

SOCIAL MEDIA CRACKDOWN:

Punishing political dissent or fighting extremism?

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Shamsa Khalil

Islamabad Policy Institute, Pakistan

The Constitution of Pakistan has promised freedom of expression to its citizens. That right has further been reaffirmed by Pakistan's accession to international conventions and treaties. However, the country has a chequered history when it comes to the exercise of those rights.

Intolerance towards dissent started shortly after Pakistan came into existence, but the problem became more pronounced during Zia-ul-Haq's dictatorship. Instead of those wrongs being corrected by the subsequent democratically elected governments, the problem kept on getting complicated and the freedom of expression continued to be curtailed.

Pakistan Tehrik-e-Insaaf (PTI), which came into power last year had, in its manifesto, promised greater access to information and more freedom for press. PTI manifesto was, however, silent on issues like protection of freedom of expression, journalists' safety, and digital freedoms. With the new government arriving on the wave of 'change', many had, therefore, wishfully expected, at the time of transition, that the abuses committed in the past would be addressed. But, as things unfolded, it became clearer that the current government is pursuing the policies of the previous civilian and military governments in restricting the right to freedom of expression, more specifically the digital freedom.

The discussion about digital freedom has been reignited by the government's latest announcement that it will crackdown on social media to curb extremist tendencies. The reason given for initiating the crackdown may sound justified, but in Pakistan, history shows, such actions do not remain restricted to the originally intended purpose and are often extended to deal with political opponent and dissenting views.

In today's modern, globalized and highly inter-connected world social media is extensively viewed as a platform, which empowers people to raise their voices and make them heard in the power corridors that could otherwise be inaccessible for them. But, it is also a fact that its misuse has stirred nasty flickers of misunderstanding, disinformation, fake news, bigotry, religious extremism; hate speech and a culture of intolerance in Pakistan adding to the economic and security crisis that we were already confronting.

Inherently social media is neither negative nor positive it only depends upon how it is used. The example of its use in Arab Spring proves it's efficacy in political mobilization to topple dictatorial regimes and give a chance to democracy.

Therefore, in a country like Pakistan which is still in the process of anchoring a strong democratic system, the least public expects from the government is that the old tactics of curbing people's opinions are not revived. From 2017 onwards, abduction of activists Gul Bukhari, Gulalai Ismail, and the 5 bloggers, who later also faced accusations of blasphemy, and the many other cases of forced disappearances, have only served to further widen the gap between the public and state institutions. State is like a mother and needs to move on from the denial mode to looking at the grievances of people with an open heart and addressing them adequately instead of crushing them.

PML-N, during its tenure, not only passed the draconian Prevention of Electronic Crimes Act (PECA) 2016, but it was more unfortunate that under its watch there was a virtual assault on mainstream and social media where journalists / bloggers and activists were at the receiving end of the state's rage for espousing dissenting opinions about the constitutionality, functioning, transparency and accountability of different State tiers and the various institutions. Instead of responding to the concerns, the State in various instances opted to respond with denial besides curbing the basic rights of citizens to information, privacy, and free speech. The dissenting views were considered as conflicting with the interests of the State.

PTI, during its days in opposition, remained a forceful voice against tough cybercrime laws, harassment of social media activists and abuse of blasphemous laws. Now that the party is in power, the expectation is that it would put into practice what it once advocated. Need of the time is a more proactive approach based on well-defined parameters without violating basic rights of citizens of the country. However, what is happening on the ground runs contrary to the expectations.

Only two days after the government's announcement of a planned crackdown on 'extremist narratives' four people were arrested from Multan on Feb 15, 2019 on the charges of hate speech against the Prime Minister through their social media accounts. Similarly, Ministry of Interior ordered action against social media accounts of activists protesting against the visit of

Saudi Crown Prince Muhammad bin Salman over the civilian casualties in Yemen War. Prime Minister Imran Khan took notice of the MoI directive after civil society protested over the notification.

These actions, notwithstanding PM Imran Khan's orders of probe in the controversial MoI directive, clearly show that crackdown on extremist narrative and hate speech was being expanded to curb opinions of political opponents. The concern was reinforced when FIA, nearly three weeks after crown prince's visit, and despite PM's directive for investigating the initial controversial order notified 'enquiries' against five journalists, an activist, and four groups. This approach of the government will add to unrest among the people. The beauty of the democratic system lies in entertaining and accommodating diversity of opinion instead of denying it and imposing prohibitions under different pretexts. On one hand Information Minister Fawad Chaudhry emphasizes the importance of dialogue to prevent violence, whereas on the other hand government actions to codify moral policing further aggravate the grievances of the citizens.

The Legal Framework:

The Constitution of Pakistan, as stated earlier, guarantees freedom of speech as a fundamental right, as provided under Article 19. However, there are several other legal provisions that infringe on this right of the citizen and can be potentially used to restrict the use of cyber-space.

For instance the Pakistan Telecommunications (Re-organization) Act, 1996 contains number of provisions that could in effect undermine the freedoms ensured by Article 19. Moreover, the powers given to PTA under this legislation also contravene Pakistan's international commitments especially under ICCPR. For instance the Act gives unrestricted powers to Government of Pakistan to make regulations for controlling internet in the name of national security. The federal government is allowed under Article 54 (1) of the Act to intercept digital communication in case, it believes, the National Security of the country is threatened or any offence is committed, which can bring harm to country's sovereignty and survival. These are very wide ranging powers that can be misused by authorities, because there is no credible mechanism for deciding whether or not a particular action threatens national security. This concern is further validated by Article 57 (2) Ah, under which, the federal government has been

given full authority to make its own rules for interception of communication without following any standard procedure. As such it is implied that the Act gives the government blanket powers to conduct surveillance without any oversight and can even order shutdown of telecommunication services.

The lack of specificity with regards to what constitutes “false” or fabricated” information, and what will qualify as “indecent materials” and which actions would be considered “mischief” is also worrying as it may be manipulated to suppress legitimate dissent and non-conforming political views. The law, moreover, restricts the use of encryption of internet users for protecting one’s data while in transmission.

There are other laws, which may also be used for curbing online freedoms. These include the most often abused law - Section 295(c) of the Penal Code, which covers blasphemy; Section 124 of the penal code relating to sedition; the 2004 Defamation Act; the provisions of the Pakistan Protection Act, which vaguely criminalizes acts “calculated to influence or affect the conduct of Government by intimidation or coercion” and crimes like disseminating hatred against religious minorities, political groups, and castes and creeds; and Prevention of Electronics Crimes Act 2016.

The ambiguous language of this Act and the severe punishments, prescribed under it, show how the concerns of digital rights activists and IT experts were cast aside during the course of legislation. Sections 31, 32, 35 and 42 of PECA, in particular, reveal how exceptional powers were given to the law enforcement agencies. PECA’s Section 31, for instance confers on ‘an authorized officer’ discretionary powers to take into custody the record of any IT system and retain it with him for 24 hours even without having approval from a court of law for such an action. It doesn’t only allow him to manipulate data but also limits the options for the data owner to claim for manipulation as it can be used as electronic evidence against him. There is no forum available for remedy of any complaints. Section 32 relates to retention of traffic data of subscribers for one year and this requirement has further been made binding on Internet service providers as well as online service providers. This clause doesn’t meet international standards and leaves a wide room for data manipulation.

Sections 35(g) and 15 allow LEAs full access to encrypted information, which is possessed by any citizen, on the pretext of “offence” against the state and these two sections have actually discouraged programmers /coders. Section 42 lacks the oversight mechanism required to monitor the sharing of data sought by international organizations and foreign governments. This section is in violation of Article 14 of Constitution of Pakistan about the right to privacy.

Similarly Sections 20 and 37 are also problematic. Section 20 makes it an offence for a person to display or transmit any content that could harm someone’s reputation. Section 37 of the Act empowers PTA to remove and block any information through an information system if the Authority considers it necessary in the interest of the glory of Islam, the integrity, security or defense of Pakistan, public order, decency or morality, in relation to contempt of court proceedings, or commission of or incitement to an offence under the Act.

The Universal Periodic Review 2017, therefore, asked Pakistan to review the provisions of PECA, among other laws, “to ensure that the actus reus and mens rea requirements of the offences they create are narrowly circumscribed to ensure that these cannot be abused to affect artistic expression and meet the tests of necessity and proportionality”.

Therefore, one can reasonably conclude that there are problematic sections in PTA Act 1996, PECA 2016, and number of other laws, some of which have been cited above, which PTI government needs to urgently address in view of the legal complications that may arise in future and concerns that they infringe on fundamental rights of the citizens. Rights of freedom of expression; information; and privacy must be ensured. The government should, as part of PECA 2016, establish an independent body that can probe abuses of the law by LEAs and protection of data.

The government should importantly give up the old tactics of securitizing space, which in any case belongs to the people and where they can exercise their legitimate rights whether its freedom of speech or peaceful right to protest. FIA’s overreaching authority to define the limits of appropriateness in usage of Social media is highly objectionable. LEAs need to understand that there is a limit beyond which they cannot access and breach citizens online privacy through surveillance.

Social media has empowered people to raise their voices and State must not feel threatened. Government and state institutions must comprehend that Social media has brought awareness about corrupt entities, sexual harassment and abuse, the misuse of power corridors. National Security should no more be made the rug under which all the insecurities about dissents and state failures can be swept.

Key Recommendations:

- The government should unequivocally uphold the right to free speech, including criticism and dissent.
- The government should immediately act to update/amend the laws governing the use of internet by ending vagueness in provisions on criminal offenses because as such they do not fulfill the requirement of due process. Vague laws fail to guide law-abiding about what actions are lawful and what's unlawful. Similarly, the defendants are not clear about the allegation/s they face and so are the courts unclear while conducting the trials in such cases.
- Being a signatory to various international conventions, the domestic laws relating to use of internet should conform to international standards for the protection of freedom of expression.

About Author

The author is a Research Officer in Islamabad Policy Institute (IPI). Her research focus is on Governance and Public policy of Pakistan covering areas of climate change, human rights, education and media. She is a graduate of International relations from NDU Islamabad. Her expertise is in Russia, Turkey as well as South Asian Security and Nuclear politics. She also contributes in national dailies and blogs on above mention domains. She can be reached at shamsa.khalil@ipik.org or Twitter [@shamsakhali](https://twitter.com/shamsakhali)