

**Prevention of Electronic Crime Act, 2016: An Analysis of the Act's Effectiveness in
Controlling Misuse of Social Media in Pakistan**

- | | |
|------------------------|--|
| 1. Waseem Haider | LLM Scholar, Session 2021-22, Abdul Wali Khan University Mardan |
| 2. Dr. Ashraf Ali | Associate Professor / Chairman, Department of Law, Abdul Wali Khan University Mardan |
| 3. Dr. Muhammad Zubair | Associate Professor, Department of Law, Abdul Wali Khan University Mardan |

Abstract



Due to scientific and technological advancement, particularly advent of social media the world has become a small, interconnected community. These social media platforms are also employed in the commission of numerous crimes. Pakistan is a relatively recent member of the online community. In our present legal system, various laws and organizations are in place to monitor social media abuse. In view of recent court rulings, this article explores the effects of social media abuse on various rights and examines whether the PECA, 2016 is sufficient to check social media abuse. For the analysis of the act a qualitative approach has been used. Numerous gaps in the Act's various sections have also been found after analysis. To better manage social media abuse and make it a safer place for everyone, some corrective steps have also been put forth.

Keywords: Prevention of Electronic Crime Act, 2016 (PECA, 2016), Cybercrime, Social Media, Law, Misuse.

Introduction

Since the beginning of time, there has been a crime. Before the development of technological tools, traditional offences were the norm. Technical developments have led to the emergence of novel Information Communication Technology (ICT) related crimes. Conventional crimes are committed using traditional methods and tools, whereas cybercrimes are committed either directly or indirectly using a computer and the internet. Cybercrime is currently one of the most perplexing problems facing governments, particularly due to the widespread use of social media.

Millions of people use a variety of modern social media applications in addition to more conventional forms of self-expression and conversation. Crimes against particular individuals or communities are committed using contemporary telecommunications networks like chat rooms on the internet, messenger and other social media applications/groups etc to harm the individual's reputation or causing mental or physical harm (Shor, 2010).

Recent years have seen widespread abuse of such media, not just in Pakistan but such abuse is also on the rise in industrialized/developed states. Such misuse has several adverse impacts on different sections of society. Even though numerous laws and law enforcement bodies have been established to control this misuse, there are still many lacunas in the structure of these bodies as well as in the laws that need to be resolved, particularly in light of recent judgments of superior courts.

Without a thorough understanding of the functions performed by each organization and how various laws operate and are interpreted in cases laws and court decisions, it is difficult to develop an appropriate strategy to control misuse of social media. It is crucial to comprehend Pakistan's capabilities and how they integrate into the online world because it is a relative newcomer to the online world (Qutab, 2008). This paper examines the effects of social media abuse on various rights and examines the question whether the PECA, 2016 is adequate to address the problem in light of recent court decisions. After examining different provisions of the act in light of judicial decisions, several gaps have been discovered. Some corrective measures have also been proposed to better handle social media abuse and make it a safer place for everyone.

Advent of Social Media

Before the development of social media and the internet, most interpersonal interactions and the mailing of handwritten messages took place in person. The emergence of social media platforms has fundamentally altered and continues to alter how people interact and communicate throughout the globe. Social media is a new form of communication, that depending on how it is used, can either make or break its consumers (Online, 2022).

The world has become a small, interconnected community thanks to social media. People can exchange videos, photos, and documents, and even make international calls using social media sites and applications. Social media is widely liked across many countries and cultures. These mobile apps are simple to use. Common examples of social media sites include twitter, whatsApp, facebook, and others (Lutkevich, 2021).

Nowadays, majority of offences are committed in developing states like Pakistan through different apps of social media.

Misuse of Social Media in Pakistan

Social media abuse is the term for using social media without permission to threaten, humiliate, or harass others, as well as to break state or municipal laws (Law Insider). Most frequently, such violations also lead to cybercrimes. High-tech crimes, internet crimes, electronic crimes are additional terms for offences committed using computers or other informational tools and equipment (Stefan C, 2007).

More than 35 million Pakistanis use and connect to social media platforms like facebook, twitter, and youtube, to name some of the well-known social media apps. Pakistan ranked ninth in Asia in terms of the number of internet subscribers as of December 31, 2013, with 29,128,970 people using the service (Pakistan, 2018). Percentage of people who use internet greatly increased in last couple of years as a result of the government policy to reduce the expense of computers and internet connection for students in particular and the general public. Social media is utilized in violation of the rights of others. Individual rights are violated when things like stalking or invasion of privacy occur. Through internet scams, it can also violate property rights. Using the names of TV programs like Bol TV show and Jeeto Pakistan, numerous frauds are carried out in Pakistan through social media apps. Sometimes the titles of government programs, like the Ehsas Program etc, are utilized to trap people and rob them of their time and money. Offences like glorifying terrorism or inciting violence have an effect on society as a whole. Although anyone could be the target of such abuse, the majority of its victims are common people who are least familiar with the online world. Most people in Pakistan are illiterate and do not know about the internet, but they still have access to it. However, only some internet users are completely equipped to use it and protect themselves from harmful elements on social media.

FIA has recorded a constant increase in cybercrime complaints each year since 2018. In 2018, over 16,000 complaints were filed, and more than 48,000 complaints were lodged in 2019. In 2020, over 94,000 complaints were registered and in 2021, over 100,000 complaints were reported (Staff, 2022).

Laws for Controlling Misuse/abuse of Social Media in Pakistan

Three decades ago, the concepts of social networking and cyber-attacks were unfathomable. Pakistan has no effective countermeasures, even though the majority of its citizens are ignorant of the dual dangers that social media and hacking pose. Although commerce and society gain from the internet, it also offers a perfect environment for commission of offences. Although the rest of the world passed suitable legislation to address this menace, Pakistan has remained unaware of the increasing threat (Ghauri, 2014).

Freedom of speech, dignity of man and privacy of home are also guaranteed by the Constitution of Pakistan, but many rights have restrictions and they cannot be exercised in such a manner as to violate the rights of others. According to the constitution, everyone has a responsibility to obey the law. Therefore, it is essential to control social media abuse to ensure that everyone within its sphere can enjoy their rights.

The Telegraph Act of 1885, which gave the government the right to intercept messages, was the country's first legislation governing message monitoring and other related issues. Later, as society and technology advanced, there was a greater need for specialized laws and organizations. The

Federal Investigation Agency Act was passed in 1974, and the FIA was created to handle various types of crimes. The schedule of the act contains information on these offences in depth.

The Pakistan Telecommunication (re-organization) Act, 1996 was enacted in 1996 to bolster surveillance and online monitoring. Duties of PTA extend beyond merely overseeing Pakistan's communications industry. It also defends customer interests. It has the power to look into complaints from individuals in various groups and take corrective action. After that, unauthorized and illegal access to material became a crime under the Electronic Transactions Ordinance of 2002 (ETO).

On August 11, 2016, the Pakistani National Assembly approved the Prevention of Electronic Crimes Act, 2016 (PECA, 2016), which has since grown to be one of the most controversial piece of legislation ever. To stop the rising number of crimes done via the internet and social media, PECA, 2016, was necessary to control it. It gives the FIA and PTA permission to take several steps in response to internet offences. Additionally, it lists many offences and their associated penalties through courts created especially for this purpose.

The following few headings will explain different modes in which social media is misused in Pakistan to the disadvantage of others and whether PECA, 2016 is effective in checking such abuse.

Cyber Defamation

Defamation is any intentional, false communication spoken or written on any platform such as social media applications as well as any publication of a false statement that has the potential to harm a person's reputation, diminish their sense of self-worth, undercut their dignity, undermine their confidence, or otherwise harm their character in the eyes of the public or their social circles. Defamation includes verbal and written statements that have the potential to damage a person's image or dignity. It also includes statements published online.

Even though the majority of social media users and influencers can permanently harm others with a single click or contact, they occasionally lack awareness of the repercussions of endorsing and demonstrating support for offensive posts. Section 20 and 21 of PECA, 2016, which deals with offences against a natural person's dignity, is used in these instances of online defamation.

For instance, in the case of *Muhammad Daniyal Farrukh Ansari vs. The State (2021)* accused was charged with several offences including offences against the dignity and modesty of the complainant, however, he was released on bail by the Supreme Court on the ground that the offences for which accused was charged do not fall within the prohibitory clause. This case depicts that punishments in different provisions of PECA, 2016 are not sufficient considering their grievousness. Defamation is a serious offence and can cause irreparable loss to the victim and his or her family (*Muhammad Daniyal Farrukh Ansari vs. the State, 2021*).

Financial Fraud

Internet financial fraud refers to any type of fraud scheme that uses message boards, chat rooms, email, or social media apps, and other online platforms to carry out fraudulent transactions, present fraudulent solicitations to potential victims, or transfer fraud proceeds to other scheme participants or financial institutions.

Social media is the easiest way to connect with people and get their information, so scammers use it to defraud people all over the globe.

For instance, in the case of *Sheraz Khan vs. The State (2021)*, the complainant was defrauded by the accused through facebook, and whatsapp links worth Rs.28,57,230/-. The bail petition of the accused was allowed by Lahore High Court. The court while releasing the accused on bail held that offences under PECA, 2016 and general laws cannot be tried jointly (*Sheraz Khan vs The State, Etc, 2021*).

Despite obviously misusing social media in the above mentioned case the accused was able to take advantage of gaps in PECA, 2016. Nevertheless, if they are not in conflict with the explicit provisions of the PECA, 2016, sections 28 and 44 of the 2016 law permit the implementation of other laws, such as the Pakistan Penal Code, 1860 (PPC), Criminal Procedure Code, 1898 (CrPC), and Qanoon Shahadat Order, 1984 (QSO). The PECA, 2016 and other general substantive and procedural criminal statutes have several inconsistencies and gaps that the accused can exploit at bail and trial stage.

Online Harassment

Online harassment is when an individual or group continuously causes hurt/harm to another using information tools and social media applications. This could include threatening them, exposing or

degrading them online. Cyber stalking, online sexual harassment, and image-based sexual abuse. It happens in places like social media, email, SMS, and instant messaging using facebook, instagram, snap chat, tik tok, and twitter.

For instance, in the case of *Waheed Dhehphal Chandio vs. The State* (2019) the accused after divorcing his wife shared nude videos of his wife and sister-in-law which were made by the applicant/accused during the periods of engagement and marriage, respectively. Such sensitive videos of both girls were also sent to their family members via social media. A case was registered against him under sections 20, 21 and 24 PECA, 2016 (*Waheed Dhehphal Chandio vs. The State etc*, 2019).

Unlawful criticism of public institutions

On social media, anyone can voice their view about anything. Sometimes, this independence is abused. It is employed for unwarranted and excessive criticism of government agencies like the police, armed forces, judiciary, and local government. It demotivates police and government officials.

For instance, in the case of *Mirza Iftikhar Uddin vs. the State, etc* (2020) accused was charged for inciting violence by sharing videos against a Hon'ble judge of the Supreme Court. The Islamabad High Court while allowing the bail petition of the accused held that the offences for which the accused is charged do not fall within the prohibitory clause. Offences committed through online social media sites, in contrast to traditional modes of offences, can have far-reaching impacts on a person or institution yet there is no categorization in PECA, 2016 and a general punishment is provided in sections 20 and 21. Special provisions for state institutions should be included in the act and enhanced punishment should be provided for such offences (*Mirza Iftikhar Uddin vs The State, etc.*, 2020).

Political Hatred

To advance their party's goal, activists from various political parties have established their social media wings. Their only goal is to support their party's initiatives and disparage those of their rivals. Such social media activities spread political hate and have prompted the filing of several lawsuits against political figures. Political discourse has become more violent and intolerable as a result. Political animosity has risen in the nation as a result of these circumstances. There should be strict rules governing the uploading of such hateful content by the members of a political party via such applications, or at least a check and balance, like a board for censoring such content, to prevent the whole society from participating in offences or hateful acts.

Religious Hatred

Social media is also used for blasphemous content and content that promotes religious hate. On various websites, various written and video materials critical of other groups and other religions are shared. Such material hurts other people's feelings. Additionally, it encourages sectarian violence against one another, disturbing law and order in society. For instance, at their sit-ins in Faizabad, several political and religious parties incited violence by using their speeches and internet propagation, which led to the violation of the public's rights. Vehicles and belongings owned by people were harmed. A few individuals also passed away. In addition, the closure of roadways hindered people from moving freely.

In the case of *Muhammad Ayoub vs. Federation of Pakistan, Etc* (2017) some facebook accounts were uploading blasphemous contents. The petitioner being a concerned citizen, filed the writ which was allowed and PTA and other relevant authorities were directed to remove such content. The court while issuing other directions while considering the grievousness of offences of blasphemy, also asked the federal government that in Section 9 of PECA, 2016 punishment of Sections 295 to 295-C PPC, 1860 may also be inserted. However, this amendment has not been made so far and every day numerous sites share such content and give rise to religious hatred which points out the weakness within PECA and PTA (*Muhammad Ayoub vs Federation Of Pakistan, Etc.*, 2017).

Findings:

PECA, 2016 has several lacunas and from the above discussion following findings have been arrived at.

- The majority of offences under PECA, 2016 are non-cognizable, compoundable, and bailable, and these factors are insufficient to stop people from violating others' integrity through the misuse of social media.
- Given the seriousness of the offences that can be committed through the misuse of social media, the penalties for the majority of offences under PECA, 2016 are insufficient.

- Due to a dearth of specific guidelines for investigation officers, PECA, 2016, is occasionally misused. Therefore, comprehensive guidelines are required in light of PECA, 2016, and its regulations to prevent abuse of law and to keep a balance between preventing social media abuse and promoting its proper use.
- Cases registered under PECA, 2016, show that both the government and the agencies are ill-prepared to prevent social media abuse. Section 37 of the act, which is modelled after Article 19 of the constitution, forbids certain contents and PTA, Pakistan's media regulator, had the authority to remove such content under PECA, 2016, but the said rules under the act were not framed until 2018, so PTA was unable to exercise this power.
- The lack of jurisdiction over businesses operating internationally regarding content regulation is a problem that PECA, 2016 does not completely addresses.
- It is evident from analysing the relevant sections of PECA, 2016, that even if two or more offences under the PPC or other laws are committed during the same occurrence, they cannot be tried simultaneously. This is because of the definition clauses. The PECA, 2016 only allows the operation of explicit PPC sections that deal with vicarious liability or common object etc and provisions regarding common exceptions in PPC, if they do not clash with the act. For example, the term "glorification" fails to support a necessary and appropriate restriction on expression when used in connection with incitement to terrorism.
- Various provisions of the act make it illegal to express oneself online without giving adequate definitions or establishing adequate protection for the public's right to free expression.
- The FIR and the formulation of charges against the accused can take a long time (even months), and this delay in the inquiry can be problematic for both the complainant and the accused.
- Even if a person has not used social media improperly, PECA, 2016, and other laws about its abuse may occasionally be used to silence critics and journalists.

Recommendations:

Given the above findings, the following are a few recommendations for effectively controlling the misuse of social media.

- The majority of PECA, 2016 penal clauses may be made cognizable. Given the harm that may be caused to an individual's reputation through online means as opposed to other forms of communication, they may be made "non-bailable" and "non-compoundable". Section 43 of the act may be amended for this reason, and additional sections may be added to its scope. It is the primary cause of the daily rise in cybercrime.
- The word "or" which appears in the penal sections of the act, may be replaced by the word "and" so that, in the event of a conviction, both imprisonment and fine may be imposed. This will strengthen the penalties for various offences under the act.
- To prevent abuse of the law and to uphold a balance among preventing misuse of social media applications and promoting its proper use, a detail guideline in accordance with the act and its rules are required to protect each individual's and independence of journalist profession as a whole's as required by Articles 19 and 19-A of the Constitution.
- To give frequent suggestions for amending the regulations made under the act in accordance with changing circumstances, a special committee of all stakeholders may be established.
- The government may assist the FIA by giving them cutting-edge tools and equipment for looking into social media-related offences.
- Since most of the people are illiterate or from rural areas, they are unable to submit appropriate complaints regarding abuse on social media. FIA in collaboration with PTA should raise awareness among people in different languages through several social media apps.
- Without outside intervention, the government should take the necessary steps to enact legislation governing the control of social media in Pakistan, including facebook, messenger, twitter, whatsapp, and other social media apps to maintain the availability of the information system within Pakistan's territorial jurisdiction.
- State agencies should be vigilant in cases involving social media misuse and should take all preventive measures to stop similar offences from occurring.

- Appropriate definitions should be given for online speech, and measures should be taken to safeguard the public's right to free expression. Prior notice must be provided even when taking legal action against someone or collecting citizen's data.
- The severity of the punishment for serious offences needs to be increased to serve the dual goals of law—detering people from committing such offences and preventing them from getting early bail.
- The investigation process under the act needs to be speed up, and each proceeding needs to have a deadline.
- Pakistan does not currently have a specific law protecting public privacy and online data, so legislation may be enacted to address these issues to safeguard appropriate and safe use of social media applications for constructive activities.
- The government should organize campaigns about cybercrime and online scams through social media applications, schools, colleges, universities, and other public spaces.

Conclusion

Internet and social media have enabled people to connect and communicate with each other. Millions of people in Pakistan daily use different kinds of social media applications. Since Pakistan is a developing country and new to the cyber world, therefore, such media is often used for the commission of different offences against individuals and society. Social media is used for cyber defamation, financial fraud and online harassment. State institutions are also maliciously criticized and targeted via social media. Today religious and political hatred is more rampant due to social media abuse. This paper demonstrates that the PECA, 2016 was a progressive step towards limiting social media abuse in Pakistan, but it is still insufficient and that there is still much space for improvement. Even though there has not been much progress and there are now more cases documented than ever before. Since all of the sections connected to offences, except 2 or 3 sections, are non-cognizable, compoundable, and bailable in nature, PECA, 2016, frequently proves to be ineffective. Furthermore, the punishment offered for the majority of crimes is not appropriate given their character. In addition to the misuse of social media by individuals, there have been instances where PECA, 2016 is abused by state institutions. The legislature needs to strike a balance between the protection of fundamental rights and curtailing the misuse of social media both by individuals as well as state institutions.

Even though the act and its regulations grant the FIA and PTA several powers to control the usage of social media applications for unlawful activities, we continue to come across social media content that are either offensive or in violation of someone's rights, privacy, or dignity. All of this indicates that PECA, 2016, has not been entirely effective in preventing social media abuse. A law can never be completely successful, but it can always be made better. PECA, 2016, and other institutions established for checking abuse of social media also have a lot of room for improvement. By implementing the aforementioned suggestions, PECA, 2016, and other bodies can be strengthened to ensure social media is used productively.

References

- Ghauri, I. (2014). Electronic Crimes Act: Cybercrime to be made non-cognisable offence. THE EXPRESS TRIBUNE.
- Law Insider. (n.d.). Social Media Misuse definition. Law Insider. Retrieved 06 26, 2022, from <https://www.lawinsider.com/dictionary/social-media-misuse#:~:text=Related%20Definitions&text=Social%20Media%20Misuse%20means%20social,%2C%20state%2C%20or%20federal%20law>.
- Lutkevich, B. (2021, 09 03). *WhatIs.com*. Retrieved 11 24, 2022, from [techtarget.com: https://www.techtarget.com/whatis/definition/social-media](https://www.techtarget.com/whatis/definition/social-media)
- Mirza Iftikhar Uddin vs The State, etc., Criminal Misc. No. 908-B/2020. (ISLAMABAD HIGH COURT, ISLAMABAD 08 20, 2020).
- Muhammad Ayoub vs Federation Of Pakistan, Etc., W.P.No.3553/2017 (Lahore High Court 04 10, 2017).
- Muhammad Daniyal Farrukh Ansari vs. the State, Criminal Petition No.1414 of 2020 (Supreme Court of Pakistan 01 18, 2021).

- Online, T. (2022, 07 05). Advent of Social Media: The Two Sides Of A Coin. Nigerian Tribune. Retrieved 03 03, 2023, from <https://tribuneonline.ng.com/advent-of-social-media-the-two-sides-of-a-coin/>
- Pakistan, D. 2. (2018, 10 04). *slideshare.net*. Retrieved 01 24, 2023, from <https://www.slideshare.net/DataReportal/digital-2013-pakistan-january-2013>
- Qutab, S. (2008). OPEN ACCESS MOVEMENT IN PAKISTAN. 4. TRIM.
- Sheraz Khan vs The State, Etc, Crl.Misc.No.44216-B/2021 (Lahore High Court 07 27, 2021).
- Shor, M. R. (2010). The Impact of Malicious Agents on the Enterprise Software Industry. 34, 595-612. Management Information Systems Research Center, University of Minnesota.
- Staff, P. (2022). *FIA Witnesses Record Increase in Cybercrime*. ProPakistani. Retrieved 03 18, 2023, from <https://propakistani.pk/2022/02/22/fia-witnesses-record-increase-in-cybercrime/#:~:text=Note%20that%20FIA%20has%20recorded,over%20100%2C000%20cases%20were%20reported.>
- Stefan C, D. K. (2007, 06 12). *Online Wiley Library*. Retrieved 12 04, 2022, from www.onlinelibrary.wiley.com: <https://onlinelibrary.wiley.com/doi/abs/10.1002/car.939>
- Waheed Dhehphal Chandio vs. The State etc, Crl.B.A.No. S-180 of 2019 (HIGH COURT OF SINDH BENCH AT SUKKUR 06 24, 2019).