



YOUTH GENERAL ASSEMBLY

# **GENDER & CYBERCRIME IN PAKISTAN**

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## **STATUTORY REVIEW**



YGA LEGAL FORUM  
A Project of Youth General Assembly



YGA Business Forum  
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YGA Media Forum  
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YGA ADR FORUM  
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**Youth General Assembly** is an autonomous assembly that has been formed in order to provide a credible platform that instigates a true sense of policy & strategy making, equitable administration and non-customary legislative, public speaking and social issues by empowering enthusiasm in youth for being the future ambassadors and democrats.

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**Printed in Pakistan**

**Published: January 2023**

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## What is Cybercrime?

Cybercrime is known as a criminal act, which is committed using computing devices and the internet. The offences that are committed against individuals or groups of individuals with criminal motive to harm the reputation of the victim, causing mental harm to the victim. The different types of cyber-crime are classified in categories like hacking, cyberbullying, cyberstalking, spoofing, hacking, intellectual property, hacking, digital piracy and many others.

## Cyber Crime Act in Pakistan

The law dealing with cyber-crimes in Pakistan is the Prevention of Electronic Crimes Act (PECA) which was introduced in 2016. It gives a comprehensive framework for various types of cybercrime in Pakistan. This act deals with following internet crimes:

- . illegal access of data
- . denial of service attack
- . Cyber terrorism
- . Electronic Forgery and Electronic Fraud
- . Spamming is unsolicited messages such as posts on the internet, emails and text messages. Spamming these days is highly popular in social media. As a lot of unwanted spam content appears on social networking sites.

## PECA 2016 Penalties for Cyber Criminals

The PECA 2016 lays down penalties for cyber criminals in Pakistan which include:

- . Up to 3 years of imprisonment, 1 million PKR or both for accessing critical information systems without authorization.
- . Up to 7 seven years of imprisonment, 10 million PKR fine or both for disruption of critical information systems with dishonest intention, similar punishment for cases related to cyber terrorism
- . Up to 3 years imprisonment, PKR 5 million or both for involvement in data breach, which includes online distribution of someone's personal data without consent.

## Statistical Data

Cyber-crime in Pakistan has increased by 83pc in three years, reports, The news on 28 August 2021. The data given shows that the cybercrimes complaints have shot up increasingly, up to 83pc from 2018 to 2020 [1]

In 2018, the cybercrime wing dealt with a total of 16,122 complaints and in 2020 the number was 94,000. Out of which over 44,000 complaints related to financial frauds were registered and dealt with in the span of the past 3 years. The other complaints were harassment, 15,000 hacking, 10,358 defamation and 16,601 complaints of fake profiles were registered from the year 2018 to 2020 [2]

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1 Kasim Abbasi, 'Cybercrime increases by 83pc in three years' International THE NEWS <<https://www.thenews.com.pk>> (28 August 2021)

2 Ibid

## **PECA 2016 Comparison with UK Data Protection Act 2018**

Similarly, in the United Kingdom also has a law like Prevention of Electronic Crimes Act 2016 has The Data Protection Act 2018 [3], that everyone is responsible for using the personal data, and has to follow the strict rules called the 'data protection principles.' Also, they make sure that the information used must be fair, lawful and transparently.

This act ensures that appropriate security is given, against all the unlawful and unauthorized processing. Thus, when comparing the Pakistani and United Kingdom's Act, is vibrant and there is a strong legal protection by the United Kingdom Act, in matters of the political opinions and the ethnic backgrounds are involved.

### **Cyber Crime dealt under PECA 2016**

Cyber-crime related crimes are dealt under the Prevention of Electronic crimes act 2016, as mentioned above. They are child pornography is a form of child sexual exploitation, are any visual depiction of a sexually explicit conduct, which involves a minor.

Furthermore, cyberstalking has become common a lot, because of an increase in the use of electronic communication in harassing or threatening someone.

These digital crimes are nowadays known as dark web which is known as part of the world web and is only accessible by the use of special software, which allows users and web operators remain anonymous, but they carry out in software license and service agreements, people add liability clauses under which detailed analysis of cybersecurity, hacking, data protection, and infringement of other party's copy writer content is also added. Majority of the time the data is uploaded on google drive and the liability becomes unlimited if the account gets hacked.

### **Federal Investigation Agency and its role**

These crimes are in correlation with the Prevention of Electronic Crimes Act 2016. Investigations on these crimes are conducted by the investigation agencies and in Pakistan, Federal Investigation Agency (FIA). As per the recent update by the Islamabad High court has declared the PECA 2016 unconstitutional. The offense under the Section 20 of the Act is in derogation of the Constitution as the punishment for the offense. Phraseology of Section 20 is very broad enough to cover not only defamation but, protection of individual regulations through the arrest and imprisonment and the resultant chilling effect which violates the letter of the Constitution and invalidity thereof is beyond a reasonable doubt. [4]

The Cyber- Crime Wing of FIA is guided by the PECA 2016, which deals with growing threats of cybercrimes. This is the only unit in Pakistan which directly receives complaints and takes legal measures against cyber criminals and to curb the phenomenon of technological abuse in society.

As in May 2022, the FIA had warned the overseas Pakistanis who are allegedly involved in committing offences on social media that their names can be put on the Exit Control List (ECL) and can be issued red notices through Interpol to arrest them [5].

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3 Data Protection Act, 2018

4Tahir Naseer, 'IHC strikes down Peca ordinance, terms it 'unconstitutional'' <https://www.dawn.com> (8 April 2022)

5Noor Aftab, 'FIA warns overseas Pakistanis' <https://www.thenews.com.pk> (9 may 2022)

So far FIA has been trying their level best in curbing the cyber-crime. Recently the FIA has initiated action against Sadaqat Hussain who was running fake twitter accounts for retired army officers. During interrogation, the accused admitted to be using social media in order to distribute the fake video clips of various retired Generals. An investigation is under way to know the reason behind of his doing so [6].

Also, recently an incident that took place in which a person had made fake account for the Prime minister Shahbaz Sharif was arrested by FIA. It is said that the person was using social media user for impersonating twitter of Prime minister. A case has been registered against him [7].

As of now every cybercrime complaint is now divided into subsections. As first FIA verifies each and every complaint and starts with an inquiry on it after it's through the verification process. Then, the inquiries are further translated into criminal cases, if an offence is made. The Process FIA has provided that a cybercrime complaint registration form is available on their website. Once the information consists of the crime and its detail of crime and categories are added. The form can be submitted online.

As per the stats published in the Dawn Article in January 2022, states that total of 102,356 complaints were made last year, in which 80,641 went through the process of verification. In which 15,932 passed the inquiry stage and total of 1,202 were the cases registered under the PECA 2016, over 1,300 suspects were arrested [8].

The FIA links this with Interpol, as the red notices which are issued by Interpol. The FIA contact Interpol through the District Police officer concerned or the officer in-charge of the same level of the requesting law enforcement agencies (LEAs) forwards the request for issuance of the Interpol Notice(s) to the Inspector General of Police/PPO, who forwards the same to the home department (the Provincial Government) for onward submission to the Ministry of Interior, Islamabad (approving/competent authority). After approval, the Ministry of Interior refers the same to the Director- General FIA/ head of NCB-Interpol, Islamabad. Such as the child pornography in which the accused were caught through the information received from the Interpol to FIA.

## **PECA 2016 Enactment by the National Assembly**

In 2016, the National Assembly enacted the Prevention of Electronic Crimes Act (PECA) to provide a comprehensive legal framework to define various kind of electronic crimes, mechanisms for investigation, prosecution and adjudication in relation to electronic crimes.

As the S.2(1)(a) act includes:

S.2(1)(a)(i) a series of acts or omissions contrary to the provision of this Act; or

SS.2(1)(a) (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 a temporary or permanent impact [9].

This means that any act committed as a cyber- crime will be charged under the PECA 16 and the authority in this act means, The Pakistan Telecommunication authority which is established under the Pakistan telecommunication (Re-organization) Act

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6 Pakistan, Man Behind fake Twitter accounts of ex- Army officers detained <https://dailytimes.com.pk> (25 May 2022)

7 FIA arrests man for impersonating PM Shehbaz Sharif on Twitter <https://arynews.tv> (23 May 2022)

8 Azfar-ul-Ashfaque, 'Cybercrime complaints topped 100,000 in 2021: FIA Chief' Dawn <<https://dawn.com>> (Karachi, Pakistan, 3 January 2022)

9 Prevention of Crimes Act 2016, S.2(1)(a) [https://na.gov.pk/uploads/documents/1472635250\\_246.pdf](https://na.gov.pk/uploads/documents/1472635250_246.pdf)

1996 (XVII of 1996). Further means that the authorization is by law or by the person empowered to make such an authorization under the law [10].

The offences and punishments under the PECA 2016, which includes unauthorized access to information system or data. This means whoever with dishonest intention gains an un-authorized access to any information system will be punished for 3 months or extended. Interference with information system and data will be punished for 6 months, could be extended or fine which may extend to one hundred thousand rupees or with both.

Moreover, the Glorification of an offense is where whoever prepares or disseminates information, any information system or device. The intention to glorify an offense relating to terrorism. Such as Cyber terrorism which creates a sense of fear insecurity and panic in the public and government. it doesn't stop here, also creates advanced interfaith, ethnic, hatred, which later leads to hate speech, racial hatred all of this shall be punished for a term, that shall be extended to 14 years or must include a fine which extended to 50 million rupees.

The establishment of investigation agencies and procedural powers for investigations is where the federal government may establish and can delegate law enforcement agencies for the purpose of investigations for the Prevention of Crime Act 2016. The power to investigate is given to authorized officers of the investigating agency as well. Furthermore, a warrant for search is issued, by the authority of the authorized officer which demonstrates the satisfaction of the court, to be believed that reasonable grounds there may be in. a specified criminal investigation or criminal proceedings.

International Co-operation is upon the request of the federal government and may upon the receipt of a request through a designated agency under this act, such co-operation to any foreign government, any foreign agency or any international organizations for the purposes of investigations or proceedings concerning offenses related to information systems.

## **Criminal Procedure Code 1860**

Prosecution and trial offences are those which are compoundable to cognizable and non-cognizable are defined under the Section 4(1)(f) and (4)(1)(n) of the Criminal Procedure Code 1860 in which "cognizable offence means an offense for, and cognizable case" means an case in which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant [11].

And "Non-cognizable" offence means an offence for and "non-cognizable case" means a case in which a police officer, may not arrest without warrant.

Thus, these offences are in abetment, shall be non-bailable. Whereas the cognizable and trial of offences are those in which the federal government is in consultation with the Chief Justice of respective high courts and has designated presiding officers of the court to try the offences under this act at such places where it's necessary. Keeping in mind that any investigate agency without having prior permission of the court can investigate cognizable offenses. In non-cognizable: permission of the court is required and investigating agency can't investigate until the court gives the permission, for example: The PECA 2016 Section 17, 19 and 21 falls in this domain.

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10 Ibid

11 Criminal Procedure Code 1860, S.4(1)(f) & S.4(1)(n)

Preventative measures for the prevention of crimes are to take prevention of electronic crimes, the federal government or the given authority of any cases, issuing directives to be followed by the designated information systems and the service providers. The computing emergency response teams' creation shall consist of recording the emergency on the computer and the response teams to respond any threat against or attack on any important information system of Pakistan shall be created by the federal government.

## **Pakistan Penal Code 1860**

This act in relation to the other laws of Pakistan, as the provision of this act, has no derogation of the Pakistan Penal Code 1860, as a matter fact The PECA 2016 and PPC work better together, such as Section 354 of the PPC which deals with modesty, harassment etc. The further act includes the Code of Criminal Procedure 1898, The Qanoon-e-Shahadat order 1984, The Protection of Pakistan Act 2014, and the investigation of for The Fair trail Act 2013[12].

The Pakistan Penal code 1860 was amended and the code of Criminal Procedure, 1898, added more sections. In which Section 292B was added which is related to child Pornography, whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian, any photograph, film, video, picture or representation, portrait, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where there is a visual depiction that involves a minor a boy or girl engaging in obscene or sexually explicit conduct[13].

The Pakistan Penal Code 1860, Section 500 deals with punishment for defamation, whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with a fine, with both [14].

## **Amendment in PECA 2016**

The PECA 2016, introduction was amidst of flurry of concern in order to govern realm of cybercrimes, A recent amendment to the Act makes several changes to the law of defamation in Pakistan, includes making 'online defamation' a non-bailable offense. Which are essentially means the grant of bail in cases of online defamation will now be granted as an exception and not as a right. The arrest of an alleged offender can be made without an arrest warrant.

The PECA 2016, works better with the Section 497 of the Criminal Procedure Code 1898[15], here especially in which cases the sentences are less than 10 years do not fall within the ambit of prohibitory clauses. They are usually bailable. As it was established in the case of PLD 1995 SC 34 where the conditions are given by the court in which bail can be granted:

- 1- The person's prosecution evidence can't do tempering
- 2- He is not an absconder
- 3- Does not have previous non convict/ criminal history/ character
- 4- Not creating violence as he is not dangerous for society [16].

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12 Prevention of Crimes Act 2016, S.2(1)(a) [https://na.gov.pk/uploads/documents/1472635250\\_246.pdf](https://na.gov.pk/uploads/documents/1472635250_246.pdf)

13 The Pakistan Penal code, 1860 and the Code of Criminal Procedure, 1898, Section 292B  
[https://senate.gov.pk/uploads/documents/1450099224\\_165.pdf](https://senate.gov.pk/uploads/documents/1450099224_165.pdf)

14 Pakistan Penal Code (ACT XLV OF 1860), Section 500  
<https://www.ma-law.org.pk/pdfflaw/PAKISTAN%20PENAL%20CODE.pdf>

15 The Code of Criminal Procedure, 1898, Section 497

16 PLD 1995 SC 34



Hence, why do we need to know the process of this aforementioned, because the bails are usually in the PECA cases, these sections of PECA 2016 are often set aside when the applying the section 497 of the CPC, which deals with prohibitory clause. The accused usually gets free when, he or she applies for bail under this section which shows the PECA had limited powers. Furthermore, the Progressive trends of the Supreme Court. Recently in 2022 SCMR 526 Supreme Court stated cyberstalking, transmitting, objectionable images of a woman, accused applied for bail, as his plea of accused was that offences alleged did not fall within prohibitory clauses of Section 497 of CPC. The court held, that ordinarily, upon conclusion of investigation in criminal cases falling outside the remit of “prohibition”, motions for the release on bail are favorably received, nonetheless, such practice is not without limitations. As in the present case, the privacy of a young lady had been grievously intruded to the utter embarrassment of her family, even her marriage went into peril. The incident was reported by her father in law and, thus, in facts and circumstances of the case, the Concurrent view of the Courts below in denying bail to the accused was correct. The petition for leave to appeal was dismissed, leave was declined and the accused was refused bail [17].

The amendment has also increased the maximum sentence to 5 years, from the previous 3 years. These measures clearly point towards a regime that seeks closely monitor, control dissenting voices and discourse. The major drawback of PECA is that most offences under Sections 10, 21 and 22 of PECA are non-cognizable offences. The complainants will suffer as no FIR will be lodged. An investigative agency like the FIA or the police can't start an investigation unless they receive permission orders from the magistrate court [18].

## **Citizen's Protection (Against online Haram) 2020**

In January 2020, the federal Cabinet of Pakistan approved the Citizen's Protection (Against online Harm) rules to regulate social media platforms for streaming content related to terrorism, extremism, hate speech, sedition, fake news, violence, defamation and national security [19]

### **Gender Perspective on Cyber-crime** *Why women are not welcome on the internet?*

We often witness that countries like USA and United Kingdom are always supporting “Gender Mainstreaming” to promote gender equality in their legal system. To that effect countries like Pakistan are also working on this. **Article 25 ensures equality before the law while Articles 25(3) and 26(2) of the Pakistani constitution** allow the state to make special provisions for the protection of women and children to give them extra protection. However, in deviation from the general rule, some women and girls are more prone to facing cyberstalking and harassment than other women, especially during the past few years, cyber misogyny has steadily increased. The patriarchal and misogynistic trends in the offline world start to reflect online where doors for “abusive sexism” have opened. On **World Press Freedom Day, UN Special Rapporteur Irene Khan** expressed her views on Freedom of opinion and expression and encouraged States to shield women journalists from online and offline attacks, as well as virtual entertainment organizations to guarantee that internet-based spaces just like social media companies are liberated from separation and safe for all women. The Internet is a pure democratization authority that leaves room for perpetrators to spread hate speech and harass both men and women but women are more likely to become victims of this. According to a report published by the **Digital Rights Foundation (DRF)**, WhatsApp and Facebook are the most frequently used applications where Pakistani women are harassed. There is a higher probability that women are more

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17 2022 SCMR 526

18 By admin, “The PECA Amendment: Reputation or right to speak? <<https://rcilhr.com>> accessed on 26 March 2022

19 Citizen's Protection (Against online Harm) Rules 2020

likely to be harassed as compared to men. There is a taboo attached to female harassment in society is the main reason why there are so many unreported cases of female silent survivors of harassment and abuse. People who didn't have access to the internet all their lives meanwhile have not also stepped out of their comfort zones and have zero exposure and awareness to act vigorously on the internet. Considering public personalities like celebrities we often come across that victim of cyber harassment and the most recent example of Pakistani Actress Ayesha Omar faced cyberbullying and was constantly questioned about her dressing choices. She dealt with harsh trolls. This is just not a case in Pakistan, the American actress Blake Lively throughout her life faced online body-shaming comments on the internet. America's Pew Research center held a survey in which it was found that young girls face online sexual harassment more vigorously when compared with men. Thirty-three percent of women who were under the age of 35 years have experienced sexual harassment online. Sixty-one percent of American women believe that online harassment is a major problem. The Digital Rights Foundation had taken out a helpline for Pakistani victims of cyberstalking, spoofing, and bullying. Such organizations are working for a safer digital environment. Advocating for the right to privacy which is also a right guaranteed under Article 14(1) of the Constitution is the litmus test for the same.

## Case study on Cyber-crime

### **Pakistan Broadcasters Association V Pakistan Electronic Media Regulatory authority**

The appellants brought under challenge the vires of Rule 15(3) of the Pakistan Electronic Media Regulatory Rules, 2009 (PEMRA Rules), and clause 10.4 of the licenses granted to appellants Nos. 2, 4, 6, 8 and 10, through their petition before the learned High Court of Sindh, whereby they also challenged the legality of the notices issued to them in pursuance of the above Rule. It was through the impugned order that the petition was dismissed by a learned Division Bench of the High Court. According to the appellants, the appellants Nos. 2, 4, 6, 8 and 10, who own and operate various satellite TV channels under their respective licenses issued by respondent No. 1, were compelled by respondent No. 1 to consent to the incorporation of clause 10.4 in their licenses, which clause allegedly contains an unlawful, unreasonable, arbitrary, excessive and disproportionate restriction on the maximum period of an advertisement break, during prime time. It was contended that the restriction sought to be imposed by respondent No. 1 through the said Rule in the operation of their respective TV channels by the appellants not only amount to usurpation of the managerial power to determine as to what, when and how, is to be broadcast by independent TV channels, but such restrictive clause is also excessive of and beyond the regulatory powers accorded to the respondents to regulate the media under Article 19 of the Constitution of Pakistan, 1973 [20].

The Supreme Court of Pakistan held that the freedom of speech goes to the very heart of a natural right of a civilized society. The state has a mandatory interest in regulating the right to speech, especially when it comes in conflict with the rights of other individuals, and other societal interests. Importantly, the Court stressed that these "restrictions and duties (must) co-exist in order to protect and preserve the right to speech."

No doubt freedom of speech goes to the very heart of a natural right of a civilized society to impart and acquire information about their common interests. It helps an individual in self accomplishment, and leads to discovery of truth, it strengthens and enlarges the capacity of an individual to participate in decision making, and provides a mechanism to facilitate achieving a reasonable balance between stability and social change.

## **PECA 2016 Preamble that the Investigation observed by FIA**

As the PECA 2016 preamble, has a special law for prevention and investigation of the prosecution and the trial of cybercrimes. It has been observed that the FIA, an investigation agency under the section 29 of the PECA invokes the provision of the FIA Act, 1974 in conducting the inquiries related to the offences defined under the PECA which may not be correct [21].

The advent of the digital age has created a need for a robust cybercrime legislation that needs to be formulated by the nation states. As my countries around the world are struggling with drafting comprehensive laws in this regard. As the technological developments have outpaced the solutions that are proposed by the state institutions, which helps in addressing new challenges which are arising from the increased use of the digital media.

### **Conclusion**

The Governments are also struggling in amending the existing laws in ensuring regulation of cybersecurity. As in Pakistan, the Prevention of Electronic Crimes Act 2016, has helped in criminalizing the unlawful and unauthorized access to information.

Recommendation to the bodies who can prevent this cybercrime is to take adequate measures of protecting the system and making quick action force to retaliate if anything like cyber-crimes is depicted in the system, the government needs to make setups which can work on issues like these. The police should be ready to investigate the criminals who are responsible for committing the crime and lawyers shall be clear that they need to protect the ones who have suffered from these crimes i.e. cybercrime. Judiciary should be clear that they need to provide justice towards the affected one.

As a whole the community needs to start working on their own cybersecurity, to prevent these crimes by updating their privacy settings off and on.

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21 Nasir Ayyaz, 'Reviewing Peca's powers' <https://www.dawn.com> accessed on 28 March 2022

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