

September 18, 2019

**Note for Senate Functional Committee on Human Rights On:  
Use of Section 20 of PECA & the Abuse of Power by the FIA**

**Summons by the FIA**

Over the last two months, vague summons U/S 160 of the CrPC have been issued by the FIA to various people. Typically, the summon provides only the Enquiry Number and date those summoned are required to appear at the FIA office to answer questions. The summon states they are already aware of the nature of the case and instructs them to bring all relevant documents, warning non-compliance will result in legal action.

- Most summons are undated
- Most people received the summons by post after the date for appearance had already passed
- Many received summons at addresses they do not reside at
- Several people are being summoned to cities the investigation has been initiated in, which is not the city of their residence
- The summons do not mention whether someone is accused or required to appear as a witness in a case
- Most summons do not mention name of the complainant
- The summons do not include details of the allegations or charge giving rise to such an investigation
- A copy of the complaint has not been provided with the summons
- Letters in response to the summons, by those summoned and their lawyers, requesting a copy of the complaint and shifting of investigation to their city of residence, have been responded to with another summon
- Many have received up to four summons till now

Repeatedly issuing vague summons without any description of the allegation or charge, refusing to provide a copy of the complaint, requiring attendance in person at the office with relevant documents without any details or reasons, expecting those summoned to travel to another city at their own expense and deliberately not responding to letters requesting copies of the complaint and transfer of investigation to their city of residence, is not only unreasonable but clear harassment.

**Application of the Law: On Paper VS in Practice**

**1) FIA invokes powers under Section 5 of the FIA Act, 1974, to conduct enquiries and investigations for offences under PECA**

After the enactment of the Prevention of Electronic Crimes Act 2016, offences committed through electronic means fall under the exclusive purview of PECA and not scheduled offences under the FIA Act, 1974. FIA was notified as the designated investigation agency under Section 29 of PECA by the Federal Cabinet in September 2016. Powers vested in FIA under the FIA Act, 1974 are not available to the FIA while acting as an investigation agency under the PECA. FIA, as the designated agency under PECA, is bound by procedures and powers under the PECA, with

reference to Sections 30, 43, 44 and 50 of the Act, and can be exercised only after obtaining necessary permissions under the CrPC.

### 2) FIA initiates investigations into non-cognizable cases without first seeking the permission of the competent court as required by law

There is no offence under PECA titled defamation. However, if an offence of defamation is to be made out under PECA, it can be assumed it would attract Section 20 which pertains to “*offences against the dignity of a natural person,*” a non-cognizable offence. To investigate a non-cognizable offence under PECA procedures under Sections 30, 43, 44 and 50 of PECA apply.

Further, there is no provision in PECA that authorises the FIA to initiate an inquiry. The word investigation and not inquiry is mentioned in the Act and Rules. Rule 7 of the Prevention of Electronic Crimes Investigation Rules, 2018, is titled “Investigation and case procedure.” With reference to Rule 7 of the Prevention of Electronic Crimes Investigation Rules, 2018, Rule 7(4) requires the circle in-charge to seek legal opinion and lodge a case after the approval of the Additional Director of the zone, which would result in an FIR. Where the case is non-cognizable, as per Rule 7(5), the circle in-charge must seek the permission of the competent court for investigation under Section 155 of the CrPC. Section 160 of the CrPC also pertains to an investigation, not inquiry.

In a case where permission was sought retrospectively by the FIA – after wrongfully initiating the investigation prior to seeking permission – the application was moved and signed by the Enquiry Officer whereas Rule 7(5) clearly states it must be “the circle in-charge” who seeks the permission of the competent court.

### 3) FIA seizes devices without warrants

There are abundant reports and accounts of devices being seized by the FIA, whether during raids on premises or when individuals appear at the offices for investigation. Section 33 of PECA requires an officer of the FIA to move an application before the competent court recording reasons why a device may be reasonably required for the purposes of investigation. After considering the application, the competent court, after applying its mind and recording reasons, may issue a warrant. In the absence of a warrant, search and seizure is illegal. However, current practice is to circumvent this mandatory provision.

There are procedures outlined in PECA under Section 36 “Dealing with seized data or information system” and Rule 8 “search and seizure,” which place requirements for ensuring the integrity, security and proper documentation. These too are not followed.

### 4) FIA violates privacy and compromises confidentiality in cases

On August 20, 2019, an article published in The Express Tribune quoting “FIA sources” revealed the names of several individuals undergoing investigation – many of whom have received the vague summons and been subjected to harassment by the FIA. In the news report, there is disclosure of an investigation against them for defamation. As per Rule 9 of PECA Investigation Rules 2018, the FIA is required to

maintain confidentiality, breach of which necessitates disciplinary action as mentioned in Rule 9. This is not the first time such a “leak” or breach of confidentiality has taken place.

### **Violation of Fundamental Rights**

The FIA is conducting roving investigations in violation of the procedures under PECA. Their abuse of the law and authority and disregard for due process and fundamental rights cannot go unchecked. As a result of these unlawful actions by the FIA, the following rights are being directly affected:

Article 4: Right of individuals to be dealt with in accordance with the law

Article 10-A: Right to fair trial

Article 13: Protection against double punishment and self-incrimination

Article 14: Inviability of dignity of man

Article 19: Freedom of Speech

Article 19A: Freedom of Information

Article 23: Provision as to Property

They must not be allowed to trample upon the fundamental rights of citizens.

### **Justice Not So Accessible**

Not everyone has knowledge of the law or has ready access to a lawyer. Many people cannot afford to hire lawyers and are reliant on pro bono help – often required on an urgent basis. There are also other constraints when speaking about grievances, filing a formal complaint or considering legal action. Many rule out the court route as (i) they don’t have the financial means to obtain legal help (ii) legal proceedings are public, long-winded and consume time and resources (iii) they fear backlash and further escalation by other party.

Often, there is considerable fear that a formal complaint or legal challenge will be viewed as an escalation by the other party – whether a private individual or a law-enforcement agency – which will be followed by reprisal and consequences. Many don’t want to turn to the law or go public about their cases due to backlash by the person/authority against whom their complaint is against, but also because in some instances, families or workplaces do not know and there is the additional risk of social and professional consequences. With the FIA, many are fearful of vindictiveness if they air their grievances, apprehensive of what may become of them or their case after.

### **Recommendations**

- Summon the FIA to provide an explanation for its unlawful acts
- Restrain the FIA from harassing citizens
- Create an effective oversight and accountability mechanism over the FIA
- Repeal Section 20 of PECA and Sections 499 and 500 of the PPC that criminal investigations to be launched against citizens

Submitted by: Farieha Aziz