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Regulating Misinformation or Silencing Dissent? A Constitutional Analysis of the PECA Amendments 2025

Muhammad Awais Aslam[1], Abdullah Kanrani[2] & Muhammad Adil Shehroz[3]

[1]*LLB (Hon's), Bahauddin Zakariya University, Sub Campus Vehari, Pakistan Email: advawaisaslam@gmail.com*
[2]*LLB (Hon's), Shaheed Zulfiqar Ali Bhutto University of Law, Karachi, Pakistan, Email: abdullahkanrani01@gmail.com*
[3]*LLB (Hon's), Bahauddin Zakariya University, Sub Campus Vehari, Pakistan, Email: muhammadadilshehroozbudh@gmail.com*

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Corresponding Author:
Muhammad Awais Aslam
Email:
advawaisaslam@gmail.com

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ABSTRACT

With the rise of digital platforms, perception of the public has changed; dissemination of information changed; and communication environment has changed. Under the 2025 Amendments to the Prevention of Electronic Crimes Act (PECA), it stipulates penalties for disseminating false information, and sets up a tribunal system specifically for hearing these cases, and brings down more state control over digital content to fight disinformation. Although such wide and vague clauses have been objected to by legal experts, reporters and human rights activists for the reasons that they restrict basic constitutional rights such as freedom of speech (Article 19) right to information (Article 19A) and right to a fair trial (Article 10A). The amendments create to enforce these new rules and it falls under the Social Media Protected and regulatory Authority (SMPRA). But in its vague, all-encompassing authority, authorities would have the power to censor voices of opposition, limit internet expression, making for flexibility of empowerment for the government. Comparative analysis of digital literacy programs and content transparency systems vis à vis International best practices as well as regulatory methods in the EU, US, India and UK find them to be more landed substitutes to criminalization as well as too forceful government action. The study of the PECA Amendments 2025 presented in this paper considers more thoroughly their potential impact on basic liberties and offers suggestions as to how the control of false information can be balanced with a defence of democratic liberties.

Introduction

A fast spread in digital platform in Pakistan has dramatically modified the information observe of dissemination. Nevertheless, with the rise of this digital revolution, questions regarding misinformation, fake news and online defamation have risen, and the government has ultimately introduced regulatory mechanisms. It was this Prevention of Electronic Crimes Act (PECA), 2016, meant for the prevention of cybercrimes such as hacking, fraud and harassment, which has seen many amendments, over the past few years.[1] The Act has, however, been criticized by human rights organizations and activists who point out that the Act constitutes a violation of the right to freedom of expression and access to information. Proof has been borne out over these past nine years, the more journalists, human rights defenders, and political opposition figures targeted for using the law. Since February 2024, authorities also broadened sweeping bans on social media platforms including blocking the X (formerly Twitter).[2] The Act has undergone significant recent amendments, creates a criminal offense for individuals spreading **"false and fake information,"** carrying a maximum penalty of three years in prison and a fine. However, the vague and unclear wording of certain aspects of the offense, combined with the PECA's history of being used to suppress dissent, raises concerns that this new provision will further undermine the already limited right to online expression in the country. The amendments were introduced without any consultation or debate, and it further expands the powers previously granted to the Pakistan Telecommunications Authority by establishing the new Social Media Regulation and Protection Authority. These provisions give authorities the ability to block and remove content based on vague criteria, which threatens the right to freedom of expression and fails to comply with international human rights law's standards of proportionality and necessity.[3] The bill was passed by the Senate on January 28, 2025, and received presidential assent on January 29, 2025, officially becoming law.[4] These amendments, however, have sparked intense debate, with critics arguing that these legal modifications are not merely about curbing misinformation but are instead a tool to suppress dissent and restrict freedom of expression. Are these amendments a necessary response to combat online harm, or do they pose a threat to democratic freedoms and the right to dissent?

Overview of the PECA Amendments 2025

The PECA Amendment Act 2025 introduced several key changes, including:

1. **Establishment of a Social Media Regulatory Authority** – A new regulatory body with investigative and punitive powers.
2. **Criminalization of "False Information"** – Under Section 26(A), spreading false information that causes "fear, panic, or unrest" is punishable by up to three years in prison and a fine of two million rupees.
3. **Fast-Track Tribunal System** – Special tribunals created with a power to try cases involving digital offences at a pace.

[1] "The Prevention of Electronic Crimes Act 2016: An Analysis | SAHSOL" <https://sahsol.lums.edu.pk/node/12862>
[2] Amnesty International, "Pakistan: Authorities Pass Bill with Sweeping Controls on Social Media" (*Amnesty International*, January 29, 2025) <https://www.amnesty.org/en/latest/news/2025/01/pakistan-authorities-pass-bill-with-sweeping-controls-on-social-media/>
[3] Ibid [2]
[4] Internews Pakistan, 'President signs controversial PECA Amendment Bill into law' (29 January 2025) https://internews.pk/eng/2025/01/29/president-signs-controversial-peca-amendment-bill-into-law/ accessed 5 February 2025.

4. **Mandatory Data Localization** – Digital platforms required to store data locally for ease of authority's access.

Potential Contraventions of Fundamental Rights

The **Prevention of Electronic Crimes Act (PECA)** has been a contentious law since its enactment in 2016, It has also raised concerns that the wide kit would permit states to shut down freedom of speech and restrict information access, and digital rights, based on cybersecurity. The PECA Amendments 2025 have served as springboards to these concerns by enhancing the state's regulatory reach in the online spaces, stipulating stiffer penalties and granting additional discretion to agency of enforcement. These amendments directly compromise the most fundamental right enunciated in the Constitution of Pakistan, namely freedom of speech (Article 19), right to a fair trial (Article 10-A) and freedom of the press.

- **Freedom of Speech and Expression (Article 19):** Here it is ensured the right of freedom of speech and expression subject to reasonable restrictions. The broad definition under the PECA amendments of 'false information' may result in self-censorship and suppression of dissenting voices and thus may infringe on this right.
- **Right to Fair Trial (Article 10A):** Specialized tribunals granted extensive powers will enable trial proceedings to be conducted without the presence of concerned parties as the basic feature of right to fair trial.
- **Freedom of the Press (Article 19):** The press's role in disseminating information is crucial for a democratic society. The stringent penalties for spreading **"false information"** may deter investigative journalism and limit the media's ability to hold authorities accountable.

Expanded State Control Over Digital Content

One of the most alarming aspects of the 2025 amendments is the enhanced power given to the **Pakistan Telecommunication Authority (PTA)** to censor online content without due process. Under **Section 37**, which was already controversial, the amendments have further broadened the definition of "harmful content" to include **any material deemed "misleading," "anti-state," or "against public morality."** This vague terminology grants authorities unchecked discretion to block digital content arbitrarily, leading to a chilling effect on free speech**.** Previously, the law was criticized for enabling selective censorship; now, with the 2025 amendments**,** the government can preemptively remove content and penalize individuals or organizations spreading so-called "misinformation," even if it is fact-based dissent.[5]

Criminalization of Online Dissent and Journalistic Expression

The new amendments introduce harsher penalties for individuals accused of spreading "fake news" or content that "creates unrest." While combatting misinformation is a legitimate concern, these amendments fail to define clear criteria for what constitutes **"false information,"** opening the door for misuse against political opponents, journalists, and activists. Investigative journalism, political criticism, and social activism are now at greater risk, as media outlets and independent reporters face legal repercussions for publishing content that challenges state narratives. The

[5] Gul I, Khan AS and Naznin S, "Critical Analysis of Prevention of Electronic Crimes Act 2016 in Pakistan," vol 2 (ASAR Council, 2021) journal-article <https://asarcouncil.com/papers/1633930363.pdf>

amendments also jail people who speak anonymously on social media as they require social media users and platforms to register with government authorities.[6] The provision goes against international norms of human rights that stipulate anonymity is imperative to free speech in authoritarian or oppressive regimes.

Enhanced Surveillance and Violation of Privacy Rights

Another deeply concerning provision of the 2025 amendments is that government surveillance powers are extended. The amendments, under section 31 and section 32 of PECA, raise the collection of data by law enforcement without a warrant. This violates the right to privacy, a necessary ingredient in any other fundamental rights guaranteed Article 10A of the Constitution. The amendments also include a mandatory data retention policy for internet service providers (ISPs), which mandate them to store user data for much longer and hand it over to authorities when asked. This large risk of data misuse and surveillance without authorization has been highlighted and witnessed in other cases where this digital law was used in targeting oppositions figures by state agencies.

Restrictions on Online Platforms and Content Creators

Within 2025 amendments to social media, tech and content creator companies are subjected to strict compliance requirements in which they are made liable for content published on their platform. Heavily fine or even ban on a platform if “prohibited content” remains indefinitely. While this has stirred concerns about the future of digital platforms in Pakistan, the big companies might withdraw from all the operations (or aspects of those) or enforce the stricter content moderation, what will deepen the desert of free speech.

Impact on the Right to a Fair Trial

As an amendment to this law, provisions are introduced that allow for a burden of proof shift from the prosecution onto accused, a basic principle of any fair trial as enumerated under Article 10A and other provisions, including **Section 26 A**, which imposes punishment on the person who intentionally disseminates "false and fake information", which may have the effect of creating **fear, panic, or disorder** in the country. By making such wording **‘knows or has reason to believe,**’ it is effectively placing an implicit burden on the accused to prove that they did not knowingly spread false information. Just like Section 2C, **Section 2C** allows the newly created Social Media Protection and Regulatory Authority to take action on complaints that 'fake and false information' has been posted and to order its removal or blocking within **24 hours** before the formal adjudication. Under the proposals, the expedited trial procedures will all but eliminate the time and resources currently available to a defense before trial, and thus greatly increase the risk of miscarriage of justice.

The amendments will also enable trials in absentia, allowing people to be convicted without being afforded due process of law. The **principle of due process**, as emphasized in the landmark case of Begum Shorish Kashmiri (PLD 1969 SC 14), underscores that any restriction on fundamental rights must adhere to judicially established legal standards.[7] However, the PECA amendments, by providing unchecked discretion to authorities, violate this doctrine and risk eroding the safeguards

[6] Ibid [5]

[7] *Government of West Pakistan v Begum Agha Abdul Karim Shorish Kashmiri* [1969] PLD SC 14

of free expression and fair trial. In politically motivated cases, where those residing abroad are unable or unwilling to attend proceedings, it will be possible for this to happen.

Comparative Perspectives

- **International Standards**

The different legal systems have significantly varied regulation of misinformation and impact to free expression. The **International Covenant on Civil and Political Rights (ICCPR)** is a key benchmark in the international law of the country, to which Pakistan is a signatory. The freedom of expression is guaranteed within Article 19 of the ICCPR, but it is subject to restrictions, the only circumstance under which such are accepted by the ICCPR being the very existence of restrictions by law, their nature, their aim and the necessity and proportionality of the restrictions.[8] The **United Nations Human Rights Committee (UNHRC)** has reiterated that laws against misinformation should not be vague or overbroad, as they risk being misused to stifle dissent.[9] The **PECA Amendments 2025**, with their broad definitions and excessive state control, do not align with these principles.[10]

Case Studies: Balancing Misinformation Regulation and Constitutional Rights

Several democracies have adopted different approaches to tackling misinformation while ensuring constitutional protections for speech:

- **United States**: The First Amendment to the U.S. Constitution provides **strong protections for free speech**, limiting the government's power to regulate misinformation. Courts have consistently ruled against broad restrictions on speech, emphasizing the dangers of state-controlled narratives.[11]
- **European Union**: The **Digital Services Act (DSA)** Run by platform accountability rather than direct censorship, social media companies will be required to put in place measures for transparency without criminalising individuals for misinformation**.**[12]
- **The Online Safety Act 2023** is a significant legislative measure enacted by the **United Kingdom** to enhance the safety of individuals using internet services. The Act creates a new regulatory framework with the aim to make online environment safer to UK users. This requires regulated internet service providers to maintain the ability to identify and mitigate risks related to illegal and harmful content and to participate in developing the services. The Act grants the Office of Communications (Ofcom) the power to oversee such compliance, enforce the regulations and make sure online platforms meet set safety standards. It empowers for example to impose fines and other penalties on platforms that do not comply with the Act. The legislation is an entirely balanced legislation, which protects the individual's rights, without being negligent towards the need to have robust

[8] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19.
[9] UN Human Rights Committee, 'General Comment No. 34: Article 19 (Freedoms of Opinion and Expression)' (CCPR/C/GC/34, 12 September 2011).
[10] A legal analysis or commentary on PECA (e.g., HRCP or a legal expert's report).
[11] *Murthy v. Missouri*, 600 U.S. ___ (2024).
[12] Digital Services Act, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 [2022] OJ L277/1.

regulation protecting adult internet users from the harm that can arise from rogue online operators and hackers.[13]

- **India**: Cyber defamation laws, used recently in some of these cases, have had the effect of smothering journalistic freedom and concern remain that misinformation laws can be weaponised as a means of political control. But there have been occasions when the press has enjoyed some protection from courts, while nonselective enforcement remains an issue.

These international approaches are diverse attempts to regulate online misinformation without jeopardizing free speech, individual rights, among others. Where the First Amendment of the United States puts free speech first, Europe's Digital Services Act requires accountability for platforms without charging people for misinformation. New law introduced by the UK's Online Safety Act 2023 introduces a regulatory regime intended to protect people who go online and also protect our constitutional rights. In India, misinformation laws are sometimes used for purposes other than what they were created for – silencing journalistic freedom and constructive political dissent – despite some judicial interventions. The varied approaches to dealing with the dilemma of content regulation in the online medium, offer important lessons for Pakistan when it attempts to grapple with the narrow but important problem of regulating online content; while seeking to make sure that such laws are not exploited or misused to stifle liberties to fight misinformation.

Public and Legal Reactions

Criticism and Support

PECA Amendments 2025 have raised many voices. But journalists, civil society organizations, and human rights activists say the amendments target political dissent rather than misinformation. In statements, the Pakistan Federal Union of Journalists (PFUJ) and Human Rights Commission of Pakistan (HRCP) warned that the changes "are set to erase press freedom and infringe on digital rights". [14] The amendments have also come under fire from legal experts for infringing constitutional guarantees under Article 19 (freedom of speech) and Article 10-A (right to a fair trial). Opponents of the amendments, on the other hand, argue that the amendments are an overreach by the government to curtail free speech with the inability to speak freely about the government and its policies could lead to a loss of democracy.

Legal Challenges

The ongoing challenge to the constitutionality of the PECA Amendments 2025 has ignited legal debates regarding the limits of freedom of expression in Pakistan. The Lahore High Court's ruling in *Usman Zulfiqar v. The State* (2022) affirms the need for a balance between free speech and the protection of reputation. In this case, the court dismissed charges against a citizen who had posted a video on social media under the Prevention of Electronic Crimes Act (PECA), [15] the court highlighted that while freedom of expression is a core right, it can be subject to reasonable restrictions to safeguard others' reputations. This ruling, consistent with previous Supreme Court decisions, suggests that the amendments may face constitutional challenges due to their broad

[13] "Online Safety Act 2023" <https://www.legislation.gov.uk/ukpga/2023/50/contents?>

[14] Pakistan Federal Union of Journalists, 'PFUJ Rejects PECA Amendments' (PFUJ, 2025) https://www.pfuj.org.pk accessed 5 February 2025; Human Rights Commission of Pakistan, 'Statement on PECA Amendments 2025' (HRCP, 2025) https://www.hrcp-web.org accessed 5 February 2025.

[15] Sheikh TS and others, "JUDGMENT SHEET" (2022) <https://sys.lhc.gov.pk/appjudgments/2022LHC6401.pdf>

scope. The constitutionality of the PECA Amendments 2025 is currently being challenged in court. A petition has been filed in the Supreme Court of Pakistan arguing that the amendments violate fundamental rights guaranteed by the Constitution, particularly freedom of expression, due process, and the right to a fair trial.[16]

Conclusion: A Move toward Digital Authoritarianism?

While cybersecurity and misinformation regulations are essential in the digital age, the **PECA Amendments 2025** appear to be more about controlling narratives than protecting online spaces**.** The amendments grant excessive power to state authorities without adequate judicial oversight**,** enabling censorship, surveillance, and suppression of dissent. The increased criminalization of digital speech, enhanced surveillance mechanisms, and undue restrictions on online platforms reflect a broader trend of digital authoritarianism**.** The lack of transparency and accountability in the enforcement of these amendments violates fundamental rights and contradicts Pakistan's constitutional commitment to democracy.

To ensure that cyber laws strike a balance between security and fundamental freedoms, it is imperative to repeal or revise these amendments to align them with constitutional safeguards**.** The judiciary, legal experts, and civil society must push back against these draconian measures and demand a legal framework that protects digital rights without compromising national security.

[16] Supreme Court to Hear Challenge Against PECA Amendments' **Pakistan Today** (Islamabad, 3 February 2025) https://www.pakistantoday.com.pk accessed 5 February 2025.