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Freedom of Expression Under PECA 2025: A Constitutional Analysis

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Abstract

Pakistan's Prevention of Electronic Crimes (Amendment) Act 2025 establishes a framework of administrative measures and criminal provisions to regulate the dissemination of false information. The main amendment in PECA Act 2025 is the addition of Section 26A dealing with an offence concerning dissemination of false or fake information likely to cause certain public consequences. Section 26A also sets out administrative measures to file complaints in respect of such information, removal and blocking of content, regulation of online platforms as well as investigation of cybercrimes.

This article supplies an analysis of Section 26A of PECA Act, 2025 as incorporated in the Main Framework of Prevention of Electronic Crimes (Amendment) Act, 2025. It further analyzes that all the essential ingredients of Section 26A such as falsity, fault, potential harm and necessity have to be individually justifiable.

This article is mainly based on Articles 4, 8, 10A, 14, 19 and 19A of the Constitution and the case of Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd. (2023) PLD 2023 SC 431. The article also discusses PECA cases, the structure of new amendment in PECA 2025, Article 19 of the ICCPR and some comparative cases.

That is not to say, however, that all digital information which is deliberately spread can be suppressed or blocked, regardless of the serious and imminent harm that it can cause to the public. There is a legitimate aim of the State in dealing with such information. What is, however, required is that it must survive substantive constitutional scrutiny.

Keywords: PECA, Section 26A, Freedom of Expression, Article 19, Article 19A, Information System, Proportionality, Due Process, Content Moderation.

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Introduction

To understand Section 26A of PECA, this article provides an illustration in which a journalist learns that a public hospital may have concealed deaths during an emergency. Two sources support part of the account, but hospital officials deny it. The available documents remain incomplete.

However, on the basis of two sources, journalist had written the story and put the documents with the story. Later, hospital officials in press conference denied the information published by journalist. In order to give explanation to the public regarding the issue, hospital officials uploaded information on their website regarding the situation and clarified that all patients were being treated in the hospital as before and no deaths had taken place.

A reporter has an ordinary task of news reporting in public interest. The State has a different task and that is to stop dissemination of false information which can cause harm and lead to panic and cause emergency like situation. Although truthful information also causes harm and that is to erosion of public's trust in state's institutions but that is a different issue. An inaccurate report is somewhere in between. While facts are in dispute, the law can act but on the basis of Constitution and that is the issue in hand.

The Act which was assented to by the President and published in the Gazette on 29 January 2025, is Prevention of Electronic Crimes (Amendment) Act, 2025 (Act II of 2025). Section 26A and a new institutional framework for the regulation of social-media content has been introduced in the Act.

Section 26A is reproduced here as follows:

“26A. Punishment for false and fake information. — 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 upto three years or with fine which may extend to two million rupees or with both.” (Prevention of Electronic Crimes (Amendment) Act, 2025).

Furthermore, the criminal offense in Section 26A is not standalone. Section 2C, which pertains to a complaint for removal or for action under Section 26A, mandates **Social Media Protection and Regulatory Authority (SMPRA)** to dispose of such a complaint within twenty-four hours. Other Sections namely 2B and 2R respectively empower removal as well as blocking and platform restriction while Section 2G enables the Chairperson to act in an urgent public-interest situation to be subsequently ratified by the Chairperson. Section 2O defines terms while Section 2O and 2R contain provisions regarding Platform-blocking and removal and other related Matters respectively. The Federal Government has been empowered to make appointments and to determine policy within the Regulatory framework (Prevention of Electronic Crimes Act, 2016, ss. 2B–2D, 2G, 2O, 2R, as amended by Prevention of Electronic Crimes (Amendment) Act, 2025).

The structure of PECA's new provisions, particularly Section 2C (**complaints**), Sections 2B and 2R (**removal and blocking**), and Section 2G (**Chairperson's powers**), would lead to the exercise of the State's power prior to the matter being determined by a competent court in terms of whether the information published is false or not, whether the accused had knowledge that the information was false or had reason to believe that the information was false, and whether the circumstances in Section 26A have been fulfilled in terms of the public's interest.

This article does not intend to examine enforcement of Section 26A PECA or even to provisionally ascertain its application in certain situations. Till now litigation under Section 26A has been conducted in terms of the constitutional complaints raised in this article. Two such sets of proceedings have been decided by the High Courts – one instituted in the Islamabad High Court and the other in the Lahore and Sindh High Courts respectively (Asad, 2025; Tanoli, 2025; The Newspaper’s Staff Reporter, 2025). Proceedings under PECA have also been initiated in the sessions courts across the country. Imaan Zainab Mazari-Hazir and Hadi Ali Chattha have for instance been convicted for publishing (through social media) several instances of ‘false information’. Their conviction under the aforesaid as well as other sections of PECA has, however, been suspended by the Supreme Court and they have been granted bail pending their appeal before the said Court (Asad 2026; Iqbal et al. 2026).

This article frames a narrower question: **What must PECA’s Section 26A satisfy to survive substantive constitutional scrutiny when it is used against freedom of expression?**

A complaint and an inquiry may be warranted by a complaint, but not a term of imprisonment for a journalist’s writing. The evidence required to preserve for a criminal trial need not be preserved in the very form it is to be adduced as evidence. Urgency to remove fabricated health emergency alerts from social media may require immediate action, but a determination that one statement is false does not establish that the publisher knew it to be false or that such caused sufficient public danger to justify a term of imprisonment for fourteen years.

This article calls that principle **stage-specific justification**.

The most relevant part of the above structure for this article is Pakistan’s constitution of fundamental rights i.e. **Article 4, 8, 10A, 14, 19 and 19A**. Article 4 sets out the rule of law and requires all laws to be consistent with the Constitution. Article 8 specifies procedure for review of any law that contravenes fundamental rights as defined in Part II of the Constitution. Article 10A requires all laws to be read in conjunction with the fundamental right of freedom of association and the protection of such freedom under Article 11. Article 14 ensures that every citizen has right to dignity of person and will be treated in a manner that is lawful and with fairness. Article 19 allows for freedom of speech and enables the public to receive and disseminate information and to hold opinions (Constitution of the Islamic Republic of Pakistan, 1973, arts. 4, 8, 10A, 14, 19, 19A). Restrictions are however allowed on this right under Article 19A only if such restrictions are ‘reasonable’ and are intended to achieve ‘legitimate objects’ as laid down in said Article.

This article draws particularly upon **Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd. (2023)** to establish the importance of independent review of speech-based decisions and to set out the larger structure of the fundamental right of freedom of expression and of information and how that right is to be restricted. The authority cited here was decided under the framework of the PEMRA law and not PECA. Yet, its spirit and approach to the fundamentals of free expression would be equally applicable to the restriction laid down by the amended section 26A of the said Act (Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd., PLD 2023 SC 431).

In order to analyze PECA sec 26A within the framework of the currently available literature on misinformation and platform-governance the criminal offense as well as the administrative framework for the restriction of free expression will first be presented in more detail. Thereafter the constitutional requirements for the restriction of free expression will be developed from within the specific context of Pakistani authority, application of these requirements to inquiry and

investigation as well as to content-restriction and to criminal-conviction will subsequently follow. Most stronger arguments in favor of PECA sec 26A will in turn be confronted with the more restricted alternative of sufficient and proportionate justification at each of the various individual stages.

Literature Review

Digital speech governance has become an increasingly important area of study in the last few years. The private platforms of Facebook, Twitter, YouTube, and Instagram, etc. are increasingly seen as systems of governance that create their own rules and develop their own methods of enforcement and of speech moderation (Klonick 2018). And as Balkin (2018) points out the field of online speech is today increasingly governed not by the state as in the past but by a complex web of relations between state and digital intermediary and of private governance.

A second body of literature concerns the design of moderation institutions for online speech. Here Evelyn Douek writes that online content moderation should not be thought of as so many individual decisions about individual pieces of online speech; rather, because so many such decisions are made by so many people, the procedure by which they are made, the design of the system as a whole, the incentives at work within it, and the upstream governance of that system all become, in themselves, constitutional issues of great importance to the freedom of expression.

Similarly, the human rights materials relating to the issue of misinformation are presented in a cautious manner. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) protects the right of freedom of expression and this right can only be restricted by the State on the grounds and with the requirements stated in the said Article. General Comment No. 34 of the Human Rights Committee emphasizes the requirement of legislation to be reasonable and necessary. It also emphasizes the need to protect criticism of public institutions and warns against excessive penalization of expression.

UN, OSCE, OAS and African Commission of Human and Peoples' Rights' free expression mandates have dealt with the issue of 'fake news' in a Joint Declaration of 2017. Importantly, this Declaration recognized the risk of 'fake news', disinformation and propaganda to democratic institutions and of affecting the rights of individuals but then noted that states' responses to misinformation were also potentially 'harmful', particularly if these were framed in 'broad' and 'undefined' terms that were 'incompatible' with freedom of expression. Shaida Khan, UN Special Rapporteur on Freedom of Opinion and Expression, in a report on disinformation issued in 2021 recognized the risks posed by disinformation to democratic institutions and to the rights of individuals but concluded that state responses to disinformation were 'damaging' when these were 'vague', 'punitive' and 'outside of human rights'.

In inquiry stage the State would have to justify the inquiry on the material available with it at that stage. In the subsequent stages the State would have to justify its actions on the basis of material available with it at that stage. Thus, the scope of constitutional scrutiny increases with the stages of criminal prosecution and the highest scrutiny would be at the stage of ultimate criminal conviction where the material on which the conviction is achieved would have to meet the highest standards of constitutional scrutiny to establish the commission of an offense.

It is useful to refer to *Shreya Singhal v. Union of India* (2015). In that case the Supreme Court had treated the offense in Section 66 and the blocking provisions in Section 69 of the Information Technology Act separately and had declared Section 66A to be ultra vires while upholding Section 69 and the rules framed thereunder. This analogy would thus help in understanding how to make

a distinction between the powers that are granted for making an inquiry and the powers that are granted for taking action but it would not answer the constitutional question in Pakistan.

While a number of books deal with the subject of free expression, much of this is of little value for the Pakistani case, although again certain works on the subject of proportionality would be of use. This is particularly the case for Eric Barendt's work on the subject and related topics in Freedom of Speech and for the more in-depth work by Aharon Barak in the form of Proportionality: Constitutional Rights and Their Limitations.

Statutory Framework

The criminal offence

Section 26A sets out the criminal offense of dissemination of fake/ false information through information systems. Section 26A (i) refers to the act of dissemination of information, public exhibition or transmission through an information system (Hereinafter referred to as "information system"); Section 26A (ii) refers to the intent of the person and he must have intentionally published information through an information system (Section 26A (ii) refers to intent to publish). Section 26A (iii) refers to knowledge of the person who published information through an information system that the information published is fake or false. Section 26A (iv) refers to public consequences which information published through an information system is likely to cause and these have been enumerated in Section 26A (iv). Section 26A (v) prescribes a punishment of imprisonment which may extend to five years, or fine; or with both. (Prevention of Electronic Crimes Act, 2016, S. 26A).

Each of these elements must be proved by the prosecutor and can be proved by different means of evidence (for example, a publisher's ignorance of the truth in relation to a fact is to be proved by different evidence than his intention to cause a public concern).

It thus is imperative to recognize the difference between actual knowledge and the circumstance of having reason to believe. A single official denial of 'fake news' would not render a person guilty of the offense of having intentionally published information he knew to be false, within the established parameters of circumstance. Such would be the case where there is evidence of the speaker's knowledge of the material facts and circumstances including the source from which he received the information, the nature of the information and any other circumstances from which the inference of his belief can reasonably be drawn.

The section proceeds on the basis of prospective harm. Thus, actual riot or public disturbance etc. need not occur. However, the legal standard of likely harm has to be robust and not allow for speculation. Thus, the standard of plausible and proximate link needs to be satisfied.

For instance, A man falsely makes it appear that an emergency situation has arisen by an authority or any other person and publishes such information with the intention that others may obey it. He tells the residents of a village to vacate their homes to move to another place which is unsafe for their residence.

In the second case of unlawful online publication of false information online a researcher for a newspaper had predicted that there would be fuel shortages when official supply figures were constantly being varied and contradicted by other official sources. His prediction was later proved to be incorrect and it caused anxiety in the public.

The two situations, even though they cause anxiety in the public, cannot therefore be brought within the ambit of the criminal law for the said reasons. Material falsity, a real culpable mental

state and a real and meaningful connection with causing of serious public harm are essential for criminalizing speech. So, interpretation of the provision would have to be restricted to these parameters to the extent that the language permits.

Administrative removal is a different legal act

Section 2C enables an individual who has been aggrieved or affected by online information determined to be “fake” or “false” to approach the Authority. Note that the time limit for the Authority’s determination is 24 hours. Section 2C sets out alternative measures including removal/blocking of online information. (Prevention of Electronic Crimes Act, 2016, S. 2C).

A twenty-four-hour period is not the same as a trial to convict a person of a crime. The same evidential burden may not be applied. However, all such complaints shall be determined by the Authority as to whether or not the grounds have been satisfied.

Section 2R sets out grounds for restriction of online information. (Prevention of Electronic Crimes Act, 2016, S.2R (1)). Sub-section (g) refers to information which has been determined to be ‘fake or false’ by the Authority with reasons to believe that such information exists “beyond a reasonable doubt”. (Prevention of Electronic Crimes Act, 2016, S.2R(1)(g)). It is important to recognize that there is difference in application of proof between a criminal trial and administrative removal. Therefore, this section also needs to be interpreted in the Way the statutory language permits.

Moreover, the section dealing with the definition of “aspersion” (s. 2(1) (iiia) of the PEC Act) in relation to Section 2R(1)(h) must be read carefully by the opposition. The section dealing with aspersion in relation to Section 2R(1)(h) deals with false information harmful of reputation (Prevention of Electronic Crimes Act, 2016, ss. 2(1) (iiia), 2R(1)(h)). Thus, the opposition’s argument that critical speech of a judge, military personnel, a Member of Parliament or other public figure would be penalized under this clause is misplaced. More so, because a body of regulator is set up to decide whether or not the information published is false and whether it causes any harm to the reputation of anyone. The said body must have clear criteria to decide such matters and must function with independence. Moreover, the reasons for such decision must be capable of being revealed.

A distinction must, therefore, be made academically between overstatement and s. 2R(1)(h). Challenge of the latter on constitutional grounds would be easily and inconclusively struck down.

Institutional design

Preliminary Provisions have vested substantial responsibilities on Social Media Protection and Regulatory Authority and its connected offices. Appointments shall be made by Federal Government. Officials of Federal Government shall also be members of said Authority. The Federal Government may issue policy directions under the said Act. The Chairperson shall have power to remove a matter from the deliberations of Authority immediately and refer the same for necessary decision within forty-eight hours. (Prevention of Electronic Crimes Act, 2016, ss. 2A–2D, 2G, 2O, as amended by Prevention of Electronic Crimes (Amendment) Act, 2025).

Administrative removal is a different legal act

The application of Section 2C and removal and blocking of online content in relation to ‘aspersions’ is also dealt with in the article under consideration. It is laid down that all applications under Section 2C shall be entertained and finally decided within twenty-four hours. (Prevention of Electronic Crimes Act, 2016, S. 2C). The Authority may remove or block online content under the Act (Prevention of Electronic Crimes Act, 2016, ss. 2O). Section 2R also deals with removal and

blocking of online content under the Act and reasons for removal and/or blocking of online content are also laid down. Section 2R is dealing with grounds for removal and/or blocking of online content under the Act. The grounds have been enumerated from clause (a) to clause (h) of Section 2R (1). (Prevention of Electronic Crimes Act, 2016, S. 2R (1)). The ground of removal and/or blocking of online content under the Act in relation to aspersions is laid down in clause (g) of Section 2R (1) and reason therefor is laid down in clause (g) of Section 2R (1) in relation to aspersions. The said reason contains unusual combination of ‘reasons to believe’ with ‘beyond a reasonable doubt’. (Prevention of Electronic Crimes Act, 2016, S.2R(1)(g)). The said clause, therefore, requires careful consideration and the said unusual combination of ‘reasons to believe’ with ‘beyond a reasonable doubt’ is required to be interpreted. Section 2R(1)(h) also deals with aspersion and defines aspersion in the said sub-section. The said sub-section defines aspersion and, therefore, the objection to clause (h) of Section 2R (1) of the amended Act would also require to be considered and dealt with, particularly, in view of the Amendment made therein in 2025. The clause (h) of Section 2R (1) defines ‘aspersion’ and aspersion has been defined in terms of ‘false and/or misleading information published on social media etc. which causes loss/ harm to reputation etc.’ The Amendment in clause (h) of Section 2R (1) took place in 2025. The said clause (h) of Section 2R (1) deals with aspersion and aspersion has been defined in the said sub-section in negative terms, i.e., in terms of ‘information which is NOT TRUE and/or ‘MISLEADING’ published on social media etc. which causes ‘loss’/harm’ to ‘reputation’. (Prevention of Electronic Crimes Act, 2016, ss. 2(1) (iiia), 2R(1)(h)).

The Constitutional Framework

Article 19 of the Constitution relates to freedom of speech, expression etc. to be enjoyed by all citizens. Article 19 guarantees freedom of speech, expression, of the press etc. and permits the State to impose ‘reasonable restrictions’ on the said guarantee in a particular circumstance, when the restriction is imposed ‘by or under Authority of Law’. The words ‘**by or under Authority of Law**’ are very important.

It is also important to note that although falsity is not listed as an independent restriction under Article 19, it can form the basis of an enumerated ground where it threatens to cause harm to some legitimate interest such as to public order, to the commission of offenses, or to the rights and dignity of others. It is, therefore, the connection between the material published online and the legitimate interest that it affects that is crucial for determining whether or not a constitutional justification has been made out.

However, this would be to make an error of the greatest proportions for if Parliament could make a restriction on freedom of expression of the nature of a criminal offense, then declare that in itself to be sufficient as a ‘reasonable’ restriction then in reality the fundamental right of freedom of expression would be no more than a mere creation of legislation which a constitutional court could not then scabble to override.

Article 19A, however, is relevant in the context of the information environment and particularly of expression online. In *Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd.* (2023, paras. 6–10), the Supreme Court had noted that expression and the public’s receipt of information are in fact complementary to each other and that one man’s protected expression can be another man’s right to receive information and to know about things that affect him. Thus, Article 19A has to be viewed in the context of the information environment and media content is to be treated as part of the information environment and not as mere records of the State that can be sought under Article 19A.

The removal of information online affects not only the publisher and the person who has complained about online content but also the audience. Removal of information from online space would most affect the audience if the information relates to government's actions, to elections, to public health, to environmental issues, to public funds or to alleged misconduct on part of state's institutions and their officials. However, the audience's right to receive information does not extend to all information including alleged corruption.

The issue of proportionality with respect to the restrictions imposed by a statute for the purpose of regulation of media for expression of information and public discourse was also decided by the Court in the aforesaid case and it was held that the restrictions would have to be necessary for the purpose of legitimate objective and would also have to be reasonable and the said restriction must be defined in the black and white of the statute. The existence of independent complaint mechanism is important to hold the regulator accountable and to ensure that such restriction is not in the hands of government. (*Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd.*, 2023, paras. 19, 23–30).

The precise dispute concerned television regulation. PECA concerns digital speech. But three principles apply here.

First, a body designated to regulate communication and express does not cease to be bound by the Constitution merely because it has been given vast discretion by Parliament.

Second, Procedure is part of the constitutional protection.

Third, a body given the authority to impose restrictions cannot impose restrictions greater than those necessary for the objective which it is attempting to achieve.

In another case titled *Pakistan Broadcasters Association v. Pakistan Electronic Media Regulatory Authority* (2016) wherein the SC of Pakistan applied the test of reasonableness in the given facts and circumstances of the case under Article 19 of the Constitution and held that it would not be appropriate to hold that all restrictions imposed by a statutory regulatory authority on freedom of carry out broadcasting would be ipso facto reasonable (*Pakistan Broadcasters Association v. Pakistan Electronic Media Regulatory Authority*, 2016).

Article 10A in the meantime only protects fair trial and due process in matters related to civil rights and obligations as well as in matters relating to criminal charges. Thus, every informal administrative step does not automatically become subject matter of Article 10A. The relevance of Article 10A however increases when the state is also determining rights and imposing obligations by its steps and actions.

Article 4 is another fundamental right of Lawful treatment. Article 8 states that all laws shall be subject to the fundamental rights of citizens. Article 14 grants the right of Dignity of person and protects his privacy. The said article would also come into play when a constitutional defense of expression is being made and that expression causes harm to another's dignity and privacy.

Thus, the framework of all rights set out in the Constitution for the protection of freedom of expression would be undermined if all the interests are not identified and the relevant interest distinguished from the others for the application of the constitutional provision.

Constitutional analysis and counterarguments

Falsity alone is an inadequate constitutional threshold

The fact that falsest factual statements cause no harm at all does not mean that all false factual statements can be outlawed as speech.

Distinguishing between knowingly false information and other erroneous information in controversy-laden publications is a daunting exercise given the on-going nature of public controversies and the incomplete factual matrix available at the time of publication. Furthermore, most fact-based publications are predicated upon the information provided by sources in confidence, and even economic forecasts are normally couched in terms of probability and based upon various sets of data. Interspersing fact and commentary, in scientific, political and other fields, is also the hallmark of most expression.

Distinguishing between a knowingly fabricated factual statement and other instances of falsehood such as an honest mistake, an interpretation, satire, a prediction or other incomplete statement of fact.

This philosophical basis for free discussion is also one found in that great work on the topic by John Stuart Mill, discussed above. It is a basis for the discussion and does not translate into a constitutional doctrine (Mill, 1859, chap. 2).

Thus the words of “harm” in s.26A must be given due content. All publication of embarrassment to institutions or of controversy of a political nature would, if the criteria of “fear”, “panic”, “disorder” or “unrest” are satisfied, broaden the scope of the offense so as to defeat the object of restricting freedom of expression.

That news story may cause public concern and anger, but in itself it is not to be judged unlawful. The question whether the false information in the publication creates a sufficient and serious risk of the kind of harm set out in the exceptions in Article 19(3) is to be determined with reference to the information as a whole, with particular regard to the false information identified in the claim.

Materiality matters

Further, all information whether correct or wrong published would be taken away from circulation if the information contained some errors in facts. For instance, an investigation report into a big procurement scam would be shut down if the reporter got the date of one meeting wrongly.

Materiality or whether the error complained of amounted to a substantial change in the meaning of the statement(s) alleged to be false or misleading, would thus be an important criterion in a case where the speaker’s work in its entirety contained errors other than the ones complained of.

Above reference would be decided on the analogous principle laid down in the case of PEMRA v. ARY Communications (Pvt.) Ltd., (2023) P.L.D. Sc. 692 where the Hon’ble Court while deciding the matter of content on electronic media laid down the principle of deciding the matter on the basis of contextual examination and applying the test of proportionality as against deeming the objectionable portion of a program in its entirety to be unlawful to be prohibited from broadcast (Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd., 2023, paras. 19, 23–30).

The mental element must remain independent

The section further distinguishes between falsity and culpability. It does not make commission of an offense of mere publication of false information. The man who publishes information has to know that he is publishing information which is false or fake. In other words, he must have belief in falsity of information. Therefore, section 26A requires knowledge or reasonable belief of falsity on part of the publisher (Prevention of Electronic Crimes Act, 2016, S 26A).

The word “known” in section 26A requires that facts are known from which an accused’s belief can reasonably be inferred. Thus, whereas the facts in *Sardar Shah Siddiqui v. Pakistan* (PLD 2011 SC 873) may have established that the accused had fabricated a number of documents including a forged birth certificate, the same facts would not establish that the accused in the instant case had reason to believe that certain information was false when in fact he did not know that information to be false.

A denial by Government can form part of the evidence against a person but cannot in all circumstances be conclusive proof against that person of the necessary element of belief. The normal function of journalism is to test the official account of events and thus the requirement of knowledge or belief based on official denial would stifle a large part of that function and thus constructive contravention of constitutional right would occur.

Digital public-interest reporting of information is also carried out by researchers, lawyers, academics, by whistleblower, by activist and even by citizen. Thus, it would not be appropriate to grant special protection to the speech of only professional journalists by conferring a special constitutional right to their speech by enacting a statutory defense in a criminal prosecution that is available only to them.

Stage-Specific justification

This is how the central argument can now be even more precisely worded. Each of the important powers of PECA must individually be subjected to constitutional scrutiny.

For each stage of the process outlined in the above figure, the central argument can now be more precisely articulated for each. For example, at the complaint stage, authority should be able to identify with specificity the content that has been claimed to be falsely published and the specific statutory ground alleged to have been breached by the content complained of.

As for screening of publications, the Authority must in each case distinguish between statements of fact, opinions, satirical publications, predictions, and quotations. Screening of a publication on the basis of a single factual assertion contained in it is not permitted.

At the stage of an inquiry under PECA, there must be sufficient evidence to connect the speaker with the published material(s) as well as to establish the statutory ingredients of the offense(s) complained of. The scope of the inquiry conducted under PECA must remain proportionate to the preliminary nature of such an inquiry.

Similarly, each punitive action i.e. arrests, search, seizure, etc. needs to have its own legal basis and the mere fact that an investigation is being conducted does not mean that all other coercive actions are also justified.

At the stage of administrative restriction, the Authority must identify the ground of restriction, the material on which it is based, the urgency of the matter and the extent to which less restrictive means are available to achieve its end. The twenty-four-hour time frame for such restrictions may

be justified by the urgency of the matter but this does not necessarily mean that reasonable grounds for restriction will automatically be forthcoming within that timeframe.

At the stage of trial, however, such silent shift from mere suspicion to irrefutable proof would be unacceptable and clearly unacceptable. The Speaker would be required to prove the charge of an offense under PECA with full burden of proof in respect of the stated facts as well as the required mental state, even where the culpable manner involves lack of due care.

Therefore, the remedy has to operate fast enough. It is of little value when, months after an election, a publication of electoral relevance is declared to have been illegitimately removed from the cyber-space. Such a finding would have established a precious principle but it would have come too late to serve any useful purpose.

By the same token, proving an offense beyond a reasonable doubt to establish guilt in criminal prosecution will not be necessary to commence investigation into an alleged offense. It is only with progression to formal criminal investigation that such higher standards of proof will become applicable.

The investigative process can itself burden expression

Freedom of press not to be curtailed even before conviction of offense. In *Rana Muhammad Arshad v. Federation of Pakistan* (2020), a short order was passed where a journalist had challenged an undated notice issued by FIA for his investigation into certain allegations. It was alleged that the journalist was being investigated because of his critical articles. The short order held that circumstances disclosed violations of freedom of journalism and of press which were enjoyed by the journalist as well as by other public interest publishers (*Rana Muhammad Arshad v. Federation of Pakistan*, 2020). It is important to reiterate here that *Rana Muhammad Arshad* therefore establishes that the costs that speech can have for the expression of other ideas and activity through investigation and prosecution by the state can be very substantial indeed and need to be recognized in the structure of a provision of this nature, but the case does not establish that therefore speech can never be the subject of investigation and criminal prosecution for breach of law.

The purpose and role of a preliminary inquiry by the PECA authority into a complaint is acknowledged in *Munir Ahmad Bhatti v. Director, FIA Cyber Crime Wing*. Although the case was decided under the PECA which previously existed and which has been substantially amended in 2025 in respect of its institutions as well as its offenses, it can still serve the limited purpose of enabling a preliminary scrutiny to determine whether a complaint has any merit or not. It will help the complainant as well as the speaker in that a complaint which is well-founded can be converted into a proper investigation into the real wrong committed by the speaker. (*Munir Ahmad Bhatti v. Director, FIA Cyber Crime Wing*, 2022, PLD 2022 Lahore 664).

Criminal process and the disagreement in the section 20 cases

Since these cases pre-date the amendment in question, i.e. section 20 of PECA, as enacted in 2025, it is sufficient to note that while these cases are presently being disputed in constitutional matters before the Supreme Court as *Shafi Meera v. Federation of Pakistan*, in the pre-2025 cases concerning section 20 of PECA, inter alia, in *Meera Shafi v. Federation of Pakistan* (2021), the learned Lahore High Court held that speech is not an absolute right and that matters of reputation and of dignity of a person or of individuals constitute recognized legal rights and that therefore freedom of speech cannot be allowed to be exercised in a manner that amounts to cause of hurt or damage to another (*Meera Shafi v. Federation of Pakistan*, 2021, 2022 LHC 1786).

This case is however presently before the Supreme Court as an allowed appeal from the decision of the LHC in this case in *Meera Shafi v. Federation of Pakistan*. The appeal before the SC is directed against the constitutional validity of section 20 of the Act read with Article 19 of the Constitution and also Article 10A of the Constitution and also to determine the criminal offence of defamation and whether the same can be tried simultaneously with a civil lawsuit for defamation. The appeal is also to determine the requirement of proof in respect of criminal defamation and also to determine the effect of false fluid defamation published on social and digital media.

The case is currently pending before the Supreme Court and therefore must continue to be treated as a live constitutional dispute. No weight therefore can be given to a short order of the Islamabad High Court of 8 April 2022 in *Pakistan Federal Union of Journalists v. President of Pakistan* (2022), WP No. 666/2022. That short order had however laid out the pertinent constitutional concerns regarding the very broad speech offenses contained in PECA's substantive provisions, specifically the criminalization of the publication of fake information that would cause harm, and the 'anti state' speech offenses, with particular focus on the issue of 'chilling' effects created by such laws and their application, and how such would affect reputation (*Pakistan Federal Union of Journalists v. President of Pakistan*, 2022, WP No. 666/2022).

From the precedents discussed above it follows that protecting reputation and dignity is a legitimate objective but that alone does not suffice to determine whether use of criminal investigation, imprisonment etc. is necessary for that purpose within the specific terms of a statute.

Recommendations and Conclusion

Recommendations

The first recommendation deals with the statutory definition of falsity. It should separate materially false publication from opinion and commentary. The materially false publication of fact should survive substantive constitutional scrutiny.

Second, the removal of content from a platform by the authority should be exercised in a structured manner. If a piece of information is incorrect or lacks a factual basis in a content, it should be removed or restricted to such an extent. The complete removal or blockage of content on social media platforms would be inappropriate and disproportionate.

Third, appellate and tribunal procedures should consider delays in speech cases seriously. The delay affects the right to receive information at large. E-filing should be used for requests for interim relief in such cases where information or publication holds importance and relates to a public matter. For instance, where the information pertains to elections and their reporting, an ongoing emergency, a parliamentary controversy, or any other time-sensitive matter.

Fourth, public organizations should discourage falsity by releasing the official records/version capable of resolving the dispute. This disclosure may protect the public more effectively than criminalization.

Conclusion

The article's conclusion derives wisdom from Article 19 which protects expression while permitting reasonable restrictions for identified constitutional purposes. Article 19A adds the audience's interest in receiving information. Articles 4 and 10A require lawful and fair process. Article 14 reminds courts that dignity and privacy are also constitutional values. Article 8 ensures that ordinary law remains subordinate to fundamental rights.

The Supreme Court's reasoning in *PEMRA v ARY* supplies an important point. Expression and access to information are connected. Regulation must remain constitutionally structured. Independent review matters. Restrictions should be necessary and proportionate. (*Pakistan Electronic Media Regulatory Authority v. ARY Communications (Pvt.) Ltd.*, 2023).

Those principles do not require constitutional immunity for deliberate deception. A person who knowingly fabricates an emergency order and creates a serious danger to the public presents a legitimate case for strong state intervention. A journalist who publishes a disputed investigation on incomplete but honestly assessed evidence presents a different case. The constitutional value of a legal test lies in its ability to tell them apart.

For that reason, the most defensible approach to PECA is neither blanket invalidation of every power nor blanket deference to the language of misinformation. It is stage-specific justification.

- The State should identify the alleged falsity.
- It should establish the relevant culpability.
- It should identify a constitutionally relevant harm.
- It should explain why the particular intervention is necessary.

And it should do so when the intervention occurs, not only after its consequences have become irreversible.

Conflict of Interest

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