combat the spread of fake news, disinformation, and misinformation. These countries use their laws in consideration of the right of freedom of expression and free speech in such a way that the opinion of the people would not be compromised. Pazzanese (2021) explains that the First Amendment to the U.S. Constitution guarantees freedom of speech and significantly restricts the government's ability to control misinformation. Similarly, the Digital Services Act adopted by the European Union, rather than targeting individuals and ordinary citizens, establishes an accountability scheme for platforms and social media firms in event of any differences. In Pakistan, however, there is no comparable law ensuring accountability for any breach or misuse of users' data by companies. Another important law is the United Kingdom's Online Safety Act 2023, which regulates online safety for users and manages the risks of illegal and harmful material.

These are global systems that control the possibility of misinformation and guarantee freedom of speech and personal rights. Such a framework is highly needed in Pakistan to address the requirement of international protection of digital rights, which would reduce cybercrime while preserving the constitutional rights of ordinary citizens.

On the same note, courts have the authority to nullify laws that produce a chilling effect on free speech. In its landmark decision in New York Times

Co. v. Sullivan (1964), the US Supreme Court held that imprudent legal restrictions on journalism suffocate public discussion and frustrate democracy. Similarly, in Shreya Singhal v. Union of India (2015), the Indian Supreme Court invalidated section 66A of the Information Technology Act, 2000, because it violated the freedom of speech guaranteed by the Constitution of India. The court discussed the same rationale to do with chilling effect. The same chilling effect can be seen in new PECA amendments, and this can have much more ominous effects on freedom of speech and political dissent. In legal terms, the chilling effect refers to the deterrence of individuals from exercising their legal rights for fear of becoming the subject of criminal proceedings. Such a chilling effect may be produced by the new PECA amendments through the abstract definitions of crimes, excessive punishment, and ineffective processes.

The Islamabad High Court has already declared the PECA (Amendment) Ordinance 2022, and part of section 20 of PECA 2016, unconstitutional because of their chilling effect on freedom of speech (Naseer, 2022). The Ordinance was found unconstitutional because of its overbroad statutory language. This ruling demonstrates the importance of the right to freedom of speech. It is heavily feared that in case the court considers such an amendment, it may invalidate them as being ultra vires the Constitution. Moreover, Pakistan has signed and ratified the ICCPR and is therefore bound to observe its obligations under the treaty.

The judiciary has been voicing the same within Pakistan. The ruling of the Islamabad High Court striking down the PECA (Amendment) Ordinance 2022 on grounds of over breadth and unconstitutionality shows how judicial opposition to laws that jeopardise free expression can deter such infringements. The Court directly resorted to the doctrine of chilling effect as a legal theory term where it refers to laws that deter people from exercising their lawful rights because they fear the punishment or are uncertain of punishment under the law. Replicating the same malpractices, disproportional penalties, and the lack of due care, the 2025 amendments are likely to be regarded as having the same flaws that the court is likely to void. In this regard, international human rights law imposes an additional layer of scrutiny on Pakistan's legislation. Being a signatory to the International Covenant on Civil and Political Rights (ICCPR) makes it the obligation of Pakistan to uphold freedom of expression as dictated in the Covenant in Article 19 that any restrictions made have to be legal, necessary and proportionate. However, the present legislation under PECA cannot pass this tripartite test due to providing excess powers to the executive, lack of specific delineation on the crimes, and offering no real checks or redress. Such deficiencies not only infringe the constitutional guarantees enshrined in Articles 14 and 19 of the Constitution of Pakistan but also breach Pakistan's international duties under the ICCPR.

To summarise, the PECA amendments, when compared with constitutional jurisprudence and international norms, are indicators of a retrogressive and even unconstitutional increase in state power. Unless there are effective judicial checks and balances and a comprehensive digital rights framework, these rules are likely to be used to stifle the digital populace rather

than to govern the digital public space democratically.

11. CONCLUSION AND POLICY RECOMMENDATIONS

Based on the above discussion, it is recommended that the government review the amendments in PECA 2025 at the earliest and align it with the Constitution and commitments with international bodies. The general lack of precision of offences, the inadequate procedures and the severity of punishments must be amended. The Pakistan State should ensure dignity and basic rights of the common man of Pakistan and should not create fear in his life, as he is already facing a lot of issues in his normal life. Keeping this in mind, the following recommendations are made.

a. The PECA Amendment 2025 could have significant impact internationally for Pakistan, particularly given that the nation has already fallen in the list of press freedom in the world. The vague and broad definitions of offences may put political discussion at risk and weaken the freedom of the press and media. The law should be carefully reviewed and its wording made clear in the light of Pakistan's international obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the fundamental rights provided in the Constitution of Pakistan.

b. The government should carry out a comprehensive review of these amendments to guarantee the rights of journalists and media professionals, in line with the constitutional rights of free speech and expression. The law should not be used to influence political discourse or to silence criticism and public opinion. Instead, it should protect journalists and social activists. All legal provisions must also meet the constitutional requirements of due process.

c. The government ought to do a comprehensive revision of these amendments in which the rights of journalists and media practitioners are guaranteed, and this is in tandem with the constitutional rights of free speech and free expression. This legislation should not influence political discourse, criticism, and opinions in society. It ought to protect the media persons and social activists. Legal provisions must satisfy the constitutional requirements of due process. The law has been enacted in a rush without involving the stakeholders and the people in consultation on the law. Hence, there is a need for discussion with, and engagement of, stakeholders and policy analysts.

d. There should be no political influence or interference in these institutions. Appointments ought to be made by a body that is independent of the incumbent government. This would require the new institutions like the Authority, tribunal, and NCCIA to be politically independent so that they can operate without biases. By doing so, a fair result would be anticipated. The judiciary should check the operations of these institutions.

e. Excessive restriction of social media sites may reduce digital innovation within Pakistan. This may adversely affect Pakistan’s digital economy and deter international digital investment. Thus, an innovation-friendly policy is an unavoidable requirement to promote the digital and information technology industry.

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