



## **PECA 2016: Recommendations for Implementation and Oversight**

The Prevention of Electronic Crimes Act (PECA) 2016 was enacted in August 2016 yet, to date, neither have the rules been issued, nor courts set up under it. Social perceptions of what constitutes stalking, harassment, bullying etc, and the legal definition of these as well as what constitutes a crime under law can be very different. At the moment, citizens have little clarity as to what is criminalized under the law and what the procedures entail – how and where they can report if they fall in harm's way. The law alone is no solution; awareness of its existence, knowledge of the procedures, willingness to use it and then proper implementation for deliverance of justice that is tied with our criminal justice system and courts, are all components of this, which need to be addressed simultaneously.

### Awareness

- The Federal Investigation Agency (FIA) and the Pakistan Telecommunications Authority (PTA) should put out **public service messages** about the law and how and where to report what
- Helpline numbers, email addresses, links to websites and report forms, office addresses should be made available
- They should also issue regular advisories on measures people can take to keep themselves safe and about current scams
- The above can be done via television, radio and print advertisements/public service messages; SMS alerts; official websites, Facebook pages and Twitter accounts and mobile applications
- General information in the form of FAQs on the procedures and stages of investigation and prosecution should also be made available
- Awareness sessions should be organized at educational institutes and those that are open to public to acquaint people with reporting procedures and processes
- It is important that the FIA and PTA clearly mention what kind of cases they deal with as well as cases that do not fall under their purview, and what is required from complainants to lodge a complaint

### Public Facilitation

- In addition to an online complaints facility, 24/7 **facilitation and response centres** should be established where complainants can visit to seek guidance, lodge complaints and follow up on their cases
- These should be set up in major cities and also expanded to districts
- The facilitation and response centres should house officials from both the FIA and PTA, who are equipped to respond to technical and legal queries vis a vis complaints, as well as deal with them



- There should be other officers who are conversant with policies and procedures, who are there for guidance and assistance to help file complaints in case a complainant does not have the capacity or understanding to do it themselves
- These centres should liaise with other government and non-governmental organizations for referral of cases and in instances where there might be a convergence – either because the crime is committed through the use of an information system, or the investigation may require it – yet the main point of contact should remain this centre
- Often, in cases of harassment or bullying, which are traumatic experiences, psychological counseling is required; these services can be offered by liaising with those who already offer them
- There should be a **case management system** in place that tracks the number of complaints entered into the system and tracks the progress of cases once complaints are converted into FIRs
- A public listing (per city) should be made available on the website that provides information e.g. number of complaints converted into FIRs, cases pending, stage the case is at (FIR, investigation, court), cases resolved as well as details of cases (while protecting the privacy of complainants)
- Complainants should have access to a portal through a receipt number issued to them for their case for detailed information on it (some of which perhaps should not be public in the interest of keeping certain information private for their protection depending on the nature of the case)

#### Human Resource and Capacity

- There are three sections in PECA which are cognizable offences, which means the FIA can act upon a complaint, lodge an FIR, make an arrest without a warrant and pursue the matter in court
- A case registered under Section 21 of PECA in Karachi has demonstrated just how ill-equipped the state is to take on cases
- The number of investigation officers (i/o) and state prosecutors are hardly enough to deal with what will eventually be an influx of cases under the Act
- Sindh, for example, currently has only one state prosecutor at the district level who deals with all FIA cases twice a week
- If the i/o (during the initial stages of the case) or the prosecutor is not present, it becomes a matter of getting one date after another, which is cumbersome and traumatic for the complainant/victim
- At the High Court level, the Deputy Attorney General's (DAG) office assigns representation in these cases; ideally specified counsels should be assigned these cases who are conversant with the facts, instead of the file circulating between different counsels at different stages of the case – this is not a matter of law alone but also requires a technical understanding
- Technical and legal training of judicial officers who are appointed to try cases under the law, as well as state prosecutors and counsels in the DAG's office, is necessary

- There is one **forensic lab** in Sindh and the main one in Islamabad
- In the Section 21 case in Karachi, the forensic report has been pending for four months; ultimately Sindh sent it to Islamabad saying it did not have the technical facilities and Islamabad said there was too much backlog to immediately produce a report
- If this is with one case, one can only imagine what would happen when there is an influx of cases, therefore existing capacity should be increased
- During hearings in Karachi, the accused's lawyer alleged that the IP-trace for the accused was only a claim by the FIA (who was prosecuting the case) and that no independent, third party had confirmed it
- Forensic labs independent of the government should also be set up so they can provide third-party reports

### Implementation and Oversight

As per Section 53 of PECA, the designated agency – which is the FIA – must submit half-yearly reports to both houses of Parliament for consideration by the relevant committee (i.e. the Standing Committees on IT and Telecom). PECA was enacted in August 2016. Eight months have passed, and there is no public knowledge of any report that has been submitted. Moreover, the Rules of Business, which is a function the Ministry of Information Technology and Telecom must perform, have also not been issued. Neither have the courts been set up for the trial of cases, due to which complainants and litigants are suffering.

- Rules of Business should be drafted in consultation with private and public stakeholders
- A draft should be made available for public input before the rules are issued
- Input should be factored in before the rules are issued; if certain recommendations are not included, reasons should be provided
- Time caps for investigation and conclusion of cases before courts should be given consideration and ensured
- Progress of cases – especially those registered by the state under cognizable offences – should be monitored by the provincial and national human rights commissions and relevant parliamentary committees of both Houses (i.e. Standing Committee on Information Technology and Telecom, and Committee on Human Rights) - a record of cases should be available with the provincial and national human rights commissions as well as online portal