

PEC Bill as on 16.02.2016

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A Bill to make provisions for prevention of electronic crimes and matters related thereto.

CHAPTER I

PRELIMINARY

1. Short title, extent, application and commencement.- (1) This Act may be called the Prevention of Electronic Crimes Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall apply to every citizen of Pakistan wherever he may be, and also to every other person for the time being in Pakistan.

(4) It shall come into force at once.

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context:--

(a) "act" includes_

i) a series of acts or omissions contrary to the provisions of this Act; or

ii) causing an act to be done by a person either directly or through an automated information system or automated mechanism or self-executing, adaptive or autonomous device, and whether having temporary or permanent impact;

(b) "access to data" means gaining control or ability to read, use, copy, modify or delete any data held in or generated by any device or information system;

(c) "access to information system" means gaining control or ability to use any part or whole of an information system whether or not through infringing any security measure;

(d) "Authority" means the Pakistan Telecommunication Authority established under Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996);

(e) "authorisation" means authorisation by law or the person empowered to make such authorisation under the law:

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Provided that where an information system or data is available for open access by the general public, access to such information system or transmission of such information system or data shall be deemed to be authorized for the purposes of this Act;

- (f) "authorised officer" means an officer authorised by the investigation agency to perform any function on behalf of the investigation agency under this Act;
- (g) "Code" means the Code of Criminal Procedure, 1898 (V of 1898);
- (h) "content data" means any representation of fact, information or concept for processing in an information system including source code or a program suitable to cause an information system to perform a function;
- (i) "Court" means the Court of competent jurisdiction designated under this Act;
- (j) "critical infrastructure" includes:
 - (i) the infrastructure vital to the State or other institutions under the Constitution whether physical or virtual such that its incapacitation disrupts or adversely affects the national security, economy, public order, services, health, safety or matters incidental or related thereto or
 - (ii) any other private or Government infrastructure so designated by the Government as critical infrastructure as per rules prescribed under this Act;
- (k) "critical infrastructure information system or data" means an information system, program or data that supports or performs a function with respect to a critical infrastructure;
- (l) "damage to an information system" means any unauthorised change in the ordinary working of an information system that impairs its performance, access, output or change in location whether temporary or permanent and with or without causing any change in the system;
- (m) "data" includes content data and traffic data;
- (n) "data damage" means alteration, deletion, deterioration, erasure, relocation, suppression, of data or making data temporarily or permanently unavailable;
- (o) "device" includes-
 - (i) physical device or article;
 - (ii) any electronic or virtual tool that is not in physical form;

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- (iii) a password, access code or similar data, in electronic or other form, by which the whole or any part of an information system is capable of being accessed; or
- (iv) automated, self-executing, adaptive or autonomous devices, programs or information systems;
- (p) "dishonest intention" means intention to cause injury, wrongful gain or wrongful loss or harm to any person;
- (q) "electronic" includes electrical, digital, magnetic, optical, biometric, electrochemical, electromechanical, wireless or electromagnetic technology;
- (r) "identity information" means an information which may authenticate or identify an individual or an information system and enable access to any data or information system;
- (s) "information" includes text, message, data, voice, sound, database, video, signals, software, computer programs, any form of intelligence as defined under the Pakistan Telecommunication (Re-organization) Act, 1996 and codes including object code and source code;
- (t) "information system" means an electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any information;
- (u) "integrity" means, in relation to an electronic document, electronic signature or advanced electronic signature, the electronic document, electronic signature or advanced electronic signature that has not been tampered with, altered or modified since a particular point in time;
- (v) "interference with information system or data" means and includes an unauthorised act in relation to an information system or data that may disturb its normal working or form with or without causing any actual damage to such system or data.
- (w) "investigation agency" means the law enforcement agency established by or designated under this Act;
- (x) "minor" means, notwithstanding anything contained in any other law, any person who has not completed the age of eighteen years.
- (y) "offence" means an offence punishable under this Act except when committed by a person under ten years of age or by a person above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion;

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(z) "rules" means rules made under this Act;

(aa) "seize" with respect to an information system or data includes taking possession of such system or data or making and retaining a copy of the data;

(aa) "service provider" includes a person who:

(i) acts as a service provider in relation to sending, receiving, storing, processing or distribution of any electronic communication or the provision of other services in relation to electronic communication through an information system;

(ii) owns, possesses, operates, manages or controls a public switched network or provides telecommunication services; or

(iii) processes or stores data on behalf of such electronic communication service or users of such service.

(bb) "subscriber information" means any information held in any form by a service provider relating to a subscriber other than traffic data;

(cc) "traffic data" includes data relating to a communication indicating its origin, destination, route, time, size, duration or type of service;

(dd) "unauthorised access" means access to such information system or data which is not available for access by general public, without authorisation or in violation of the terms and conditions of the authorisation;

(ee) "unauthorised interception" shall mean in relation to an information system or data, any interception without authorisation;

(ff) "unsolicited information" means the information which is sent for commercial and marketing purposes against explicit rejection of the recipient and does not include marketing authorised under the law.

(3) Unless context provides otherwise, any other expression used in this Act or rules framed thereunder but not defined in the Act, shall have meanings assigned to the expression in the Pakistan Penal Code, 1860 (XLV of 1860), the Code of Criminal Procedure, 1898 (V of 1898) and the Qanoon-e-Shahadat Order, 1984 (X of 1984), as the case may be.

CHAPTER II **OFFENCES AND PUNISHMENTS**

3. Unauthorised access to information system or data.- Whoever ~~intentionally~~ with dishonest intention gains unauthorised access to any information system or data shall be punished with imprisonment for a term which may extend to three months or with fine up to fifty thousand rupees or with both.

4. Unauthorised copying or transmission of data.- Whoever with dishonest intention and without authorisation copies or otherwise transmits or causes to be transmitted any data shall be punished with imprisonment for a term which may extend to six months, or with fine up to one hundred thousand rupees or with both.

5. Interference with information system or data.- Whoever with dishonest intention interferes with or damages or causes to be interfered with or damaged any part or whole of an information system or data shall be punished with imprisonment which may extend to two years or with fine up to five hundred thousand rupees or with both.

6. Unauthorised access to critical infrastructure information system or data:- Whoever with dishonest intention gains unauthorised access to any critical infrastructure information system or data shall be punished with imprisonment which may extend to three years or with fine up to one million rupees or with both.

7. Unauthorised copying or transmission of critical infrastructure data.- Whoever with dishonest intention and without authorisation copies or otherwise transmits or causes to be transmitted any critical infrastructure data shall be punished with imprisonment for a term which may extend to five years, or with fine up to five million rupees or with both.

8. Interference with critical infrastructure information system or data.- Whoever with dishonest intention interferes with or damages, or causes to be interfered with or damaged, any part or whole of a critical information system, or data, shall be punished with imprisonment which may extend to seven years or with fine up to ten million rupees or with both.

9. Glorification of an offence and hate speech. Whoever prepares or disseminates information, through any information system or device, with the intent to:-

- (a) glorify an offence or the person accused or convicted of a crime relating to terrorism or activities of proscribed organizations; or

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(b) advance inter-religious, sectarian or ethnic hatred

shall be punished with imprisonment for a term which may extend to five years or with fine up to ten million rupees or with both.

Explanation: "Glorification" includes depiction of any form of praise or celebration in a desirable manner.

10. Cyber terrorism. –Whoever commits or threatens to commit any of the offences under sections 6, 7, 8 or 9 of this Act, where the commission or threat is with the intent to:-

(a) coerce, intimidate, overawe or create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(b) advance inter-religious, sectarian or ethnic discord,

shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine up to fifty million rupees or with both.

11. Electronic forgery.– (1) Whoever, interferes with or uses any information system, device or data, with the intent to cause damage or injury to the public or to any person, or to make any illegal claim or title or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud by any input, alteration, deletion, or suppression of data, resulting in unauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of the fact that the data is directly readable and intelligible or not shall be punished with imprisonment of either description for a term which may extend to three years, or with fine up to two hundred and fifty thousand rupees or with both.

(2) Whoever commits offence under sub-section (1) in relation to a critical infrastructure information system or data shall be punished with imprisonment for a term which may extend to seven years or with fine up to five million rupees or with both.

12. Electronic fraud:–Whoever with the intent for wrongful gain interferes with or uses any information system, device or data or induces any person to enter into a relationship or deceives any person, whose act or omission is likely to cause damage or harm to that person or any other person shall be punished with imprisonment for a term which may extend to two years or with fine up to ten million rupees, or with both.

13. Making, obtaining, or supplying device for use in offence.– Whoever produces, makes, generates, adapts, exports, supplies, offers to supply or imports for use any information system, data or device, primarily

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with the intent to be used or believing that it is primarily to be used to commit or to assist in the commission of an offence under this Act shall, without prejudice to any other liability that he may incur in this behalf, be punished with imprisonment for a term which may extend to 6 months or with fine up to fifty thousand rupees or with both.

14. Unauthorised use of identity information.-(1) Whoever obtains, sells, possesses, transmits or uses another person's identity information without authorisation shall be punished with imprisonment for a term which may extend to three years or with fine up to five million rupees, or with both.

(2) Any person whose identity information is obtained, sold, possessed, used or transmitted may apply to the Authority for securing, destroying, blocking access or preventing transmission of identity information referred to in sub-section (1) and the Authority on receipt of such application may take such measures as deemed appropriate for securing, destroying or preventing transmission of such identity information.

15. Unauthorised issuance of SIM cards etc.- Whoever sells or otherwise provides subscriber identity module (SIM) card, re-usable identification module (R-IUM) or other portable memory chip designed to be used in cellular mobile or wireless phone for transmitting information without obtaining and verification of the subscriber's antecedents in the mode and manner for the time being approved by the Authority shall be punished with imprisonment for a term which may extend to three years or with fine up to five hundred thousand rupees or both.

16. Tempering etc. of communication equipment.- Whoever unlawfully or without authorisation changes, alters, tampers with or re-programs unique device identifier of any communication equipment including a cellular or wireless handset and starts using or marketing such device for transmitting and receiving information shall be punished with imprisonment which may extend to three years or with fine up to one million rupees or both.

Explanation: A "unique device identifier" is an electronic equipment identifier which is unique to a mobile wireless communication device.

17. Unauthorised interception.- Whoever with dishonest intention commits unauthorised interception by technical means of:-

- (a) any transmission that is not intended to be and is not open to the public, from or within an information system; or
- (b) electromagnetic emissions from an information system that are carrying data,

shall be punished with imprisonment of either description for a term which may extend to two years or with fine up to five hundred thousand rupees or with both.

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18. Offences against dignity of natural person- (1) Whoever intentionally publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine up to one million rupees or with both:

Provided that nothing under this sub-section (1) shall apply to anything aired by a broadcast media or distribution service licensed under Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002).

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of, or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, may pass such orders as deemed appropriate including an order for removal, destruction, preventing transmission of, or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

19. Offences against modesty of a natural person and minor.- (1) Whoever intentionally publicly exhibits or displays or transmits any information which:-

- (a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or
- (b) distorts the face of a natural person or includes a photograph or a video of a natural person in sexually explicit conduct; or
- (c) intimidates a natural person with any sexual act or any sexually explicit image or video of a natural person; or
- (d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to seven years or with fine up to five million rupees or both.

(2) Whoever commits an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to ten years, or with fine up to ten million rupees or with both.

(3) Whoever produces, offers or makes available, distributes or transmits through an information system or procures for oneself or for another person or intentionally possesses material in an information system that visually depicts:

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- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct

shall be punished with imprisonment for a term which may extend to seven years, or with fine up to five million rupees or with both.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of, or blocking access to such information referred to in sub-section (1) and (3) and the Authority on receipt of such application, may pass such orders as deemed appropriate including an order for removal, destruction, preventing transmission of, or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

20. Malicious code.-Whoever willfully and without authorization writes, offers, makes available, distributes or transmits malicious code through an information system or device, with intent to cause harm to any information system or data resulting in the corruption, destruction, alteration, suppression, theft or loss of the information system or data shall be punished with imprisonment for a term which may extend to two years or with fine up to one million rupees or both.

Explanation.- For the purpose of this section the expression "malicious code" includes a computer program or a hidden function in a program that damages an information system or data or compromises the performance of such system or availability of data or uses it without proper authorisation.

21. Cyber stalking.- (1) Whoever with the intent to coerce or intimidate or harass any person, uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication, to:-

- (a) follow a person or contact or attempt to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
- (b) monitor the use by a person of the internet, electronic mail, text message, or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms such person,

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commits the offence of cyber stalking.

(2) Whoever commits the offence specified in sub-section (1) shall be punishable with imprisonment for a term which may extend to one year or with fine up to one million rupees, or with both:

Provided that if the victim of the cyber stalking under sub-section (1) is a minor the punishment may extend to five years or with fine upto ten million rupees, or with both.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, may pass such orders as deemed appropriate including an order for removal, destruction, preventing transmission of, or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

22. Spamming.- (1) Whoever with intent transmits harmful, fraudulent, misleading, illegal or unsolicited information to any person without permission of the recipient, or causes any information system to show any such information for wrongful gain, commits the offence of spamming.

(2) A person including an institution or an organization engaged in direct marketing shall provide the option to the recipient of direct marketing to unsubscribe such marketing.

(3) Whoever commits the offence of spamming as described in sub-section (1) or engages in direct marketing in violation of sub-section (2), for the first time, shall be punished with fine not exceeding fifty thousand rupees and for every subsequent violation shall be punished with imprisonment for a term which may extend to three months or with fine up to one million rupees or with both.

23. Spoofing.- (1) Whoever with dishonest intention, establishes a website or sends any information with a counterfeit source intended to be believed by the recipient or visitor of the website, to be an authentic source commits spoofing.

(2) Whoever commits spoofing shall be punished with imprisonment for a term which may extend to three years, or with fine up to five hundred thousand rupees or with both.

24. Legal recognition of offences committed in relation to information system.- (1) Notwithstanding anything contained in any other law for the time being in force, an offence under this Act or any other law shall not be denied legal recognition and enforcement for the sole reason of such offence being committed in relation to, or through the use of an information system.

(2) References to "property" in any law creating an offence in relation to or concerning property, shall include

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information system and data.

25. Pakistan Penal Code 1860 to apply.- The provisions of the Pakistan Penal Code 1860 (XLV of 1860), to the extent not inconsistent with anything provided in this Act, shall apply to the offences provided in this Act.

CHAPTER III
ESTABLISHMENT OF INVESTIGATION AGENCY AND PROCEDURAL POWERS FOR
INVESTIGATION

26. Establishment of investigation agency.-(1) The Federal Government may establish or designate a law enforcement agency as the investigation agency for the purposes of investigation of offences under this Act.

(2) Unless otherwise provided for under this Act, the investigation agency, the authorised officer and the Court shall in all matters follow the procedure laid down in the Code to the extent that it is not inconsistent with any provision of this Act.

(3) Notwithstanding provisions of any other law, the Federal Government shall make rules for appointment and promotion in the investigation agency including undertaking of specialized courses in digital forensics, information technology, computer science and other related matters for training of the officers and staff of the investigation agency.

27. Power to investigate.- (1) Only an authorised officer of the investigation agency shall have the powers to investigate an offence under this Act:

Provided that the Federal Government or the Provincial Government may, as the case may be, constitute one or more joint investigation teams comprising of the authorised officer of investigation agency and any other law enforcement agency for investigation of an offence under this Act and any other law for the time being in force.

28. Expedited preservation and acquisition of data.- (1) If an authorised officer is satisfied that-

(a) data stored in any information system or by means of an information system, is reasonably required for the purposes of a criminal investigation; and

(b) there is a risk or vulnerability that the data may be modified, lost, destroyed or rendered inaccessible,

the authorised officer may, by written notice given to a person in control of the information system, require that person to provide that data or to ensure that the data specified in the notice be preserved and the integrity thereof is maintained for a period not exceeding ninety days as specified in the notice:

Provided that the authorized officer shall immediately but not later than twenty four hours bring to the notice

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of the Court, the fact of acquisition of such data and the court on receipt of such information may pass such orders as deemed appropriate in the circumstances of the case including issuance of warrants for retention of such data or otherwise.

(2) The period provided in sub-section (1) for preservation of data may be extended by the Court if so deemed necessary upon receipt of an application from the authorised officer in this behalf.

29. Retention of traffic data.---(1) A service provider shall, within its existing or required technical capability, retain its traffic data for a minimum period of one year or such period as the Authority may notify from time to time and provide that data to the investigation agency or the authorised officer whenever so required.

(2) The service providers shall retain the traffic data under sub section (1) by fulfilling all the requirements of data retention and its originality as provided under sections 5 and 6 of the Electronic Transaction Ordinance, 2002 (LI of 2002).

(3) Any person who contravenes the provisions of this section shall be punished with imprisonment for a term which may extend to six months or with fine up to five hundred thousand rupees or with both.

30. Warrant for search or seizure.-(1) Upon an application by an authorised officer that demonstrates to the satisfaction of the Court that there exist reasonable grounds to believe that there may be in a specified place an information system, data, device or other articles that-

(a) may reasonably be required for the purpose of a criminal investigation or criminal proceedings which may be material as evidence in proving a specifically identified offence made out under this Act; or

(b) has been acquired by a person as a result of the commission of an offence,

the Court may issue a warrant which shall authorise an officer of the investigation agency, with such assistance as may be necessary, to enter the specified place and to search the premises and any information system, data, device or storage medium relevant to the offence identified in the application and access, seize or similarly secure any information system, data, device or other articles relevant to the offence identified in the application.

(2) In circumstances involving an offence under section 10 of this Act, under which a warrant may be issued, but cannot be obtained without affording opportunity of destruction, alteration or loss of data, information system, device or any other article required for investigation, the authorized officer who shall be a Gazetted officer of the investigation agency enter the specified place and search the premises and any information

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system, data, device or article relevant to the offence and access, seize or similarly secure any information system, data, device or other articles relevant to the offence:

Provided that the authorised officer shall immediately but not later than twenty four hours bring to the notice of the Court, the fact of such search or seizure and the court on receipt of such information may pass such orders as deemed appropriate in the circumstances of the case.

31.Warrant for disclosure of content data.-(1) Upon an application by an authorised officer that demonstrates to the satisfaction of the Court that there exist reasonable grounds to believe that the content data stored in an information system is reasonably required for the purpose of a criminal investigation or criminal proceedings with respect to an offence made out under this Act, the Court may, after recording reasons, order that a person in control of the data or information system, to provide such data or access to such data to the authorised officer.

(2) The period of a warrant issued under sub-section (1) may be extended beyond seven days if, on an application, a Court authorises an extension for a further period of time as may be specified by the Court.

32.Powers of an authorised officer.-(1) Subject to provisions of this Act, an authorised officer shall have the powers to -

- (a) have access to and inspect the operation of any specified information system;
- (b) use or cause to be used any specified information system to search any specified data contained in or available to such system;
- (c) obtain and copy only relevant data, use equipment to make copies and obtain an intelligible output from an information system;
- (d) have access to or demand any information in readable and comprehensible format or plain version;
- (e) require any person by whom or on whose behalf, the authorised officer has reasonable cause to believe, any information system has been used to grant access to any data within an information system within the control of such person;
- (f) require any person having charge of or otherwise concerned with the operation of any information system to provide him reasonable technical and other assistance as the authorised officer may require for investigation of an offence under this Act; and

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- (g) require any person who is in possession of decryption information of an information system, device or data under investigation to grant him access to such data, device or information system in unencrypted or decrypted intelligible format for the purpose of investigating any such offence:

Explanation.- Decryption information means information or technology that enables a person to readily retransform or unscramble encrypted data from its unreadable form and from ciphered data to intelligible data.

(2) In exercise of the power of search and seizure of any information system, program or data the authorised officer at all times shall-

- (a) act with proportionality;
- (b) take all precautions to maintain integrity and secrecy of the information system and data in respect of which a warrant for search or seizure has been issued;
- (c) not disrupt or interfere with the integrity or running and operation of any information system or data that is not the subject of the offences identified in the application for which a warrant for search or seizure has been issued;
- (d) avoid disruption to the continued legitimate business operations and the premises subjected to search or seizure under this Act; and
- (e) avoid disruption to any information system, program or data not connected with the information system that is not the subject of the offences identified in the application for which a warrant has been issued or is not necessary for the investigation of the specified offence in respect of which a warrant has been issued.

(3) When seizing or securing any information system or data, the authorised officer shall make all efforts to use technical measures to maintain its integrity and chain of custody. The authorised officer shall seize an information system, data, device or articles, in part or in whole as a last resort only in the event where it is not possible under the circumstances to use such technical measures or where use of such technical measures by themselves shall not be sufficient to maintain the integrity and chain of custody of the data or information system being seized.

(4) Where an authorised officer seizes or secures any data or information system, the authorised officer shall ensure that information system or data while in the possession or in the access of the authorised officer is not released to any other person including competitors or public at large and details including log of any action performed on the data or information system is maintained in a manner prescribed under this Act.

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33. Dealing with seized data or information system.- (1) If data or information system has been seized or secured following a search or seizure under this Act, the authorised officer who undertook the search or seizure shall, at the time of the seizure, -

(a) make a list of what has been seized or rendered inaccessible, with the date and time of seizure; and

(b) give a copy of that list to-

i. the occupier of the premises, or

ii. the owner of the data or information system, or

iii, the person from whose possession the data or information system has been seized, in prescribed manner in presence of two witnesses.

(2) The authorised officer upon an application of the owner of the data or information system or an authorised agent of the owner, on payment of prescribed costs, shall provide forensic image of the data or information system to the owner or his authorised agent within a reasonable time.

(3) If the authorised officer has reasons to believe that providing forensic image of the data or information system to the owner under sub-section (2) may prejudice

(i) the investigation in connection with which the search was carried out; or

(ii) another ongoing investigation; or

(iii) any criminal proceedings that are pending or that may be brought in relation to any of those investigations,

the authorised officer shall, within seven days of receipt of the application under sub-section (2), approach the Court for seeking an order not to provide copy of the seized data or

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information system.

(4) The Court, upon receipt of an application from an authorised officer under sub-section (3) may, after recording reasons in writing, pass such order as deemed appropriate in the circumstances of the case.

(5) The costs associated with the exercise of rights under this section shall be borne by the person exercising these rights.

34. Unlawful on-line content.-(1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access of any information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.

(2) The Authority may, with the approval of the Federal Government, prescribe rules for adoption of standards and procedure to manage information, block access and entertain complaints.

(3) Until such procedure and standards are prescribed, the Authority shall exercise its powers under this Act or any other law for the time being in force in accordance with the directions issued by the Federal Government not inconsistent with the provisions of this Act.

35. Limitation of liability of service providers.- (1) No service provider shall be subject to any civil or criminal liability, unless it is established that the service provider had specific actual knowledge and willful intent to proactively and positively participate, and not merely through omission or failure to act, and thereby facilitated, aided or abetted the use by any person of any information system, service, application, online platform or telecommunication system maintained, controlled or managed by the service provider in connection with a contravention of this Act or rules made thereunder or any other law for the time being in force:

Provided that the burden to prove that a service provider had specific actual knowledge, and willful intent to proactively and positively participate in any act that gave rise to any civil or criminal liability shall be upon the person alleging such facts and no interim or final orders, or directions shall be issued with respect to a service provider by any investigation agency or Court unless such facts have so been proved and determined:

Provided further that such allegation and its proof shall clearly identify with specificity the content, material or other aspect with respect to which civil or criminal liability is claimed including but not limited to unique identifiers such as the Account Identification (Account ID), Uniform Resource Locator (URL), Top Level

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Domain (TLD), Internet Protocol Addresses (IP Addresses), or other unique identifier and clearly state the statutory provision and basis of the claim.

(2) No service provider shall under any circumstance be liable under this Act, rules made thereunder or any other law for maintaining and making available the provision of their service in good faith.

(3) No service provider shall be subject to any civil or criminal liability as a result of informing a subscriber, user or end-users affected by any claim, notice or exercise of any power under this Act, rules made thereunder or any other law:

Provided that the service provider, for a period not exceeding fourteen days, shall keep confidential and not disclose the existence of any investigation or exercise of any power under this Act when a notice to this effect is served upon it by an authorised officer, which period of confidentiality may be extended beyond fourteen days if, on an application by the authorised officer, the Court authorises an extension for a further specified period upon being satisfied that reasonable cause for such extension exists.

(4) No service provider shall be liable under this Act, rules made thereunder or any other law for the disclosure of any data or other information that the service provider discloses only to the extent of the provisions of this Act.

(5) No service provider shall be under any obligation to proactively monitor, make inquiries about material or content hosted, cached, routed, relayed, conduit, transmitted or made available by such intermediary or service provider.

36. Real-time collection and recording of information.-(1) If a Court is satisfied on the basis of information furnished by an authorised officer that there are reasonable grounds to believe that the content of any information is reasonably required for the purposes of a specific criminal investigation, the Court may order, with respect to information held by or passing through a service provider, to a designated agency as notified under the Investigation for Fair Trial Act, 2013 (I of 2013) or any other law for the time being in force having capability to collect real time information, to collect or record such information in real-time in coordination with the investigation agency for provision in the prescribed manner:

Provided that such real-time collection or recording shall not be ordered for a period beyond what is absolutely necessary and in any event for not more than seven days.

(2) Notwithstanding anything contained in any law to the contrary the information so collected under subsection (1) shall be admissible in evidence.

(3) The period of real-time collection or recording may be extended beyond seven days if, on an application,

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the Court authorises an extension for a further specified period.

(4) The Court may also require the designated agency to keep confidential the fact of the execution of any power provided for in this section and any information relating to it.

(5) The application under sub-sections (1) and (2) shall in addition to substantive grounds and reasons also-

- (a) explain why it is believed the data sought will be available with the person in control of an information system;
- (b) identify and explain with specificity the type of information likely to be found on such information system;
- (c) identify and explain with specificity the identified offence made out under this Act in respect of which the warrant is sought;
- (d) if authority to seek real-time collection or recording on more than one occasion is needed, explain why, and how many further disclosures are needed to achieve the purpose for which the warrant is to be issued;
- (e) what measures shall be taken to prepare and ensure that the real-time collection or recording is carried out whilst maintaining the privacy of other users, customers and third parties and without the disclosure of information of any person not part of the investigation;
- (f) why the investigation may be frustrated or seriously prejudiced unless the real time collection or recording is permitted; and
- (g) why to achieve the purpose for which the warrant is being applied, real time collection or recording by the person in control of the information system is necessary.

37. Forensic laboratory.- The Federal Government shall establish or designate a forensic laboratory, independent of the investigation agency, to provide expert opinion before the Court or for the benefit of the investigation agency in relation to electronic evidence collected for purposes of investigation and prosecution of offences under this Act.

38. Confidentiality of information.- Any person including a service provider, while providing services under the terms of lawful contract or otherwise in accordance with the law, or an authorized officer who has

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secured access to any material or data containing personal information about another person, discloses such material to any other person, except when required by law, without the consent of the person concerned or in breach of lawful contract with the intent to cause or knowing that he is likely to cause harm, wrongful loss or gain to any person or compromise confidentiality of such material or data, shall be punished with imprisonment for a term which may extend to three years or with fine up to one million rupees or with both.

CHAPTER IV **INTERNATIONAL COOPERATION**

39. International cooperation.-(1) The Federal Government may upon receipt of a request, extend such cooperation to any foreign Government, 24 x 7 network, any foreign agency or any international organization or agency for the purposes of investigations or proceedings concerning offences related to information systems, electronic communication or data or for the collection of evidence in electronic form relating to an offence or obtaining expeditious preservation and disclosure of data by means of an information system or real-time collection of data associated with specified communications or interception of data under this Act.

(2) The Federal Government may, at its own, forward to a foreign Government, 24 x 7 network, any foreign agency or any international agency or organization any information obtained from its own investigations if it considers that the disclosure of such information might assist the other Government, agency or organization etc., as the case be in initiating or carrying out investigations or proceedings concerning any offence.

(3) The Federal Government may require the foreign Government, 24 x 7 network, any foreign agency or any international agency to keep the information provided confidential or use it subject to some conditions.

(4) The Federal Government may send and answer requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.

(5) The Federal Government may refuse to accede to any request made by a foreign Government, 24 x 7 network, any foreign agency or any international organization or agency if the request concerns an offence which may prejudice its national interests including its sovereignty, security, public order or an ongoing investigation or trial.

CHAPTER – V **PROSECUTION AND TRIAL OF OFFENCES**

40. Offences to be compoundable and non-cognizable.-(1) All offences under this Act, except the offences under section 10 and 19 of this Act, and abetment thereof, shall be non-cognizable, bailable and compoundable:

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Provided that offences under section 15 of this Act shall be cognizable by the investigation agency on a written complaint by the Authority.

(2) Offences under section 10 and 19 of this Act and abetment thereof shall be non-bailable, non-compoundable and cognizable by the investigation agency.

41. Cognizance and trial of offences.— (1) The Federal Government, in consultation with the Chief Justice of respective High Court, shall designate Presiding Officers of the Courts to try offences under this Act at such places as deemed necessary.

(2) The Federal Government shall, in consultation with the Chief Justice of respective High Court, arrange for special training to be conducted by an entity notified by the Federal Government for training on computer sciences, cyber forensics, electronic transactions and data protection.

(3) Prosecution and trial of an offence under this Act committed by a minor shall be conducted under the Juvenile Justice System Ordinance, 2000.

(4) To the extent not inconsistent with this Act, the procedure laid down under the Code of Criminal Procedure 1898 (V of 1898) and the Qanoon-e-Shahadat Order 1984 (X of 1984) shall be followed.

42. Order for payment of compensation.— The Court may, in addition to award of any punishment including fine under this Act, make an order for payment of compensation to the victim for any damage or loss caused and the compensation so awarded shall be recoverable as arrears of land revenue:

Provided that the compensation awarded by the Court shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation so awarded.

43. Appointment of amicus curiae and seeking expert opinion.— The Court may appoint amicus curiae or seek independent expert opinion on any matter connected with a case pending before it.

44. Appeal.— An appeal against the final judgment of a Court shall lie within thirty days from the date of provision of its certified copy free of cost.

CHAPTER VI **PREVENTIVE MEASURES**

45. Prevention of electronic crimes.— (1) The Federal Government or the Authority, as the case may be, may issue guidelines to be followed by the owners of the designated information systems or service providers in the

interest of preventing any offence under this Act.

(2) Any owner of the information system or service provider who violates the guidelines issued by the Federal Government under sub-section (1) shall be guilty of an offence punishable, if committed for the first time, with fine upto ten million rupees and upon any subsequent conviction shall be punishable with imprisonment which may extend to six months or with fine or with both.

46. Computer Emergency Response Teams.-(1) The Federal Government may formulate one or more Computer Emergency Response Teams to respond to any threat against or attack on any critical infrastructure information systems or critical infrastructure data, or widespread attack on information systems in Pakistan.

(2) A Computer Emergency Response Team constituted under sub-section (1) may comprise of technical experts of known expertise, officers of any intelligence agency or any sub-set thereof.

(3) A Computer Emergency Response Team shall respond to a threat or attack without causing any undue hindrance or inconvenience to the use and access of the information system or data as may be prescribed.

CHAPTER VII **MISCELLANEOUS**

47. Relation of the Act with other laws.-(1) The provisions of this Act shall have effect not in derogation of the Pakistan Penal Code, 1860 (XLV of 1860), the Code of Criminal Procedure, 1898 (V of 1898) and the Qanoon-e-Shahadat Order, 1984 (X of 1984), Protection of Pakistan Act, 2014 (X of 2014) and Investigation for Fair Trial Act, 2013 (I of 2013).

(2) Subject to sub-section (1), the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law on the subject for the time being in force.

48. Power to make rules.-(1) The Federal Government may, by notification in the official Gazette, make rules for carrying out purposes of this Act.

(2) Without prejudice to the generality, of the foregoing powers, such rules may specify:-

- (a) qualifications and trainings of the officers and staff of the investigation agency and prosecutors;
- (b) powers, functions and responsibilities of the investigation agency, its officers and prosecutors;
- (c) standard operating procedures of the investigation and prosecution agency;
- (d) mode and manner in which record of investigation under this Act may be maintained;

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- (e) manner to deal with the seized data, information system, device or other articles;
- (f) working of joint investigation teams;
- (g) requirements for seeking permission of the Authority to change, alter or re-program unique device identifier of any communication equipment by any person for research or any other legitimate purpose;
- (h) procedure for seeking appropriate orders of the Authority for removal, destruction or blocking access to information under this Act;
- (i) constitution of Computer Emergency Response Team and the standard operation procedure to be adopted by such team;
- (j) appointment of designated agency having capability to collect real time information;
- (k) manner of coordination between the investigation agency and other law enforcement and intelligence agencies including designated agency;
- (l) for management and oversight of the forensic laboratory;
- (m) qualifications and trainings of the officers, experts and staff of the forensic laboratory;
- (n) powers, functions and responsibilities of the forensic laboratory, its officers, experts and staff;
- (o) standard operating procedures of the forensic laboratory to interact with the investigation and prosecution agency;
- (p) manner of soliciting and extending international cooperation, and
- (q) matters connected or ancillary thereto.

49. Removal of difficulties.-If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, within two years of commencement of this Act by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

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50. Amendment of Electronic Transactions Ordinance, 2002 (LI of 2002) and pending proceedings:—

(1) Sections 36 and 37 of the Electronic Transactions Ordinance, 2002 (LI of 2002) are omitted.

(2) Any action taken by or with the approval of the authority or proceedings pending under the provisions of the Electronic Transactions Ordinance, 2002 (LI of 2002) repealed by sub-section (1), shall continue and be so deemed to have been taken or initiated under this Act.

51. Savings of powers:—Nothing in this Act shall affect, limit or prejudice the duly authorized and lawful powers and functions of the institutions controlled by the Governments performed in good faith.
