Note on the Implementation of Prevention of Electronic Crimes Act 2016

When the National Action Plan (NAP) was rolled out in 2014, one of the 12 points pertained to curbing extremist content and hate speech online. The need to bring laws in conformity with NAP was the narrative peddled to bulldoze the Prevention of Electronic Crimes Act (PECA) 2016 through. At the time, many warned against this law because of its broad and restrictive provisions which criminalized speech and gave excessive and overbroad powers to the Pakistan Telecommunications Authority (PTA) and law-enforcement i.e Federal Investigation Agency.

(See: Archive PECA)

August 2019 will mark three years of PECA. How much of a deterrent it has been against online abuse towards women or journalists, activists and political workers is clear. While labels are used against them and campaigns run terming them anti-state agents, traitors, anti-Islam and even blasphemers, there's no action against any of this despite repeated complaints. Where there has been action is against dissidents. Questions and critique, any departure from the official narrative, is considered anti-state and anti-institution propaganda. And that's what the crackdown has been against under PECA.

(See: Chapter on Cybercrime Law and Free Expression Chapter: HRCP Annual Report 2017)

During advocacy against the law, Sections 20 and 37 were pointed out specifically as sections that should be omitted from the law.

Section 20: This section pertains to criminal defamation and reads:

Section 20 – Offences against dignity of a natural person (1) Whoever intentionally and 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 which may extend to one million rupees or with both.

Though this is non-cognizable, bailable and compoundable offence – which means the FIA cannot act on its own, requires a complaint by an aggrieved person after which it has to obtain permission from court to initiate an inquiry – but that is not how Section 20 has been applied. A quick look at FIRs shows that cognizable sections of PECA, the Pakistan Penal Code and Anti-Terrorism Act are routinely added to FIRs to gain powers to make arrests while the primary charge is under Section 20. Moreover, Section 20 has been used against political workers, journalists, activists and citizens for remarks about state institutions whereas the law requires the complainant to be an individual and the aggrieved person i.e. who has been personally defamed. An institution does not fit the scope of the offence. Even in the case of a state official, he/she must personally file the complaint, no one register a complaint on their behalf, especially not the FIA. However, the application has been to the contrary.

Earlier, inquiries were conducted by the counter terrorism department and later the cybercrime wing, instructing journalists to present themselves for questioning and bring

in their devices – search and seizure of which requires a warrant – without formal charges or so much as an intimation of what the inquiry pertained to. Sometimes there were phone calls, others received vague summons.

(See: Petition before Sindh High Court and Timeline)

Section 37: Titled "Unlawful on-line content," the relevant sections read as follows:

(1) The Authority shall have the power to remove or block or issue directions for removal for blocking of access to an 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, morality, or in relation to contempt of court or commission of or incitement to an offence under this Act

(2) The Authority shall with the approval of the Federal Government prescribe rules providing for, among other matters, safeguards, transparent process and effective oversight mechanism for exercise of powers under sub-section (1)

(4) Any person aggrieved from any order passed by the Authority under sub-section (1), may file an application with the Authority for review of the order within thirty days from the date of passing of the order

Section 37, which copy pastes Article 19 and gives PTA powers to interpret and apply the restrictions is something parliament should legislate on and the judiciary interpret. It is not a function for a telecom regulator to perform. Powers under Section 37 led to the blocking of Khabaristan Times and the Awami Worker's Party websites among a long list of others, without prior notice or reasons provided in writing for the decision. To date no rules under Section 37 have been issued either. Recently journalists, lawyers and activists received emails from Twitter saying "official correspondence" was received with respect to their tweets saying the content "violated local law." While the former Information Minister said the government didn't report the tweets to Twitter in this case, who did? Who qualifies to "officially correspond" with Twitter in this case and other platforms in general?

(See: Section 37: Our Official Correspondence Problem and Public Petition to Senate)

Recommendations:

While there are multiple problems with both the law and its application, what requires immediate attention is the application of these sections that has a direct bearing on free expression and fundamental rights and accountability of the authorities. It is requested:

- FIA and PTA be directed to submit record of action taken under Sections 20 and 37 of PECA
- FIA be instructed to submit reports to both houses of parliament as required under Section 53 of PECA
- NA and Senate Standing Committees on Information Technology and Telecom and Human Rights jointly review PECA against concerns cited about the law as a whole and hold the relevant authorities to account