



The Perils of PECA: Democratic New Rules for Online Content Regulation in Pakistan?

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On October 24, 2019, human rights activist Gulalai Ismail's father, Professor Muhammad Ismail, [was arrested by the Federal Investigation Agency](#) (FIA). The FIA arrested Professor Ismail after registering a First Information Report (FIR) against him under the [Prevention of Electronic Crimes Act \(PECA\) 2016](#). According to the news report, the agency initiated this case against Professor Ismail after receiving a complaint alleging that he had posted hate speech and fake information against the government of Pakistan on social media. The FIA seized his Facebook and Twitter IDs and passwords and his mobile phone.

Stories like this are not uncommon in Pakistan. Ever since PECA was enacted in 2016, the government has used it to haul journalists, activists, professors and the like before the FIA on [allegations of "anti-state activity."](#) And while cases like this are common, cases that would carry out the government's stated purposes of PECA are not: it claims that one of the purposes of PECA is to curb the online harassment of women. Yet, perversely, they are instead using the act to allow men accused online of sex crimes to [bring defamation claims against their female accusers](#). For these reasons, [civil society watchdogs are deeply concerned](#) by the Pakistani government's abuse of PECA's provisions as it stands.

Now the government of Pakistan seeks to expand its regulatory powers under PECA even more. The newly proposed [Citizens Protection \(Against Online Harm Rules\), 2020](#) (the Rules) would allow for the regulation of "active opposition to the fundamental values of Pakistan" and of content that "violates or affects the religious, cultural, ethnic, or national security sensitivities" of the nation. With these open-ended terms at their heart, the proposed Rules are not likely to regulate online content in a manner protective of rights, but rather would have the effect of unduly censoring its citizens in violation of free expression guarantees.

These proposed Rules could, for example, prevent citizens from exercising their constitutional rights to criticize the state, to express their religious beliefs, or to publicize their personal or political opinions, whenever such expressions run counter to official views. And, based on what happened to Professor Ismail and many others, there is real concern that this could become the rule rather than the exception.

Government officials have responded to criticism of the proposed Rules by [claiming that they are less stringent](#) than the content regulation rules of democratic countries/regions such as the European Union, the United Kingdom, and the United States. But this claim is largely not true. The pertinent laws in those countries either refrain from directly regulating online content as protected speech, or regulate it in line with international human rights standards. The same human rights standards, incidentally, that apply to Pakistan.

For example, the United States (U.S.) actually does very little to regulate online content (with the notable exception of child pornography, which is a crime). Instead of being controlled by an official government agency, internet use and content in the U.S. is [primarily policed by the private companies](#) enforcing their terms of service and related policies. There are also agreements between online platforms to work together to remove certain content (such as that pertaining to terrorism or child abuse imagery) or actors from their services. Only when online expression can be deemed defamatory—for which the legal standards are very high in the U.S.—can it be pursued, and then only by the affected party, not by the government.

The U.S. approach is unique due to its renowned First Amendment protections for free speech. Other consolidated democracies with a rule of law tradition take a different approach. For instance, the United Kingdom (UK) regulates most online content through the executive Office of Communications (commonly known as Ofcom), a government appointed regulator of communications services. [Under a newly proposed regulatory regime](#), Ofcom will require internet companies like Facebook and Google to publish a set of guidelines that explicitly state what content and behavior they allow on their sites. It will then ensure that these standards are enforced consistently and transparently by mandating them to publish annual transparency reports explaining what content they have removed and how they are meeting their guidelines.

Ofcom also will have the power to ensure that social media companies quickly remove illegal content, with a special focus on terrorism and child abuse imagery. [As a safeguard for freedom of expression](#), Ofcom will not have the ability to remove specific posts from social media platforms itself. Rather, [the government says](#) that the UK Regulation “will focus on the wider systems and processes that platforms have in place to deal with online harms, while maintaining a proportionate and risk-based approach.” In practice this means that Ofcom will regulate the aforementioned harmful content by setting new targets for platforms to remove such content themselves. Under this approach, internet companies would be incentivized to follow the new regulations by the [threat of personal liability for their executives](#) who could be held responsible for harmful content on their platforms.

Similarly, the European Union (EU) has proposed a [Regulation on preventing the dissemination of terrorist content online](#). This new legislation would grant EU member state governments more power to regulate online content with the specific goal of preventing online terrorist content. The proposed Regulation would allow authorities, which can include the police, to issue an administrative or judicial decision requiring social media platforms to remove content within one hour. It would also mandate that service providers, where appropriate, take proactive measures proportionate to the level of risk and to remove terrorist content from their sites by taking measures such as automated detection tools.

This proposed EU Regulation has not yet been adopted, but UN human rights experts already [have raised various human rights related concerns](#) about it as currently drafted. While these concerns should be further addressed before the enactment of the Regulation, it does, in its current form, include a number of safeguards designed to ensure the protection of human rights. These [safeguards](#) protect fundamental rights such as freedom of expression and information and allow for the possibility of judicial redress as guaranteed by the right to an effective remedy. In order to protect these rights, the Regulation would impose obligations upon EU countries to put remedies and complaint mechanisms into place in order to ensure that users have a way to challenge the removal of their content. It would also require that hosting service providers preserve the content that they remove to safeguard against

erroneous removal. and impose certain transparency requirements on providers to ensure greater accountability towards users, citizens, and public authorities.

Rather than citing the U.S., UK, and EU as comparable approaches, which in light of the foregoing they are not, Pakistani officials could have compared their controversial Rules to the new regulations being proposed in India. Under the proposed regulatory scheme, Indian government officials could demand that social media platforms remove posts or videos that the authorities regard as libelous, invasive of privacy, hateful, or deceptive. It would also force internet platforms to continuously cooperate with government requests without requiring a court order or warrant. Not surprisingly, the New York Times described the Indian proposal as an attempt to enact “[Chinese-style internet censorship](#),” due to a lack of safeguards for [privacy rights](#) and a [lack of grievance mechanisms](#) for users to contest content removal.

This critique leveled at India could also easily apply to Pakistan if the latter’s proposed Rules are enacted. China has [one of the most restrictive](#) content regulation regimes in the world. It has blocked most international social media and messaging platforms and limited the content available on global search engines. It forces websites and internet companies to monitor their content and block banned material or face severe punishments for noncompliance. The government also regularly imprisons citizens for online activities. The sentences for these “crimes” can be up to several years; defamation, for example, carries a sentence of up to three years and disinformation is punishable by up to seven years in prison. Pakistan, like India, would be taking several steps closer to a Chinese model of content regulation if the respective regulations proposed were to take effect without amendment to include EU or UK-style safeguards.

Pakistan could – and should – be taking a different course. Unlike the content regulation policies of the nations that Pakistan claims to be copying—the U.S., the UK, and the EU—the newly proposed online content regulation Rules do not attempt to comply with international law. According to the [United Nations’ expert on freedom of expression](#), for example, criminal defamation laws like those regularly invoked in Pakistan under PECA cannot be used to protect things such as “the State, national symbols, national identity, cultures, schools of thought, religions, political ideologies or political doctrines.” As such, the implementation of a norm that would regulate content on the basis that it “violates or affects the religious, cultural, [and] ethnic sensitivities” of Pakistan, as the proposed Rules say, would likely constitute a direct violation of Pakistan’s human rights obligations.

In sum, the question put forth is this: are Pakistan’s new proposed Rules under PECA more similar to content regulations in democratic countries such as the UK and those in the EU, or are they more similar to the regulations in more authoritarian regimes like China? If it wanted to take the former path, Pakistan would have to amend its content regulation provisions to comply with its human rights obligations and create safeguards, such as complaint procedures and transparency requirements, to better protect human rights. The alternative is to take a large step, if not several, down the path of increased authoritarianism. By reconsidering and reconfiguring these Rules to model the more rights respecting examples cited, the Pakistan government can show its commitment to democracy and human rights.