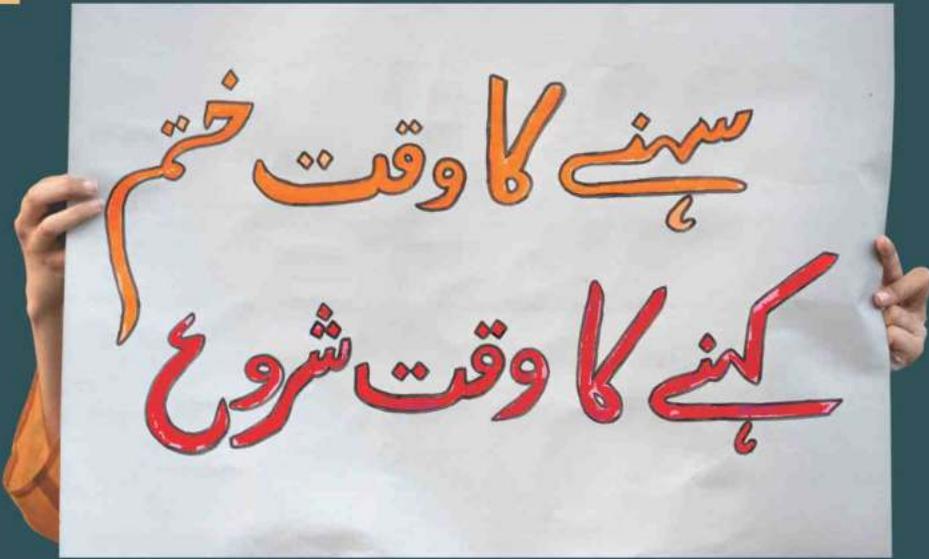


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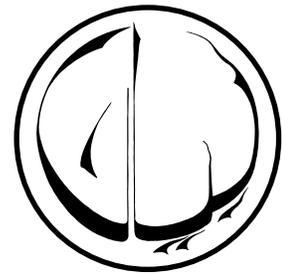
SEASONS OF
SILENCE

VOLUME VI AUGUST 2021

BI-ANNUAL SOCIO-LEGAL JOURNAL



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SEASONS OF SILENCE
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Simorgh Women's Resource and Publication Centre is a non-government, not for profit feminist activist organisation. Simorgh's main focus is research and dissemination of information that will enable women and men to challenge the dominance of ideas that support social and economic divisions on the basis of gender, class, caste, religion, race and nationality.

The views expressed in this publication are those of the authors and not necessarily those held by Simorgh.

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editorial

A socio-legal journal, Bayan aims to critically address the gap between the scholarship on the concept, idea and definition of citizens' rights and the ways in which they find expression – or are denied a voice on Pakistan's shifting social and political terrain. Premised on the understanding that not only do peoples' rights thrive best under a pluralist and participatory democracy, but that democracy itself thrives best when people have an active voice in the daily affairs of political life, Bayan's particular focus is on peoples' rights, particularly women's access to justice. Bayan's point of departure from other legal and social science journals in the country lies at two levels. The first, which is more mundane, is to do with the journal's non-commercial status. Reliant primarily on donor funding for its production, it has a sporadic though tenacious existence. This is borne out by the fact that the journal, which was launched in 2003, was suspended in 2006 due to lack of funds, even as its resilience is evidenced by its commitment and ability to pick up its editorial thread from where it had been dropped almost twelve years ago. The second, which is of greater moment, is to do with Bayan's identity as a feminist journal concerned with the social, economic and political rights of all citizens regardless of differences of sexual identity, class, caste and religion. As such, Bayan recognizes the connections between the broad strokes of history and the microhistorical terrain where laws, cultural practice, social norms and human lives come into play. Therefore, while it maintains the norms of academic excellence through researched papers, it aims to capture the immediacy of people's day to day struggles through reflective pieces, interviews and visual narratives, especially of women and all those who occupy the fringes of the mainstream.

The idea of a socio-legal journal came from the late Chief Justice Sabih-ud-din of the High Court of Sindh. In a discussion on women's low and unequal access to justice including the mainstream gender bias exacerbated by Zia-ul-Haq's misogynistic laws, he stressed the need for a legal journal in Pakistan for analysis and critical comment on judicial procedures and decisions to trace the lacunae in given laws, and show how gender-biases can combine with perceived notions of women's role and function in society to impact negatively on their access to justice. Taking the cue from him, Bayan was conceived as a socio-legal journal that would look at the issue of women's relationship with the justice system, not from the standpoint of the law alone, but from where the law intersects with culture, religion, customary practices, gender, economic and class-caste differences. The aim was not to criticize the justice system for the sake of criticism but to strengthen it by initiating informed public conversations on laws, judicial procedures and judgements for improved access, especially by marginalized and disempowered groups and communities such as women and non-Muslim minorities. With this end in view, Bayan was operationalized as part of the regional Asia Pacific Advisory Forum for Judicial Education on Equality Issues. It has been revived as part of the women's political empowerment project, Fempower. The original Bayan had regional outreach enabled by a regionally representative Advisory Board. For logistical reasons our ambit is narrower this time, however, in the hope of extending it regionally, our Advisory Board has limited regional representation including Justice (R) Dube from Canada, who was also a valuable member of the first Advisory Board. This issue, which deals with the fundamental human and democratic right to freedom of speech and expression, will be followed by three more volumes even as we look for further funding to ensure continuity.

Premised on the view that not only is debate an integral part of democracy and democratic growth, it is also a means to a deeper and more nuanced understanding of citizens' human rights concerns and the creation of an informed civil society, we envisage that this issue of Bayan,

editorial

as its name indicates, will provide the space for an exchange of ideas and points of view. Using different perspectives, the essays in this volume look at the issue of freedom of expression and citizens' right to information in the print and electronic media.

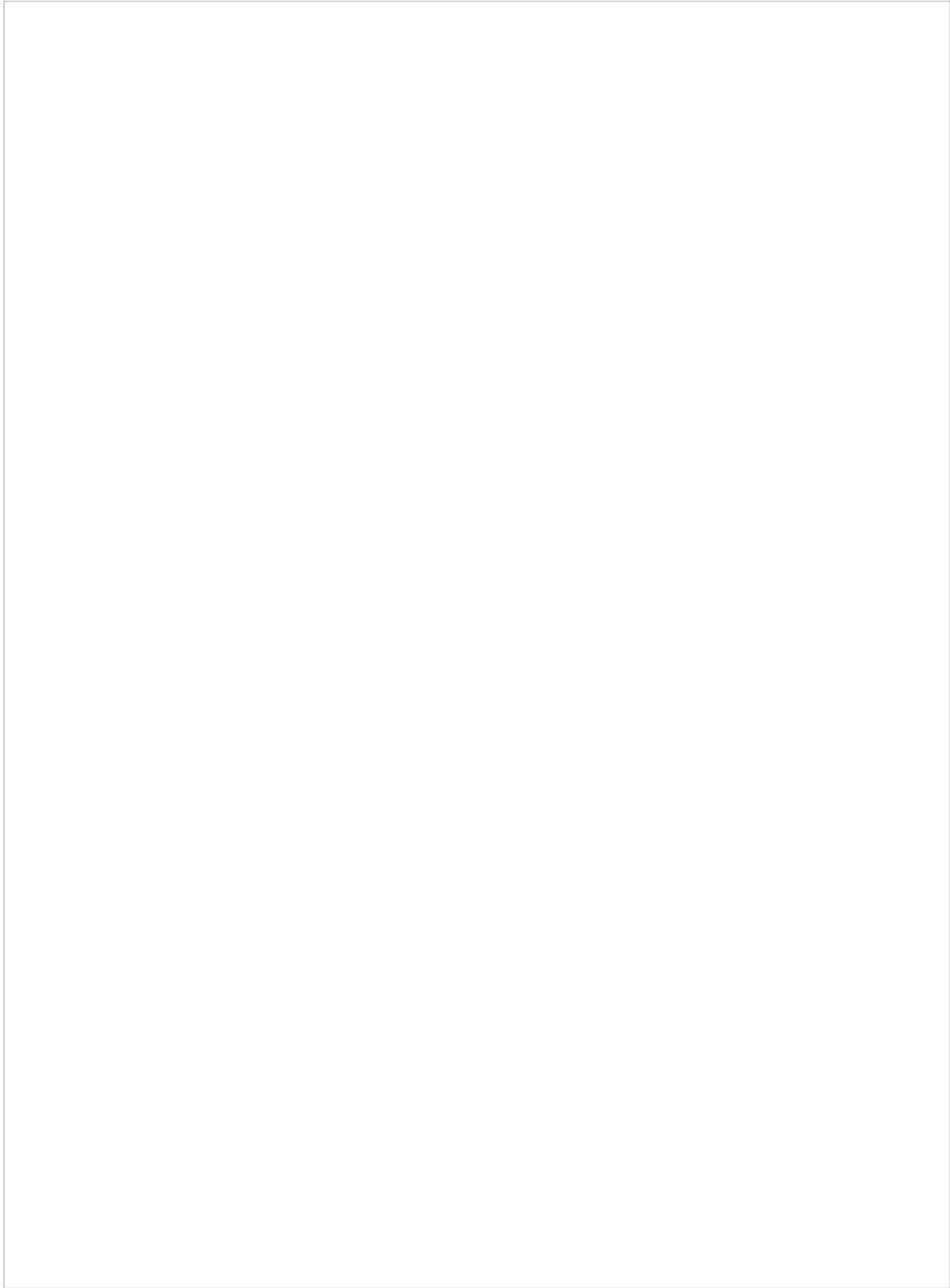
The first two essays, by Zaki Rahman who is a lawyer, and Ishtiaq Ahmad an academic and political analyst, provide a historical overview of the concept of the right to freedom of speech and expression and its centrality to a democratic polity. The third essay, which is by Kamila Hyat, a working journalist, provides a more hands on critique of different strategies of censorship ranging from direct action, such as the imposition of fines, temporary bans and complete take-overs of dissenting newspapers by the state, as well as creation of fictional narratives to obfuscate facts and propagate calculated misinformation as in the case of the Iraq war. The writers trace the troubled history of press freedom in Pakistan from its early beginnings in the pre and post-Independence world to the present day. Approaching the subject from different perspectives – the legal and political-historical in the case of the first two essays, and of a politically engaged working journalist in the case of the third, the writers provide interesting insights into the issue even as they highlight the importance of press freedom, democratic growth and journalistic integrity. The essays by Adnan Rehmat and Shmyla Khan, and opinion piece by Nighat Dad and Zainab Durrani focus on the issue of freedom of speech and laws pertaining to electronic media and online content. Rehmat's essay critically assesses the Pakistan Electronic Media Regulatory Authority (PEMRA) and shows how an instrument formed to break the monopoly of state owned media channels through independent television channels and radio stations, subverted its own agenda to become a mouthpiece for the state. Apart from assessing PEMRA's impact on the right to freedom of expression, the essay provides interesting insights into the ways generically constituted institutional components such as 'rules' and behavioural norms can combine to reproduce the very problem they are meant to address. Khan's essay critiques the Prevention of Electronic Crimes Act, 2016 (PECA) which empowers the Pakistan Telecommunications Authority (PTA) to control blocking and removal of content from the internet. Written from a feminist perspective, it centralizes the experiences of women and gender minorities in its critique of laws that regulate online spaces even as it elucidates that these spaces are also sites of resistance and counter-speech for marginalized peoples. The comment by Nighat Dad and Zainab Durrani draws attention to the unprecedented degree of freedom of expression offered by online space, even as it highlights the restrictive role of the Prevention of Electronic Crimes Act (PECA) and Removal and Blocking of Unlawful Online Content (RBUOC) Rules including the undemocratic nature of policymaking and the strategic use of 'religion', 'culture', and 'morality' to curb this right.

Rahat Dar's visual narrative of the rise in women's protests for rights, equity and equality highlights the personal as the political and paves the way to the more personal pieces. The first is a reprint of Mazhar Ali Khan's 1970 interview for *The Forum Dhaka* and the second is Rubina Saigol's reflective piece on the repressive nature of silence. Freed from the constraints of academic objectivity, these pieces bring an immediacy and emotional charge to the issues raised in the formal research based essays.



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THE RIGHT TO TELL PEOPLE WHAT THEY DO NOT WANT TO HEAR: FREEDOM OF SPEECH AND EXPRESSION IN PAKISTAN



ZAKI RAHMAN

ABSTRACT

This essay identifies the right to freedom of speech and expression as cause and consequence of democratic maturity and locates its critique of media regulation in Pakistan with reference to the state's troubled relationship with the 'democratic enterprise'. Focusing on the negative fallout of censorship with specific reference to constitutional and legislative issues in the free speech arena, this essay makes a critical comment on the use of sedition laws to discourage and kill dissent, with reference to instruments and bodies such as Prevention of Electronic Crimes Act, 2016 (PECA), Pakistan Telecommunication Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA) as well as judicial decisions on cases pertaining to these laws. The writer supports his argument for freedom of speech as a fundamental democratic right by tracking the historical and conceptual evolution of the idea of freedom of speech and censorship from Plato to the 21st century.

BACKGROUND

Zaki Rahman practices law in Lahore. He holds an LL.B. degree from the University of Sussex and was called to the Bar of England and Wales in 2003. He is an adjunct faculty member at the Shaikh Ahmad Hassan School of Law in the Lahore University of Management Sciences.

بول، کہ لب آزاد ہیں تیرے
 بول، زباں اب تک تیری ہے
 تیرا ستواں جسم ہے تیرا
 بول کہ جاں اب تک تیری ہے¹
 فیض احمد فیض²

INTRODUCTION

Freedom of speech and expression is both a cause and a consequence of democratic maturity. It is, therefore, no surprise, given Pakistan's troubled relationship with the democratic enterprise, that the country continues to have difficulty in defining the contours of free speech. In part, this may be attributed to the protean nature of the concept itself. Even in democracies with much longer histories than Pakistan, free speech remains a hotly contested space, with widely differing views regarding the scope and nature of restrictions and qualifications that may be imposed thereon.

The fault lines in the Pakistan polity cut across diverse domains such as civil-military relations, religious and sectarian tensions, ethnic divides, federal power and provincial autonomy and class differences. This paper is an attempt to examine the manner in which some of these burning issues have shaped the legislative framework and public discourse surrounding freedom of speech and expression in Pakistan. In particular, the ways in which the state – and dominant groups and institutions within the state – have resisted the development of free speech will be explored.

The first part of this paper will provide a brief sketch of the genesis and development of free speech as a political concept, including its inherent limitations. This will be followed by an analysis of how certain laws in Pakistan have aided the state (as well as powerful interest groups and classes within the state) in adversely influencing free speech and the development of an open society, and the damage this has caused to Pakistani society as a whole. In conclusion, it is argued that to make meaningful strides towards a more open and participatory democracy that respects freedom of speech and expression, significant revisions are required in the social contract between the state and its citizens.

¹ Speak, for your lips are still free
 Speak, the tongue is still yours
 Your bare body is yours
 Speak, for you still have life
 Faiz Ahmed Faiz

² Faiz Ahmed Faiz, Nuskha Hai Wafa, Maktaba-e-Karwaan (1985), 3rd ed

OUTLINE OF GENESIS AND DEVELOPMENT OF FREEDOM OF SPEECH AND EXPRESSION

The 19th century English utilitarian philosopher, John Stuart Mill,³ was one of the first to attempt a systematic account of liberty of thought and discussion. Prior to this, Western political theory—largely drawing inspiration from the ancient Greek philosophers, rarely recognized the right to free speech. This was partly on account of the favouring of the communal and political over the individual, which was a characteristic feature of the Greek genius. In *Politics*,⁴ one of the most famous treatises in the history of political science, Aristotle likens human beings to ‘parts’ of the city in the same manner as a hand is a part of the body. On this analysis, the individual would always be subordinate to the city, and the individual’s needs, desires, and activities would at all times be circumscribed by reference to what is beneficial for the city. In other words, the highest good is the political good and the corollary to such view (although not explicitly addressed by Aristotle) is that the political authority of the state cannot be made subservient to any rights of the individual such as free speech.

Later, with the advent of Scholasticism and the medieval Christian philosophers, matters such as individual liberty were not at the forefront of discussion for obvious reasons. It was not until John Locke (1632-1704) that political liberalism, with its characteristic emphasis on individual rights, began to take embryonic shape. One of the most influential Enlightenment thinkers, Locke was a great advocate of religious tolerance and freedom of conscience. Locke wrote in the aftermath of the brutal religious conflict between Catholic and Protestant forces known as the Thirty Years War, which ravaged Central Europe from 1618 to 1648 leaving over 8 million dead. While not addressing the issue of free speech directly, Locke gave a coherent account of limited government which recognized the necessity of protection of individual liberty from government interference, thus paving the way for the liberty of thought and discussion. He is justly regarded as one of the forerunners of the Constitution of the United State.⁵

As the Enlightenment era progressed, the issues of rational free discourse, religious tolerance and individual conscience increasingly took centre stage. It was in this background that John Stuart Mill wrote his seminal work *On Liberty* in 1859. Mill’s basic thesis was that to deny airing of opposing opinions is to assume one’s infallibility, which is disastrous for the project of ascertaining the truth about any matter.⁶ It is only through the ‘collision of conflicting opinions’ and debate that there is any chance of attaining proximity to the truth, failing which, whole communities remain mired in falsehood and error. Moreover, even if an opinion is true, it is beneficial for the holders of that opinion to have to debate and defend its correctness for it is only through such an exercise that the “truth may penetrate their feelings and acquire a real mastery over their conduct”.⁷ Otherwise, lip service to the truth is all that can be achieved, such as when men profess allegiance to high religious ideals at the same time as their conduct and character betray their professed beliefs.

In the twentieth century, American political theorists, and legal scholars such as Alexander Meiklejohn and Cass Sunstein grounded the necessity of free speech in the way that it enables participatory democracy and allows the most inclusive (and therefore the best) public deliberation. Thus, freedom of thought and expression becomes not just a guarantor of individual liberty, but also a facilitator of good governance and political health. In a sense, this mode of thought inverts the traditional views of the early Greek philosophers which implied that individual liberty was to be subordinated to the good of the community; modern free-speech advocates assert that in fact the good of the community is best served and secured by freedom of thought and expression at the individual level.

An analogy may be drawn with certain concepts of depth psychology – just as Sigmund Freud theorized that repression of certain psychic contents leads to neurotic disturbances in the personality of an individual, it

³ John Stuart Mill, *On Liberty*. Dover Publications (2002)

⁴ Aristotle, *Politics*. University of Chicago Press (2013)

⁵ John Locke, *Two Treatises of Government and A Letter Concerning Toleration*. Yale University Press (2003)

⁶ *Ibid*

⁷ *Ibid*, ch. 2

may be stated that the failure of a community to allow free flow of ideas coupled with deliberate silencing of certain voices leads to a fractured and disintegrated polity, with groups holding opposing opinions confronting each other with mutual incomprehension and hostility. On this analysis, the flourishing of a culture is greatly dependent upon its openness to new ideas and debate. This is the thesis developed by the Indian Nobel Prize winning economist, Amartya Sen, in his 2005 book *The Argumentative Indian*.⁸ One of the factors to which Sen attributes the historical greatness of Indian civilization is the “simultaneous flourishing of many different convictions and viewpoints...”

A similar rationale for free speech can be found in the famous dissenting judgement of Justice Oliver Wendell Holmes Jr. in the Supreme Court of the United States (SCOTUS) case of *Abrams v. United States*.⁹ The case concerned the prosecution of an anarchist for his anti-war views. Dissenting from the majority judgement convicting the anarchist, Justice Holmes observed:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.¹⁰

This ‘market place of ideas’ theory has been followed numerous times by courts in the United States to curb censorship, and allow freedom of expression.

Another landmark judgement in the free speech arena is the concurring opinion of Justice Louis Brandeis in the case of *Whitney v. California*.¹¹ The opinion of Justice Brandeis is considered one of the greatest judicial defences of free speech and is grounded upon the connection between freedom of expression and democratic processes. The opinion holds that self-governance is at the heart of democracy, i.e. citizens have both a right and an obligation to take part in government. This includes full freedom to discuss and criticize government policy. If the efforts of citizens to do so are thwarted through censorship, this constitutes an attack on the very foundations of democracy.

LIMITS ON FREE SPEECH AND EXPRESSION

As Stanley Fish argues in his book *There's No Such Thing as Free Speech ...and it's a good thing too*,¹² unrestricted free speech does not and should not exist anywhere in the world. Different societies may have differing sets of constraints that are imposed on free speech, but what is common is that some level and form of regulation of free speech is necessary. Except for staunch libertarians, this should be an uncontentional position. Most countries around the world (the United States being a notable exception) have laws that prohibit hate speech.¹³ Similarly, the interface between public morality and freedom of expression is a contested arena in societies around the world, with most jurisdictions imposing some form of legal restraints in the name of public morality. Thus, even in the United States (where the First Amendment on the right to free speech continues to protect hate speech), the Supreme Court of the United States in the famous case of *Miller v. California*¹⁴ held that obscene material is not always protected by the First Amendment.¹⁵ The feminist legal

⁸ Amartya Sen, *The Argumentative Indian*, Writings on Indian History, Culture and Identity. Picador (2006)

⁹ 250 U.S. 616 (1919)

¹⁰ *Ibid*

¹¹ 274 U.S. 357 (1927)

¹² Stanley Fish, *There's No Such Thing as Free Speech: And It's a Good Thing, Too*. Oxford University Press (1994)

¹³ It may be noted that while offensive speech is protected by the First Amendment, such speech which is actually directed towards inciting others to violence may not be protected

¹⁴ 413 U.S. 15 (1973)

¹⁵ The legality of obscene material in the United States is now subjected to the Miller test which has the following three prongs: (i) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; (ii) whether the work depicts, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law; and (iii) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The material is deemed obscene (and therefore not protected by the First Amendment) if all three conditions are satisfied

scholar, Catherine MacKinnon,¹⁶ has long argued that pornography should not be protected under the First Amendment since it depicts women as inferior beings that exist merely for the sexual gratification of men. Pornography, MacKinnon argues, violates the Fourteenth Amendment guarantee of the equal protection clause.

The recent furore over the blasphemous cartoons of the Prophet of Islam (PBUH) and the violent fallout arising from it is a case in point.¹⁷ The French President, Emmanuel Macron, was quick to defend freedom of expression in the immediate aftermath of the grisly murder of the French schoolteacher who showed the cartoons to his students. Macron was defiant in the face of Muslim outrage and even hailed the murdered teacher as a “quiet hero”.¹⁸ Other leaders, such as Canadian Prime Minister Justin Trudeau, presented a more nuanced view. Trudeau, while defending free speech, stated that it was “not without limits” and should not ‘arbitrarily and needlessly hurt’ certain communities.¹⁹

Trudeau’s position is the old familiar stance of liberals which holds that my freedom ends where your nose begins. In 2018, the European Court of Human Rights (ECtHR) ruled that Austrian courts had not violated the rights of a woman who, while criticizing certain practices of the Prophet (PBUH), had been convicted under an Austrian law for ‘disparagement of religious precepts’.²⁰ While upholding the woman’s conviction, the ECtHR held that the Austrian courts carefully balanced the woman’s “right to freedom of expression with the right of others to have their religious feelings protected, and served the legitimate aim of preserving religious peace in Austria”. Similarly, in 2019, the ECtHR ruled that the right of freedom of expression does not protect Holocaust denial.²¹

The tension that often prevails between freedom of expression and other constitutional values (such as not harming others, importance of national security etc.) is also captured in the International Covenant on Civil and Political Rights (ICCPR), Article 19 of which emphasizes the right to freedom of expression but qualifies it as follows:

The exercise of the rights... carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights and reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

PAKISTAN: CONSTITUTIONAL AND LEGISLATIVE ISSUES IN THE FREE SPEECH ARENA

Turning to Pakistan, it may be noted that the country is a signatory to both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In addition, freedom of speech is a constitutionally guaranteed fundamental right. Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) provides as follows:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.

It is evident that the framers of the Constitution did not by any means intend freedom of speech and expression to be an unqualified right. The restrictions on free speech allowed by the Constitution have played out

¹⁶ Catharine A MacKinnon, *Only Words*. Harvard University Press (1996)

¹⁷ Macron ‘can understand Muslims’ Muhammad cartoons shock. BBC News, 21 October 2021

¹⁸ Free speech has limits, says Canada PM when asked about Prophet Mohammed cartoons. Al Arabiya News, 31 October 2020

¹⁹ Ibid

²⁰ *E.S. v. Austria*, Application No.: 38450/12, Judgement dated: 25 October 2018

²¹ *Pastörs v. Germany*, Application No.: 55225/14, Judgement dated: 3 October 2019

in Pakistan in accordance with the country's characteristic socio-political realities. From an individual rights perspective, some of the most problematic restrictions on free speech are those professed to have been imposed in the name of the 'integrity, security or defence' of Pakistan. In the words of Paula Newberg,²² the creation of Pakistan brought about an "executive dominated state already created by imperial instruments of governance". Even though the subsequent framing of Constitutions granted multiple fundamental rights to citizens, the colonial legacy happily imbibed by the ruling elite meant that such fundamental rights were always at the mercy of an authoritarian and centralized state. By and large, the severest curtailment of rights has coincided with periods of military rule in Pakistan; however, civilian governments have by no means been able to resist the temptation to throttle free speech and related rights.

In order to maintain its hegemony, the authoritarian Pakistani state has, in the guise of 'reasonable restrictions', used inherited legislation and also, from time to time, enacted new laws to meet exigencies. The list of such laws is far too numerous to be analysed in this paper and a couple of examples will have to suffice for the purpose of demonstrating the manner in which legislation has made inroads into constitutional freedoms.

Sedition

One of the time-honoured methods used for suppression of dissenting views is the invocation of the sedition provision contained in the Pakistan Penal Code, 1860 (PPC). As background, it may be noted that in the aftermath of the uprising against colonial rule (1857-1858), the British colonists felt the need for strengthening the criminal justice system under the overview of the British Parliament and the colonial administration under the Secretary of State for India. As a consequence, the Penal Code was enacted in 1860 followed by the Police Act, 1861. The former law remains in the Pakistani statute book to date.²³

Section 124-A of the PPC, which deals with sedition, provides as follows:

Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Federal or Provincial Government established by law shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

The offence of sedition, as described above, is vague and overbroad. It thus violates one of the cardinal principles of criminal jurisprudence which is that a criminal offence must be formulated in clear and precise language since, in the words of the Supreme Court of Pakistan that "every citizen has an inalienable right under the Constitution to know what is prohibited by law and what the law does not require him to do".²⁴ Moreover, as has often been remarked in the context of Section 124-A, it is not the job of the law to force 'affection' for the Government amongst its citizens. As Mahatma Gandhi, one of the most high-profile victims of Section 124-A remarked:

Section 124-A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of a citizen... Affection cannot be manufactured or regulated by the law. If one has no affection for a particular person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.²⁵

The subjectivity and vagueness of Section 124-A has made it the favourite tool of authoritarian rulers and zeal-

²² Paula Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge University Press (1995)

²³ Editors Note. The Police Act, 1861 was amended in its application to the Provinces. Although, Police Order, 2002 was promulgated by the legislature. Vide Section 185 of the Police Order, 2002, the Police Act, 1861 was repealed in part while, inter alia, references made to the Act or in any law or instrument were declared to be construed as references to the corresponding provisions of this Order. Furthermore, the Order has not been given due importance and still awaits serious implementation. For further clarification, see Mohammad Ali Babakhel, *Police laws in between repeals and revivals*. The Express Tribune, 17 August 2020

²⁴ Editors Note. *Ghulam Abbas Niazi v. Federation of Pakistan*, PLD 2009 SC 866

²⁵ Mahatma Gandhi, March 1922

ous prosecutors. Misapplication of the law started with the colonial rulers who arrested and prosecuted numerous Independence Movement leaders in India; it continues to date with the use of the law against opposition politicians, journalists, student leaders, and human rights movements.

A recent manifestation of this strategy is the use of sedition charges by the current government against former prime minister, Nawaz Sharif and members of his party, including his daughter Maryam Nawaz, following Sharif's outspoken criticism of the government and the political role played by the military in the country. In one of his speeches, the former prime minister alleged that the army had gone from a 'state within a state' to a 'state above the state'. Sharif also accused the military of ensuring the election of Imran Khan through widespread rigging and of engineering the fall of Sharif's own government. Given the current closeness between the incumbent government and the military, sedition charges were inevitable.²⁶

Another example of the inappropriate use of the sedition law are the cases against student protestors marching for their rights in November 2018, and then again in November 2019.²⁷ The demands of the students ranged from lifting bans on political activities of students in colleges and universities to calls for greater allocation of government budget to educational institutions. Student anger had also been stoked by the brutal on-campus lynching of the progressive and outspoken voice of Mashal Khan²⁸ at the Abdul Wali Khan University in Mardan, and the rape and murder of medical student Nimrita Kumari, belonging to the Hindu minority community in Sindh.²⁹ Prominent left wing intellectuals and activists supported the movement whose slogan was "*Surkh ho ga, surkh ho ga – Asia surkh ho ga*" [it will turn red, it will turn red – Asia will turn red].

The Students Solidarity March,³⁰ as this movement came to be known, was met with hostility by the state. Organizers of the rallies (including Iqbal Lala, the father of Mashal Khan) were arrested by the police. The authorities were clearly worried that the protests, which had expanded to 53 cities in Pakistan, would continue to spread if unchecked, and radicalize young people. Instead of engaging with the legitimate demands of the students, state agencies acting in a typically knee-jerk fashion, charged the organizers with the offence of sedition.

There is nothing new about the use of force by the state to quell dissent, particularly progressive politics. In fact, there is a long tradition of ruthless suppression of left-wing political activity by the ruling elite and sedition charges are one of the handy tools used to stifle the demands for a more equitable and egalitarian political order.

The tale of the Pashtun Tahaffuz Movement (PTM) is yet another example of the use of the archaic sedition law to crush voices raised for political rights. The voices in this case belong to the ethnic Pashtun minority group. The genesis of the PTM can be traced back to the aftermath of the Pakistan Army's military operation against the Pakistani Taliban in South Waziristan in 2009. Around 600,000 persons belonging to the Pashtun Mehsud tribe were displaced because of the fighting. With their houses and infrastructure destroyed, many of them were unable to return even after the Pakistan Army eventually succeeded in subduing the Taliban forces.³¹

Given the proximity of the Pashtun areas with Afghanistan and the history of the area, an uneasy relationship has developed between the Pakistan military and many Pashtuns. The PTM accuses the Pakistan Army of widespread human rights abuses in the area. The Pakistan Army has often detained, and according to the PTM, harassed and humiliated Pashtuns, on the grounds of suspected links with terrorist groups.³²

The movement, which came to be led by Manzoor Pashteen, started out with the demand for removal of landmines from South Waziristan. The PTM really gathered steam after the extrajudicial killing of Naeqebullah Mehsud, a 28-year-old man from South Waziristan, in a police encounter in Karachi in January 2018. The police claimed that Naeqebullah had been a terrorist with links to militant Islamic organizations who had been killed in a shootout. An inquiry team of senior police officers found that Naeqebullah had no history of militancy and

²⁶ Editors Note. Shamil Shams, Pakistan: Police File Sedition Charges against Former PM Nawaz Sharif. DW News, 10 October 2020

²⁷ Students' March. DAWN News, 29 November 2019

²⁸ Editors Note. Muhammad Shehzad, 'Sedition' Case Logged against Participants of Student Solidarity March. The Express Tribune, 1 December 2019

²⁹ Mashal Khan case: Death sentence for Pakistan 'blasphemy' murder. BBC News, 7 February 2018

³⁰ Pakistani Hindu medical student Nimrita was raped and killed, says the new post-mortem report, Pakistan. Gulf News, 7 November 2019

³¹ Editors Note. Manzoor Pashteen: The voice of Pashtuns for many in Pakistan. Al Jazeera, 17 March 2018

³² Editors Note. Manzoor Pashteen: Activist who dared to challenge Pakistan army held. BBC News, 27 January 2020

had been made the subject of a fake police encounter. Thereafter, the PTM has repeatedly called for accountability of police and military officers allegedly involved in abduction of Pashtun activists or in extrajudicial killings like the Naqeebullah case.³³ There have also been demands for the formation of a truth and reconciliation commission for the victims of disappearances and extrajudicial killings.

The PTM has always maintained that its struggle is peaceful and constitutional. Manzoor Pashteen has stated that the focus of the struggle is to hold state agencies accountable and to heal the rift between the state and disenchanted Pashtuns. However, this has not prevented the state from pressing sedition charges against PTM leaders and members. In January of last year, Pashteen was arrested for a speech he had made in which he allegedly criticized the Pakistan Constitution for perpetuating Punjabi dominance and supporting the suppression of minority ethnic groups.³⁴ Pashteen has denied the allegations and maintains that, far from negating the Constitution, his whole struggle is to uphold the fundamental rights guaranteed in the Constitution.

Following Pashteen's arrest, workers of the PTM organized a protest. 23 protestors were arrested and two of the most prominent faces amongst them – namely a member of Parliament from North Waziristan, Mohsin Dawar, and Ammar Rashid, a member of the Awami Workers Party – were also charged with sedition. The Islamabad High Court had to intervene and ultimately the sedition charges were dropped. Chief Justice Athar Minallah was quoted as stating:

We don't expect that a democratic government will curb freedom of expression. An elected democratic government cannot place curbs on freedom of expression. (We) shouldn't fear criticism...³⁵

There is some hope that the attitude of the Courts towards frivolous sedition charges will continue to evolve in the right direction to put an end to the criminalization of dissent and protest. Certain recent decisions point towards that direction. If this judicial trend becomes widespread and sustained, it will mark a welcome development away from earlier strict interpretations of the law. For an example of the traditional judicial approach, the seminal case of *The State v. Ataullah Khan Mangal* decided by the Supreme Court in 1967 is instructive. In that case, the Supreme Court considered whether a defendant charged with sedition could use, as a defence, the argument that his criticism of certain measures taken by the government was based on truth.³⁶ The Court held that truth could not be a defence to sedition, and that even legitimate and truthful criticism of the government can be found to be seditious so long as it is calculated to excite 'hatred', 'contempt' or 'disaffection' for the government.³⁷

It may be noted that the offence under Section 124-A does not require any incitement to violence. It makes no distinction between a call to arms to overthrow a government by force and critical statements which supposedly induce 'disaffection'. As discussed earlier, the right to free speech contained in the Constitution is not absolute, but is subject to 'reasonable restrictions' imposed by law. However, it is difficult to see how Section 124-A can be construed as a 'reasonable restriction' on freedom of speech and expression. It is, therefore, not difficult to see why petitions contending that the law is unconstitutional are currently pending before the courts. It is high time that the law – a colonial relic which seeks to cower citizens into submission and unthinking obedience to the state – is declared as unconstitutional by the courts.

The selected examples of inappropriate use of sedition law discussed above bring into focus the manner in which powerful groups within the state use the law to cement their dominant status. In the case of Nawaz Sharif and PML (N), it is the ultra-powerful military establishment which seeks to stifle the questioning of its role in politics by using the sedition law. Similarly, the targeting of PTM can be viewed as the military (in which the most powerful ethnic group of Punjabis predominates), asserting itself against the demands of a minority ethnic group (i.e., Pashtuns). Finally, the intolerance of the state towards the Students Solidarity March illustrates how the economically powerful ruling elite brooks no dissent from left wing activists demanding a more equitable social order.

³³ Editors Note. Naqeebullah was killed in 'fake encounter', had no militant tendencies: police inquiry finds. DAWN News, 20 January 2018

³⁴ Manzoor Pashteen: Activist who dared to challenge Pakistan army held. BBC News, 27 January 2020

³⁵ 'This is Pakistan, Not India', Says Islamabad HC Chief Justice, Opposing Curbs on Free Speech. The Wire, 17 February 2020

³⁶ *The State v. Ataullah Khan Mangal*, PLD 1967 SC 78

³⁷ Ibid

THE PREVENTION OF ELECTRONIC CRIMES ACT, 2016 (PECA)

The ability of social media to challenge the status quo means that authoritarian governments the world over are wary of its power. The potentially revolutionary aspect of social media is clearly apparent in developments ranging from the Arab Spring uprisings to the ongoing ‘Me Too’ movement. In 2016, the Pakistan Government rushed PECA through Parliament despite severe opposition by human rights activists and civil society.³⁸ Ostensibly made for the laudable reason of preventing cybercrime, PECA is currently being misapplied (much like the sedition law) in order to establish the iron grip of the federal government and military establishment over public discourse. While Pakistan has a vibrant social media environment, certain subjects remain taboo. PECA provides a handy tool to the authorities to ensure that the internet can be controlled.

One of the latest instances of PECA misuse are the charges slapped against three journalists – Asad Ali Toor, the producer of a prime-time television show, Bilal Farooqi, news editor of a daily newspaper and Absar Alam, a former anchor at AAJ news channel.³⁹ What is common amongst these three men is that they are often critical of the government and the military establishment.

The complaint filed against Toor (based on which the police registered a First Information Report) alleges that he used “derogatory language to refer to high-level government institutions, including the Pakistan Army.” Toor has often called for financial accountability of the military. Similarly, Farooqi has been accused of ‘defaming’ the Pakistan Army on his Twitter and Facebook accounts while Alam has been booked for using “derogatory language against state institutions and personalities” on his Twitter account. Amongst the various offences with which these men are charged are Section 11 (hate speech) and Section 20 (offences against the dignity of a person) of PECA.

Section 11 of PECA provides, as follows:

Whoever prepares or disseminates information, through any information system or device, that advances or is likely to advance interfaith, sectarian or racial hatred, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

It is clear that Section 11 is intended to only criminalize the dissemination of information which has the effect or potential effect of fanning hatred on a religious or racial basis; however, in practice it is also being used to keep in check dissident voices that dare to challenge the pillars of the authoritarian state. The same appears to be the case with Section 20(1) which provides as follows:

(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.

Section 20(1) essentially creates an offence of online defamation. This is legislative overkill, as criminal defamation is already an offence under the Pakistan Penal Code. Similarly, online hate speech criminalized under Section 11 of PECA quoted above is also already a crime under the Anti-Terrorism Act, 1997 (ATA). The creation of similar criminal offences across multiple statutes creates a threatening environment which is anathema for free speech. Also, as per a recent Supreme Court decision, the creation of the same offence under different laws with different procedures for prosecution is unconstitutional as it infringes the seminal concept of rule of law that the law must be “accessible and so far as possible intelligible, clear and predictable”; otherwise, “citizens alleged to have committed an offence in respect of finance would be left wondering which offence they would

³⁸ Editors Note. Eesha Arshad Khan, The Prevention of Electronic Crimes Act 2016: An Analysis. LUMS Law Journal (2018), Vol. 5, p. 117

³⁹ Editors Note. Fariha Aziz, Pakistan’s cybercrime law: boon or bane? Heinrich Boll Stiftung, 14 February 2018. Also see Pakistan: Three journalists face sedition charges under Cybercrime Law. IFJ Asia Pacific, 24 September 2020

be charged with, which Court they would be tried in and under what procedure”.⁴⁰ There is an urgent need to repeal Sections 11 and 20 and other provisions of PECA which prescribe offences for conduct which is already criminalized.

Another deeply problematic PECA provision is Section 37, which grants PTA virtually unfettered powers to remove or block on-line content “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 or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.” Section 37 also provides that for the purposes of exercising powers relating to removal or blocking of content, PTA is required to make rules (i.e. delegated legislation) with the approval of the Federal Government.

On the surface, there appears to be nothing wrong with this provision as it reproduces the list of ‘reasonable restrictions’ on free speech contained in Article 19 of the Pakistan Constitution. The problem arises with the fact that Parliament has not provided any guidelines to PTA as to what constitutes reasonable restrictions in the context of glory of Islam, national security, decency, and morality etc. Instead, discretion to remove or block online content and to make rules to regulate such matters has been left to the sole discretion of PTA. This is an example of excessive delegation and an abdication of its own legislative responsibility by Parliament. It is a fundamental principle of constitutional law that Parliament must lay down the parameters within which executive bodies can make delegated legislation. If Parliament fails to do so, the power vested in the executive to make delegated legislation can be struck down by the courts on the ground of excessive delegation.⁴¹

It is, therefore, incumbent upon Parliament to debate and lay down clear boundaries as to what constitutes reasonable restrictions in connection with national security, morality, decency etc. In the absence of such guidelines, too much power is vested in the executive to police citizens and censor content which is not to its liking. Bodies such as PTA and PEMRA – the regulators of television and radio in Pakistan - are mostly composed of bureaucrats and other government functionaries. Matters as crucial as delineation of reasonable restrictions on free speech should not be left to unelected persons appointed by the government. Instead, democratic norms demand that the elected representatives of the people in Parliament should be the arbiters of such issues.

These matters assume even greater importance in countries such as Pakistan with poor track records for journalistic freedoms. It is no secret that media outlets are not permitted to air comments on certain taboo issues. Among other matters, any criticism of the military establishment is highly likely to invite trouble. The manner in which PECA is being used against journalists has been alluded to above. An even worse fate befalls many journalists – according to a report by Freedom Network,⁴² a media rights watchdog, at least 91 cases of attacks and violations against journalists have been reported in one year (between 3rd May 2019 and 10th April 2020). These range from murders and physical assaults to online harassment and threats.

In this grim situation, the recent judgment given by the Chief Justice of the Islamabad High Court in the case of *Rana Muhammad Arshad v. Federation of Pakistan*⁴³ is heartening. The case involved a journalist who was being harassed by the Federal Investigation Agency (FIA) for his critical reporting. The FIA alleged commission of offences under PECA. Parts of the judgement of the Court are worth quoting at length:

A society that values democratic principles and is committed to uphold the rule of law would manifestly advance the cause of protecting freedom of the press and free speech... Free press is crucial for encouraging and ensuring creativity, innovation and socio-political evolution of a society. A society that inhibits creativity and innovation recedes to the status of regression and morbidity... Freedom of the press ensures peace because it is the most effective antidote against violence, aggression, anarchy and extremism. It serves as a safety valve by enabling citizens, groups and sections of the society to vent grievances, anger and frustration. A free press functions as a bulwark against resolution of disputes through violent means. Poverty, corruption, injustice, discriminatory treatment of marginalized citizens and minorities, violence and extremism are all characteristics of a repressive state that limits, restricts and undermines

⁴⁰ *Syed Mushahid Shah v. Federal Investigation Agency*, 2017 SCMR 1218

⁴¹ Editors Note. *Municipal Corporation Of Delhi vs Birla Cotton, Spinning*, AIR 1968 SC 1232

⁴² Freedom Network, Murders, Harassment and Assault: The Tough Wages of Journalism in Pakistan. Pakistan Press Freedom Report 2019-20

⁴³ *Rana Muhammad Arshad v. Federation of Pakistan*, PLD 2021 Islamabad 42

the freedom and independence of the press...⁴⁴

Later in the judgment, the Court sounds a warning to the ruling elite and state in the following terms:

...No State or society can progress... if its citizens or members are unable to communicate and articulate ideas without fear or threat of retaliation. It denies to the people an opportunity of meaningful participation in the society when the state functionaries resort to intimidating the independent and professional journalist as retaliation for their work...

... The lack of access of the people to a free press affects the weaker and marginalized sections of the society the most because it empowers the elite and makes them unaccountable. The most effective accountability of the state and its powerful elite is through an independent and responsible press. The state and its agents cannot be allowed to use power and authority to silence voices and to retaliate against critical reporting or dissent.⁴⁵

It would be hard to find a clearer or more eloquent exposition of why free speech matters and the dangers of suppressing it. The job of the courts is to protect fundamental rights of citizens and the courts must therefore be intolerant of frivolous prosecutions under PECA, the sedition law and all other legislation which is used to throttle freedom of expression. This will have the salutary effect of not only protecting constitutionally guaranteed fundamental rights, but also creating a healthier functioning body politic.

MISUSE OF BLASPHEMY LAW AND RELATED MATTERS

Problems with misuse of the blasphemy law in Pakistan are well documented. Blasphemy is an offence under the PPC which, in certain cases, carries a death penalty. The law is often used to settle personal scores and property disputes by levelling false allegations of blasphemy. In addition, vulnerable sections of society such as religious minorities are often targeted through false accusations of blasphemy.

The lynching of Mashal Khan at his university in connection with unproved blasphemy allegations has been alluded to earlier. The case of Junaid Hafeez, a Fulbright scholar and former lecturer at the Bahauddin Zakariya University in Multan, is another manifestation of the same phenomenon. Hafeez, known for holding liberal views, was targeted by university students and has been languishing in jail since 2013 (in solitary confinement since 2014) on alleged blasphemy charges. He was awarded a death sentence in December 2019.⁴⁶ Human rights groups have termed his trial a gross miscarriage of justice.

The tragic killing of former Governor of Punjab, Salmaan Taseer, by Mumtaz Qadri, a commando in the Punjab Police Elite Force who had been deputed as a personal guard for Taseer, is another case in point. On 4th January 2011, Qadri had gunned down Taseer at Kohsar Market in Islamabad. In his subsequent statement, Qadri claimed that the killing of Taseer had been in accordance with the Quran and Sunnah as Taseer had been publicly sympathetic towards Asia Bibi - a poor Christian woman convicted of blasphemy - and had criticized the blasphemy law under which she had been charged, which itself amounted to blasphemy by him. Asia Bibi was subsequently acquitted by the Supreme Court.⁴⁷ Qadri was convicted of murder⁴⁸ and hanged but not before becoming a hero to millions who still revere him as a saint. Many other cases abound of falsely accused persons either killed by enraged mobs or spending years in jail before they are finally acquitted by superior courts on lack of evidence.

The vigilantism surrounding blasphemy accusations is part of a larger issue whereby emotive appeals to religious orthodoxy are used to silence voices. The effect of this permeates through all levels of society. The

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Asad Hashim, Pakistani academic Junaid Hafeez sentenced to death for blasphemy. Al Jazeera, 21 December 2019.

⁴⁷ *Asia Bibi v. The State*, PLD 2019 SC 64

⁴⁸ Editors Note. *Muhammad Mumtaz Qadri v. The State*, PLD 2016 SC 17

Mashal Khan case is the ugly and tragic extreme of a fairly common situation whereby students in colleges and universities belonging to student wing associations of religious parties routinely terrorize other students who dare to air progressive views. Professors with liberal views (such as Junaid Hafeez) are hounded and targeted by these same student wing associations.

Many Pakistani textbooks on history, deliberately manufactured to promote a myopic and ideologically slanted narrative, present such a distorted view that an eminent Pakistani historian once accused them of murdering history.⁴⁹ The same situation largely prevails in the media. The tale of Javed Ahmed Ghamidi, a religious scholar and theologian holding relatively progressive views, is instructive in this regard. In the first decade of this century, Ghamidi appeared regularly on television presenting his views; however, he had to flee Pakistan in 2010 after two of his associates were killed and another was shot but survived.⁵⁰ He still lives and lectures from abroad. The space for religious tolerance has been fast shrinking in the country.

The reasons for the prevailing state of affairs are complex and are partly embedded in geopolitics. A full analysis of relevant factors is beyond the scope of this article; however, the following may be noted. It is well known that the Pakistani security establishment has for decades supported certain militant religious groups to achieve its strategic objectives in Afghanistan and other neighbouring countries. To further this aim, the dominant narrative of the state – commencing from the Zia-ul-Haq years – has been ideologically slanted towards jihad. Pakistan has also been the battleground of a proxy war between Saudi Arabia and Iran, with both countries providing funding and arms to religious groups within the country. The failure of the state to provide education has led to a mushrooming of madrassahs which has further strengthened a backward-looking interpretation of religion. All these factors, amongst others, have combined to produce a society where religious intolerance – which in extreme circumstances translates into terrorism – flourishes.

CONCLUSION

It should be apparent from the foregoing analysis that the authoritarian structure of the state is the biggest impediment to freedom of speech and expression in Pakistan. The ruling elite is composed of powerful economic groups that resist calls for a more equitable social order and are not afraid to use legislation as well as the coercive power of state machinery to quell dissent. Despite the passage of the Eighteenth Amendment to the Constitution in 2010 empowering the provinces and enshrining provincial autonomy in the Constitution, the state continues to have a hostile relationship with certain minority ethnic groups. Moreover, the all-powerful military establishment does not tolerate questioning of its role in politics or its disproportionate use of state resources. The problem is further compounded by the historical backing of militant religious groups by the state and its agencies in order to further strategic and ideological objectives, which has led to institutionalization of religious intolerance in the country.

The repressive nature of the state has only deepened the fissures within the body politic. Ironically, the more the state attempts to use legislation and force to suppress ‘disaffection’, the more resentment is produced. Groups and persons that are not allowed to propagate their viewpoints peacefully feel excluded and may resort to other means including violence to make their presence felt. The religious, sectarian, ethnic, and civil-military tensions within the country bear testament to this fundamental fact.

The socio-political evolution of a society is invariably stunted because of suppression of freedom of speech and expression. An environment has been created in Pakistan which does not value original thinking or creativity with consequent negative effects on research, science and technology, arts, philosophy, and literature. Policing by religious groups has created a situation where many colleges and universities – meant to be the nurseries of critical thinking, intellectual enquiry, and debate – have degenerated into sterile domains. General discourse, whether on television or social media, is conditioned by fear of reprisals if certain sensitive matters are broached.

⁴⁹ K.K. Aziz, *The Murder of History: A Critique of History Textbooks Used in Pakistan*. Sang-e-Meel Publications (2010)

⁵⁰ Editors Note. Islamic scholar attacks Pakistan’s blasphemy laws. *The Guardian*, 20 January 2011

As discussed in this paper, several pragmatic steps can be taken to preserve and protect constitutional guarantees of free speech. These include repeal of draconian laws (such as the sedition law and certain provisions of PECA) coupled with greater Parliamentary debate on the contours of free speech and the restrictions that may fairly be imposed thereon with a view to framing more progressive legislation. The role of the courts in upholding the fundamental right of free speech and expression is obviously critical. Wholescale revamping of the education system is also the need of the hour. This should focus on rewriting of textbooks, protection of academic freedom on campuses across the country, as well as robust prosecution of those who use force or false blasphemy allegations to spread terror and stamp out progressive viewpoints. It is also incumbent upon the state to ensure that it does not extend patronage or tolerance to those propagating hatred and violence in the name of religion. Greater regulation of madrassahs is an important step that needs to be taken in this regard.

None of the above, however, is likely to take place unless the fundamental issue of the nature of the social contract between the state and its citizens is addressed. Free speech and its attendant values such as creativity, tolerance, innovation, and social advancement can only flourish in a state that cherishes pluralism and does not feel threatened by citizens who question the dominant narrative. In order to promote these values, the state needs to provide modes and mechanisms through which disgruntled groups can voice grievances. A paradigm shift is urgently required whereby the state is not envisioned as a national security state but one that is geared to ensuring participatory democracy and where different shades and hues of opinion can co-exist. The future integrity, cohesiveness, and welfare of the nation depends on it.



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THE PAKISTAN UTOPIA: CENSORSHIP POLICIES OF AN IDEOLOGICAL STATE



Ishtiaq Ahmed

ABSTRACT

Locating Press freedom on the historical terrain of the trials and tribulations of a newly independent confessional state caught in the oppositional pull between the demands of ideological singularity and democratic pluralism and inclusivity, this essay connects the state's impulse towards censorship to the tensions between the democratic impulse of peoples' aspirations in a pluralist society and the demands of an increasingly authoritarian polity in the larger context of regional, neo-imperial Cold War and Post-Cold War politics. In the process, it sheds light on the strategies and stratagems of state censorship. In mapping out the political terrain from independence to decades of military rule interspersed with brief moments of civilian government, the essay focuses on the 'democratic deficit' that has pervaded Pakistan's politics from the very start, and shows the role of state censorship as one that goes beyond normative limits to serve as a tool not only to shape public opinion but also to construct a uniform and standardised national identity in line with the country's 'utopian ideal'.

BACKGROUND

A political scientist and writer, Ishtiaq Ahmad is an alumnus of St. Anthony's High School, Forman Christian College, and the University of the Punjab, Lahore. He holds a PhD in Political Science from Stockholm University, where he taught in the Department of Political Science from 1987-2007 and is now Professor Emeritus of Political Science. He was an Honorary Senior Fellow of the Institute of South Asian Studies at the National University of Singapore and at the South Asian Studies Programme from June 2007 – June 2010 and Visiting Professor at Lahore University of Sciences (LUMS) and Government College University (GCU) respectively from 2013-15 and 2015-19. His publications include *The Punjab Bloodied, Partitioned and Cleansed: Unravelling the 1947 Tragedy through Secret British Reports and First-Person Accounts*; *Pakistan: The Garrison State, Origins, Evolution, Consequences (1947–2011)*; *Jinnah: His Successes, Failures and Role in History*; and, *Pre-Partition Punjab's Contribution to Indian Cinema*.

ISHTIAQ AHMED¹

The relationship between the state and its population has always been unequal, with the former in a position to exact obedience from the people within its territories by persuasion, coercion, taxation, and a host of other measures. What all states aspire to is habitual loyalty to its behests from the people. The religious establishment is almost invariably an extended arm of the state, while the educational system is the main medium through which the state disseminates beliefs and values commensurate with the interests of the state.²

In return, the state maintains armed forces to dispel external aggression as well as internal rebellion. It also maintains a legal system purported to provide justice and relief to citizens while culprits are punished for the crimes they commit. The social contract theory of Thomas Hobbes, John Locke and Jean-Jacques Rousseau famously underscored that. It also maintains an economic system which routinely produces goods needed by the people and distributes them according to some system of justice. In short, the state provides those services which individual citizens and even communities on their own cannot possibly maintain and sustain.³ The media, both print and audiovisual too, is expected to uphold the national interest. Even the entertainment industry is expected to augment the state in maintaining feelings of patriotism to the nation and state.⁴

Contemporary states almost invariably commit themselves to providing freedoms to citizens commensurate with international norms and law. Besides the right to life, property, conscience, and religion, the freedom of opinion and the right to express one's views is considered a core human right. Thus, for example, Article 19 of the Universal Declaration of Human Rights (UDHR) states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

¹ I would like to acknowledge my debt to Usman Shahid for providing basic empirical material on the censorship policies of Pakistan in his MPhil thesis, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore in 2014

² Gabriel Almond and G. Bringham Powell, *Comparative Politics: A Development Approach*, Little, Brown and Company (1966). David Easton, *The Political System: An Inquiry Into the State of Political Science*, Knopf (1971)

³ *Ibid*

⁴ Anjali Gera Roy and Chua Beng Huat, *Travels of Bollywood Cinema: From Bombay to LA*, Oxford University Press (2012), ch. 4

Free speech is the cornerstone of the liberal standpoint. John Stuart Mill and a host of other liberal thinkers have underscored the absolute imperative of free speech to enable individuals and societies to discuss and debate contentious issues, and adopt rational policies in the light of the arguments set forth. In other words, free speech represents the ‘marketplace of ideas’ in the light of which societies can address existing issues and problems in a peaceful, progressive manner.

A liberal political dispensation comprises three essential levels of politics: the state and government represent legitimate power and authority to maintain law and order; citizens and denizens are the bearers of rights and freedoms; while the civil society comprising voluntary organizations of individuals, including the print and electronic media entities, ensure that the polity functions in accordance with democratic norms and values, thus fostering tolerance and pluralism while simultaneously maintaining inclusive and universal citizenship. Separation of state and religion, individualism, tolerance, and pluralism are part of the secular state model of liberalism.⁵

Now, while the liberal-democratic state is the norm proposed by The Charter of the United Nations (1945 UN Charter), the international political order is far more politically diverse and complex and comprises absolute monarchies, strongmen dictatorships, military juntas, benevolent authoritarian regimes, majoritarian democracies and ideological states fired by religious or sectarian messianic zeal. In such polities, the right to freedom of speech and expression is inhibited by formal and informal censures. On the other hand, states based on liberal values of tolerance and pluralism tolerate greater criticism and scrutiny from the civil society actors, including the media.

Apart from the formal state institutions and government ministries, all states gather intelligence and take recourse to different types of surveillance of activities going on within their territories as well as regionally and internationally. The intelligence agencies and secret services in principle are answerable to the government, but it is more of a rule than an exception that such entities enjoy a wide latitude of discretionary powers and exercise them arbitrarily and without informing their civilian or military superiors. All this is done in the interest of national security and integrity. Such characteristics are inherent in the nature of the beast, the state, so to say. Under the circumstances, censorship is a classic means available to the state – ideal liberal as well as other illiberal states – to control the production and sharing of information and knowledge pertaining to the activities of individuals, intelligentsia, intellectuals, journalists, politicians, social media activists, and even those employed in the entertainment industries.

Classically, the Greek philosopher Plato introduced the idea of censorship to control society and reproduce it in consonance with his utopian idea of the state: The Republic. He argued that only such information and knowledge was to be imparted to the citizens which rendered them obedient to the state and its rulers. For achieving this, he especially emphasized the educational system as the means to impart unquestioning loyalty to the state and the rulers. Although Plato proved systematically through his dialectical method that truth was better than untruth, he nevertheless invented the idea of the ‘noble lie’ which states could tell people to convince them that unquestioning obedience to the rulers was in their best interests.⁶ Needless to say, the idea of censorship has appealed down the ages to priests and politicians, and exercising censorship to produce an ideal society and individual citizens is especially appealing to ideological states of both right and left.

THE FREE PRESS AND THE BRITISH COLONIAL STATE

Before the British annexation of India, handwritten books, usually of religious scriptures and classic poetry and fiction, were available, but the market for them was extremely limited as very few people could read and write. The printing press was brought to India during the expansion and rule of the English East India Company. A Law Commission was constituted under Lord Macaulay, which presented the first draft of the Indian Penal Code that covered laws pertaining to printing and publishing to Governor General

⁵ Alan Ryan, *The Making of Modern Liberalism*, Princeton University Press (2012)

⁶ Ishtiaq Ahmed, *Jinnah: His Successes, Failures and Role in History*, Penguin Viking (2020), p. 502. Plato, *The Republic*, London: Penguin Books (1987), p. 181-182

Lord Auckland. Chief Justice Sir Burnes Peacock and the judges of the Calcutta High Court revised and finalized the draft in 1850. Eventually, it was passed by the legislative council in October 1860.⁷

Writing on India in 1853, Karl Marx spoke about British imperialism both breaking down the old society, looting its wealth but simultaneously eradicating stultifying superstitions, customs, and traditions. Besides the infrastructure of a modern large-scale economy and the paraphernalia of railways, telegraph and bureaucracy, he underscored the establishment of the printing press as an important technology that would generate nationalism and modern thinking.⁸ Following the Uprising of 1857, mainly of disgruntled Hindu and Muslim soldiers of the East India Company, a drastic change took place in the structure of British rule in India. India became a Crown Colony directly ruled by the British government Governor-Generals, who were also viceroys of the British monarch in India. Queen Victoria's proclamation of 1 November 1858 gave pledges not to interfere in the ancient customs of the people, which meant proselytizing natives to Christianity was no longer to be part of state policy. Religious freedom and tolerance were to be practised. However, independent Christian missions could peacefully propagate their faith to Indians. On the whole, the colonial state practised religious neutrality and secularism.⁹

Although independent newspapers and printing presses were established, the British kept a vigilant eye on the contents of publications, while a whole body of laws was maintained specifically to penalize those publications which criticized the government or published news during rioting and other emergencies. I have given several instances of it during the critical months of 1947 when rioting in Punjab had become endemic to the political situation.¹⁰

THE TWO-NATION THEORY AND THE PARTITION OF INDIA

British rule united India in an unprecedented way, although empires had existed in the past. Inevitably, modern education based on liberal values that the colonial state imparted in elite schools and higher educational institutions created a class of men (and women) who demanded greater rights and self-rule. Such demands were spearheaded by the Indian National Congress (1885). The British responded to the emerging Congress menace by granting the large Muslim minority separate electorates in 1909. In the long run, the separate electorates isolated Muslims from the mainstream freedom struggle and resulted in Muslim separatism, which in March 1940 came to be expressed in the demand for a separate state for Muslims in the Indian subcontinent. Mohammad Ali Jinnah, the supreme leader of the All-India Muslim League, argued that Indian Muslims were a nation by virtue of their distinct religion and therefore entitled to a separate state of their own. He argued that Islam taught Muslims democracy, while Hinduism the opposite of it: caste-ridden hierarchy. The Indian National Congress had instead insisted that all those who lived in India were Indians and the British should leave India united and under one effective central government. It argued that to divide Indians based on religion was to subvert the freedom movement in favour of a reactionary backward-looking ideology. The British granted Jinnah his Pakistan but separated the non-Muslim majority districts of Bengal and Punjab and gave them to India to placate Congress.¹¹

The notoriously hurried partition was accompanied by the loss of more than a million lives and the forcible eviction of 14-15 million people from their ancestral abodes.¹² The international border drawn by the Radcliffe Award in Bengal and Punjab rendered Pakistan a security nightmare. On the West Pakistan border, Lahore, Sialkot, and many other major towns were less than 15-30 kilometres from the border. Defending West Pakistan became the paramount concern of the Pakistani military, which concentrated its troops and armaments

⁷ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 50

⁸ Robert C. Tucker, *The Marx-Engels Reader*, W.W Norton & Company (1978), p. 653-64, 2nd ed

⁹ Ishtiaq Ahmed, *Jinnah Op. cit.*, p. 38-39

¹⁰ Ishtiaq Ahmed, *The Punjab Bloodied, Partition and Cleansed: Unravelling the 1947 Tragedy through Secret British Reports and First-Person Accounts*, Oxford University Press (2017), p. 111-113. Radhika Iyengar, *A pre-Independence history of press freedom in India*. Indian Express, 3 May 2017

¹¹ Ishtiaq Ahmed, *Jinnah Op. cit.*

¹² Ishtiaq Ahmed, *The Punjab Bloodied Op. cit.*

to that part of Pakistan. On the other hand, East Pakistan located 1200 kilometres to the east with Indian territory in between, was left virtually defenseless, simply because of the lack of troops and military hardware. Such insecurities were further aggravated by border disputes with Afghanistan, disputes over the sharing of the assets of the colonial state and over Kashmir. More importantly, it became a matter of primary concern that Pakistan should distinguish itself from India as sharply and distinctly as possible.

Since Pakistan was claimed on a religious basis premised on the assumption that Indian Muslims constituted a political nation and not simply a big minority by virtue of their religion and distinct Islamic culture, the relationship between religion and state for all practical purposes became inextricable.¹³ Such a relationship resulted in the state elites introducing constitutional and legal measures purported to ensure that Muslims could live as chaste Muslims in this life and achieve salvation in the hereafter.

Thus, a perceived existentialist threat from India, the ideological imperative to adopt a contrasting national ideology from India which, while adopting Islam as its national marker was both confessional and democratic, and on such a basis to integrate the population of Pakistan as a nation led Pakistan towards socializing policies which alienated non-Muslim Pakistanis and more crucially – exposed the sectarian fissures and cleavages among Pakistanis who had been included in the British census records as Muslims. Such tendencies were greatly accentuated when from 1979 onwards, Pakistan became a frontline state against Communist Afghanistan and the Soviet Red Army's presence in that country. It meant training and arming Mujahedeen to carry out jihad sponsored financially and militarily primarily by the United States and Saudi Arabia, but with a host of other countries also supporting that campaign. The convergence of such external and internal factors created the mindset of a garrison state, which is best expressed through the metaphor of Pakistan being a fortress of Islam. Simultaneously, the idea that Pakistan would practice democracy in accordance with Islam remained a constant in the national discourse of Pakistan.¹⁴

In light of this framework, we now address the issues of media freedom and censorship.

THE BEGINNINGS

Now, all states must cull out a national identity that distinguishes them from other states. This is a functional necessity to enable the state to establish a structure of authority and loyalty over its population and territory. Pragmatic states can work their way to national identity with relative ease because they do not take upon themselves more duties than the maintenance of national security, reproduction of the economical means to sustain their populations, maintenance of law and order, provision of basic services and welfare and related auxiliary tasks. On the other hand, ideological states are committed to the realization of a grand ideal that requires social engineering. Consequently, ideological states can try to monopolize the production of identity and culture with a view to creating a pure or ideal type of society and human beings. In such circumstances, religion, secular dogma, race or some other factor can be emphasized as the key denominator of national identity and culture, and the state can employ its power and resources to disseminate it in society. Such states seek to supplant variance, diversity, and the contradictions present in the cultural heritage with standardized, regimental uniformity and harmony. The more ideologically a state is fixated with a rigid utopian ideal, the greater it's tendency to impose a standard identity.

If now, the ideological state professes extra secular objectives such as ensuring the salvation of its citizens in the here-after as its primary objective, it encroaches on the autonomy of individuals in a more comprehensive manner. The reference here is to the objectives such a state formally professes to uphold, and not to its capacities, capabilities or the seriousness of its power elite.

¹³ Ishtiaq Ahmed, *Pakistan the Garrison State – Origins, Evolution, Consequences 1947 - 2011*, Oxford University Press (2013)

¹⁴ *Ibid*

PAKISTAN'S ADVENT AS A SECURITY CONSCIOUS IDEOLOGICAL STATE

A democratic deficit pervaded Pakistani politics from the very start. Work on the constitution dragged on for nine years, while no general election was held until 1970. A vice regal type of government perpetuating the dominance of politicians elected in 1946, that is before Pakistan came into being, and later of the civil-military oligarchy meant that democratic institutions did not take root. Critics of government policies invariably were accused of being Indian or Russian agents involved in a conspiracy to undermine the sovereignty and integrity of Pakistan. On the other hand, the Pakistan Government adopted the Penal Code bequeathed to it by the British colonial state under Section 18(3) of the Independence Act, 1947. This became the main framework of subsequent developments which included several amendments, mostly in the form of ordinances issued by the government. Already in 1950, Section 123-A of the Pakistan Penal Code, 1860 (PPC) dealing with the freedom of speech and press expressly forbade citizens to condemn the ideology of Pakistan or to call into question the sovereignty of Pakistan. A violation of this law entailed rigorous imprisonment for up to ten years and fine. The Government used this Section against the Urdu weekly *Jarida Al-Islah* Lahore that published the manifesto of Allama Mashriqi's Islam League Party, which allegedly was against the creation of Pakistan. Section 124-A warned that inciting disaffection, contempt, or hatred towards the government may entail life imprisonment or fine or both. However, criticizing the government and its policy did not by itself constitute an offence. The procedure required that the government alone could bring charges against an individual or an organization, while a judge had the powers to determine whether the words used were seditious or not irrespective of what witnesses may say.¹⁵

Another interesting section of the penal code dealing with the freedom of publication was Section 292. It dealt with the production or possession of obscene books and papers and their sale, distribution, publicity etc. A person dealing with any of the stated offences could be punished with imprisonment of up to three months or fine or both. The term 'obscene' was defined as an offence against 'modesty' or 'chastity'. Determining what constituted obscenity was left to the discretion of the judiciary. The infamous case in 1950 of the celebrated short-story writer Saadat Hasan Manto being charged with obscenity in a Lahore court for his short-stories *Thanda Gosht* (Colder than Ice) and *Khol Do* (The Return) is a stark reminder of the narrow approach to literary freedom, which came to characterize Pakistan as an ideological state. Manto's classic reply was that he did not conjure up the ugly scenes of sexual exploitation; he only brought to light the evil which was given free play during the 1947 partition. Ironically, many other writers testified against him with dubious allegations, including that his work did not constitute any major contribution to literature.¹⁶ It is a scandal which has haunted Pakistan ever since. It established a precedent that the state has frequently used to victimize writers, including free thinkers and ordinary citizens, who have been hounded by the authorities on similar grounds.

The point to note is that from the very beginning, safeguarding the Islamic identity of Pakistan was taken up by the state as a major duty through various rules and regulations which over time expanded the prerogative of the state to penalize citizens through legal action as well as impose censorship on the news and articles published in the Pakistani press.

It is to be noted that despite the criminalization of pornography and extremely strict controls over the Internet, Pakistan continues to be classified as a country with the highest rates of pornography consumption. In 2019, the Daily Times reported the Minister for Human Rights, Shirin Mazari saying that Pakistan had one of the highest rates of child pornography online watching.¹⁷ Some of the most heinous sexual crimes, especially against children, have been reported in recent years in Pakistan.

Regarding the autonomous press of Pakistan, Lahore was initially the hub of journalistic activities while some newspapers were being published from Karachi, Gujranwala and Sialkot in West Pakistan and Dhaka and

¹⁵ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 51

¹⁶ Saadat Hasan Manto and Khalid Hasan (ed), *A Wet Afternoon: Stories, Sketches, Reminiscences*, Alhamra (2001), p. 694-703

¹⁷ Makhdoom Shahab-ud-Din, *Child Pornography in Pakistan: Reality or myth?* Daily Times, 15 July 2019

Chittagong in the eastern wing of the country. The mainstream dailies included The Pakistan Times, Civil and Military Gazette, Zamindar, Inqalab, Ehsan, Shahbaz, Dawn, Nawa-e-Waqt, Anjam, Morning News and Jang. A month after Governor-General Mohammad Ali Jinnah's demise in September 1948, his successor Khawaja Nazim-ud-Din, on the advice of Prime Minister Liaquat Ali Khan, signed the Public Safety Ordinance pertaining to criticism of the government by the press.¹⁸ This resulted in the government imposing a fourteen-day ban and suspension of publication on the Zamindar edited by Maulana Zafar Ali Khan for criticizing government policy on Kashmir. Under that ordinance, the government had the discretionary powers to stop the publishing of any newspapers without furnishing any reason. The ordinance empowered the police to enter and search any newspaper office without a search warrant, and it could take into its custody the published material it deemed dangerous for the well-being of the country. The daily Safeena was closed down under this ordinance; no evidence was produced to justify the action against the press. Similar actions were taken against magazines such as Sawaira, Naqoosh and Adab-e-Latif. Pro-government newspapers backed government action under the pretext that these magazines were publishing unethical material. Besides such repressive measures, the government could penalize newspapers and magazines by denying them advertisements on behalf of the state.¹⁹

After Liaquat Ali Khan's assassination in October 1951, the civil servants virtually began to run the government with puppet civilian regimes formed by bureaucrats and politicians. Apart from the Public Safety Ordinance, 1948; the Pakistan Security Act, 1952; and, the Official Secrets Act, 1923 were invoked to stifle dissent and curb the freedom of press time and again. Between 1947-1953, in Punjab alone, 31 newspapers were banned.²⁰ Usman Shahid observes:

In order to protect its vested interests, government used the Ideology of Pakistan and national interest to silence and suppress the press.²¹

In 1953, the first signs of cracks in the confessional underpinnings of the two-nation theory, upon which Jinnah had demanded the partition of India, surfaced when an anti-Ahmadi agitation broke out in Punjab. Although Jinnah had mobilized all those included in the colonial government's census as Muslims to support the demand for Pakistan that included the Ahmadi because each vote counted, and to claim that the Muslim League represented all Muslims, a bitter controversy existed over the status of Ahmadi as Muslims. The anti-Ahmadi agitation demanded that Pakistan is an Islamic state and only those who believed in the finality of the Prophethood of Muhammad PBUH could hold public office in such an ideological state. They demanded that Pakistan's Foreign Minister Sir Muhammad Zafrullah Khan, who was an Ahmadi, and others of his community employed in the state services should be removed from office. A serious law and order situation was created as violence broke out in Lahore and several other places in Punjab. The Muslim League Government in Punjab was largely responsible for backing the agitation, which was spearheaded by the Sunni and Shia ulema of all sects. The central government in Karachi imposed martial law and curfew in the troubled areas. The newspapers were instructed strictly not to issue news or comments critical of the Punjab Martial Law Administration. A Court of Inquiry warned that the idea of an Islamic state would lead Pakistan towards greater intolerance and fanaticism.²²

The agitation in Punjab did not spread to other parts of Pakistan but overall, social, economic, and political conditions deteriorated because of chronic food shortages, floods, and other such calamities in the country. In both wings of the country dissatisfaction of the people was exacerbated by the lack of democracy as neither a constitution was agreed upon, nor general elections were held. The newspapers reported the volatile situation in Pakistan. The ruling civil-military oligarchy responded to the growing dissatisfaction in the country by forming a Press Commission in 1954. In its report, it underscored that the patriotism of the press to enhance the security and integrity of Pakistan was imperative. It made the following observations, which were correct and true:

A national press is the mirror of national politics. The politics of the country, therefore, do have a bearing

¹⁸ Zamir Niazi, *The Press in Chains*, Oxford University Press (2010), p. 62

¹⁹ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 53

²⁰ Ibid

²¹ Ibid, p. 54

²² Ishtiaq Ahmed, *Pakistan the Garrison State* Op. cit, p. 646-53

on the country's Press. [...] it can be said that a country gets the kind of press it deserves. If the politics of a country is dirty, the country's Press cannot remain immune from it. [...] the country will continue to have a bad Press as long as its politics are unhealthy.²³

THE AYUB DICTATORSHIP 1958 -1969

The crises of the early 1950s not only persisted but worsened in the years which followed, and by 1958 an uncanny feeling of an impending civil war began to be felt. The oligarchy had imposed One-Unit on West Pakistan by amalgamating Punjab, Sindh, NWFP, and Baluchistan into the consolidated West Pakistan Province and the eastern wing comprising East Pakistan as another unit. It had meant considerable resentment in the smaller provinces, as all power was now concentrated in Lahore, the capital of West Pakistan. In any event, Dr Khan Sahib, elder brother of Khan Abdul Ghaffar Khan, who had served as the Chief Minister of West Pakistan was murdered in Lahore in May 1958, while the Deputy Speaker of the East Pakistan Assembly Shahid Ali was mercilessly assaulted on the floor of the House by some disgruntled members of the House. He succumbed to the injuries and died. It was clear that not only democratic norms were being flouted at all levels, but the economy was in terrible shape.²⁴

On 7 October 1958, the façade of civilian but unelected governments was finally set aside and the military under the aegis of President Iskandar Mirza, the Commander-in-Chief of the Pakistan Army, General Ayub Khan and their associates, staged a peaceful but well-organized coup declaring Pakistan to be under Martial Law with Ayub Khan as Chief Martial Law Administrator. On 27 October, Ayub Khan ousted Iskandar Mirza and became the head of state and government.

It was now that the military, or rather, the army, supremacy over all other institutions began to be organized into a patently authoritarian regime. Henceforth, the army was always a prominent, even decisive factor in the building up of Pakistan as an ideological state: armed with Islamic ideology, rabidly anti-Communist and committed to development along capitalist lines. That the new regime needed to bring all key sectors of society under its control meant that new reforms and changes were needed. Ayub established the Bureau of National Research and Reconstruction (BNR&R), which later became the Ministry of Information and Broadcasting. It started hiring journalists whose opinions mattered. They were instructed to project the military regime as the saviour and custodian of Pakistan's integrity and security and given the task to write in favour of the government.²⁵

On the other hand, those who refused to comply with the military government agenda were subjected to patent repression. For example, the Progressive Papers Limited (PPL), the stronghold of anti-imperialist intellectuals and journalists such as Faiz Ahmed Faiz, Mazhar Ali Khan, Ahmed Nadeem Qasmi, Sibte Hasan, Alys Faiz, many of whom were also part of the Progressive Writer's Movement, plus the management of PPL under Mian Iftikharuddin and Syed Amir Hussain Shah bore the brunt of state repression: The dailies, The Pakistan Times, and Imroze and the weekly Lail-o-Nahar were taken over by the regime. Five years later, the PPL was transformed into the government-controlled National Press Trust (NPT). Journalists, working for the Trust and nine other newspapers acquired by it were staunch supporters of the military regime and Ayub Khan. In that transformation, Z.A. Sulehri, appointed as the editor of The Pakistan Times and senior bureaucrat Altaf Gauhar were among the military government's notable ideologues.

The takeover of PPL epitomized a decisive right-wing turn in the history of press freedom in Pakistan. Externally, it was the completion of the process during which Pakistan relentlessly sought closer ties with the United States. In fact, even before Pakistan came into being, lobbying for US support for Pakistan had begun by offering to serve as the frontline state in South Asia to contain the spread of Soviet Communism. It was also asserted that because of religious ties with the Middle East, Pakistan could render military service in that crucial oil-rich

²³ Report of the Press Commission, Karachi: Government of Pakistan publication, 1954, p. 181

²⁴ Hasan Askari Rizvi, *The Military and Politics in Pakistan 1947-1997*, Sang-e-Meel Publications (2009), p. 84

²⁵ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 57-58

region of the world. Consequently, Pakistan entered direct military pacts with the US in 1954 and 1959 as well as anti-Communist regional pacts such as Southeast Asia Treaty Organization (SEATO) and Central Treaty Organization (CENTO).²⁶

Clearly, such drastic action was meant to declare loudly and unambiguously that Pakistan was a western ally in the Cold War. Such policy turned inside meant the state openly patronizing right-wing intellectuals and writers. In the long run, such policy helped the Islamist forces in Pakistan, which wanted to do away with the confusion about the future of democracy in Pakistan. Quite simply, it paved the way for greater inclusion of fundamentalist Islamist values and norms during the notorious rule of General Muhammad Zia-ul-Haq, but of that later.

In 1960, the Press and Publication Ordinance (PPO) was introduced to further subdue the press. It declared not only the editors and publishers but also the printers and distributors of newspapers, magazines, journals, periodicals, books, and other publications liable for punishment if they printed anything contrary to the government agenda. The government had the authority to demand security deposits from the printing presses for publishing newspapers or books as well as objectionable material as defined by the Ordinance. Security deposits ranging from Rs. 500 to 10,000 could be demanded from printing presses, which could be confiscated if their publications were found to contravene the Ordinance. After a new constitution given by Ayub Khan was promulgated in 1962 and Martial Law was lifted, the PPO was made part of the Press and Publications (West Pakistan Amendment) Ordinance, 1963, and the Press and Publications (East Pakistan Second Amendment) Ordinance, 1963 (The West Pakistan Press and Publication Ordinance 1963).

The most complete control over the press and media was imposed during the 17-day war with India, which broke out following Pakistan dispatching men into the Indian-administered Kashmir with a view to inciting Kashmiri Muslims to rebel against India. That mission failed miserably and resulted instead in a war on the international border between India and Pakistan. During the war, the Ministry for Broadcasting and Information exercised complete censorship over the news. The newspapers were instructed to publish what information the ministry fed them. A hype of grand victory was created but which turned into its opposite when the war was over, and Pakistan had not only failed to liberate Kashmir but had failed also to push India back.²⁷ A UN Security Council Resolution dated 23 September instituted a ceasefire and at Tashkent in the former Soviet Union, President Ayub met Indian Prime Minister Lal Bahadur Shastri to talk peace. The Tashkent Agreement meant the status quo was accepted by both sides. As a reaction, an anti-Ayub movement began to develop which, despite considerable efforts of the state to quell, kept gaining momentum. Finally, Ayub stepped down in March 1969.

YAHYA REGIME 1969-1971

General Mohammad Yahya Khan took over the reins of power from Ayub in March 1969. On 30 July 1969, the government promulgated The West Pakistan Publication of Books (Regulation and Control) Ordinance. It was particularly made to regulate and control the printing and publication of foreign content in Pakistan. The reason for introducing it was the growing criticism in the international media for the continuation of dictatorship and lack of democracy in Pakistan.

More interestingly, however, the martial law government announced general elections to be held in Pakistan in 1970: the first since the country was founded in 1947! Throughout the year during the election campaign, the press enjoyed significant freedom. The military government's most remarkable achievement was to hold the first free and fair elections based on universal adult franchise in 1970. Intriguingly, while a Legal Framework Order necessitated that the elections should not contravene the Ideology of Pakistan based on the confessional two-nation theory, the Awami League with its support base in East Pakistan could contest the elections on a six-point programme which virtually transformed Pakistan into a confederation with two separate currencies

²⁶ Ishtiaq Ahmed, *Pakistan the Garrison State* Op. cit, p. 87-97

²⁷ Ibid, p. 134-58. Altaf Gauhar, *Ayub Khan: Pakistan's First Military Ruler*, Sang-e-Meel Publications (1998), p. 326-55. Brigadier (R) Abdul Rehman Siddiqi, *The Military in Pakistan: Image and Reality*, Vanguard (1996), p. 155

and the right to raise armed troops to defend East Pakistan. The election result sprang a surprise not anticipated anywhere in Pakistan: Out of 300 elected seats in the Pakistan National Assembly, the Awami League won 261 seats out of 262 allotted to East Pakistan. Therefore, under the norms and praxis of parliamentary democracy, it was entitled to form the government. This was unacceptable to the power elite of West Pakistan.²⁸

Negotiations between the politicians and the military rulers failed; the situation turned volatile and explosive as mass demonstrations were started by Awami League leaders and cadres. In some incidents, West Pakistanis were assaulted, and it seemed that the situation would get out of control. The press was told to refrain from publishing anything against the national interest. Subsequently, the correspondent of Pakistan Observer in Dhaka (Dacca), Najibullah was arrested under the Section 134-A of the Martial Law Regulation, 1959 No. 49 (MLR No. 49) for publishing and writing 'objectionable' content. He was imprisoned for five years and fined Rs. 5000 while the editor was sentenced to three years and fined Rs. 35000 by the Military Court in Rawalpindi. After a rigorous protest by the Pakistan Federal Union of Journalists (PFUJ) and its affiliates, both were released.²⁹ Moreover, under the martial law regulations no news, leaflet or posters were published in print and electronic media without censorship. Soon after the military operation began in East Pakistan, newspapers sympathizing with Awami League were closed. On 30 March 1971, all foreign reporters in Dhaka were asked to leave the country immediately. Many journalists, editors, and publishers were summoned by the Military Courts and arrested in both wings of Pakistan.³⁰

What followed was the notorious military crackdown on 25 March 1971, which degenerated into a civil war that lasted until the end of December of that year, culminating with the intervention of the Indian military and a short war on the Indian-West Pakistan border as well. It resulted in a humiliating defeat for Pakistan with East Pakistan declaring itself as the independent state of Bangladesh. During those several months of 1971, strict censorship was clamped on the press and the people of West Pakistan were fed fake stories of Pakistan, military's firm grip on East Pakistan and defeat of the Indians.³¹

BHUTTO ERA 1971-1977

Zulfiqar Ali Bhutto came to power in a truncated Pakistan at the end of December 1971, first as president and later as prime minister. He did not repeal the PPO. In the initial flurry of a government with a substantial number of seats in the National Assembly and government in the centre, Punjab and Sindh it encouraged press freedom, but soon afterwards began to use the PPO against journalists critiquing his high-handed tactics against opponents in the opposition. Bhutto had masterminded the 1959 National Press Trust Ordinance (NPTO) as a minister in the military regime of Ayub Khan; he retained it during his rule despite protests by journalists. Newspapers under the NPTO were used to slander political opponents.³²

In 1973, Pakistan got its first constitution duly deliberated and agreed upon. It spoke of press freedom, but Article 19 made clear the limits to the freedom of speech and publication:

Every citizen shall have the right to freedom of speech and expression, and there shall be Freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court [commission of] or incitement to an offence.

This was reinforced by Article 19-A on Right to Information (RTI) which states:

Every citizen shall have the right to have access to information in all matters of public importance subject

²⁸ Ishtiaq Ahmed, *Pakistan the Garrison State* Op. cit, p. 160-81

²⁹ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 61

³⁰ Mazhar Abbas, *No lesson learnt from 1971*. The News, 17 December 2017

³¹ Ishtiaq Ahmed, *Pakistan the Garrison State* Op. cit, p. 190-91

³² Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 62

to regulation and reasonable restrictions imposed by law.

However, other legislation was promulgated which imposed restrictions on such freedoms. Usman Shahid mentions the following:

- Newsprint Control Ordinance, 1971;
- National Press Trust (appointment of chairman) Act, 1972;
- Copyright Amendment Act, 1973;
- Media Council Amendment Act, 1973;
- Pakistan Broadcasting Act, 1973;
- News Employee (Conditions of Services) Act, 1973;
- Prevention of Anti-National Activities Act, 1974; and,
- West Pakistan Press and Publication Act, 1976 (major amendment)

Bhutto's arrogance and vindictiveness resulted increasingly in people within his party leaving him, while the opposition comprising Islamist parties of the right, middle parties and regional leaders were already against him. The March 1977 election was won by Bhutto's Pakistan People's Party (PPP), but the opposition accused the government of rigging the polls. It resulted in mass protests led by the combined opposition, namely the Pakistan National Alliance (PNA), which became increasingly violent as both the state and the protesters resorted to force. Finally, in July 1977, General Muhammad Zia-ul-Haq toppled the Bhutto government and captured power.

ZIA REGIME 1977-1988

The inherently restrictive nature of the ideological state upon which Muslim nationalism was founded reached its apotheosis under General Zia. In an unambiguous and explicit manner, he said that if democracy meant a diminution of the Islamic basis of Pakistan he would have no truck with it and would consolidate Pakistan on an Islamic basis with Islamic ideology permeating all sectors of life, ranging from the individual to social, economic, political and cultural with Islamic Sharia pervading the legal system of Pakistan. Unsurprisingly, such a blunt declaration meant discarding all pretence of even nominally giving any importance to parliament or human rights, and especially to the freedom of speech and expression. Already saddled with a whole range of repressive laws, Zia unabashedly strove to impose Islamization in a comprehensive manner on Pakistan.³³ However, since he had come to power by overthrowing Bhutto whose repressive policies against the press had increased in proportion to his alienation from the people, Zia initially relaxed the rules and procedures for permitting newspapers to obtain declarations to publish. He stated, 'No restrictions can be imposed on publication of facts and the press can take anyone to account'.³⁴

However, soon afterwards Zia decided to revive Pakistan's role as the frontline state against Soviet Communism and become part of the US-Saudi Arabia sponsored jihad against the Communist government in Afghanistan and the Soviet Red Army which had entered Afghanistan in December 1979 to support the Afghan Communists. Massive economic and military aid began to pour into Pakistan. The government pulled out all stops to popularize the war in Afghanistan as an Islamic jihad, and drafted journalists to back the government policies. Any signs of dissent or criticism from the press were met with severe punitive action – all in the name of the glory of Islam and Pakistan's crucial role in that struggle against Godless communists. Ironically, this jihad was supported even by professedly atheistic China and Israel and several Arab states.

Journalists resisting the reactionary dictatorship of Zia were not only incarcerated but, on several occasions, publicly flogged. A 'press advice' system was instituted purporting to replace the earlier press laws and martial law regulations but in actual fact, press freedom was curtailed drastically to 'handout, telephone and utterance-

³³ Ishtiaq Ahmed, *Pakistan the Garrison State* Op. cit, p. 235-45

³⁴ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 64

based journalism'.³⁵ In October 1979, the government imposed 'pre-censorship' which meant that the press advice was used to permit only sanitized reporting of events. As a result, investigative journalism, which had already received blow after blow through the years, was virtually stamped out. The government introduced MLR No. 49 maintaining that such action was a 'prerequisite for Sharia, democracy and stability'.³⁶ Five dailies, six weeklies and two monthlies were suspended under MLR No. 49. Army officers and young bureaucrats were authorized to investigate if any news in the papers was against the national interest. These state functionaries then simply told the editors to remove such news items before the copy reached the printing press.

Meanwhile, opposition to the Zia dictatorship was growing under the PPP, whose cadres and some leaders dared oppose the government. Daring journalists began to report the growing mass movement against the dictatorship. The government amended Sections 499 and 500 of the PPC to further curtail the freedom of speech. The sections read:

.... publication of defamatory matter against any person, even if it is true and in public interest would constitute a cognisable and compoundable offence³⁷

Thus, Pakistan's already weakened press and media were further strangulated. Consequently, self-censorship supplanted pre-censorship on January 11, 1982. Journalist Zamir Niazi captured that irony succinctly, 'the pen was unchained while the hand that wielded it was cuffed'.³⁸

Despite all the pressure, some remarkable instances of defiance did take place. For example, when the PPP mouthpiece Musawat was banned, the PFUJ strongly protested the closure, which successfully brought the newspaper back to life within a couple of weeks. In April 1978, its Lahore edition was banned again, but the press stood against the closure. It led to dozens of arrests, but the Lahore edition was restored. However, the PPO was never challenged seriously, even after as many as 16 newspapers were asked to deposit security under the same ordinance. Throughout the Zia-ul-Haq dictatorship, ownership of the press was highly concentrated. A few owners had control over almost 90 per cent of the circulation.³⁹

PAKISTAN BACK TO DEMOCRACY 1988-1999

President Zia-ul-Haq died in a mysterious plane crash on 17 August 1988. In the next 11 years, four democratically elected civilian governments, twice of Benazir Bhutto and twice of Mian Nawaz Sharif came to power but none of them served the full five years term. Three of them were dismissed by the military dictators, and the last one of Nawaz Sharif was toppled by Chief of Army Staff General Pervez Musharraf on 12 October 1999. During those 11 years of democracy, the governments were weak and unstable; consequently, the media enjoyed substantial freedom. However, when in power, both Benazir and Sharif used the media to malign each other.

MUSHARRAF REGIME 1999-2008

Although Benazir had introduced private television channels, it was only with General Pervez Musharraf that a radical decision to liberalize the broadcasting sector was taken. As a result, licences were granted easily to radio and cable TV channels. The mushroom growth of television channels in turn gave birth to political talk shows. The talk shows attracted large audiences and have since then been established

³⁵ Ibid, p. 65

³⁶ Ibid

³⁷ Shaikh Aziz, A Leaf from History: Four Journalists Flogged, Two Newspapers Shut. DAWN News, 3 May 2016.

³⁸ Usman Shahid, Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 66

³⁹ Ibid, p. 66-67

as the most watched programmes on current affairs. The quality of discussions has varied, but commentators critical of government policies and ideological stands have been excluded from such programmes. Musharraf did away with some regulations, but introduced others.

Finally, in January 2002 the Pakistan Electronic Media Regulatory Authority (PEMRA) was promulgated. Initially PEMRA was placed under the control of the Ministry of Information and Broadcasting, but criticism from journalists led to it being established as an independent authority. It resulted in a flurry of independent media, which began to chide the Musharraf government. In 2005, PEMRA was amended and again in 2007 before the 2008 election. This took place because of the protests and demonstrations led by lawyers against the government for mistreating the Chief Justice of Pakistan Iftikhar Muhammad Chaudhry. An emergency was declared, and ordinances were issued in late 2007 that barred the media from publishing or broadcasting “anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organs of the state,” as well as any broadcasts deemed to be ‘false or baseless’. Those journalists or publications considered to be in breach of the ordinances could face jail terms of up to three years, fines of up to 10 million rupees and cancellation of their broadcasting licence.⁴⁰

DEMOCRACY RESTORED 2008-2013

Such harsh measures, however, failed in crushing the countrywide protests against General Musharraf who resigned as Chief of Army Staff in November 2007 and General Ashraf Pervez Kayani succeeded him. In December 2007, Benazir Bhutto who had returned to Pakistan was assassinated in Rawalpindi. The election which was due in January 2008 was postponed till 18 February. Musharraf had, however, hung on as president of Pakistan. He swore in the PPP candidate Yousaf Raza Gilani as the prime minister of Pakistan who, along with Nawaz Sharif’s PML-N, formed a coalition government. Musharraf finally resigned as president on 18 August 2008. In the meantime, terrorist attacks in Pakistan by the Taliban had resulted in hundreds of deaths, including those of serving military officials and police.

With Musharraf gone, the curbs on the media were lifted. Nevertheless, Freedom House in its Global Press Freedom Ranking for 2012 rated Pakistan as ‘Not Free’. Further, the Asian Human Rights Commission commented on the speech of former Foreign Minister Hina Rabbani Khar at the UN Human Rights Council on 4 November 2012, that while Pakistan remained a national security state, guaranteeing RTI is difficult to imagine.⁴¹

However, a Human Rights and Democracy Report of 2011 noted that media in Pakistan continued to develop and flourish in 2011 in many cases. Since 2008, the number and range of media outlets increased. Now more Pakistanis have access to newspapers, television and online media. This proliferation has created opportunities as well as challenges for media practitioners, politicians and officials to have an understanding of effective freedom of expression and objective reporting.

The same report added:

There were also concerns regarding censorship in Pakistan during 2011. In November, cable operators stopped broadcasting BBC World in Pakistan following a documentary series critical of Pakistan’s role in the fight against terrorism. In the same month, access to the online news site Baluch Hal was blocked by the Pakistan Telecommunication Authority for allegedly publishing — anti-Pakistan material (the site covered human rights violations, including enforced disappearances). The Pakistan Telecommunication Authority also attempted to ban the use of nearly 1,700 ‘obscene’ words from text messages, though it is now reconsidering, following public complaints.⁴²

The Freedom House report stated that media freedom was hindered by military and intelligence officials and

⁴⁰ Freedom House, Freedom of the Press 2010 - Pakistan, 1 October 2010. Available at: <https://www.refworld.org/docid/4ca5cc59c.html>

⁴¹ Pakistan Origin of Country (COI) Report, 7 December 2012, p. 107

⁴² Ibid, p. 108

higher judiciary to abstain journalists from critical reporting through threats as well as high level of violence. The report further explained that the Constitution and other legislations curb freedom of the press. Blasphemy laws have also been used to suppress media.⁴³

Although, the PPP government did not take any action against the media lamenting its government, it remained alienated on different occasions of violence against journalists by state institutions, particularly spy agencies. Moreover, the government also banned the official advertisement quota of Jang and Geo group for its harsh criticism of President Asif Ali Zardari and his government. On the other hand, for consecutively two years (2010 and 2011), Pakistan remained the deadliest country in the world for journalists, with ten deaths alone in 2011. Journalists received threats constantly from Taliban, militants, religious extremists, separatists in Baluchistan and some political groups.⁴⁴

According to the USSD report in 2011:

There were instances in which the government shut down private television channels and blocked certain media outlets from broadcasting. The broadcasters asserted that the language of broadcast laws was vague, leading to instances of abuse and arbitrary broadcasting restrictions by the Pakistan Electronic Media Regulatory Authority (PEMRA). The NGO InterMedia reported that PTV did not operate under the purview of the law and benefitted from a monopoly on broadcast license fees. According to Freedom House, authorities used the PEMRA rules to silence the broadcast media either by suspending licenses or threatening to do so.⁴⁵

From March 2008 till June 2013, at least 34 journalists were assassinated in the line of duty. More than a hundred journalists across Pakistan gave firsthand information of harassment, abduction, torture, and murder attempts at the hands of state and non-state actors.⁴⁶ Reasons for assaults on journalists working in different regions and different circumstances vary, however, their purpose remains the same: to silence the media. This has always been the case since independence, rather before the partition of India. However, the reason for mentioning these facts here will help understand that no matter how democratic or authoritarian the government was, journalists remained under the pressure of both seen and unseen factors.⁴⁷

Despite increasing awareness of threats to journalists and freedom of the press, attempts made by local and international journalist organizations and the government to address these issues, the perpetrators continue to spread their wings by threatening and intimidating the media. Out of 73 cases investigated by Amnesty International, only in one case were the perpetrators brought to justice. The police and other authorities investigated 32 incidents in which journalists were the victims.⁴⁸

Interestingly, the government alleged media of anti-democracy conduct. However, media men cleared their positions by justifying that they were criticizing the government not democracy. It was not only the government that was offended by the media. On 6 March 2013, the state's supreme pillar, the Parliament passed a resolution regarding media conduct. It was particularly against anchorpersons who were telecasting programmes against members of the National Assembly. They were accused of attributing false information to the Members of Parliament (MPs). Another important factor regarding this resolution was that it was passed unanimously by the majority of members from all parties.

The resolution stated:

This House resolves that all anchorpersons who are telecasting programmes against Parliamentarians and other entities without verification of the facts for some personal agendas or for some ulterior motives or for some unlawful gains or such anchorpersons who have been exposed for their non-professional con-

⁴³ Ibid, p. 108

⁴⁴ Ibid, p. 109

⁴⁵ Ibid, p. 110

⁴⁶ Amnesty International, A Bullet has been chosen for you: Attacks on Journalists in Pakistan, 30 April 2014, p. 7

⁴⁷ Usman Shahid, Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 79

⁴⁸ Ibid

duct, this House strongly condemns such anchorpersons and demand (sic) from the owner of the media houses to expel them forthwith besides other due actions.⁴⁹

It is to be noted that the Pakistan media, like media anywhere in the world, represents powerful interests and ideologies, which can use that advantage to manipulate information. Thus, for example, on 5 November 2009, The Nation published a front-page story accusing Wall Street Journal correspondent Matthew Rosenberg of being a spy. The report presented no evidence, but only unnamed sources.⁵⁰ On the other hand, journalists who are deemed to be working for hostile foreign interests can pay with their lives. The case of slain investigative journalist Syed Saleem Shahzad exemplifies such fatal consequences. Shahzad wrote extensively on Islamist militancy and its connections to the Pakistani deep state. Suspected of working for foreign agencies inimical to the national interests of Pakistan, he earned the wrath of concerned authorities. The New York Times of 4 July 2011 reported that classified intelligence obtained before Saleem Shahzad's disappearance hinted that the Inter-Services Intelligence (ISI) was involved in the attack on him for his investigative reports on the powerful military. Shahzad sent an email to Human Rights Watch on 19 October 2010, informing them that he had been threatened by the ISI. He was found dead on 31 May 2011. A special Judicial Commission was formed to probe into Shahzad's death, but after six months it failed to arrest the culprits. The ISI denied any involvement in a press release. Quite simply, Pakistani journalists who cross the virtual red zone do it at their own peril. The red zone includes reporting of military, militants, extremists and separatists, banned religious outfits and other religious zealots as well as some other powerful state and non-state actors.⁵¹

It is also believed that the PPP government was under pressure to amend or repeal those laws promulgated during Musharraf regime. They amended some of PEMRA rules in 2009 and 2012 and ensured press liberty to some extent, however, there were also some clauses added that faced severe criticism by media and journalist organizations. The PEMRA board was also reconstituted to some extent and included media professionals. The Ministry of Information also requested Pakistani broadcasters to draft a code of ethics. PFUJ and The South Asia Free Media Association (SAFMA) already have a code of ethics however broadcasters failed to draft one, unanimously.⁵²

For the first time in the history of Pakistan, the parliament completed its tenure and dissolved peacefully on 16 March 2013. Elections were announced to be held on 11 May 2013. During elections, the media unanimously campaigned in favour of democracy and urged citizens to bring change through the vote. There was the highest turnout in the history of Pakistan as 55 per cent voters exercised their democratic right. The credit mainly goes to the media that helped people gain political consciousness and confidence to change their fate with the power of vote. Contrarily, some media outlets were accused of being partisan and supportive of certain parties. Political parties, civil society and journalists themselves raised the issue and pointed fingers at certain individuals as well as some media houses of being biased in favour of or against a political party.

Pakistan Muslim League Nawaz won and formed the government in the centre. Pakistan Tehreek-e-Insaaf managed to form its government in KPK and PPP in Sindh. Within the first year of its formation, the government passed the Right to Information Law, which guarantees the citizens of Pakistan their fundamental and constitutional right to information. KPK and Punjab governments also passed the RTI at the provincial level as an Act in November and December 2013 respectively.

Pakistan is notorious for giving protection to so-called non-state actors who wreak havoc on the lives of people, including military, police, and civilians. The infamous Tehreek-e-Taliban Pakistan (TTP) issued a fatwa (decree) against the media on 16 October 2013 and a media hit list that included the names of almost two dozen journalists. The fatwa divided journalists and other media men into three categories, namely, Murjif, Muqatil and Sa'e Bil-fassaad. Murjif are those who propagate against Muslims during a war between Islam and infidel-

⁴⁹ Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 80

⁵⁰ Ibid

⁵¹ Sherry Ricchiardi, *Challenges for Independent News Media in Pakistan: A Report to the Center for International Media Assistance*. Center for International Media Assistance, 30 July 2012.

⁵² Usman Shahid, *Agenda-Setting Role of Media in Pakistan: A Case Study of Operation Neptune Spear*, unpublished MPhil thesis passed by Government College University Lahore (2014), p. 81

ity; Muqatil are those who provoke infidels and their allies to wage a war on Muslims, and Sa'e Bil-fassaad includes those who incite violence against the Will of Allah.⁵³ Journalists, who according to the fatwa belong to all three categories, deserve to be killed. In 2012, the Taliban killed a reporter for Voice of America (VOA), Mukarram Khan Aatif. Dozens of journalists told Amnesty International that they had not been receiving regular salaries, benefits and any special protection from the Establishment.⁵⁴

MEDIA UNDER IMRAN KHAN

Imran Khan, the cricket legend, came to power in 2017 through an election, which the opposition alleged was rigged but which nevertheless resulted in a change of government from that of Nawaz Sharif to his. Khan declared that he wanted to revive the pristine philosophy and ideology of the State of Medina established by the Holy Prophet (PBUH). He declared an all-out war on corruption because of which many politicians, especially those of the PML-N were charged with massive corruption and put on trial. Although the press and electronic media retained their freedom, the government was accused of tightening control over talk shows and the media.

The most dramatic curtailment of the freedom of expression, printing and publishing came in July 2020 when a new bill was passed by the Punjab Assembly, which gave the provincial government sweeping powers to censor information by barring any publisher, editor, or translator, from printing or publishing any text that is deemed 'un-Islamic' or 'objectionable' by the government. The bill titled Punjab Tahaffuz-e-Bunyad-e-Islam Bill 2020 was passed by the house and has been termed 'historic' by Punjab Assembly Speaker Pervaiz Elahi.⁵⁵

According to the bill, the Directorate General of Public Relations (DGPR) is empowered to visit and inspect the premises of the printing presses, offices of publication houses and bookshops. The DGPR also has the authority to refuse permission to import, print, or publish a book "if it is prejudicial to the national interest, culture, religious and sectarian harmony". The proposed law also stops "the publisher, editor, or translator from printing or publishing any book and material that consists of photographs or pictures of suicide bombers, terrorists, except as required by law enforcing agencies for purposes of investigation". The bill also makes it mandatory for book importers to provide a list of books imported by him/her to an authorized officer within fifteen days of the import. It also binds publishers to send memoranda of books published by the company every three months. It stated that "the publisher on the same day of the printing of a book shall provide four copies of every edition of a book".⁵⁶

Objections were raised by Pakistani civil society organizations, particularly those dealing with human rights. As no such bill has ever been passed by the Pakistan Parliament or any other provincial assemblies, it is unclear if it will be enforced in a determined manner, but it hangs as the Sword of Damocles over the heads of publishing and news media industries. Overall, the Imran Khan government has patronized populist Islamist values and ideals at the expense of the people's democratic right to freedom of speech and expression.

CONCLUSION

In light of the overview presented of the censorship of information, knowledge and news with a view to realizing the ideals of a modern, democratic and Islamic state and a concomitant chaste social and cultural order, Pakistan presents many contradictions and inconsistencies. While it is not a case of a robust secular, liberal-democratic polity which gives a free hand to dissenting opinion and the free sharing of information and knowledge, it is by no means a totalitarian state, either in which civil society in general or the media in particular, are completely denied space to critique government policies.

⁵³ Hasan Abdullah, Media now in TTP crosshairs. DAWN News, 23 January 2014

⁵⁴ Declan Walsh, Reporter Dies in Pakistan, and Taliban Warn Others. The New York Times, 18 January 2012

⁵⁵ Azam Malik, Punjab Assembly passes Tahaffuz-e-Bunyad-e-Islam Bill. Geo News, 23 July 2020

⁵⁶ Ibid

The perceived, imagined and contrived existentialist threat from India has meant that the state has from the beginning been overreactive to criticism by the media of its policies. We find newspapers being charged with unpatriotic conduct by the government from the very beginning. Saadat Hasan Manto's persecution by the state on grounds that he preached obscenity and immorality in his short stories was indicative of the narrow and constricting view on creative writing by a state hell-bent on forcing strict Islamic morality on citizens. The onslaught on the Pakistan Progressive Papers and left-leaning intellectuals and journalists brought out Pakistan's right-wing pro-American leaning during the Cold War. Despite such developments, the media continued to challenge government policies in some measure and face repression.

In the aftermath of General Zia's Islamization policies and involvement in the so-called Afghan jihad, an overall brutalization of sensibilities took place. During his eleven years rule, the media experienced comprehensive censorship. After Zia, with the restoration of democracy and during the military regime of General Pervez Musharraf the state tolerated media criticism to a point but used legal subterfuge to continue hounding daring journalists and repressing defiant media houses. In some cases, journalists had to pay with their lives for reporting events which offended the deep state. On the whole in Pakistan, the freedoms of expression and opinion and of printing and publishing have been controlled by an ideological state determined to tell the 'noble lie' to the people of Pakistan that the state is their guardian and obeying it tamely and uncritically is an act of loyalty and piety.



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DECLINING IDEOLOGICAL SPACE WITHIN THE “FREE MEDIA”



Kamila Hyat

ABSTRACT

Written in 2007, during General Musharraf's stint in power for the unpublished Bayan Vol VI, excerpts from Kamila Hayat's essay are still relevant today. Seeing censorship as a mechanism of silencing dissent, the writer examines two strategies employed by vested interests to obfuscate information. The first, which focuses on Pakistan, takes account of the ways spaces for alternative narratives have been reduced by the state. The second is to do with global media conglomerates, whose repertoire includes a collectively created 'virtual' world detached from the ground realities of US initiated wars undertaken in others' lands.

BACKGROUND

Kamila Hyat, the first woman editor of The News, is a columnist and has worked as Joint Director of the Human Rights Commission of Pakistan.

While the Musharraf government has made a great deal of noise about freedom of the media and the expanded space it has permitted for new television, radio and print media set-ups, it is worth taking a more analytical view of the situation. Recent alterations in laws on the electronic media are an undisguised bid to exert greater control and suppress criticism of the armed forces and make a distinct attempt to narrow space.¹ Other means and methods have also been used for the same purpose over a period of time. Amongst media practitioners, even though proposed changes in the law have been withdrawn, there are fears of a far harsher code of practice in the near future.

It is also obvious that the new radio stations, television channels or print media publications that have appeared on the scene over the past five years have done nothing to widen the ideological boundaries of debate or to take the discussion on national issues beyond parameters that have become increasingly limited over the decades. Indeed, there is some evidence to suggest that these boundaries are now narrower than ever before, even while political leaders continue to make claims of having granted the media near absolute freedom.

The uncomfortable patterns that have emerged over the past months in the form of attacks and intimidation of the media in Pakistan are fairly well documented. Since the year 1992, 17 journalists have been killed in the country.² Many others have been threatened or intimidated.³ The victims include Hayatullah Khan, the young journalist from Waziristan, who was found murdered on 16 June 2006 in the town of Mirali after being 'picked up' by intelligence agencies in December 2005.⁴

In its annual assessment of global press freedoms, the Paris-based Reporters Sans Frontières' in its report for 2006, dropped Pakistan by several places, ranking it at 152nd place amongst the 168 nations it assessed. Similar patterns have continued into 2007, according to reports compiled by media watchdog bodies, both within and outside the country.⁵ In most cases, those targeted have been guilty of dissenting from the 'official' view, which notably, over the past three years, has been defined as being outlined by 'national security' interests, rather

¹ Prof. Dr. Muhammad Ahmed Qadri, Suwaibah Qadri and Naseem Umer, Development of Media Policies and Reforms during In Pakistan With Reference To the Democratic and Dictatorship Regime. New Media and Mass Communication (2016), Vol. 46

² A. Lin Neumann, Press Freedom Under the Dragon. The Committee to Protect Journalists (1997)

³ A State of Denial: The Crisis of Press Freedom and Journalist Safety in Pakistan. The International Federation of Journalists, February 2007

⁴ Ibid

⁵ Worldwide Press Freedom Index 2007, Reporters without Borders. Available at: <https://rsf.org/en/node/79189>

than the interest of ordinary people. This of course is typical of military dictatorships everywhere in the world, with claims of the need to protect ‘security’ often used to suppress information of various kinds and to crush the diversity of ideological opinion.

From newsrooms across the country, reports of regular ‘advice’ on what to print, often coming from men in army uniform, are now routine. ‘Errant’ columnists who refuse to be ‘advised’ have been called to the offices of persons high up on the military ladder, warned that they are working against ‘national interest’ and informed in clear terms what is expected of them. Lists have been compiled of journalists who need to be coerced or bribed to ensure conformity. Professionals, such as investigative journalist Amir Mir, faced still more sinister threats. In November 2004, Mir, then an assistant editor with the monthly Herald in Karachi, was visited by intelligence agents at his home in Lahore and warned to stop writing ‘unfavourable’ stories. Mir had faced similar intimidation in previous years, with his car targeted in a mysterious arson attack in 2003, soon after President Pervez Musharraf had lashed out against him at a meeting in Lahore. Mir was forced to resign from his job in 2005 and has subsequently failed to find employment with any mainstream publication.⁶

However, these crude methods of suppressing dissent form only the topmost layer of a pyramid of repression that has been erected over the past five decades. The fact that over this period, military administrations have most often commandeered the country has contributed to the curbs placed on the press, most notably liberal elements within it, and the lack of tolerance so often shown for views that diverge from those of the establishment. These restrictions have been used by successive governments virtually since the time Pakistan came into being in August 1947. Many aspects of these ugly actions have been documented in detail. The first attack on the freedom of the press came in 1948, when the Muslim League majority government of Punjab proscribed three progressive periodicals, Savera, Naqoosh and Adab-e-Latif. Naqoosh was penalized for publishing a short story by Saadat Hassan Manto, *Khol do* on grounds of obscenity. While newspapers falling under the umbrella of Progressive Papers Limited, established in January 1947 by Mian Iftikharuddin, one of the Muslim League’s most rational and liberal voices, opposed the takeover, many other sections of the press approved the ban.⁷

This unholy alliance between many publications and the Pakistan establishment, in fact, determined the direction of journalism in Pakistan in the decades since Partition, with the ‘pro-establishment’ sections receiving many benefits and rewards for their loyalty. This pattern has been detailed, among others, by the late Zamir Niazi in his 1986 book, *The Press in Chains*. In it, he writes:

... right from the League government to date, no government has admitted it is hostile to the idea of freedom of information. The Press was often accused (the practice still goes on) by all and sundry of not having done “its duty to society, and the country at large”. Here the word “society” means the ruling clique, which was busy in palace intrigues behind the back of the people.⁸

Niazi has cited numerous examples to describe how a strong alliance was created, in the early days of Pakistan’s existence, between the establishment, or ruling clique, and newspaper editors and owners. The most influential among these through the 1950s were Altaf Hussain, the then editor of the Karachi-based English language Dawn, and Hamid Nizami, the powerful owner of the Lahore-based Urdu daily, Nawa-e-Waqt. In return, these publications received the backing of the country’s rulers.⁹

Describing this, Zuhair Siddiqui, quoted by Niazi, writes about the situation after 1950:

In the years that followed, the Government could, almost always, find support for its arbitrary action against a newspaper in one section [of the Press] or another. The support was generally extended in the name of ‘the national interest, the glory of Islam, the ideology of Pakistan’ or some other mundane consideration...¹⁰

⁶ United States Department of State, U.S. Department of State Country Report on Human Rights Practices 2005 - Pakistan, 8 March 2006, p. 131

⁷ The Herald, (Monthly) Karachi (1977), p. 9

⁸ Zamir Niazi, *The Press in Chains*. Karachi Press Club (1986), p. 46

⁹ Ibid

¹⁰ Op. cit

The non-conformist writer, Ahmed Bashir, has described how, in 1949 he and a colleague were unceremoniously dismissed from the staff of Qandil, a weekly journal brought out by the Nawa-e-Waqt group, after the publication carried an article criticizing the repressive Punjab Public Safety Act imposed by the provincial government soon after the death of Mohammad Ali Jinnah.¹¹

This pattern, established early on in the history of Pakistan, has continued since then, and the result has been a progressive closing in of the space permitted to debate a widening range of issues. For instance, today, notions such as a secular state, equal rights for Ahmadis as citizens or corruption within the armed forces are rarely if ever discussed in the media. This is despite the fact that each of these issues has significant bearing on the nature of the state and society in the country today. This conformity to a single, largely orthodox school of thought, and the fact that no publication of any significance pursues an ideological line that can be interpreted as deviating anywhere left of centre, was branded into the national media scene by several events.

The most far-reaching was the seizure of the Progressive Papers Limited in Lahore in April 1959 by the regime of Field Marshall Ayub Khan, the first military dictator to rule the country. At the time, the group brought out the English language daily, *The Pakistan Times*, the Urdu daily *Imroze* and the Urdu literary weekly *Lail-o-Nahar*. The publications projected a distinctly Leftist and progressive interpretation of the national situation, advocating economic reform, improved ties with India and political change, among other issues. The seizure involved armed policemen physically taking over the building, which housed Progressive Papers and raiding the residences of Mian Iftikharuddin, the Company's Chairperson, who owned a majority of its shares and its Managing Director, Syed Amir Hussain Shah, to seize documents they alleged related to the receipt of funds from foreign sources and news reports likely to "endanger the security of Pakistan".¹² That no corroborative evidence was found did not affect the government's decision.

The action effectively brought to an end progressive journalism within the mainstream media in the country. No major daily newspaper since then has been able to adopt a policy that diverges from the broad ideological 'consensus' enforced on the country, within which the establishment holds a pivotal position.

Following these events, the then editor of the newspaper, Mazhar Ali Khan, resigned and *The Pakistan Times* of 19 April 1959 carried an editorial titled *The New Leaf*,¹³ which set in place the standards of mediocrity, hypocrisy and inanity so often seen in the state-backed media since then.

Through its actions, the Ayub regime also demonstrated how controlling the press and consequently, the information and ideas available to the public, enabled autocratic regimes to strengthen their hold over the country. Then, as is the case now, 'national security' interests and allegations that the Progressive Papers group was damaging, these were used as a means to silence voices critical of the regime.¹⁴

Also significant, particularly in historic terms, was the manner in which the Civil and Military Gazette (CMG), a newspaper founded in 1870 in Lahore – which from 1882 to 1887 employed Rudyard Kipling – was first

¹¹ 11. Editors Note. Khalid Hassan (1984), p. 39. The Safety and Security Acts were introduced by the British after the 1857 Indian War of Independence ['Mutiny' in British records] to contain political dissent by granting the administration wide-ranging powers to detain political workers without trial and impose press curbs etc. (see Jabbar, Javed and Qazi Faez Isa, *Mass Media Laws and Regulations in Pakistan, and Commentary from a Historical Perspective*, Singapore: Asian Media and Communication Centre, 1997). Both the Muslim League and the Indian National Congress fought against these laws and in fact it was against the Safety and Security Acts that Mian Iftikharuddin, who was to set up the Progressive Papers Ltd in 1947, led the Muslim League Civil Disobedience Movement in early 1947. It is ironical that soon after the creation of Pakistan, these laws were re-invoked and widened in scope ostensibly to contain anti-state elements but in actual fact to target left-wing journalists and writers associated mainly with the papers constituting Progressive Papers Ltd, members of the Progressive Writers' Movement, trade unionists and labour leaders. This is borne out by the fact that among the people arrested under the amended Security Act were the sub-editor of 'Imroz', Zaheer Babar and Ahmad Ali Khan, assistant editor 'The Pakistan Times' and president of the Punjab Union of Journalists. (Mian Muhammad Iftikhar-ud-Din, *Selected speeches and statements [of] Mian Iftikhar-ud-Din*. Translated by Abdullah Malik. Nigarishat, Lahore (1971)). This information is corroborated by Mazhar Ali Khan's editorials in 'The Pakistan Times' (Mazhar Ali Khan, *Pakistan: The First Twelve Years: The Pakistan Times Editorials of Mazhar Ali Khan*, Oxford University Press: Karachi (1996)) and Mian Iftikharuddin's speeches in the Constituent Assembly of Pakistan. It was under the amended Security Act of Pakistan that 'The Pakistan Times,' 'Imroz' and the weekly 'Lail-o-Nahar' were 'taken over' by the military government of Field Marshal Ayub Khan in 1958

¹² Mazhar Ali Khan, *Forum - Dhaka*, 7 February 1970

¹³ Written by Quadratullah Shahab, a senior civil servant and Urdu writer, Shahab held the distinction of serving as the Principal Secretary to three heads of state; Governor General Ghulam Muhammad, President Iskander Mirza and President Ayub Khan. He went on to serve as the Ambassador of Pakistan to the Netherlands in 1962 and later as Information Secretary of Pakistan and Education Secretary of Pakistan. Source Wikipedia

¹⁴ Ibid. Editors Note. Neelam Hussain, Samiya Mumtaz, and Samina Choonara, *In Politics of Language*, Lahore: Simorgh Women's Resource and Publication Centre (1997), p. 164

crippled, and then killed. The painful process began in April 1949, soon after the CMG published an article suggesting a compromise formula was being worked out on Kashmir between India and Pakistan. Despite a denial and apology published prominently the next day, a fierce campaign against the paper was launched, with 16 West Pakistan newspapers,¹⁵ on 6 May 1949, carrying a joint editorial, seeking among other actions, the suspension of the publication of CMG “...for a suitable period”.¹⁶ Sadly, the Pakistan Times, then edited by Faiz Ahmed Faiz, also published the vicious editorial.¹⁷ Chiragh Hasan Hasrat of Imroze refused to publish the editorial, but he held out only for twenty-four hours before publishing it on 7 May.¹⁸ East Pakistan editors declined to join the ugly chorus.¹⁹ The CMG was subsequently banned for six months,²⁰ causing it hugely damaging losses in terms of circulation and advertising revenue. It never fully recovered. In 1964, the CMG, already only a shadow of the paper it had once been, was finally shut down by its then proprietor, Nasir Shaikh, an industrialist who was reported to have faced considerable pressure from the government over the publication’s independent policies and its frequent criticism of the military regime.²¹

...the story of the Pakistan press is not dissimilar to the experiences of the media in other countries.

Similar compulsions focused around the need of almost all autocratic regimes to control thought, have led undemocratic regimes to take similar steps to reign in free media. Indeed, even outside the brutal military regimes of Latin America through the 1970s or Far East Asia over a similar period of time, the conformity found within a large chunk of the global media is enforced by realities and strategies far more subtle than the physical seizure of newspaper offices, or the forced omission of large portions of news, as seen in Pakistan under the late General Muhammad Zia-ul-Haq.²²

Across the globe, media conglomerates have more power than they have ever commanded in any previous age, with their ownership of the press, television, book publishing, film production and computer-based information systems. These media giants have collectively created a kind of ‘virtual’ world, quite detached from reality. Their motto could well have been taken from George Orwell’s 1984:

War Is Peace
Freedom Is Slavery
Ignorance Is Strength.²³

The ‘war on terror’ provides one instance of this reversal in meaning. The war, after in Afghanistan, Waziristan²⁴ and now, potentially in Iran, has brought unparalleled terror to thousands of people. It has destroyed children, wrecked families and displaced thousands. What worst form of terror can there be compared to these atrocities? Yet, the constructed information churned out by the media, with dissent possible only within ‘consensual’ boundaries,²⁵ says little about the death of children, about the targeting of civilians or the manner in which nations have been seized in what amounts to a new era of colonialism. Instead, the term ‘collateral damage’ covers a wide variety of events involving the death of innocent persons.

Even while the global media talks of globalization of McDonald’s outlets, mobile phone networks and cable television channels swamping the world, the realities of the existing economic order are ignored. These realities include the death of at least 6,000 children each day because of lack of access to clean drinking water²⁶ and a world where most human beings subsist on less than two dollars a day,²⁷ with no access to phones, the Internet, television or the other props of globalization.

¹⁵ Dawn, Dawn-Gujrati, Dawn-Urdu, Jang, Anjam, Sind Observer, Al-Wahid-Sindhi, Pakistan Times, Nawa-i-Waqt, Imroze, Zamindar, Safina, Inqilab, Ghalib, Maghribi Pakistan, Jadid Nizam

¹⁶ Op. cit., Niazi, p. 69

¹⁷ Ibid. p. 70

¹⁸ Ibid. p. 69

¹⁹ Ibid. p. 69

²⁰ Ibid. p. 70

²¹ The Herald, (Monthly) Karachi. August 1977, p. 9

²² 1924-1988

²³ George Orwell, 1984 (1950), p. 4

²⁴ Waziristan is a mountainous region of northwest Pakistan, bordering Afghanistan

²⁵ John Pilger, Heroes, South End Press (2002), p. 1

²⁶ See <http://www.nowpublic.com/world/multiple-9-11s-every-day-year>. Last accessed on 10 March 2008

²⁷ United Nations Development Programme, A Time For Bold Ambition: Together We Can Cut Poverty in Half. UNDP Annual Report 2005

Most recently, the reporting on the visit of Venezuelan President, Hugo Chavez to Europe²⁸ has acted to highlight the manner in which the global media is capable of placing its own 'spin' on reality. Chavez, a leader who makes no pretensions about his allegiance to the Left and has won no less than eight electoral victories in his own country over the last two years, in the form of referendums and in polls,²⁹ is seen by many citizens in Latin America as a modern-day revolutionary – willing to use his country's significant oil wealth for the good of its people. These policies, and his fierce stance against the US, have led to Chavez being ridiculed by much of the western media – most notably during his visit to London on the invitation of city mayor Ken Livingstone.³⁰

Indeed, evidence to suggest that the media is biased is in no short supply, and nor is this a recent phenomenon. Numerous studies suggest this to be the case in almost all western nations,³¹ and while the scale of research is far more limited within Pakistan or South Asia in general, similar patterns are quite easily discernible.³²

One of the most frequently quoted analyses of media bias has been the work of the Glasgow Media Group, beginning in the mid-1970s. The authors of the study have found, and documented at length, a strong tendency within television news to reinforce values similar to those held by the government, particularly where political dissent is concerned.³³

Similar bias has been pinpointed by analysts such as Noam Chomsky, one of the best-known American dissidents, in his analysis of print media news from South East Asia, during and after US involvement in the region. Even the most respectable sections of the US Press, such as The New York Times, reflected a tilt towards the ideology of the United States.³⁴

Broadly speaking, news, in almost all parts of the world, tends to conform to the norms and values dominant in a particular society and rarely moves outside these boundaries, tending to see opinions that lie beyond the consensus as presenting a threat to the existing status quo.³⁵ This phenomenon has found roots in Pakistan as well, and has assisted dictatorial regimes in imposing their own opinions on the public and tightening the noose around divergent ideologies in the media.

In the Pakistani context, examples of the extent to which this 'status quo' is protected, can often be found in the manner in which news regarding women or violence against them is presented. In her paper, *Gender and Media: Pakistan Perspective*, presented at the South Asian Free Media Association regional workshop on gender and media in Khatmandu on June 26-27, 2004, Tasneem Ahmar describes how the under-representation of women in key roles, particularly in the Urdu language media, contributed to a situation in which issues such as crimes against women were deliberately sensationalized and the woman 'criminalized' in the process.³⁶ Similar biases conforming to the stereotypical view of women inherent in state policies were visible in the reluctance to tackle topics such as sexual harassment, the trafficking of women and other kindred issues.

Blatantly commercial factors, such as the desire to protect the interests of companies on which the media is dependent for advertising, frequently leads to bias and the preservation of the status quo.³⁷ This phenomenon of course has immense relevance to the situation in Pakistan, with more and more newspapers and television networks owned by proprietors with strong interests in other corporate sectors. The need to protect these

²⁸ May 2006

²⁹ Brian A. Nelson, The Chávez presidency. Encyclopaedia Britannica, 8 April 2019.

³⁰ John Pilger, Chavez is a threat because he offers the alternative of a decent society. The Guardian, 13 May 2006

³¹ Robert S. Lichter, Stanley Rothman and Linda S. Lichter, The Media Elite. Adler & Adler (1986)

³² <http://web.amnesty.org/library/Index/ENGASA330082001?open&of=ENG-PAK>. Last accessed on 23 April 2021

³³ Jeffrey C. Alexander, Revolution, Reaction, and Reform: The Change Theory of Parsons's Middle Period. Sociological Inquiry (1981), Vol. 51, Iss. 3-4

³⁴ Noam Chomsky, Edward S. Herman, The Washington Connection and Third World Fascism, The Political Economy of Human Rights Volume I. Haymarket Books (1981)

³⁵ Ibid

³⁶ Editors Note. See the news coverage of the Saima Waheed case pertaining to the marriage of choice consistently used language that sensationalized the case through the pejorative use of terms such as "the love-sick Saima". (Neelam Hussain, Samiya Mumtaz, and Rubina Saigol, Engendering the Nation State, Vol. 1, Lahore: Simorgh Women's Resource and Publication Centre (1997), p. 222). More recently, the case of the transgender couple Shahzina and Shumail, bears witness to this kind of negative representation. Ignoring the fact of multiple sexualities, newspapers persisted in referring to them as the 'she couple.' This transmuted a personal tragedy into matter for salacious public consumption, and at the same time relegated it to the realm of aberrant behaviour.

³⁷ Noam Chomsky, Necessary Illusions: Thought Control in Democratic Societies. Sough End Press (1989)

business interests and to keep commercial advertising pouring in remains. In the view of many working journalists, this is possibly the most significant constraint on material published in a newspaper or the ideological and political opinions expressed in it.

A discussion of bias inevitably leads to the question of ‘objectivity’ – a word of critical importance in any discourse about journalism or the media. Yet, the concept of ‘objectivity’ emerged only in the 1920s, largely in response to the development of public relations and later, wartime propaganda.³⁸ The very notion of ‘objectivity’, laid down as an ideal journalists are expected to follow, dictates that they turn to ‘accredited’ sources for information, statements, etc. – meaning that, most frequently, it is MPs, ministers, employers, etc. who provide the ‘primary’ view of social reality, and any alternative responses must be shaped to fit the framework already laid down.³⁹ This pattern can be seen in almost any newspaper produced in Pakistan, and indeed, in most produced across the globe.

The ‘rules of objectivity’, as interpreted in the local scenario, also make it mandatory for journalists to seek an ‘official’ or ‘establishment’ response regarding any critical story. In practice, this means that prior warnings regarding a story go out, either leading to pressure being exerted to ‘kill’ it, or, when any access to an official version of events is denied, making it impossible for the story to go into print as the ‘rules’ have been violated.

This strictly defined framework, within which the press operates, means that the perspective on events provided by the media most often suits the interests of the establishment – making more direct control unnecessary. Publications, such as *Nawa-e-Waqt*, which conform to the establishment viewpoint due to tradition and ideological affiliation, have often benefited from direct support. In the Pakistani context, this has most often come in the form of greater quotas of advertising etc., government control over official advertising, a powerful lever to influence and manipulate the press, as well as its control over the assessments made by the Audit Bureau of Circulation which produces figures on the outreach of publications, has consistently been criticized as a powerful tool of harassment and intimidation.

And of course, from time to time, there are unusual distortions within the broad picture of the Pakistan media. In May 2005, the Federal and Punjab provincial governments banned state-sponsored advertising to the *Nawa-e-Waqt* group after critical reporting of the government and published advertisements sponsored by political parties opposing the regime of President Pervez Musharraf, respectively.⁴⁰ The ban on advertising was lifted in August 2005, after negotiations and interventions by the All Pakistan Newspapers Society and the Council of Pakistan Newspaper Editors.⁴¹

The pattern of limitation and control imposed by the state, deploying the various tools in its arsenal to ensure increasingly narrow conformity within the media, is increasingly visible. No mainstream publication challenges the existing ‘status quo’, and while dissenting views are projected in columns or in interviews, such opinions do not form a part of the wider view of reality put out to audiences.

The fact that the kind of coercive techniques used in the earlier decades of Pakistan’s history to force unwilling newspapers into line are no longer needed is of course a sign of the almost overwhelming success of the establishment. Its dominant vision is hardly challenged within the press today, creating an ideological uniformity which often appears to deny the very existence of dissenting opinions or political views that lie outside the limited ‘consensus’ created within the media and kept intact both by its own actions and those of outside agents influencing its working.

³⁸ Michael Schudson, *Discovering the News: A Social History of American Newspapers*. Basic Books (1978)

³⁹ S. Hall, C. Critcher, T. Jefferson, J. Clarke, & B. Roberts, *Policing the Crisis: Mugging, the State and Law and Order*. Basingstoke: Palgrave Macmillan (2013)

⁴⁰ CPJ Condemns Pakistani Government’s ban on ads. Committee to Protect Journalists, 27 May 2005

⁴¹ *Ibid*

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PEMRA: A MANDATE UNDERMINED FROM WITHIN



Adnan Rehmat

ABSTRACT

Identifying The Pakistan Electronic Media Regulatory Authority (PEMRA) as an important indicator of Pakistan's media landscape, this essay critically examines the gaps and contradictions between PEMRA's stated aim to protect and promote press freedom and its evolution as an instrument that has undermined its own agenda in the interests of the state's regulatory powers. In a detailed analysis of the PEMRA (Amendment) Act, 2007, the writer discusses the largely unilateral role of public officials in PEMRA lawmaking, censorship, and the pro-state nature of media narratives and the consequences for digital media, including recommendations for mitigation of digital censorship.

BACKGROUND

Adnan Rehmat is a journalist, researcher, analyst, advisor, trainer, writer, and editor who has been associated with the media sector in Pakistan, South Asia and the Gulf since 1990. Since 2000, he has been associated with efforts on the development of strategies for the Pakistani media spectrum including print, electronic and online to strengthen professionalism, pluralisms, diversity, and openness including promoting civil liberties, particularly freedom of expression and safety and security of journalists. He is also involved in initiatives to improve access to information, media legal reforms, building news and information capacities of the broadcast and online media sectors, digital rights and promoting a culture of media and communications research, analysis and development strategies.

EXECUTIVE SUMMARY

The media landscape in Pakistan has dramatically expanded in terms of size and impact in the early part of the twenty-first century with the institution of the Pakistan Electronic Media Regulatory Authority (PEMRA) in 2002. Instituted with the aim of allowing independent television channels and radio stations, PEMRA broke the monopoly of state-owned media channels and freed the country from the stranglehold of state broadcasting narratives that reflected narrow national interests that were often at odds with the public interest.

In the first decade of this century, the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (PEMRA Ordinance) helped increase the establishment and operationalization of dozens of TV channels and radio stations and transformed how people accessed their news and information. Huma Yusuf and Emrys Schoemaker write that:

Access to news and information ... the capacity of individuals to communicate with fellow citizens ... radically altered. Indeed, many observers – from UN representatives to US politicians – laud(ed) Pakistan as having among the most vibrant and independent media in the Islamic world.¹

This engendered an animated national dialogue on rights and development issues that reflected the broad set of political and social pluralisms of Pakistan and, at first, helped expand the free speech environment.

It is not merely a coincidence that the ouster of a military government and the political transition back to democracy, Pakistan's first two elected governments completing their five-year tenures consecutively and the first democratic transfer of power between two governments, took place in the same period. This shift was partly aided by the expanding freedom of expression and access to information regimes brought about through the PEMRA law that allowed free media to flourish.

Control over media has long reflected the location of state power in Pakistan. Although civilian provincial administrations shut down opposition newspapers in the years after the country's independence, it was under Pakistan's first military dictator, General Ayub Khan (1958-69) that centralized media control was properly institutionalized. The state-owned Pakistan Television Corporation (PTV) was established in 1964 and sought

¹ Huma Yusuf and Emrys Schoemaker, *The media of Pakistan: Fostering inclusion in a fragile democracy?* BBC Media Action, Police Briefing #9 (2013)

to maintain the authority of the government of the time and to perpetuate the new nation state's identity as a country of diverse cultures united by a shared Islamic faith. Subsequently, General Zia-ul-Haq (who governed Pakistan from 1977 to 1988) oversaw the media's most overtly ideological nation-building role. However, though heavily censored, privately-owned newspapers continued to publish content that was critical of military rule in Pakistan. This, coupled with newspapers' earlier role in the Pakistan Independence Movement, began to create the perception of the media as anti-establishment and pro-democracy. A 'satellite revolution' across South Asia during Pakistan's so-called 'decade of democracy' also created greater public demand for independent programming. By the time General Pervez Musharraf came to power in 1999, the potential of privately-owned media to advance democratic values was well understood by the Pakistani public, even while the state continued to use its broadcast outlets and its influence over privately-owned newspapers to try to shape public discourse.² The opening of the airwaves to private broadcast ownership consolidated this trend through PEMRA licensees.

However, the situation soured around the middle of the second decade when increasing censorship and closing of space for democratic politics affected by its deeper sections, the state became intolerant of the independent media engendered by PEMRA. Subsequently, the regulator – PEMRA itself – was used to crack down on dissent and pluralist political narratives on current affairs television channels and FM radio stations as its role in regulating content was expanded at the expense of strengthening the media industry.

The first-generation nature of the PEMRA law allowed non-representative forces to manipulate its mandate and squeeze the space for freedom of expression and right to information around 2017. The election of the Pakistan Tehreek-e-Insaf government in 2018 accelerated the pace of closing spaces for freedom of expression and right to information, and decreased the number of news broadcasters, as well as politically muting those that remained.

Efforts in 2019-20 were also made by the government to expand the remit of PEMRA to the rapidly growing cyberspace of Pakistan to allow the regulator to police freedom of expression, access to information online and curb digital rights. Piloted by PEMRA, even though it intruded into a territory—the internet and cyberspace – which was not its domain to regulate, an effort was made to merge all three media regulators – PEMRA (electronic media), Press Council of Pakistan (print media) and Pakistan Telecommunication Authority (PTA), (internet media) into a proposed Pakistan Media Regulatory Authority (PMRA), ostensibly to impose a wider, stricter, and more uniform censorship regime across all media in Pakistan. This attempt was thwarted by civil society in 2019. Changing tack, this initiative was resurrected in 2020 through PTA, but is currently being resisted.

At the heart of Pakistan's love affair with freedom of expression and right to information in the twenty-first century – which first blossomed and is now withering – has been PEMRA and its peculiar legal framework.

The legacy of PEMRA as a regulator of Pakistan's electronic media sector, its mandate and place within the sectoral regulation landscape makes for a fascinating examination. This article looks at PEMRA's practices that impacted the fundamental rights to freedom of expression and access to information in terms of constitutional guarantees. It scrutinizes whether PEMRA furthered these or impeded them, or both. It analyses where PEMRA succeeded or failed in terms of the letter and spirit of its mandate in its interface with the legal and constitutional guarantees that frame the rights of the citizens.

SECTION 1: POLICY

This section looks at how the mandate of PEMRA (Amendment) Act, 2007, as amended from its parent version of 2002, translates from, and aligns with, Articles 19 (Freedom of speech, etc) and 19-A (Right to Information) of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution). Do these articles strengthen the PEMRA mandate or come into conflict with it? And if so, how?

² Ibid

The PEMRA Amendment Act, 2007 indirectly outlines its *raison d'être* or purpose in its Preamble where it promises to uphold both Article 19 and Article 19-A of the Constitution of Pakistan through the following:

To regulate electronic media in Pakistan...Whereas it is expedient to provide for the development of electronic media to –

- (i) Improve the standards of information, education, and entertainment.
- (ii) Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama, and other subjects of public and national interest.
- (iii) Facilitate the devolution of responsibility and power to the grassroots by improving the access of the people to mass media at the local and community level; and
- (iv) Ensure accountability, transparency and good governance by optimising the free flow of information.

Prima facie, these translate into guarantees not only for freedom of expression and right to information but also emphasize the plurality of information sources and perspectives as a measure of professional standards.

This indicates a progressive bent towards support for diversity and pluralism in both information types and opinion, thereby indicating an alignment with Articles 19 and 19-A insofar as the guarantees for fundamental rights go, without resort to the parts of these two articles that emphasise limitations, e.g. Article 19:

... subject to any reasonable restrictions imposed by the law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.

The Preamble of the PEMRA Ordinance specifies the principal mission of PEMRA as a facilitator of access to mass independent broadcast media to communities,³ thereby further embellishing its credentials as a guarantor of access to information to Pakistan's multiple communities. It also takes upon itself the promise of good standards of information – presumably by setting minimum standards of reliable journalism and non-current affairs content through a 'Code of Ethics' that licensees are required to sign before starting their broadcasts.

The Preamble itself sets a high benchmark for PEMRA as an electronic media regulator in terms of both purpose and self-compliance by linking the role of electronic media as a free legal agent of accountability as part of the governance system and as an indicator of the quality of democracy itself. This is indicated in Clause IV of the Preamble: "ensure accountability, transparency and good governance by optimizing the free flow of information". It also tacitly admits the classical purpose of media to be the guardian of public interest over any other interests, including those of the state through its function of supporting freedom of expression and right to information.

How far, since the inception of PEMRA in 2002, has it practised its own promises or run afoul of the legal conflict between Article 19 of the Constitution and the loftier promises made in the PEMRA (Amendment) Act, 2007, is a different matter and discussed in detail below.

SECTION 2: PROCEDURE

This section looks at policies and regulations accruing from the PEMRA (Amendment) Act, 2007 – whether and how these aim at furthering the guarantees of Articles 19 and 19-A by aligning with citizen's rights or pursuing alignment with state objectives and governmental practices of censorship and expanding state narratives.

³ Clause III of the Preamble of PEMRA Ordinance, 2002 as amended by the PEMRA (Amendment Act, 2007: "facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level"

LOFTY MISSION UNDERCUT BY CONTRARIAN REGULATIONS

While the articulated purpose of PEMRA upholds the universal values of free speech (Article 19) and access to information (Article 19-A), it is important to understand the unarticulated limits that inhibit these universal values and rights from realization in this instance. These limitations are the ones that Article 19 itself puts in place prohibiting explicit criticism of Islam (although apparently not restricting similar critique of other religions and faiths), the military, judiciary, and even policies of countries deemed friends by the state. This implicit limitation within the preamble is ostensibly structural in nature, with the imposition of constitutional obligations carrying overriding powers over all attendant laws and acts, including all versions of the PEMRA laws. Historically, PEMRA has taken the easy route by enforcing the limitations of free speech and right to information on its licensee TV channels, radio stations and cable distributors rather than defending their rights to the operative parts of Articles 19 and 19-A.

Despite this thorny contradiction between promising a universal value and putting legal shackles on it, this still makes PEMRA, insofar as the articulation of institutional purpose goes, a self-guarantor of the implementation of Articles 19 and 19-A through the private broadcast media sector (PEMRA does not regulate the state broadcast sector). This role is at odds with the assumption that independent media is the guardian of public interest. The limited exercise of independence within the confines of these restricted rights makes it easier to nudge the private broadcast sector to remain within boundaries and hobbles PEMRA's missionary position of helping the independent broadcast media that it regulates as the guardian of public interest, and places it in a position of serving the state's interest by not tolerating overt critique of its policies and preventing unhindered accountability of it within the domain of public opinion.

PEMRA - GUARDIAN OF PUBLIC INTEREST OR STATE INTEREST?

PEMRA was established by the Government of Pakistan, under the PEMRA Ordinance of 2002, later amended by PEMRA (Amendment) Act, 2007, and entrusted with a wide mandate to regulate all categories of electronic media. Its main objectives include "promotion of an independent and free media" for the development of democratic society; "improving standards of information, education and entertainment"; enlarging choice of content, or what may be called pluralistic speech; "improving access of people to mass media"; and, "ensuring accountability, transparency and good governance by optimizing the free flow of information".⁴

Over the years, critics⁵ of PEMRA have stated that despite its mission and objectives, the authority remains dependent on and under government control. As such, it has not been able to effectively regulate pressing issues of media concentration, enforcement of its policies, lack of diversity of content, anti-free trade policies, competitive issues, free speech, and technological convergence.

PEMRA lags independent and efficient regulatory authorities of developed democracies such as Canada and America.⁶ It is often criticised⁷ as a mere 'license issuing authority' controlled almost entirely by the government, as opposed to an independent regulatory body. This is evidenced in that none of the members of its Board of Directors represent the independent broadcast sector that it regulates, and most of them are government officials.

Through both the primacy of Article 19, which restricts overt criticism of the military and judiciary, and the total control that the government exercises over appointments of its directors, PEMRA is structurally designed to be a guardian of the state's and not the public's interests. This is repeatedly evidenced in the fact that whenever

⁴ Muhammad Aftab Alam, *Broadcast Regulation in Pakistan: The Need for an Enabling Regulatory Regime*. The Institute of Social and Policy Sciences (I-SAPS) Islamabad, Pakistan (2009), p. 4

⁵ Adnan Rehmat, *Regulating content, not media*. The News, 11 August 2019

⁶ Daithi Mac Sithigh, 'It Is Hereby Declared': The Quiet Reform of Canadian Broadcasting Law (September 15, 2008).

⁷ Syeda Anna Sohail, *Ofcom, PEMRA and Mighty Media Conglomerates, Conclusions*. University of Twente, the Netherlands (2012), p. 82

there is a clash between the two, PEMRA policy and apparatus are used to protect and promote the former. However, while Article 19 only imposes 'reasonable' restrictions on free speech, which has been defined by the Supreme Court⁸ as 1) Speech causing 'tangible' harm to public policy (Islam, armed forces, State relations, etc.), the burden of proof is on the state to show this; 2) Restricting said speech is 'proportional' to the harm being caused. The state makes such an analysis, and the apex court, as the final authority on constitutional law, can enforce or invalidate state restrictions on free speech.

INDEPENDENCE AND AUTONOMY

At its inception, PEMRA was placed under the direct control of the Ministry of Information and Broadcasting (MoIB). This institutional relationship was changed because of criticism by media representatives who argued that "the Authority could become yet another instrument in the hands of the government to safeguard the dominant position of its state broadcaster Pakistan Television (PTV)."⁹ However, this decision was again reversed when it was once again put under the indirect control of MoIB in 2007.

Section 4 of the PEMRA Ordinance, 2002, gave the federal government power to issue binding policy directives to it. On this basis, in 2007 the government amended the Ordinance of 2002 and gave PEMRA the authority to ban "printing or broadcasting of anything which defamed or brought into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organs of the state."¹⁰ In addition, proviso 5 of Section 19,¹¹ also mandated it to draft a tough new 'Code of Conduct' that would supersede previous versions. A third amendment enacted on 3 November 2007 "notified at least seven new violations that were not part of the version of the law that existed before the state of emergency" and carried enhanced punishments and penalties. These amendments were in clear violation of established norms or 'inner morality of law'¹² which prohibits sudden and arbitrary changes in laws. Significantly, courts have not developed precedents against such amendments, nor struck down such amendments.

DOES CONTROL OF PEMRA MEAN CONTROL OF MEDIA NARRATIVES?

The main factors of a well-functioning media regulation include ensuring freedom, independence, and pluralism of speech.¹³ It is not possible to support these goals if the regulatory authority is itself not independent of government control. The federal MoIB secretary is also a PEMRA Board Member. All its members are appointed by the president of Pakistan, out of whom five "shall be eminent citizens" including two women from all provinces "on full time basis". The law does not state the duration of appointment and grounds for firing a member, except that if the member, apart from 'ex officio members',¹⁴ absents her or himself for three consecutive meetings of the Authority. However, media researchers have reported how the members are composed of ex-government officials:

The 12-member authority was dominated by bureaucrats and ex-police officers – a phenomenon that had been partly changed after the assumption of office by the present government.¹⁵

⁸ *Masroor Ahsan v. Ardeshir Cowasjee*, PLD 1998 SC 823; *Jameel Ahmed Malik v. Pakistan Ordnance Factories Board*, 2004 SCMR 164 at p. 178; *Sheikh Muhammad Rashid v. Majid Nizami*, Editor in Chief, *The Nation and Nawa e Waqat*, Lahore, PLD 2002 SC 514

⁹ Marco Mezzera and Safdar Sial, *Media and Governance in Pakistan: A controversial yet essential relationship*. IFP Democratisation And Transnational Justice Cluster, October 2010, p. 21

¹⁰ Adnan Rehmat (2008). *Murder and Mayhem: The Worst Year Ever for Pakistani Media*. Annual State of Pakistan Media Report. Islamabad: Intermedia, (2007-08), p. 5

¹¹ Provisio 5 of Section 19, PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act, 2007: "The Authority shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees"

¹² Edwin W. Tucker, *The Morality of Law*, by Lon L. Fuller. *Indiana Law Journal* (1965), Vol. 40: Iss 2, Article 5. Available at: <https://www.repository.law.indiana.edu/ilj/vol40/iss2/5>

¹³ *The Role of Media Regulatory Authorities*, Council of Europe

Available at: <https://www.coe.int/en/web/freedom-expression/media-regulatory-authorities>. Last Accessed on 17 May 2020

¹⁴ Secretaries of Information, Interior; Chairman, PTA; and, Chairman, Federal Board of Revenue

¹⁵ Network Contact: International Media Support, *Media in Pakistan: Between Radicalisation and Democratisation in an Unfolding Conflict* (2009), p. 18

This structure and procedure of appointment ensures that the policies that guide the implementation of the PEMRA law are dictated mostly by government-appointed public officials representing a state interested in thwarting accountability rather than, as the law itself articulates, promoting accountability. The licencees too are, in turn, dictated to by the policy guidelines from PEMRA thereby governing and controlling content produced by the licenced media.

SECTION 3: PRACTICE

This section examines who PEMRA really serves: the state, the citizens, or the media? This is illustrated by decisions and notifications issued in recent times by PEMRA to its licencee media.

PEMRA's historical experience in regulating the media is peculiar. It has revolved not around establishing industry standards and market development, but instead on overtly focusing on regulating content and thereby undercutting the mandate of independent journalism as being the guardian of public interest, safeguarding citizens' rights and holding the government and state accountable in terms of enforcement of fundamental rights.

PEMRA'S OVERT EMPHASIS ON CONTENT REGULATION AND AGGRESSIVE IMPOSITION

PEMRA is often criticised¹⁶ for disproportionately penalizing 'offenders' in the electronic media with imprisonment and/or huge monetary fines under Section 33 of the PEMRA (Amendment) Act, 2007, which holds:

Any broadcast media or distribution service operator or person who violates or abets the violations of the provisions of the Ordinance shall be guilty of an offence punishable with a fine which may extend to ten million rupees.

Despite PEMRA's immense ability and authority to curtail free speech, on many momentous occasions, the regulatory body has been used as a façade for direct interventions by the government to punish the speech of broadcasters. The case in point is Geo Network's allegations against the head of Inter-Services Intelligence (ISI), the premier spy agency and arm of the Pakistani Army, on the attempted murder of its TV anchor, Mr. Hamid Mir. Government institutions acted *ultra vires*¹⁷ of PEMRA's statutory provisions and issued a directive to it based on 'advice' from ISI to suspend Geo's licence for 15 days and fined it PKR. 10 million.¹⁸

When Geo was finally allowed to re-broadcast, it remained banned in Cantonment areas and was given unfavourable positions in the array of channels by private cable operators.¹⁹ Geo was technically sued by PEMRA under penal provisions of sedition and blasphemy laws, which are not part of its compendium of legislations, at various forums. This unprecedented mistreatment and arguably an outright breach of constitutional rights of a single broadcaster were made possible by the blatantly arbitrary, procedurally unfair, and substantively unconstitutional victimization by the state, before which PEMRA seemed helpless.

EXECUTIVE DISCRETION AND RESTRICTION ON SPEECH CONTENT

PEMRA enforces rules as well as regulates speech on a case-by-case basis. Rules "conserve public and private

¹⁶ Faiza Hassan, Muhammad Aftab Alam and Adnan Rehmat, *Coercive Censorship, Muted Dissent: Pakistan Descends into Silence*. Institute for Research, Advocacy and Development (IRADA) (2019), p. 18. Last Accessed on 8 June 2021

¹⁷ Ultra Vires means Beyond the powers and is a Latin phrase used in law to describe an act which requires legal authority but is done without it

¹⁸ PEMRA suspends Geo TV's licence for 15 days, imposes Rs10 million fine. *The Express Tribune*, 6 June 2014

¹⁹ State of Media in Pakistan, Key Trends of 2014 and Main Challenges in 2015. Freedom Network, ch. 1, p. 5. Available at: <https://www.fnpr.org/wp-content/uploads/2015/01/State-Of-Media-In-Pakistan-Key-Findings-of-2014-And-Challenges-in-2015-PDF.pdf>

resources” and increase predictability, but are prone to “permitting the harmful and incorrectly forbidding the beneficial”,²⁰ as often is the case with PEMRA regulations.²¹ Whereas, case-by-case analysis reduces miscarriage of justice, it is a thorn in the side of regulators as the Report commissioned by the Supreme Court of Pakistan notes that one of the negative facets of news media is the:

Inability of PEMRA to enforce discipline due to excessive proliferation of channels (satellite channels plus CD in-house channels of each cable TV Distributor) and due to stay orders from the High Courts.²²

In Pakistan, there is a general lack of *stare decisis*²³ and the body of applicable judicial precedent covering all the powers given to PEMRA to regulate licences and content. It is possible that many ‘cases’ and ‘controversies’ may not have reached the court, but where they have, courts have not ventured to give standards elaborating PEMRA’s habitual vague and sweeping statutory expression.

In 2016, PEMRA delegated powers to its Chairman to shut down any channel instantly upon violating the media Code of Conduct.²⁴ Moreover, applying broad powers given under the legislation to restrict content, PEMRA took “notice of exaggerated coverage of protests and stated that such attempts have created panic in society and can risk people’s life and limb”. Finding the channels guilty of “creating sensationalism through their analyses and tickers that could lead to fanning sectarianism, intolerance and deterioration of law-and-order situation”, it implicated such analyses to “destroy[ing] the National Action Plan at a time when Operation *Zarb-e-Azb* [was] going on”. PEMRA only issued a warning in this instance.²⁵

Continuing in the tradition of repressive media laws, since Pakistan’s inception, PEMRA has been further delegated the power to ban speech (through a programme or advertisement) of broadcast media and distribution service operation under Section 27 of the Act which provides:

is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquillity or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency...

Many of the restrictions, such as ‘ideology of Pakistan’ are inherently vague and are not properly elaborated upon by the judiciary when given a chance to set limits to broad powers under the Section,²⁶ and are prone to abuse by the unelected regulators. Further, PEMRA has power under Section 30 to unilaterally revoke or suspend the licence of broadcast media or distribution service “by an order in writing” if it fails to pay licence, renewal, etc. fees or if it “contravenes any provision of [the] Ordinance”.²⁷

SECTION 4: IMPACT AND ACCOUNTABILITY

This section considers the overall impact of PEMRA’s regulatory exercise – has electronic media in Pakistan become freer or more curbed in terms of freedom of expression and right to information because of PEMRA’s actual regulatory practices? How can PEMRA become more transparent and accountable for the gaps between its mandate and performance?

²⁰ Bruce M. Owen, Regulatory Reform: The Telecommunications Act of 1996 and the FCC Media Ownership Rules. Michigan State University-Detroit College of Law (2003), p. 6

²¹ For instance, PEMRA, an independent regulatory authority, can ban ‘printing or broadcasting of anything which defamed or brought into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organs of the state’

²² Supreme Court of Pakistan, Report of the Media Commission (2013), p. 79

²³ Editors Note. *Stare Decisis* is a legal doctrine that makes it obligatory for Courts to follow previous rulings by Courts higher in the hierarchy where the facts and circumstances of the case are the same or similar, unless they contravene the ordinary principles of justice or are distinguishable

²⁴ Kalbe Ali, Pemra chief empowered to take TV channels off air. DAWN News, 3 March 2016

²⁵ Ibid

²⁶ In *Dr. Shahid Masood v. Federation of Pakistan*, 2010 SCMR 1849, the Supreme Court of Pakistan held all the provisions of PEMRA to be legally binding on all the licensees and the sole reason for broadcasters right to transmit its programs without hindrance

²⁷ Islamabad High Court in *Independent Newspapers Corporation (Pvt.) Ltd v. PEMRA*, PLD 2014 Islamabad 7, criticized huge renewal fees of license, although it did not venture to strike down renewal clauses from the PEMRA legislations

At the start of 2020, Pakistan was already one of the world's largest digital societies²⁸ bracketing it among the top ten countries in the world in terms of internet users aspiring to greater global influence online. Indeed one of the key highlights of Prime Minister Imran Khan's participation in the World Economic Forum in Davos in January 2020 were his meetings with the chiefs of social media and digital giants Facebook, YouTube, and Telenor from whom he sought greater investments.

And yet within weeks, the future of Pakistan's burgeoning digital economy became clouded after the coming of two major initiatives in quick succession by the government, apparently to curb cybercrime and make the internet safer.

First, in January 2020, PEMRA unexpectedly announced²⁹ its intent to mandate Pakistanis producing visual online content, including TV channels streaming their broadcast online, to obtain licences at steep costs and international non-linear content distributors like Netflix to do likewise. The draft proposal was shared for a while by PEMRA on its website, but was later withdrawn.

Disagreeing, stakeholders were up in arms³⁰ in a spirited opposition to these attempts, alleging they aimed to curb online dissent and would end up stifling the digital economy just when it needed a fillip. Alarmed, journalists, media, civil society, human rights activists, and political parties reacted strongly and rejected the proposals. These stakeholders pointed out that PEMRA did not have legal jurisdiction to regulate the internet and that its real intent was to prevent the large number of critical journalists forced out of their mainstream media jobs from running their popular social media channels, especially on YouTube. This reaction was supported by the parliament and forced PEMRA to drop the initiative.

Second, in February 2020, the federal cabinet unexpectedly announced the Citizens Protection (Against Online Harm) Rules, 2020. These comprised a list of stringent new regulations requiring, among other things, all social media activities online and all international social media companies like YouTube, Facebook, and Twitter to set up offices in Pakistan, maintain local servers for all local social media activity and obliged them to disclose any information or data to investigation agencies when requested by the authorities. They would also be required to remove content deemed unlawful by the authorities. If platforms failed to comply with the rules, they risked being blocked and fined.

The public reaction as well as from social media companies was swift and one of outrage. They claimed that the proposed regulations were coercive, in contravention of international practice and national constitutional guarantees and would dramatically restrict online civil liberties, digital rights and unravel the digital economy. In a climb down, the government announced a halt to enforcement of the decision and agreed to broader consultations with the stakeholders about the fate of these regulations.³¹

These attempts can be seen as a continuation of the state's low threshold for criticism of its policies and actions, and its reliance on PEMRA as a key tool for manipulation of media and its landscape. In particular, the proposals were seen as attempts to indirectly materialize the otherwise rejected idea in 2019 of the PMRA, replacing PEMRA, floated by the Imran Khan government to serve as a single controlling authority for print, broadcast, and online media.

Through these regulations, PEMRA seemed to be proposing to acquire Prevention of Electronic Crimes Act, 2016 (PECA) like powers for itself. PECA has proven controversial³² for criminalizing dissent in a law that ostensibly seeks to combat cybercrime but may be considered as a thinly disguised framework to hinder freedom of expression online.

²⁸ Wikipedia, List of countries by number of Internet users. Available at: https://en.wikipedia.org/wiki/List_of_countries_by_number_of_Internet_users. Last accessed on 8 June 2021

²⁹ Laiba Omer, PEMRA Suggests that Licensing Fees Should Now be Mandatory for Digital Content Creators. Brandsynario, 31 January 2020

³⁰ Ikram Junaidi, Pemra proposal to regulate online content services rejected. DAWN News, 29 January 2020

³¹ Ramsha Jahangir, Implementation of online rules suspended, says PTA. DAWN News, 3 March 2020

³² Eesha Arshad Khan, The Prevention of Electronic Crimes Act 2016: An Analysis. LUMS Law Journal (2018), Vol. 5, p. 117

CORRUPTED PEMRA MANDATE: CURBING FREE SPEECH AND ACCESS TO INFORMATION

In terms of holding PEMRA accountable for its actions rather than its stated principles, in recent years the Authority, in clear defiance of its self-professed mandate on facilitating freedom of expression and access to information, has come to be more active on 'regulation or controlling the content' of its licensees rather than 'regulating the market' for them. This is evident from the fact that during 2019, PEMRA took several actions concerning the content of several TV channels.

According to a Pakistani civil liberties group, the Institute for Research, Advocacy and Development (IRADA) in its annual Pakistan Media Legal Review Report 2019 titled 'Coercive Censorship, Muted Dissent',³³ these actions included at least 20 show-cause notices, five advisories, five notices and nine directives issued to its licensees in 2019 alone. PEMRA also banned the airing of programmes on satellite TV channels and gagged individuals from appearing as guests in talk shows or anchoring the show altogether. Some of these actions, referenced from this report, included the following:

PEMRA ADVISORIES

2 January 2019: Advisory to TV channels to produce "sensible" morning shows, asking them "to keep in mind social, cultural, religious and ethical values of our society".

8 January 2019: Advisory for television channels to "observe decency in their non-news content" asking them "not to air dramas containing controversial themes, indecent clothing and gestures, controversial plots (involving infidelity and extramarital affairs, etc.) and unnecessary details of events".

June 2019: Advisory³⁴ to TV channels asking them not to "demean individuals representing various political parties and law enforcement agencies through caricatures, animated characters, photoshopped images and memes".

August 2019: Asked channels not to air "pre-recorded or live special programmes on *Eid-ul-Adha* as it would "hurt sentiments of not only our nation but also the Kashmiri brethren" and advised them against inviting any Indian guest.

30 October 2019: Advisory to all satellite TV channels to comply with a Lahore Accountability Court's order against broadcasting programmes "maligning the courts without any basis".

Reacting to this flurry of advisories, The Nation termed these notices as against freedom of thought and expression and asked PEMRA to be careful while using vague and ill-defined terms like 'culture' or 'national identity' for regulating media or curbing freedom of expression.

On 11 January 2019, the daily Dawn wrote that "the culture wars appear to be heating up once again as regulators and the superior judiciary wade awkwardly into the realm of media content monitoring and censorship." While questioning the justification of this series of advisories, Dawn stated that PEMRA's interventions "appear to be arbitrary and subject to the whims of the regulator rather than a consistent enforcement of rules and norms that have been rigorously and transparently evaluated." It termed these actions as a form of 'moral policing'.

³³ Ibid

³⁴ Kalbe Ali, Pemra advises channels not to 'demean individuals'. DAWN News, 14 June 2019

PEMRA DIRECTIVES

In addition to the Advisories, PEMRA issued several Directives to its licensees, which included, but were not limited to, the following:

1 January 2019: TV channels directed against coverage of cases pending or being heard in different courts and forbidding them from ‘unnecessary debates’ on sub judice cases.

26 April 2019: Channel 24 and its anchor Najam Sethi were directed to air an apology for allegedly propagating false news about the prime minister on the channel and directed to deposit a sum of PKR. 1 million fine within a week. Later in August, the channel succumbed to pressure and cancelled the ‘Najam Sethi Show’ altogether.

28 October 2019: TV anchors were barred from giving their ‘opinions’ during talk shows and asked to remain within the limits of their role as ‘moderators’. PEMRA claimed that the Islamabad High Court had taken cognisance of various speculative TV talk shows in its order dated 26 October in the case of *Shahbaz Sharif*.³⁵ A group of senior journalists, TV anchors and the Pakistan Federal Union of Journalists slammed the Directive. They also approached the Lahore High Court for annulment of the Directive. On 30 October 2019, the Court put PEMRA’s notification on hold and asked the Authority’s chairman to explain which court directive formed the basis for its harsh directive. On 16 November 2019, the PEMRA chairman tendered an unconditional apology in the Islamabad High Court and expressed regrets for issuing a ‘misleading’ advisory that banned the appearance of TV anchors on other talk shows.

PEMRA SHOW-CAUSE NOTICES

During 2019, PEMRA issued several show-cause notices to its various licensees. Some of those with a bearing on free speech were as follows:

15 April 2019: ARY News and Bol News aired news about a possible reshuffle in the federal cabinet. Alleging that the news was “fake and unsubstantiated” on 17 April 2019 PEMRA issued them show-cause notices, saying that “by airing such news, the channels were creating chaos among the public and maligning the government functionaries.” On 18 April 2019, the Prime Minister’s Office announced a major reshuffle in the federal cabinet.

1 June 2019: Show-cause notices were issued by PEMRA to 14 news channels for alleged violation of its earlier advisory prohibiting TV channels from discussing the reference filed against two senior judges with the Supreme Judicial Council.

7 July 2019: Show-cause notices were issued by PEMRA to 21 news channels for the “unedited live telecast” of a press conference by opposition leader Maryam Nawaz in Lahore wherein she claimed the judge of an accountability court had confessed he had been “pressured and blackmailed” to convict her father Nawaz Sharif in the Al-Azizia reference. In 2020, the judge was dismissed from service for having become compromised.

GAGGING CHANNELS, BANNING PROGRAMMES AND CENSORING INDIVIDUALS BY PEMRA

In 2019, PEMRA blocked the transmission of TV channels, banned numerous television anchors and their programmes and stopped individual experts from appearing on shows. Some prominent instances included the

³⁵ Editors Note. Malik Asad, IHC issues contempt notice to Pemra chairman. DAWN News, 30 October 2019

following:

1 January 2019: 30-day ban was imposed on the broadcast of Harf-i-Raaz, a programme of Orya Maqbool Jan on Neo TV, for inviting an alleged Taliban official to his programme on the phone.

29 January 2019: Anchor Dr Danish was prohibited from appearing on any TV channel for a month in any capacity, for allegedly levelling false allegations against some senior government officials on his show.

5 April 2019: All news channels were directed to invite retired army officers to current affairs talk shows as 'defence analysts' and to seek prior clearance from the Inter-Services Public Relations (ISPR), the army's media wing.

1 July 2019: An interview of former President and Pakistan People's Party Co-Chairman Asif Zardari conducted by journalist Hamid Mir was taken off within a few minutes after the broadcast went to air on Geo News TV channel. In a post-cabinet meeting presser on 9 July 2019, Shafqat Mahmood, the Federal Education Minister, said PEMRA would be asked to justify the airing of 'under-trial prisoners'.

8 July 2019: Transmission of Abtak TV, 24 News and Capital TV channels was suddenly suspended by cable distributors who claimed a PEMRA directive to do so.

11 July 2019: An interview of Pakistan Muslim League-N Vice President Maryam Nawaz was taken off-air just a few minutes after it started.

1 October 2019: The appearance of analyst Hafeez Ullah Niazi was banned on any channel for 30 days. Niazi challenged the gag order in the Lahore High Court, which suspended the order.

12 October 2019: TV channels instructed against giving coverage to press conferences of the opposition Jamiat Ulama-e-Islam chief Fazlur Rehman. The Peshawar High Court subsequently ruled PEMRA's order illegal.

26 October 2019: All TV channels were directed to refrain from inviting opposition leader and former senator Hafiz Hamdullah on their programmes, claiming he was not a Pakistani citizen.

FINES AND PENALTIES BY PEMRA

12 June 2019: A PKR. 1 million fine was imposed on News One TV channel for airing allegedly 'malicious' content against the National Accountability Bureau chairman on 23 May 2019.

7 August 2019: A PKR. 1 million fine was imposed on Geo News for airing a "highly seditious and scandalous" programme against the NAB chairman and "maligning state institutions".

These instances amply demonstrate that the overall impact of PEMRA's regulatory exercise has made electronic media in Pakistan less free and more curbed in terms of freedom of expression and right to information and that the gap between its mandate and performance has grown larger, particularly since 2018.

SECTION 5: REFORM:

This section seeks to offer some recommendations on reforming Pakistan's electronic media regulatory regime – the jurisdiction of PEMRA – to make the regulator more professional and aligned with its stated mission.

Considering the overt and covert nature of pressures imposed on PEMRA by the state and its own lack of

priorities in strengthening the independent broadcast sector, it is amply established that the Authority has failed not only in not meeting its own promises of supporting freedom of expression and access to information articulated in both the primary and subsequent versions of the law but also beyond into becoming an industry regulator of standards.

The legacy of the PEMRA law is that it has remained a first-generation legal instrument predating the sector it regulates by almost two decades, even as the convergence of technology and greater spread of digitalization has changed the sector fundamentally since the law was first instituted in 2002.

The imperatives that necessitate legal reforms to allow PEMRA to professionalize itself and remain relevant in a dynamic and plural society include:

- How can PEMRA move beyond being a media content regulator to an industry regulator to promote professional industry standards?
- How can PEMRA ensure freedom of expression and access to information instead of being an instrument of State censorship?
- How can PEMRA support diversity and pluralism in media narratives instead of narrowly defined state dictums?
- How can PEMRA facilitate public interest journalism grounded in human rights advocacy and accountability, instead of forcing private broadcasters to become spokespersons for state priorities?

RECOMMENDATIONS

Here are some critical challenges and their attendant reforms that the PEMRA law can engender through a critical review of its current version with reference to its original mandate taken in direct consultation with the relevant stakeholders:

Challenge 1: PEMRA lacks the independence required under international best practices of law of bodies which regulate the media in terms of both its members and its organizational structure.

Reform: The structure and membership of PEMRA should be fundamentally amended to make it functionally independent of the executive (with the representation of key stakeholders and professionals and gender and minority group representation), including, among other things, by putting it under parliamentary oversight.

Challenge 2: PEMRA's failure, as the regulator, to take advantage of opportunities offered by the accelerating process of digital transition for the industry.

Reform: The promised but aborted process of switching over to digital broadcasting should be restored with the support of an appropriate legal and policy environment, and the airwaves should be opened to private broadcasters, including local communities, not just commercial entities.

Challenge 3: Excessive restrictions on the media content of what may be broadcast, along with an unduly heavy-handed application of these rules.

Reform: The rules on content should be reviewed and amended to bring them in sync with international standards, including by removing vague and intrusive restrictions. The possibility of a co-regulatory system for content-related complaints should be explored.

Challenge 4: An absence of appropriate rules to promote media diversity, including the licensing of community broadcasting, leads to a lack of community-owned broadcast media.

Reform: The rules regarding licensing should be reviewed to ensure that appropriate safeguards are included to

promote media diversity. As part of this, the rules should provide for a system for licensing community broadcasters, in particular community radios, and ensure an equitable reservation of frequency for this broadcasting sector.



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SPACE ONLINE: IS THE INTERNET FOR WOMEN?



Shmyla Khan

ABSTRACT

Acknowledging the space granted by social media to women's dissenting voices, this essay uses a feminist perspective to examine the constitutional restrictions on freedom of speech and expression in Pakistani media. Taking account of patriarchal social arrangements and mainstream discourse that limits women's access to resources, voice and agency, it focuses on the Prevention of Electronic Crimes Act, 2016 (PECA), to shed light on how online spaces are regulated and restricted for women who transgress spatial and discursive boundaries. The essay addresses the gender bias in censorship, the state's regulatory powers and the criminalization of non-conforming women, even as it highlights the emergence of social media as a site of resistance. Illustrating her argument with reference to the Aurat March and the Me Too Movement, the writer shows that while patriarchy is deeply attached to women's bodies and the internet harbours misogynistic networks, by allowing individuals to bypass physical constraints, social media is also a place of possibilities that has generated conversations whose momentum will not be stopped by lawsuits and gag orders.

BACKGROUND

A lawyer and Director of Policy at the Digital Rights Foundation, Shmyla Khan teaches Privacy and Digital Transformation at the Lahore University of Management Sciences (LUMS). Prior to this, she was a faculty member of the Liberal Arts Department at the Beaconhouse National University (BNU), where she taught courses in "Technologies and Digital Transformations, Law and Society, and Gender and Media". Her interests include technology, gender, law and interdisciplinary research. She holds an LL.B from LUMS and LLM from the University of Michigan Law School.

INTRODUCTION

Freedom of expression, while a fundamental human right recognized in international human rights law and constitutions across the world, is not experienced uniformly. The legal freedoms accorded by Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) states that “every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press” have often not translated into the lived experience of citizens, particularly journalists, activists, and critical voices within the country.

The advent of the internet in many ways revolutionized the way we communicate, produce and consume content. The top-down mode of mass communication in electronic and print media was disrupted through the decentralized, networked method seen in digital space. In its simplest formulation, the architecture of the internet meant that anyone with a device and a connection could produce content and access information.

This initial optimism of the internet has been largely tampered with by the numerous challenges digital technologies have presented in terms of the privatization¹ and commercialization of online spaces through tech giants,² increased control of online expression by nation states³ and the proliferation of harmful speech, misinformation, and disinformation.⁴ These challenges have been felt acutely in Pakistan as well, where freedom of online spaces is increasingly under attack. According to the annual ‘Freedom on the Net’ by Freedom House, Pakistan has consistently ranked as ‘Not Free’.⁵ The state has continuously made legal and infrastructural interventions to wrest control over online content through enhanced powers to remove and block ‘objectionable’ content,⁶ penalize speech protected under international human rights regimes and invest in deep-packet

¹ Victoria D. Baranetsky, *Social Media and the Internet: A Story of Privatization*. Pace Law Review (2014). Available at: <https://digitalcommons.pace.edu/plr/vol35/iss1/11>

² Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, PublicAffairs (2019)

³ Jia Lu and Xinchuan Liu, *The Nation-State in the Digital Age: A Contextual Analysis in 33 Countries*, International Journal of Communication (2018), Vol. 12, p. 110 to 130

⁴ Matthew Hindman and Vlad Barash, *Disinformation, ‘Fake News’ and Influence Campaigns on Twitter*. Knight Foundation, 2018

⁵ Freedom House, *Freedom on the Net (2020)*. Available at: <https://freedomhouse.org/country/pakistan/freedom-net/2020>

⁶ Sadaf Khan, Zoya Rehman & Salwa Rana, *The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020 - A rights focused legal analysis*. Media Matters for Democracy, p. 3: “The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020 (hereinafter referred to as the Rules) have been drafted under Section 37 of Prevention of Electronic Crimes Act, 2016 (referred to as PECA from hereafter). The rules were notified in October 2020, and published in the Official Gazette in November.” Available at: <https://digitalrightsmonitor.pk/wp-content/uploads/2021/01/Social-Media-Rules-2020-Legal-Analysis.pdf>. Also, see Ramsha Jahangir, *Tech giants threaten to leave Pakistan if social media rules stay*. DAWN News, 20 November 2020. These Rules have been opposed by civil society actors as well as social media companies who see them as an infringement on freedom of expression and consistent with international human rights practices

inspection for monitoring of internet content.⁷

The control of online spaces by state and private actors has had a detrimental impact on freedom of expression online. However, within the generalized discourse of free speech, the experience of women and other marginalized communities is often not captured. Access to free speech, both online and offline, depends on the positionality of the legal subject, based on the person's identity and place in society. Ironically, as we talk about the crackdown on online free speech, there is remarkable tolerance for misogynistic hate speech directed towards marginalized groups,⁸ a fact conceded by social media companies themselves.⁹ The overemphasis on traditionally 'political' speech concerns often misses the dynamics of speech that harms particular identities. Dominant discourse¹⁰ and jurisprudence regarding free speech, particularly stemming from the United States, often terms this form of harmful speech as an inevitable by-product of freedom of expression in the 'marketplace of ideas', and as collateral damage for a larger good.¹¹

This essay seeks to approach online freedom of expression from the perspective of feminist critiques, placing the experiences of women and gender minorities at the centre of analysis on freedom of expression in online spaces. The first part of this essay will examine the laws regulating online spaces and their efficacy in ensuring freedom of expression for women and gender minorities; this will be done through an analysis of legislation and case law. Secondly, an analysis of free speech jurisprudence and philosophy will be done through the lens of feminist critique. Lastly, through analysis of existing literature, accounts and case studies, this essay will elucidate the ways in which online spaces are also sites of resistance and counter-speech for women and gender minorities.

THE LEGAL LANDSCAPE FOR FREE SPEECH IN PAKISTAN

Article 19 of the Constitution, which provides for the freedom of expression and right to information, is applicable to online spaces. The courts of Pakistan have also applied fundamental human rights to emerging technologies and online spaces. For instance, the Islamabad High Court in *CM Pak Limited v. Federation of Pakistan* held that access to network services cannot be denied on the basis of law and order concerns, and such suspensions result in the denial of constitutional fundamental rights.¹² In the case of *Awami Workers Party v. PTA through its Chairman, etc*, the Islamabad High Court held that blocking the Awami Workers Party's (AWP) website right before the 2018 elections was a flagrant violation of the fundamental rights guaranteed under the Constitution. It was decided that the Pakistan Telecommunication Authority (PTA) had acted without due process and was ordered to frame rules under Section 37 to prescribe its procedure for blocking content on the internet.¹³ Additionally, in wake of the suspension of the multiplayer game PUBG, it was held in *Proxima Beta Pvt. Ltd. v. Federation of Pakistan, through the Secretary, Ministry of Information Technology and Telecommunication and others* that the PTA failed to pass a formal and reasoned order containing its decision regarding banning the application, thus declaring the ban on the game as illegal.¹⁴

⁷ Monitoring Desk, Govt working with controversial firm to monitor internet traffic: report. DAWN News, 25 October 2019

⁸ Amnesty International, Toxic Twitter - A Toxic Place for Women, 2018. Available at: <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>. Jahanzaib Haque and Omer Bashir, Banned outfits in Pakistan operate openly on Facebook. DAWN News, 26 May 2017

⁹ Sheryl Sandberg, Making Progress on Civil Rights - But Still a Long Way to Go. META, 8 July 2020. Available at: <https://about.fb.com/news/2020/07/civil-rights-audit-report/>

¹⁰ John Stuart Mill, *On Liberty*, Dover Publications (2002)

¹¹ Michel Rosenfeld, Hate Speech in Constitutional Jurisprudence: A Comparative Analysis. 24 *Cardozo Law Review* 1523 (2003). Available at: <https://larc.cardozo.yu.edu/faculty-articles/148>

¹² *CM Pak Limited v. Pakistan Telecommunication Authority*, PLD 2018 Islamabad 243

¹³ *Awami Worker Party v. PTA etc*, Writ Petition No. 634 of 2019. Islamabad High Court, Order dated 12.09.2019. Available at: https://mis.ihc.gov.pk/frmRdJgmnt?cseNo=Writ%20Petition-634-2019%20%7C%20Citation%20Awaited&cseTle=Awami%20Worker%20Party%20VS%20PTA%20etc&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah&jgmnt=/attachments/judgements/99634/1/99634_637575468311420604.pdf

¹⁴ *M/S Proxima Beta Pvt Ltd v. FOP etc*, Writ Petition No. 1788 of 2020. Islamabad High Court, Order dated 14.07.2020. Available at: https://mis.ihc.gov.pk/frmRdJgmnt?cseNo=Writ%20Petition-1788-2020%20%7C%20Citation%20Awaited&cseTle=M/S%20Proxima%20Beta%20Pvt%20Ltd%20VS%20FOP%20etc&jgs=Honourable%20Mr.%20Justice%20Aamer%20Farooq&jgmnt=/attachments/judgements/W.P-1788-2020_637312044522790192.pdf

Furthermore, other fundamental rights, such as the right to privacy under Article 14 of the Constitution,¹⁵ have been held to be applicable to technological communications, and fall under the domain of the constitutional right to privacy. Similarly, in the case of *Benazir Bhutto v. President of Pakistan*, the Apex Court held that:

The inviolability of privacy is directly linked with the dignity of man. If a man is to preserve his dignity, if he is to live with honour and reputation, his privacy whether in home or outside the home has to be saved from invasion and protected from illegal intrusion. The right conferred under Article 14 is not to any premises home or office, but to the person, the man/woman wherever he/she may be.¹⁶

In his dissenting note in the *Justice Qazi Faez Isa v. The President of Pakistan & others*, Justice Syed Mansoor Ali Shah discussed the right to privacy “affirms the agency and autonomy of the individual” and “[u]ndue surveillance can lead to a chilling effect on those critical of State institutions and societal norms”.¹⁷

Article 19-A of the Constitution lays down the right to information: “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”¹⁸ The right to information was added as a fundamental right with the Eighteenth Amendment in 2010. Read together, these fundamental freedoms, enshrined in the Constitution, guarantee that every citizen has the right to express themselves freely, without unnecessary interference from the state.

While these developments in the digital rights sphere have been encouraging, they have been stymied by restrictive laws and interpretations. Freedom of expression in any society is not absolute, Article 19 of the Constitution of Pakistan contains a litany of caveats:

[S]ubject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.¹⁹

This freedom of expression does not translate into the actual experiences of many citizens both at a purely legal level – where laws are actively used to silence dissent and other forms of speech – and at a societal level, where structures of capitalism and patriarchy exist to ensure that speech becomes a privilege that determines ‘who gets to speak’. This essay will be exploring both these aspects, contextualizing what speech means beyond abstract rights and laws, through lived experiences of women and gender minorities and through analysing case law to access ‘law in action’.²⁰

These constitutional limits on freedom of expression have been reproduced in Section 37 which empowers the Pakistan Telecommunications Authority (PTA) to control the blocking and removal of content from the internet:

37. Unlawful on-line content:

(1) The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an (sic) 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 or 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 subsection (1).

(3) Until such rules are prescribed under sub-section (2), the Authority shall exercise its powers under this Act or any other law for the time being in force in accordance with the directions issued by the Federal Government not inconsistent with the provisions of this Act.

¹⁵ Article 14, Constitution of Pakistan

¹⁶ *Benazir Bhutto v. President of Pakistan*, PLD 1998 SC 388

¹⁷ See separate note by Justice Mansoor Ali Shah in *Justice Qazi Faez Isa v. The President of Pakistan*, PLD 2021 SC 1

¹⁸ Article 19-A, Constitution of Pakistan

¹⁹ Article 19, Constitution of Pakistan

²⁰ Karl N. Llewellyn, *Jurisprudence: Realism in Theory and Practice*. The University of Chicago Press (1962). Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*. University of Chicago Press (1998)

- (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.
- (5) An appeal against the decision of the Authority in review shall lie before the High Court within thirty days of the order of the Authority in review.²¹

The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules, 2020 have widened the ambit of the PTA's powers to include Sections 292 to 298, 204 and 509 of the Pakistan Penal Code, 1860 (PPC). Furthermore the "integrity, security and defence of Pakistan" has been expanded to include any information that "harms the reputation of Federal or Provincial Government or any person holding public office".²² This expansion goes beyond the constitutional language used in Article 19, essentially restricting on-line free expression beyond any other medium if these Rules are left unchallenged.

Apart from the powers accorded under Section 37, PECA provides for offences committed through online information systems that can be investigated and prosecuted by the Federal Investigative Agency (FIA) cyber-crime wing as designated under Section 29 of PECA. These offences include Cyber terrorism (Section 10), Hate speech (Section 11), Unauthorized use of identity information (Section 16), Offence against dignity of a natural person (Section 20), Offence against modesty of a natural person (Section 21), Child Pornography (Section 22) and Cyber stalking (Section 24). While Sections 21,²³ 22²⁴ and 24²⁵ are designed to protect acts and speech directed at 'natural persons', particularly women and children, enforcement of these laws have their own sets of challenges in terms of lack of gender sensitivity of the FIA, undue delays in the investigation process and lack of institutional resources to tackle online harassment at the scale on which it occurs in Pakistan.²⁶

Furthermore, provisions of PECA have been routinely weaponized to silence and intimidate women who are using online spaces to talk about their experiences of violence and harassment. Section 20,²⁷ which criminalizes defamation in online spaces, resulted in First Information Reports (FIRs) against multiple women, girls, and allies speaking out under the #MeToo hashtag, as well as, journalists and activists who are critical of politicians and state institutions.²⁸ While women often turn to online platforms to share their stories to bypass patriarchal legal systems and processes, the law of criminal defamation seeks to make them accountable on the very legal structures that failed them.

Online freedom of expression is a nascent and developing field of jurisprudence, and the trend towards limits

²¹ Section 37, Prevention of Electronic Crimes Act, 2016

²² Rule 4(1)(ii) of The Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020

²³ Section 21, Prevention of Electronic Crimes Act, 2016:

"Whoever intentionally and publicly exhibits or displays or transmits any information which, -

- (a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or (b) includes a photograph or a video of a natural person in sexually explicit conduct; or (c) intimidates a natural person with at sexual act, or any sexually explicit image or video of a natural person; or (d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail"

²⁴ Section 22, Prevention of Electronic Crimes Act, 2016:

"(1) Whoever intentionally produces, offers or makes available, distributes or transmits through an information system or procures for himself or for another person or without law justification possesses material in an information system, that visually depicts--

- (a) a minor engaged in sexually explicit conduct;
- (b) a person appearing to be a minor engaged in sexually explicit conduct; or
- (c) realistic images representing a minor engaged in sexually explicit conduct; or
- (d) discloses the identity of the minor

shall be punished with imprisonment for a term which may extend for seven years, or with fine which may extend to five million rupees or with both"

²⁵ Section 24, Prevention of Electronic Crimes Act, 2016:

"(1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the internet, website, electronic mail or any other similar means of communication to: (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;

- (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person"

²⁶ Digital Rights Foundation, Cyber Harassment Helpline Report 2019. Available at: <https://digitalrightsfoundation.pk/wp-content/uploads/2019/02/Policy-Brief-Cyber-Harassment-Helpline.pdf>

²⁷ Section 20, Prevention of Electronic Crimes Act, 2016:

"Offences against dignity of a natural person:

- (1) Who ever 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"

²⁸ Summons, Enquiries, FIRs, Detentions and Arrests in connection with Social Media Posts. Bolo Bhi, 16 April 2019. Available at: <https://bolobhi.org/timeline-summons-enquiries-firs-detentions-and-arrests-in-connection-with-social-media-posts-2/> <https://bolobhi.org/timeline-summons-enquiries-firs-detentions-and-arrests-in-connection-with-social-media-posts-2/>.

and curbs on free speech is increasingly becoming the norm. By October 2020 the PTA banned several applications and websites on grounds of indecency and vulgarity.²⁹ Legislation, passed under the garb of protecting women, is being weaponized as a tool of silencing. While ‘national security’ is often brandished as a pretext for limiting free speech, the brunt of censorship in Pakistan has been grounded in tools of control and policing of expression, which almost inevitably gets framed in gendered terms such as ‘indecency’ and ‘obscenity’. Jurisprudence often fails to fully define the contours of these terms, ensuring that they are used by the state and society to police women’s speech, bodies, and other forms of expression. Courts have frequently abdicated the thorny question of what constitutes indecency or obscenity, relying on the judgement of regulatory bodies to adjudicate the matter. In the case lodged before the Lahore High Court regarding the Aurat March, the court held that while there were limits on the right to expression and assembly, the organizer guidelines were enough to ensure that any ‘indecent speech’ does not take place.³⁰ While the march was allowed to take place, the court did not go as far as to reject the obscenity objection raised by the petitioner.³¹ In *Independent Media Corporation (Pvt) Ltd. v. Pakistan Electronic Media Regulatory Authority*, the High Court of Sindh refrained from going into the merits of the questions raised and held that whether content of the broadcast was ‘obscenity’, ‘indecency’, or ‘vulgarity’ was not the job of the High Court, as the Council of Complaints empowered under Section 26 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (PEMRA Ordinance) was best suited to make that determination.³² The Lahore High Court in 1960, however, tackled the question of definition in *Yaqub Beg v. The State* and held that despite several witnesses (which included doctors, professors, students and exponents of the arts) produced by the petitioner, the opinion of the petitioner or the artist is immaterial and that the test was the “reaction of a normal man and by [the] prevailing normal standards and conditions of society.”³³ The court determined that the books being sold by the petitioner at this bookshop were obscene and was particularly swayed by the fact that except for three photographs, the majority of depictions were of the nude female body. It was held that “the beauty of the female form could still be achieved if the breasts and private parts were covered.”³⁴

The case law discussed above demonstrates that restraints on free speech are often articulated in gendered and paternalistic terms, to police the female body and frequently under the garb of ‘protecting’ women from obscenity. Freedom of expression is couched in the language of generalities, human rights and citizenship and the fact that neither free speech nor human rights or citizenship are experienced uniformly is often obscured. The generalized right to free speech, evidently, is supposed to protect us all from the excesses of the state, however, the identity of the person ‘speaking’ often determines their access to these rights, undercut by factors such as gender, class, race, ethnicity, sexuality, and disability. This intersectional approach will be taken in this essay, taking gender and gender identity as the primary mode of analysis.

WOMEN AND THE INTERNET

As mentioned above, the emergence of social media has ensured that anyone with an electronic device and internet connection can create content on an online platform. Many commentators have pointed out that this has democratized speech, decentering previous monopolies over free speech.³⁵ In a country like Pakistan, the claim of democratization is contested given the gaping digital divide along lines of class, geographical location and gender.

Pakistan has one of the largest digital gender divides in the world, where mobile ownership is undercut by a woman’s position within her family and unequal access to finances. According to the GSMA *Mobile Gender Gap Report 2020*, Pakistan had the widest mobile ownership gender gap as women were 38 per cent less likely than

²⁹ The Newspaper’s Staff Reporter, Court seeks PTA explanation over TikTok ban. DAWN News, 16 October 2020

³⁰ *Munir Ahmad v. Federation of Pakistan*, PLD 2020 LAH 528

³¹ Ibid

³² *Independent Media Corporation (Pvt) Ltd. v. Pakistan Electronic Media Regulatory Authority*, PLD 2017 KAR 209

³³ *Yaqub Beg v. The State*, PLD 1960 LAH 172

³⁴ Ibid

³⁵ Emily B. Laidlaw, *Regulating Speech in Cyberspace: Gatekeepers, Human Rights and Corporate Responsibility*, Cambridge University Press (2015)

men to own a mobile phone and 49 per cent less likely to use mobile internet.³⁶ 35 per cent of women who do not own a mobile phone in Pakistan report that disapproval from their family is the top barrier to owning one.³⁷ Furthermore, access is also an issue of class, as urban, upper to upper-middle class women are disproportionately represented in online platforms and conversations. In fact, familial disapproval undercuts mobile phone usage even when access is somehow gained with the threat of violence and surveillance looming over women as they access these technologies.³⁸ With online spaces emerging as spaces of political and social discourse, social media platforms such as Twitter and Facebook have become highly contested political spaces in the last decade and women's unequal access to these spaces is emerging as a free speech issue. Online spaces in their gendered construction tend to mirror the dynamics of offline spaces, where men are in the majority.

The gender digital divide not only means that there are fewer women on online platforms, but also that women from lower socio-economic backgrounds are less likely to be on these platforms than those from urban, educated and upper-class women. As conversations on gender and the feminist movement shift to online spaces, these exclusions have implications for who gets to represent women in these spaces.³⁹

Feminist approaches to technology have both pointed to the role of technology in 'reproducing patriarchy' while at the same time offering "possibilities for de-stabilising conventional gender differences."⁴⁰ These visions of technology that often play out in our understanding of the internet's potential to uphold freedom of expression are riddled with contradictions of unbridled optimism and recognition of social media spaces as products of social forces. Interventions by radical and socialist feminists have uncovered the class and gender power relations within technoscience, many of which are applicable to the internet.⁴¹

Nevertheless, despite these critiques, the early embrace of digital technologies by cyber-feminists was grounded in the non-corporal nature of the internet, where constraints of gender, so often embedded within the body, could be transcended.⁴² In her pivotal works, Donna Haraway introduces the concept of the 'cyborg' that holds the potential for imagining a world beyond boundaries set by gender.⁴³ While not discounting the materiality of technology and the social relations it is embedded in, Haraway does allow herself to be swayed by the possibilities that emerging technologies could hold and the ways in which technology could be harnessed to challenge patriarchal constraints. Within this political and social milieu, online spaces in some ways have opened up new avenues for self-expression and speech (explored in more detail in the third part of the essay).

One of the major obstacles raised in the context of women's use of the internet is online violence and harassment. The issue of online violence is often framed as a gender-based violence issue, which it undoubtedly is because women and gender minorities are disproportionately targeted. However, within this conceptual framing, women's freedom of expression is left largely unexamined. This reframing repositions gendered abuse and violence within the purview of civic freedoms and free speech, adding an additional dimension to online violence discourse but more importantly complicating the debate on the right to freedom of expression, both online and offline.

Gendered online violence is both a form of individual harassment and a larger structural problem. Sarah Banet-Weiser and Kate Miltner refer to "hostility towards women in online environments" as "networked misogyny."⁴⁴ Banet and Miltner take a holistic approach to online violence, neither restricting it to legal issues nor to technological factors, but diagnose the structure and logic of misogyny as the central reason for the pervasive-

³⁶ GSMA, Connected Women - The Mobile Gender Gap Report 2020. Available at: <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/05/GSMA-The-Mobile-Gender-Gap-Report-2020.pdf>

³⁷ Ibid

³⁸ Shahab-ud-Din, Woman killed in Swat for 'using a mobile phone'. Samaa News, 4 November 2019

³⁹ Zoya Rehman, Online Feminist Resistance in Pakistan, *Sur International Journal on Human Rights* (2017), English ed.; São Paulo Vol. 14, Iss. 26, p. 151-159

⁴⁰ Judy Wajcman, Feminist Theories of Technology. *Cambridge Journal of Economics* (2010), Vol. 34, No. 1, p. 143-52. Available at: <https://www.jstor.org/stable/24232027>

⁴¹ Ibid, p. 146-7

⁴² Ibid

⁴³ Donna J. Haraway, *A Cyborg Manifesto: Science, technology, and Socialist-Feminism in the Late Twentieth Century*, Routledge (1991), p.149-181

⁴⁴ Sarah Banet-Weiser & Kate M. Miltner, #MasculinitySoFragile: culture, structure, and networked misogyny. *Feminist Media Studies* (2015), p. 171-174. Available at: <https://www.tandfonline.com/doi/abs/10.1080/14680777.2016.1120490?journalCode=rms20>

ness of online violence and hostility against women. This networked misogyny is constantly used to not only attack women but to control and discipline their expression, ranging from their politics to the performance of gender identities.⁴⁵

This dynamic can be seen playing out in the Pakistani context where women journalists, who have to maintain a public presence on social media platforms as part of their job, are regularly targeted specifically on the basis of their gender.⁴⁶ As per research by the Digital Rights Foundation, 78 per cent of the respondents (58 per cent of which were female) said that they faced online abuse, harassment, and threats of physical violence online.⁴⁷ In another report it was posited that the nature of attacks faced by women journalists is gendered, and these are often focused on their personal lives and appearance.⁴⁸ In a similar study of female politicians in Pakistan during the 2018 elections, it was found that women politicians and candidates were more likely to be subjected to gendered slurs and harassment as compared to male politicians who were attacked on the basis of their politics.⁴⁹ The study conducted a sentiment analysis of Facebook comments directed towards politicians on their official pages, and it was found that when men were attacked words such as ‘corrupt’ were used to attack them, whereas with women the attacks weaponized their gender. Furthermore, when praising the politician’s words like ‘leader’ were employed, while for women it was comments about their appearance. The UN Special Rapporteur on Violence against Women (SRVAW) stated in her report to the UN General Assembly in October 2018:

“Men and women can both experience violence in politics. Such acts of violence against women, however, target them because of their gender and take gender-based forms, such as sexist threats or sexual harassment and violence. Their aim is to discourage women from being politically active and exercising their human rights and to influence, restrict or prevent the political participation of individual women and women as a group.

Such violence, including in and beyond elections, consists of any act of gender-based violence, or threat of such acts, that results in, or is likely to result in, physical, sexual or psychological harm or suffering and is directed against a woman in politics because she is a woman, or affects women disproportionately.”⁵⁰

Salter, in his analysis of technological spaces as Counterpublics examines whether social media harbours the same ‘masculinist bias’ as the mass media. While he holds great optimism in the democratizing impact of online spaces that allow for communication of ‘many to many’ as opposed to connecting ‘one to many’, the analysis glosses over some structural inequalities embedded within the internet. Whilst the article, published in 2013, precedes the #MeToo movement, it deals with case studies of women using the internet to call out their sexual assault experiences.⁵¹ The masculinist bias found in mass or traditional media can also be seen in the design, ownership, and governance of online spaces. Many feminist and digital rights activists have pointed out that social media platforms harbour a bias against women and marginalized communities in how these platforms are structured.⁵² Many women have critiqued the Community Guidelines of these social media platforms as they fail to take account of the structural imbalances that exist.⁵³ Women often report that their accounts are suspended for fighting back against gendered hate speech.⁵⁴

⁴⁵ Amanda Rossie, Moving beyond ‘Am I pretty or ugly?’: Disciplining girls through YouTube feedback. *Journal of Media & Cultural Studies* (2015), Vol. 29, Iss. 2, p. 230-240. Available at: <https://www.tandfonline.com/doi/abs/10.1080/10304312.2015.1022953>

⁴⁶ The Newspaper’s Staff Reporter, Parliamentary body hears complaints of women journalists. *DAWN News*, 19 August 2020

⁴⁷ Digital Rights Foundation Launched Report: Digital (in)Security of Journalists in Pakistan. Digital Rights Foundation, 2 January 2018. Available at: <https://digitalrightsfoundation.pk/digital-rights-foundation-launched-report-digital-insecurity-of-journalists-in-pakistan/>

⁴⁸ Digital Rights Foundation, Measuring Pakistani Women’s Experiences of Online Violence: A Quantitative Research Study on Online Gender-Based Harassment in Pakistan, 2017. Available at: <https://digitalrightsfoundation.pk/wp-content/uploads/2017/05/Hamara-Internet-Online-Harassment-Report.pdf>

⁴⁹ Digital Rights Foundation, Online Participation of Female Politicians: In Pakistan’s General Elections, 2018. Available at: <https://digitalrightsfoundation.pk/wp-content/uploads/2019/01/Booklet-Elections-Web-low.pdf>

⁵⁰ Dubravka Šimonović, Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective. United Nations General Assembly, Human Rights Council, 2018. Available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/301

⁵¹ Michael Salter, Justice and revenge in online counter-publics: Emerging responses to sexual violence in the age of social media. *Crime, Media, Culture: An International Journal* (2013), Vol. 9, Iss. 3, p. 225-242. Available at: <https://journals.sagepub.com/doi/abs/10.1177/1741659013493918>

⁵² Varghese K. George, Campaign against Twitter by Dalit activists. *The Hindu*, 5 November 2019

⁵³ Ysabel Gerrard & Helan Thornham, Content moderation: Social media’s sexist assemblages. *New Media & Society* (2020), Vol. 22, Iss. 7, p. 1266-1286. Available at: <https://journals.sagepub.com/doi/10.1177/1461444820912540>

⁵⁴ Samuel Gibbs, Facebook bans women for posting ‘men are scum’ after harassment scandals. *The Guardian*, 5 December 2017. Casey Newton, Why you can’t say ‘men are trash’ on Facebook. *The Verge*, 3 October 2019

Salter's optimism is particularly inadequate in the context of Pakistan, where the online legal regime actively works towards ensuring the counterpublics where women can talk about instances of sexual assault are fore-closed. As mentioned above, Section 20 of PECA has emerged as a particularly hostile legal instrument for silencing victims and survivors of sexual assault who speak up online. Even with Salter's ultimate analysis, there is a hierarchy of which women get to access the networks of privilege online and 'perfect victimhood'.⁵⁵

Gender-based online violence and harassment can include offences such as sexually explicit material termed by Nicola Henry and Anastasia Powell as "technology-facilitated sexual violence and harassment",⁵⁶ as well as, speech-based harassment targeting the gender or sexuality of a particular individual or group of persons. As scholars such as Danielle Citron have argued, online harm and violence are often trivialized because of the perceived lack of 'real life' harm accrued to individuals⁵⁷ or lack of embodied victims and perpetrators.⁵⁸ However, the impact of technology-facilitated violence is just as 'real':

Harms in the so-called "virtual" world can have real effects, both bodily and psychical, and are not tangential, but increasingly central, to how individuals experience and live their everyday lives. The harms experienced by women in the socio-spatial world may have at least as much impact on a person as traditional harms occurring against the physical body.⁵⁹

While it is not necessary for online violence to be embodied in order to be considered serious or a harm, the convergence between online and offline violence often exists. In the Pakistani context, this often manifests in honour killings or the use of technology-enabled surveillance as a tool of control in cases of domestic violence. The first reported case of this nature was the 2011 Kohistan killings in which three women were killed after a video emerged of them singing and clapping.⁶⁰ Qandeel Baloch was also murdered by her brother for bringing perceived 'dishonour' on the family through her social media videos.⁶¹ In 2020, two girls in Waziristan were murdered after a video of them with a man surfaced on social media.⁶² Further still, cases of online blackmailing and harassment have also translated into victims taking their own lives due to a failure of the system to address their complaints, the mental health fallout of the harassment and familial/societal pressures.⁶³ The flow of online abuse and harassment can also stem from offline violence to the online sphere, most common in cases where instances of sexual assault are captured on camera and used to either blackmail or disseminated in online spaces which has the impact of re-traumatizing victims and survivors.⁶⁴

Expertly by Citron in her essay 'Civil Rights in Our Information Age', given that women in online spaces are targeted on the basis of their gender, the impact is collective.⁶⁵ She posits the need for a civil rights approach to online violence against women. This has implications for a gendered approach to freedom of expression as it seeks to invert the discussion by focusing on the speech of women and marginalized communities targeted by certain forms of speech as opposed to the fixation on the limitations that will presumably be placed on expression if we allow these harms to become part of jurisprudence.

⁵⁵ Ibid, p. 225

⁵⁶ Nicola Henry & Anastasia Powell, Embodied Harms: Gender, Shame, and Technology-Facilitated Sexual Violence. *Violence Against Women* (2015), Vol. 21, Iss. 6, p. 758-779. Available at: <https://journals.sagepub.com/doi/10.1177/1077801215576581>

⁵⁷ Danielle Keats Citron, *Civil Rights in the Information Age: The Offensive Internet: Speech, Privacy and Reputation* (Martha Nussbaum & Saul Levmore, eds.). Harvard University Press (2010)

⁵⁸ Nicola Henry and Anastasia Powell, Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research. *Trauma, Violence, & Abuse* (2016). Available at: <https://journals.sagepub.com/doi/abs/10.1177/1524838016650189>

⁵⁹ Ibid, p. 765

⁶⁰ Kohistan video murders: Three guilty in 'honour killing' blood feud. BBC News, 5 September 2019. Zubair Ayub, Three sentenced in infamous Kohistan wedding video case. *The Express Tribune*, 5 September 2019

⁶¹ Editors Note. *The State v. Muhammad Wasim (Qandeel Baloch case)*, judgement dated 27.09.2019 in Sessions Trial No. 24-T of 2016/2019 arising out of FIR No. 439. Taser Subhani, Qandeel Baloch's brother sentenced to life for her murder; Mufti Qavi, others acquitted. *DAWN News*, 27 September 2019

⁶² Pakistan girls murdered over phone video footage. BBC News, 17 May 2020

⁶³ Ali Hasan, Suspect arrested in 'suicide' case of Sindh University student a 'repeat offender': police. *DAWN News*, 6 January 2017. Girl commits suicide after threats over harassment case. *The News*, 26 September 2020

⁶⁴ Mollie C. DiTullio and Mackenzie M. Sullivan, A Feminist-Informed Narrative Approach: Treating Clients Who Have Experienced Image-Based Sexual Abuse. *Journal of Feminist Family Therapy* (2019), Vol. 31, Iss. 2-3, p. 100-113

⁶⁵ Ibid

CRITIQUING FREE SPEECH PERSPECTIVES

Freedom of expression is often associated with the proverbial ‘marketplace of ideas’ where competing ideas are allowed to exist alongside one another and vie with each other as products in an economic ‘free market’.⁶⁶ The theory goes that the most ‘valuable’ idea will win the competition against others and society will arrive at the optimum ideas to govern itself. This simplistic notion of freedom of expression suffers from some fundamental blind spots. Firstly, it assumes that all ideas in society are equally placed and are competing on a level playing field. Throughout history notions and beliefs supporting structures of fascism, discrimination, white supremacy, imperialism, and patriarchy have been dominant in the ‘marketplace of ideas’, indicating more of a market and structural failure of society to freely decide on the ‘best’ ideas. The assumption that ideas are equally placed is no accident, as it is steeped in liberal notions of meritocracy and formal equality. Ideas do not exist independent of societal structures and context. In fact, they are often bolstered by these very structures. Concerning ourselves with ideas without examining the power structures behind them belies instances in which powerful economic, racist and patriarchal interests actively work to disseminate ideas and legal systems which work to silence dissent.

Secondly, the use of women’s gender to police and exert control over their expression is not unique to online spaces, rather it happens in all spaces both public and private. Women’s expression in public spaces has been restricted by patriarchal notions of their perceived role in society that is relegated to that of the private sphere. In the theorizations of free speech and public discourse, the systemic marginalization of women and minorities from these public spaces is often not accounted for. Nancy Fraser offers a powerful critique of the masculinist public sphere constructed “to the formal exclusion from political life of women.”⁶⁷ The separation between the public and private sphere served to ward off women from the public sphere, which is the site of discourse and expression.

Thirdly, the conception of the sites of speech as public spaces evokes the false impression that it is a type of ‘ground zero’ where tools of language and culture are equally accessible to all. Building further on Fraser’s critique:

In stratified societies, unequally empowered social groups tend to develop unequally valued cultural styles. The result is the development of powerful informal pressures that marginalize the contributions of members of subordinated groups both in everyday life contexts and in official public spheres. Moreover, these pressures are amplified, rather than mitigated, by the peculiar political economy of the bourgeois public sphere. In this public sphere, the media that constitute the material support for the circulation of views are privately owned and operated for profit. Consequently, subordinated social groups usually lack equal access to the material means of equal participation.⁶⁸

Catharine Mackinnon, in her book *Only Words*, offers a critique of notions of free speech which fail to encompass structural inequalities and harms that speech acts can have on women’s bodies.⁶⁹ Mackinnon posits that “social inequality is substantially created and reinforced—that is done—through words and images.”⁷⁰ Judith Butler talks about being ‘injured by language’ and our ‘vulnerability to language’ as a by-product of being linguistic beings.⁷¹ Words do not simply express ideas without consequences, which is often why hate speech is criminalized or deplatformed as it can feed into systems of oppression and in some cases direct violence on target groups. Misogynistic speech or depictions can solidify the notion of women being perceived as objects rather than humans. These have real-world consequences, permeating institutions of power; as Mackinnon argues, some consumers of these ideas “write on bathroom walls. Some undoubtedly write judicial opinions.”⁷²

⁶⁶ Justice Oliver Wendell Holmes Jr. dissenting opinion in the Supreme Court of the United States (SCOTUS) case of *Abrams v. United States*, 250 U.S. 616 (1919), p. 630

⁶⁷ Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*. Duke University Press (1990), p. 56-80. Available at: <https://www.jstor.org/stable/466240>

⁶⁸ *Ibid*, p. 63

⁶⁹ Catharine A. MacKinnon, *Only Words*. Cambridge, MA: Harvard University Press (1993)

⁷⁰ *Ibid*, p. 13

⁷¹ Judith Butler, *Excitable Speech: A Politics of the Performative*, Routledge, New York & London (1997), p. 1-2

⁷² *Ibid*, p. 19

In her searing critique of pornography, she frames it not just as speech that contains ideas, rather “[i]ts place in abuse requires understanding it more in active than in passive terms, as constructing and performative rather than as merely referential or connotative.”⁷³

Formally ‘equal’ laws guaranteeing freedom of expression predominantly categorize speech directed towards women and marginalized groups as ‘protected speech’. When laws and courts do take the step of providing protections, they are framed in regressive terms such as national security, decency and vulgarity, which seek to control both the narrative and the marginalized group itself. Feminist approaches provide a foundational critique of free speech concepts, which should prompt us fundamentally to rethink what constitutes speech harm and whose speech we’re aiming to protect.

INTERNET AS A SITE OF RESISTANCE

Judy Wajcman argues that simple constructions of technology either as liberatory or, on the other end of the spectrum, of women as passive victims of technology are both reductive. These either-or constructions belie the complex dynamics of these spaces which can hold a multitude of truths and experiences.⁷⁴ It is true that women in Pakistan use online spaces to express themselves, access information and build communities⁷⁵ that cannot be done in offline spaces due to barriers such as lack of access to public spaces and restrictions on mobility among other reasons. While access to online spaces is limited by issues such as class, location, ability and familial attitudes, for a certain subsection of women these spaces have become meaningful platforms for speech and expression.

Fraser introduces the concept of counterpublics built by women and marginalized communities as a result of exclusions from the public sphere. These counterpublics serve as “parallel discursive arenas where members of subordinated social groups invent and circulate counter discourses, to formulate oppositional interpretations of their identities, interests and needs.”⁷⁶ Spaces on the internet such as closed Facebook groups or WhatsApp groups allow women to negotiate safety and privacy in order to build pockets of counterpublics which allow for expression, connection and discourse. Online communities have been documented allowing women to build virtual safe spaces, building on self-regulation and active moderation to ensure the privacy of users.⁷⁷

The #MeToo movement, both worldwide and in Pakistan, has provided a voice to victims and survivors to talk about their abuse on their own terms. Legal systems often reduce women’s experience of assault and harassment to pieces of evidence and technical and jurisdictional abstractions, erasing women’s lived experience from the entire process. Online spaces have provided that opportunity to women to not only share experiences, but also press for accountability of powerful men.⁷⁸ The effectiveness of the movement, stymied by defamation lawsuits and gag orders,⁷⁹ does not take away from the unprecedented platform provided through social media.

Excluded from mainstream male-dominated media platforms and subject to gatekeeping, women and queer individuals are finding a voice on popular platforms such as TikTok and YouTube, developing substantial audiences.⁸⁰ More research and attention needs to be given to the ways in which marginalized groups are asserting their agency in these spaces, despite increasing censorship and regulation of these spaces.

⁷³ Ibid, p. 21

⁷⁴ Ibid

⁷⁵ Ajwah Nadeem, Online Feminist Sisterhoods, Feminist Movements Go Online: Imagining Feminist Futures Online. Digital Rights Foundation, November 2020, No. 2. Available at: <https://digitalrightsfoundation.pk/the-digital-50-50/>

⁷⁶ Ibid, p. 67

⁷⁷ Sindhu Abassi and Uneeba Waqar, Soul Sisters: The Facebook group giving voice to Pakistani women. Geo News, 13 March 2017

⁷⁸ Rabia Mehmood, Pakistan’s long #MeToo moment. Al Jazeera, 22 April 2018

⁷⁹ Sabrina Toppa, They Accused a Pakistani Megastar of Sexual Harassment. Then They Were Sued for Defamation. Yahoo News, 20 October 2020. Available at: <https://news.yahoo.com/accused-pakistani-megastar-sexual-harassment-130323811.html>

⁸⁰ Sanam Maher, What TikTok tells us about Pakistan. DAWN News, 3 November 2019

CONCLUSION

This essay sought to conceptualize the right to free speech and expression within a feminist framework. The starting point of analysis was that dominant free speech discourse, taken up by civil society actors and researchers within Pakistan, often constructs free speech as a formal right. The underlying assumption is that free speech can be equally enjoyed by all if legislated upon and implemented in the 'correct' manner. This essay argues, that a purely legalistic and formal approach to free speech does not capture the fact that speech is experienced very differently from the margins.

This essay analyses the legislation and jurisprudence regarding the internet, particularly from the perspective of gendered expression in online spaces. The analysis shows that vague legislation has been applied to morally police expression. It postulates the experience of women and gender minorities in online spaces as one marked by exclusion and online harassment as patriarchal structures are reproduced through technology. Lastly, the essay draws on feminist critiques of dominant free speech discourse with the aim of complicating the demands we make in terms of legal reforms and advocacy. In conclusion, it is posited that without taking into account the unique harms experienced by women and gender minorities in online spaces, any approach to ensuring freedom of expression will be hollow. This conversation is all the more urgent in light of the ways the internet is being used by women to exercise their rights and build movements. The future of these movements depends on a feminist approach to free speech that takes into account the experiences and harms unique to women and gender minorities.



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CRITICAL APPRECIATION OF THE REMOVAL AND BLOCKING OF UNLAWFUL ONLINE CONTENT AND THE RIGHTS OF THE CITIZEN.



Nighat Dad & Zainab Durrani

ABSTRACT

Online space is possibly one of the very few platforms in Pakistan that offers a degree of freedom of speech and expression. Given Pakistan's social and political climate, it is not surprising that the internet is subjected to shrewdly framed restrictions. This opinion piece provides a critical review of the legal climate in which the Prevention of Electronic Crimes Act, 2016 (PECA) and Removal and Blocking of Unlawful Online Content (RBUOC) Rules were passed. Identifying the undemocratic nature of policy-making and exclusion of stakeholders from the process as the root cause, it highlights the socio-political implications of ways in which 'religion', 'culture', and 'morality' are used to restrict freedom of expression, especially as in the absence of universal criteria for what content is 'blasphemous' or 'culturally insensitive' renders these terms vague and facilitates Pakistan Telecommunication Authority (PTA) in employing the Rules arbitrarily. The authors conclude that the only way forward is the abolition of these Rules along with the implementation of clearly defined legal criteria to ensure all entities are safeguard against from the arbitrary application of censorship on digital media.

BACKGROUND

Nighat Dad is a lawyer and a founder of Digital Rights Foundation, a not-for-profit civil society organization that works on cyber harassment, data protection and online free speech in Pakistan and South Asia. Her work in this field led to her being named a Next Generation Leader by Time Magazine in 2015. She is a recipient of the Dutch Human Rights Tulip Award (2016) and a TED Global Fellowship (2017) and was nominated as a Young Global Leader by the World Economic Forum in 2018.

Zainab Durrani is Programme Manager at the Digital Rights Foundation, with a demonstrated history of work in the field of civic and social organization. Her skills and work focus include data privacy advocacy, research, and legal contract review. She has a Bachelor of Law (LL.B) degree from the University of London International Programmes.

This opinion piece intends to address internet governance in Pakistan and in particular take a closer look at the recently mandated Removal and Blocking of Unlawful Online Content (RBUOC) Rules and the impact, both actual and possible, of its implementation.

The legal landscape surrounding Pakistan's digitizing has been turbulent, at the very least. The Electronic Transaction Ordinance in 2002 kick-started the process, leading to the Prevention of Electronic Crimes Ordinance (PECO) in 2007 which was later repealed due to it not being able to attain the status of an Act, and was replaced by the Prevention of Electronic Crimes Act, 2016 (PECA). A fact to be noted with most interest here is that the state of democracy was not a common denominator during the introduction of both these laws: when PECO was brought in, Pakistan was still under a dictatorial regime,¹ whereas PECA was promulgated by the government and its representatives. Neither law created an avenue for a rights-based legislation.²

The advent of PECA has been riddled with controversy, mainly because of the potentially draconian nature of some of its provisions, particularly those affecting fundamental rights such as freedom of expression, freedom of speech, and right to privacy.³

Given the existing sentiments against PECA, the parent law under which RBUOC Rules were enacted, the notification from the Ministry of Information Technology and Telecommunication (MoITT) in February 2020 about its proposed Citizens Protection (Against Online Harm) Rules were not well-received by the civil society. PECA is already a law that has received much criticism, especially with regard to the effectively unbridled powers of retention and decryption of user data by government personnel, as documented in a policy brief⁴ from Privacy International, which details the critique of the then-proposed law. This brief points out the potentially abusive nature of some of the proposed provisions, such as requiring data retention from service providers (Section 32) and the requirement of real-time recording and collection of data in specified circumstances (Section 39). PECA drew criticism from digital rights activists and civil society, as there was unease regarding some of its provisions and the double-edged sword nature of the penalties and liberties afforded to the Federal Investigation

¹ S. Akbar Zaidi, Special report: The military strikes back 1999-2008. DAWN News, 23 November 2017. Available at: <https://www.dawn.com/news/1372376>

² Editors Note. PECA became a hotly debated legislation primarily because of the secretive nature of the legislative process and the reluctance of its authors and movers to make the bill public. Several outdated versions were circulated, and the bill was bulldozed in parliament through a committee. The bill met with resistance from the civil society that voiced its concerns about its potential for human rights violations, but these voices went unheeded

³ Digital Rights Foundation, Privacy International's Comments on the draft Prevention of Electronic Crimes Act, 2015 (Pakistan), April 2015

⁴ Ibid

Authority (FIA) and the Pakistan Telecommunication Authority (PTA) under the Act. Another area of concern in the context of free speech was Section 37 of PECA, on the removal of 'Unlawful on-line content' which reads:

The Authority shall have the power to remove or block or issue directions for removal or 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 or morality...under this Act.

This section, in one fell swoop, gave significant powers of control over what is widely considered to be one of the last few vestiges of free speech: the online space. Curtailing the basic ability to speak up about what the citizens of Pakistan hold dear, whether it is inane opinions on music choices or the discharge of their civic rights in criticizing the elected government, is a massive infringement of constitutionally guaranteed liberties. The liberties themselves, however, are also framed in a manner that is quite restrictive and thus this allows the drafters of the law to fall back on the protection afforded by having their wording the same as the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution), verbatim.

The provision of Section 37 of PECA allows for seemingly arbitrary blockage and surveillance of content, and instances of such removal, blocking, and surveillance of content have been reported on numerous occasions in recent years. The list of those affected by this law includes not only the usual suspects such as activists⁵ and journalists,⁶ but also content creators and citizens who express their opinions and concerns using social media platforms. The RBOUC Rules were built on the foundations of Section 37, and much like its parent Act, were passed with questionable legality of the legislative process being followed; as no clear consultative process took place and drafts were not readily available. When first introduced in February 2020⁷ they were rejected⁸ outright by over a 100 civil society organizations⁹ as being too drastic to even engage in a consultative process, as their very premise was deemed to be too intrusive because these Rules stimulated the process of shrinking safe spaces for those concerned, but also made the approach to any avenue of redress difficult. It is worth noting that the petitions made against Section 37 of PECA never made any headway, nor were the concerns raised by them addressed when the RBOUC Rules made an entry onto the scene.

The Islamabad High Court held, regarding the Pakistan Telecommunication Authority's actions, that while exercising such power and discretion, the Authority must not act 'arbitrarily' and 'capriciously'.¹⁰ Additionally, there are multiple petitions sub judice in court¹¹ that have sprung up since the RBOUC Rules were made public, showing clearly the public and private sector's response to them, though it is obvious that not all petitions are altruistically motivated as many of those aggrieved by the lack of consultative process or of its efficacy are those whose businesses have been impacted by the provisions in the Rules.

It is the consultative and inclusive nature of the process of creating rules and regulations that affords them the ability to be counted as democratic tools for maintaining law and order. If the vital elements of involving relevant stakeholders and allowing the people to comment on how they are ruled are taken out, it goes against the very basis of living in a democracy and also renders useless the notion of a social contract between the citizens and the state. Thus, as mentioned earlier, these Rules were rejected outright by civil society organizations. This development prompted the Prime Minister to suspend the Rules,¹² which in itself is perplexing as it prompts the question of how the Premier can suspend rules notified by the Federal Cabinet and a simple de-notification was not carried out.

In an article penned for DAWN, Fariha Aziz of Bolo Bhi wrote:

⁵ Maria Abi-Habib, Abductions, Censorship and Layoffs: Pakistani Critics Are Under Siege. The New York Times, 15 October 2020

⁶ Tehreem Azeem, Pakistan's Undeclared Censorship. The Diplomat, 16 May 2019

⁷ Digital Rights Foundation, Citizens Groups, Journalists' Body & Others Reject PEMRA's Draconian Proposed Draft Regulations On Web TV & Other Allied Attempts, 28 January 2020

⁸ Iftikhar A. Khan, Govt okays rules to regulate social media. DAWN News, 13 February 2020

⁹ Ikram Junaidi, Rights groups to boycott talks with govt over online rules. DAWN News, 2 March 2020

¹⁰ Fariha Aziz, Our Official Correspondence Problem: Section 37. Bolo Bhi, 25 January 2019. Also see Bolo Bhi v. Federation of Pakistan, Writ Petition No. 4994 of 2014, Islamabad High Court, Order dated 25.05.2018

¹¹ Petitions against FIA, PTA and PECA. Bolo Bhi, 9 May 2019

¹² Ramsha Jahangir, Implementation of online rules suspended, says PTA. DAWN News, 3 March 2020

The rules transgress Peca, violate court judgements, infringe on fundamental rights and run contrary to international best practices. Anyone committed to transparency and rights should call for the rules to be immediately withdrawn by the cabinet and refrain from participating in a process initiated to 'legalise' illegitimate aims and powers. Peca should be proof enough of this.¹³

These sentiments have been echoed by many who are viewing the developments of the digital governance landscape in Pakistan with scrutiny. Analysing the RBOUC Rules, it is clear that they echo the spirit of the parent legislation even as they legally overreach their ambit and create additional liabilities, which go beyond the scope of implementation of the parent laws.

ANALYSIS OF THE RBUOC RULES

At the outset, Rule 4 of RBUOC Rules provides that “every person or organization shall have the right to express and disseminate any Online Content” and then, without irony, sets out an entire list of exceptions it must not contravene including factors like “glory of Islam”, “public order” and “decency and morality” under Section 37 of PECA. As the Constitution is framed this way, using PECA’s verbatim replication of the language of Article 19 is a clever way of avoiding criticism.

Rule 4 (ii) includes in its definition dissemination of any information harmful to the reputation of the Federal and Provincial government and thus impacting the “integrity, security and defense of Pakistan”. This, we feel, is an overreach and casts such a wide net of protection from criticism across the government body that it effectively quells any and every dissenting opinion.

Rule 7 places the responsibility of removal of online content, which has been deemed unlawful by the PTA, within the time frame of 24 hours, shortened to 6 in case of an emergency.

Rule 8 outlines the penalty for not following through with the earlier provision, namely the blocking of the entire website or platform, or certain services provided by them.

Rule 9 asks the service providers and social media platforms to publish guidelines informing the user not to upload content violative of “cultural sensitivities of Pakistan”, or content that is “blasphemous or defamatory”. These are particularly concerning provisions, as the understanding of these terms is not uniform, which makes it a very vague premise on which to penalize the companies and regulate the content shared or created by their users.

Provisio (a) of Rule 9 (5) requires the companies to register with the PTA within a 9-month period, whereas **Provisio (b)** of the same asks them to establish a permanent registered office within the same timeframe. This requirement not only seems like an unlikely one to be fulfilled but at the outset, social media companies having offices in Pakistan can pose a danger and risk to internet users’ privacy especially given the context of a complete lack of any data protection framework in Pakistan.

It is with continued irony that we must appreciate that some of these companies adhere to the international human rights law framework to implement their community guidelines, whereas in Pakistan itself the environment around the rule of law and respect for human rights such as freedom of speech is absent. Take for instance the case of Asad Toor, a journalist who was accused of creating ‘negative propaganda against the Army’ and had an FIR issued against him using the defamation sections of the Pakistan Penal Code as well as the hate speech and criminal defamation sections of PECA.¹⁴ This unfortunately is not an isolated incident by any means. Multiple journalists such as Bilal Farooqi, former PEMRA chairman Absar Alam¹⁵ and Ehtisham Kiyani¹⁶ have faced the wrath of this crackdown and this is all news that has been reported in the last quarter of 2020. This, coupled with reporting of news outlets being blocked for airing the Opposition speeches, allowing PECA to criminalize internet activity and collect data without any framework, points to a situation of censorship that is steadily getting out of control.

¹³ Fariha Aziz, Away with the rules. DAWN News, 23 May 2020

¹⁴ FIR registered against journalist Asad Toor for ‘negative propaganda’ against army. DAWN News, 15 September 2020

¹⁵ Ibid

¹⁶ Media rights group denounces arrest of Pakistani journalist. AP News, 25 September 2020

Given their stringent nature, it is necessary also to comment on the negative impact these Rules may have on Pakistan's digital economy. In accordance with the Rules, social media companies are required to register in Pakistan within 3-months and localize data and servers in Pakistan within 12 months in order to stay operational. Moreover, they are required to cooperate with all requests including providing the government with decrypted, readable and comprehensive format data. Non-compliance can result in a fine of up to five hundred million rupees or the closure of services.

Threatening social media companies and platforms like Facebook and Google would have a direct and significant impact on the growth of the digital economy in Pakistan.

The Asia Internet Coalition (AIC), which consists of tech giants such as Facebook and Google, issued a statement in response to the Rules shortly after their release which stated that:

AIC members are alarmed by the scope of Pakistan's new law targeting internet companies, as well as the government's opaque process by which these rules were developed. The consultation that was announced in February never occurred. The draconian data localization requirements will damage the ability of people to access a free and open internet and shut Pakistan's digital economy off from the rest of the world.¹⁷

Barring a short 9-months period set out for compliance, the Rules place the same constraints on social media companies and internet service providers. The Digital Rights Foundation team, which has been monitoring this with bated breath all year, notes¹⁸ that the only major difference between the February draft and the final document released in November is that the position of a National Coordinator who was to oversee the Rules, had been eliminated and replaced by the PTA as the authority in charge. Other than that, the Rules place the same constraints on both social media companies and internet service providers. Both must comply with a 24-hour period for removal or blocking of content deemed by PTA to be in contravention of the Rules, except in situations of emergency, in which case the window is shortened to 6 hours. Failure to fall in line with this, Rule 7, shall result in the blocking of the entire platform itself by PTA. There is also the provision to not display, in the first place, content that is "blasphemous, defamatory, violative of the cultural sensitivities of Pakistan or threatens its security or defence". This infringes upon the basic freedom of expression granted to citizens of Pakistan under Article 19 of the Constitution. Granted that this right is qualified, subject to "reasonable restriction" but the crux of this debate of subjectiveness comes down to the definition of "reasonable" that is being employed here, especially since the jurisprudence around online freedoms hardly exists in Pakistan at the moment to the point where "reasonable restriction" has not been interpreted by the courts for the online world. Another important note is that the rights made official under Article 19-A (right to information) and Article 17 (freedom of association) of the Constitution also contain the same qualifier of "reasonable restriction" thus rendering them toothless to a great extent.

CONCLUSION

In conclusion, it is observed from the perspective of our work in the digital realm and also from our experience with cyber laws and their implementation that the barometer for reasonability is not an unbiased one. The Rules can essentially be used as tools of suppression that can be enacted arbitrarily in the absence of adequate safeguards. The impact of this threatens to affect not only previously mentioned stakeholders such as rights activists but also any user of social media and digital platforms who speaks up using their Constitutionally-guaranteed rights and exercises freedom of thought and expression.

The concerns that are being raised about PECA and the Rules have their basis not only in past experiences of

¹⁷ [Pakistan] AIC Issues Media Statement on Removal and Blocking of Unlawful Content (Procedure, Oversight and Safeguards) Rules. Asia Internet Coalition, 19 Nov 2020

¹⁸ Digital Rights Foundation, Digital Rights Foundation is gravely concerned by the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020, 19 November 2020

¹⁹ Kathy Gannon, In Pakistan, Criticism Grows Dangerous as Dissent Is Stifled. The Diplomat, 11 March 2020

‘consultative processes’ that have proved to be an eyewash at best but also find their roots in the status quo as it is now with an overwhelming number of penalizing actions taken against human rights defenders, civic activists and dissidents. These concerns stem from how PECA has been implemented and how PTA has employed its powers arbitrarily in the past, such as the law being used to prop up near-baseless excuses for arresting or prosecuting journalists and activists as well as silencing news outlets, as has been noted in this article.

Pakistan is not a part of the 120 nations that have enacted some form of data protection legislation. This further weakens faith in the law enforcement agencies and the ministries that are creating and notifying these rules. A further strike on their credibility and rationale for continued incredulity from the watchdogs of the industry comes from the fact that the Rules appear to be ultra vires and seem to outflank the parent law - the umbrella from which they have allegedly sprung.

What must be contemplated now is a way forward. For civil society and digital and free speech activists, the only solution is that these rules must go. We believe they should be de-notified, and that this conversation should start with the abolition of starkly problematic provisions like Section 37 of PECA, as well as a revision of the procedures FIA offers victims of crime in cyberspace which are intimidating, ambiguous, and prone to ad hoc change, thus instilling uncertainty in the application of the law. Unless these measures are taken, much like the mythical Hydra, we will see one measure of rights curtailment being replaced by another, much worse one and find ourselves in a loop of shrinking breathable spaces.



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SPEAKING OUT – THE PERSONAL AS POLITICAL



Rahat Ali Dar

ABSTRACT

2018 marked the start of 8th March protest come celebration marches for women's rights. Comprising songs, slogans, posters, street theatre and impromptu dancing, the idea took off, and what began in Karachi gained in strength, spread and visibility and in 2019 similar Marches were held in Hyderabad, Lahore, Islamabad and then on to Peshawar, Faisalabad, Multan, in 2020 onwards to become an annual feature of Pakistan's urban landscape. The significant difference between these marches and earlier protests is one of historical contexts, focus and approach.

The visual narrative by Rahat Dar captures the slogans and mood of the protest marches by women.

BACKGROUND

A photojournalist, Rahat Ali Dar uses his camera instead of words to tell his tale. Dar began his career as a photojournalist with the daily Siyaasat where he soon made a name for himself. Since then he has worked with some of Pakistan's major newspapers which include Nawa-e-Waqt, The Frontier Post, The Nation and currently, with The News. Other than these he has worked for weeklies such as Viewpoint and Newslines including BBC Urdu. His sense of the newsworthy and ability to be at the right place at the right time has resulted in photographs that capture significant moments of Pakistan's lived history. These include scenes from Benazir Bhutto's processions, police violence at a Women's Action Forum protest and a serial of the Saima Waheed marriage by choice case that resulted in the Supreme Court judgement on the adult woman's right to marriage of choice. Dar's work has been displayed in international art galleries including in India









DÉJÀ VU



Mazhar Ali Khan

ABSTRACT

Reproduced from the 7 February 1970 issue of Forum Dhaka, courtesy of Hameeda Hossain/ Bangladesh on Record, Mazhar Ali Khan's account of the seizure of Progressive Papers Ltd., complements, enhances and quickens with life the journalistic objectivity of the sequential cause and effect of events in Ishtiaq Ahmad and Kamila Hyat's fact-based essays. The significance of this piece lies not only in that it provides a first-person account of state violence but in the emotional charge of the narrative generated by two apparently conflicting approaches and tones of voice – the one of dispassionate objective news reportage – the meticulous precision which discards all that is extraneous; and the other inflected by the immediacy of the vivid experience of remembered outrage; the invasion of personal space – of books confiscated; papers rifled through by alien hands; of resistance confronting the implacable illogic of bland-faced authority.

BACKGROUND

One of Pakistan's most outstanding journalists known for independent journalism, Mazhar Ali Khan began his career as a member of the editorial team of The Pakistan Times with Faiz Ahmad Faiz as Editor, and it was with Faiz and owner and management, Mian Ifikharuddin and Syed Amir Hussain Shah, that the progressive editorial position and thematic priorities for Progressive Papers Limited were formulated. He replaced Faiz as editor in 1951 when the latter fell foul of the Rawalpindi Conspiracy Case and remained in this position until 19th April 1959, when Ayub Khan's military regime seized the newspaper along with its sister publications; the Urdu daily Imroze; and, the weekly magazine Lail-o-Nahar.

It was during his twelve years as editor of The Pakistan Times, that the paper's credibility

was established as an independent advocate of secular democracy and non-alignment based on good relations with both socialist and capitalist countries including criticism of the One Unit and denial of the then East Pakistan's share in power and financial benefits. His resignation from The Pakistan Times was followed by a fallow period of about 16 years marked by a few columns for the Forum, Dhaka established by Dr Kamal Hossain and Rahman Subhan, and a brief stint as editor, Dawn during Pakistan's brief assay with democracy under Zulfikar Ali Bhutto. Mazhar Ali Khan began writing again when he established the weekly Viewpoint in 1975, and not only did he continue to do so until the publication folded due to a lack of funds in 1992, he gathered together a team of dedicated workers around him to make Viewpoint into a clear voice for democracy that persistently challenged the oppressive silence of the Zia-ul-Haq years.

Sources: Wikipedia, the free encyclopedia; I.A Rehman, An outstanding journalist. DAWN News, 15 June 2017; and, personal memories of colleagues/friends.



AYUB'S ATTACK ON

It is a unique privilege for FORUM to serve as the vehicle for Mazhar Ali Khan's return to journalism after a decade in the wilderness. He became one of the first martyrs to the cause of press freedom in the Ayub years when he refused to continue as editor of *The Pakistan Times*, following its illegal seizure by the regime in 1959. Prior to that date, during his tenure as editor, *The Pakistan Times* became the most outstanding paper that this country has seen. Mazhar Ali Khan is the first and most distinguished of a long list of outstanding journalists driven out of the profession by Ayub. He will be a regular contributor to the columns of FORUM. In returning this outstanding talent to the readers of Pakistan we feel that we have contributed to justifying our existence.

When the people of our land attain full freedom and genuine democracy, and Pakistan's history is written by honest scholars searching for the truth and not as a panegyric on or apologia for the Ruler of the Day, the Ayub regime will be found guilty of a long and varied list of heinous acts, of defying the most elementary principles of law and justice, of destroying institutions wedded to the public weal, and of victimising individuals who could not easily be browbeaten or purchased.

It will not be easy for our future historians to determine which single action of the self-appointed President and his Government of courtiers did the greatest harm to the national interest, for they will have a wide field to survey. Many will probably conclude that the Dictatorship's gravest crime was its deliberate destruction of press freedom, because so many other evils flowed from this act of denying to the people of Pakistan one of their fundamental rights. It is, therefore, pertinent to recall the Ayub regime's first step towards this fascist aim, namely, its attack on the Progressive Papers, an institution created under the patronage of the Quaid-e-Azam.

The dastardly attack was made at dawn on Saturday, 18 April, 1959. Two Ministers, one a General, masterminded the operations with their main headquarters at the residence of the Martial Law Administrator of Zone B, and a tactical headquarters at Lahore's Gymkhana Club.

By midnight the offices of the Progressive Papers, *The Pakistan Times*, *The Imroze*, and the weekly *Lail-o-Nahar*, were surrounded by an array of armed police and C.I.D. men, and captured as the night shift left the premises.

At the same time, similar detachments besieged the residences of Mian Iftikharuddin, the Company's Chairman, who also owned a majority of its shares, and its Managing Director, Syed Amir Hussain Shah. The police carried search warrants and were authorised to use "reasonable force" to take possession of all documents connected with Progressive Papers Ltd., and "any material or documents reasonably believed to relate to receipt of funds from foreign sources, or to news, reports or information, likely to endanger the security of Pakistan."

For some weeks before the event, we had heard rumours that the Government was unhappy with *The Pakistan Times* because it was not giving the regime full support, and more recently sympathetic individuals connected with the Government had discreetly whispered the warning that "something terrible" would happen to our papers.

We were naive enough to believe that any action contemplated would be legal action of some sort, and we did not see how our papers came within the mischief of any existing laws, not excluding the Security Act and the various Martial Law Regulations applicable to the Press.

Since 8 October, 1958, our journals had been published under Censorship, and when the Censorship order was formally withdrawn and the euphemism Press-advice substituted for it, we chose to be "advised" daily, unlike some other newspapers more confident of being able to interpret the Government mind in respect of the draconian laws to which the Press was subject. In the circumstances, we felt there could be no palpable cause for action, and even if action were taken out of pique it could not be sustained.

Our naivety was rudely shattered, and we learnt the lesson that a usurper's regime guided by unprincipled and lying toadies, was capable of illegal and unscrupulous action to gain its own ends.

The last warning received by me before the event was at 1.30 a.m., when a friend woke me up to say that he had heard from a Minister at the Gymkhana Club that he would be coming to see me at 5 a.m. to discuss "the future of *The Pakistan Times*". At about 5.30 a.m., the threatened Ministerial visitation—which by morning I had begun to discount—materialised. He told me in plain terms that the Government had taken over *The Pakistan Times*. In reply to the protest that this could not be done as there was no law which allowed such action, he said that it "had already been done" and that the Security Act had been amended two days ago to make it possible. Cutting short the discussion on law and ethics, he said he had come to explain that the Government's only purpose was to oust Mian Iftikharuddin and to change the management. No other change was

intended, and that, in fact, "better facilities" for work would be made available to the editorial staff. The confused and confusing discussion ended when I said that I would give my decision by the afternoon.

I went immediately to see Mian Iftikharuddin, who was then seriously ill, and whose house by then was surrounded by the police, wanting to search the premises. On his behalf Mian Mahmud Ali Kasuri tried to stall the police, but his efforts to contest the legality of the police action were fruitless. At Syed Amir Hussain Shah's residence a similar scene was being enacted.

From Mian Iftikharuddin's residence the police took away all his cheque books, bank statements, a sheaf of letters, and newspaper files. From Amir Hussain Shah's residence they took away a reasonable quantity of the Progressive Papers' letterhead.

About noon, I reached the office, and saw that the take-over was indeed complete. Armed police, with handcuffs dangling from their belts, stood at the gates and C. I. D. men were all over the place. When I tried to open the door to my room, I was stopped by a policeman guarding the sanctum. The Managing Director's office was occupied by Mr. Mohammed Sarfaraz, the newly appointed Administrator, and only at his intervention was I allowed to enter my room.

Sarfaraz gave me the details of the Government's monstrous action, and I saw relevant orders and notifications which had been issued, clearly showing that the coup was a well-planned conspiracy. I also saw a copy of 'The New Leaf,' the editorial which appeared in the next day's issues of *The Pakistan Times* and *Imroze*. Reputedly the work of Qadrutullah Shahab, the then Information Secretary, it is the stupidest piece of bad writing that has ever disgraced the columns of these journals.

A C.I.D. officer conducted a thorough search of my room and took away certain papers and books. The papers included Mr. Daultana's thesis on One Unit and two letters, one for publication, from Mridula Sarabhai. The books he took away were mostly Soviet and Chinese publications. I pointed out a big pile of American publications on my table and told him that these too

PROGRESSIVE PAPERS

were of foreign origin, but he said, looking rather sheepish, that his Government was not interested in them.

I called an informal meeting of the other editors and senior colleagues, and told them that I had decided to resign immediately.

Later in the afternoon, after informing Mian Iftikharuddin, I went to General Rana's residence. There I was confronted by a Minister and a group of senior officials, including Shahab and Sarfaraz. On being told that I had decided to leave *The Pakistan Times*, they sought to persuade me to change my mind. A rambling debate ensued, in which the various issues were discussed. My suggestion that if the Progressive Papers were really considered guilty as charged, the charges should be proved in a court of law, only evoked inane smiles. My objection to the editorial called 'The New Leaf' was met with the reply that if I remained, it would be scrapped, and my objection to the Company being handed over to a Government official with the offer that I should take his place. My contention that no cause for action arose as the papers had been published under Censorship was used to suggest that I should carry on as no new restrictions were being imposed on *The Pakistan Times*.

When it was realised that refusal was final, an official pointed out that the Essential Services Ordinance had been invoked and that I could not resign. I said it would be a novel experiment to compel an editor to continue to work against his will, and if they so desired they could try it. At this the Minister said that the Ordinance would not be applied to me, and that if I insisted my resignation would be accepted. Requesting that my name should be removed from the print line, I left the gathering.

As far as the Progressive Papers Ltd. are concerned, this is almost the end of the story, bar the shouting.

THE SHOUTING

The next day, Syed Amir Hussain Shah and Mian Mahmud Ali Kasuri, met the two Ministers at their main headquarters, and protested against the action taken by the Government, demanding that the charges should either be substantiated in a court of law or withdrawn. The General's only reply was that Mian Mahmud Ali Kasuri could well have been arrested for obstructing police officers in the discharge of their duty. The other Minister tried to justify Government's action, but the only concrete instance of "subversion" he mentioned was a brief editorial note published in *The Pakistan Times* regarding the Sino-India border dispute in which it had been suggested that In-

dia's attitude was unreasonable.

A few days later, Mian Iftikharuddin, his son Arif, and Syed Amir Hussain Shah were served with notices stating that in the Government's opinion they had purchased shares in Progressive Papers Ltd. with the help of foreign funds, and that their shares would be confiscated under the Security Act, which incidentally, was repeatedly amended to cater for each shift in the situation.

Mian Iftikharuddin demanded that he should have access to the papers and cheque books taken away by the C.I.D. so that he could show how he had paid for Progressive Papers shares. This permission was not granted. When Syed Amir Hussain Shah appeared before the Tribunal to explain his purchase of shares in 1946, he told the body that Mian Iftikharuddin should be given the opportunity to present his explanation. No notice was taken of this plea. While Amir Hussain's shares were restored to him, Mian Iftikharuddin and his son were dispossessed of all their shares. It is obvious that Government had no intentions of listening to reason and the Tribunal was enacting a farce, because long before it had met, notices for the auction of these shares had been advertised.

I'LL BE JUDGE, I'LL BE JURY.....

The Directors also received letters stating that the Board had been dissolved because the Progressive Papers Ltd. were receiving "policy guidance and financial assistance" from foreign sources; that "there was an objectionable innuendo in their writings which, even if it was not discernible in any single article, was, in the accumulative influence on the minds of its readers, meant to engender subversion". Replies in refutation of these and other charges were submitted, but the Tribunal set up under the Security Act took no notice of these explanations; the demand that the Directors concerned should be heard by the Tribunal was ignored; and even their telegrams and registered letters were not acknowledged.

Mian Mahmud Ali Kasuri then sent to the Government a "notice of demand for justice" in which he pointed out the various illegalities and improprieties committed by Government and demanded that these grievances should be redressed, failing which he would be compelled to resort to a court of law.

No reply being received, a Writ Petition was filed before the Supreme Court, but before it could be heard the Government passed a Martial Law Regulation removing the matter from the Court's purview.

THE REAL STORY

During this period, the real story behind the take-over began to unfold.

If it was learnt that soon after the Ayub regime had established itself, it felt the need of the services of newspapers that would be completely subservient to its interests. Proposals were initially made for starting one or two newspapers under the Government's direct control. When the matter was examined in detail, it was realised that the venture was not likely to succeed. A proposal for nationalising the whole Press was also considered but rejected because of the fear of adverse publicity abroad. It was then decided that some well established newspapers should somehow be acquired. The Progressive Papers were a good target, because in addition to *The Pakistan Times*, the country's largest English daily, there was also an Urdu daily and a weekly.

A Cabinet committee had been set up to deal with the matter. Once the decision had been taken to take over the Progressive Papers, the case against them began to be built up. The so-called political charges are reported to have been prepared by the Director of the Intelligence Bureau, assisted by a Brigadier who at that time was grooming himself to become the Goebbels of the regime. Other government departments were instructed to dig up anything they could find against the Company and its newspapers. This process reportedly went on for many months.

That the charges were utterly false is proved by the fact that although the Company's files were scrutinised by teams of sleuths for nearly three years, not a single iota of evidence was discovered to substantiate any charge or even to pinpoint a serious irregularity.

One by one the inquiries instituted in respect of the charges were dropped, and the criminal case filed against Mian Iftikharuddin in respect of newsprint import and sale was withdrawn; thereafter Government had to find other means of harassing him and the persecutions continued until his demise.

Since it is plain that the charges against Progressive Papers Ltd. were fabricated, and would have been thrown out of court even by a third class magistrate gifted with a modicum of honesty and elementary knowledge of legal procedures, the Ayub Government's action and the Kangaroo court which authenticated it can only be viewed as a medieval *auto-da-fe*, because the only complaint which had validity was that those who owned, managed and guided *The Pakistan Times* and its sister papers did not share the regime's faith in its dictatorship, and for this lack of faith they were punished.

SILENCE IS NOT GOLDEN



Rubina Saigol

ABSTRACT

In a passionate indictment of socially and politically enforced silencing and censorship, this piece interrogates and rejects the cliché, 'silence is golden' as a sign of unthinking acquiescence. It argues that society, state and a complicit, coerced, compliant and/or gender-blind media uses silence as a pernicious form of deception at the multiple levels of individuals, society and state. Referring to state-based and other mainstream narratives including tales told by the media that hide the untold stories of violence and warfare that lie behind them, the writer sees silence as a disturbing indicator of misinformation combined with the power of received ideas and conscious or unconscious compliance and subjugation. Focusing on language use, the essay speaks about the oppressive nature of silence that reinforces patriarchal patterns of violence and class-based discrimination and argues for the noise and vitality of dissenting voices; conversations and arguments that challenge the status quo and grant meaning to our lives.

BACKGROUND

Rubina Saigol: feminist scholar, educationist, human rights activist and member of the Women's Action Forum and a founder of Ajoka Theatre with Madiha Gauhar, Shahid Nadeem and others. A born and bred Lahori, she went to school at the Convent of Jesus and Mary, took her BA from Kinnaird College Lahore, read for her Masters in Psychology from the University of the Punjab before joining Columbia University for a Masters in Development Psychology and a PhD in Education from the University of Rochester. Singer, actor, teacher, and impromptu maker of political nonsense rhymes - Rubina Saigol has written extensively on women's rights, education, nationalism, religious radicalism, terrorism and human rights. Her publications include Knowledge and Identity: Articulation of Gender in Educational Discourse in Pakistan; and, The Pakistan Project: A Feminist Perspective on Nation & Identity.

*Go placidly amid the noise and haste, and remember what peace there may be in silence.
Desiderata - Max Ehrmann*

Silence has so many dimensions that the moment one starts to think about it one is inundated with ideas, images, fleeting thoughts, memories, and feelings of comfort and discomfort. One does not know how to make sense of a word so simple, so common, so pervasive in everyday speech – yet so elusive, complex and defiant that it rebels against all attempts to understand it. It surrounds our daily lives, wrapping us in a protective covering that neither allows the noise of reality from encroaching upon our senses nor lets our quiet cries be heard by anyone else. Safely ensconced in our false quietude, we go about our regular business, neither questioning what we see nor permitting others to question us. I am reminded here of some verses from the old Simon and Garfunkel song, *The Sound of Silence*:

In the naked light I saw, ten thousand people maybe more
People talking without speaking, people hearing without listening
People writing songs that voices never share
and no one dare disturb the sound of silence!

Fools, said I, you do not know
Silence like the cancer grows

The song acutely captures the heavy and oppressive shroud of silence that covers our collective existence, hiding what is clamouring to be revealed, revealing what is concealed beneath layers of lies and half-truths. Silence is so connected with what is hidden. It conceals the unspeakable that lies around us for our forgetting. And yes, like cancer it does grow until it finally becomes a shriek.

What is silence? Is it the opposite of noise? The opposite of speech? Is it a synonym for Peace? Tranquillity? Some of the worst forms of silence come about in the midst of noise, in the presence of excessive speech. And some forms of peace and tranquillity are so loud and shrill with the horrors they envelop that one longs for some disquietude. Silence is not always golden. Silence can be a crime.

Who is silenced and who silences? This is always a question of power. When a person chooses to remain silent as a statement, she/he is asserting power. This kind of silence is essentially speech that enables the assertion of one's inner autonomy. However, when one is silenced by another, it is an act of the assertion of power by the other. This is the silence that oppresses, conceals and subjugates. This is the silence that must be broken.

One of the earliest slogans of the feminist movement was “Speaking out and breaking the silence”.¹ It was an early slogan because of the centuries of silence that surrounded women’s lives – the silence that denied their labour, the silence that negated their subordination, the silence that denied violence against them. Innumerable silences shrouded women’s lives in mystery, made a secret of their productive activities and dammed up their anger, rage, fear, desire, love, and hate. Being rendered ‘voiceless’, women ceased to exist – for to live is to speak.

This silence snaked its way from the household to the so-called public sphere. The personal and private patriarchy of the father, brother, husband, and son translated into the impersonal and public patriarchy of the state and its various organs of silencing – the school, workplace, parliament... Women who were told by their families that their voices should not trespass the hallowed boundaries of the home, were taught lessons in silent forbearance in schools, quiet obedience in the workplace and demure capitulation in parliament. Women became tongue-tied and good listeners. While their organs of speech were blunted, their organs of hearing were sharpened. Women were taught to listen to others’ pain and problems and help solve them, while the pain raging ferociously in their own hearts was to be disciplined and tamed. Left unheard lest all hell break loose. The state and other public patriarchies colluded with the home and family to effectively shackle the voices that might subvert the lies so carefully and painstakingly crafted by patriarchy. Everyone could live in the heaven of domesticity in peace and harmony while the *ghar ki malika* (Queen of the Home) went about her daily travails from dawn to dusk.

Women are understandably suspicious of the peace and harmony that is offered to them in their ‘safe havens’. They are privy to the secret of this discordant peace.² They know at whose expense it has been attained. They are told to keep quiet, shut up and not make a noise when they are beaten, mutilated and burned because their own man’s honour would be at stake. Their own dignity and protection lies in not telling. Telling would be humiliation. So not telling is the answer. Thus, the ‘happy marriage’ is sustained through a peaceful and tranquil falsehood lived daily by many a woman. If she dares to challenge and question the imposition of peace for which society, custom, and tradition make her solely responsible, the floodgates of hell are opened for her. Reviled, rebuked and abandoned by friends and strangers alike she is a sinner; she will burn in hell and on the day of judgment, as she is told, all manner of divine wrath will descend upon her for lifting the veil of silence from the horrors of her life – for bringing a bad name to her *majazi khuda* (God on Earth). Speaking is equal to sinning. Silence is equal to salvation.

From the home and family, this fatal silence spreads into wider society, enveloping public spaces in its poisonous grip. It overtakes all institutions, all discourses and all imagination. As in the family, so in the public space, silence weaves its way through power. Whenever dissent is to be quelled, disagreement quashed and subversion obtained, silencing offers its time-tested techniques to governments, states and beyond. It gives birth to numerous press and publication ordinances such as the Prevention of Electronic Crimes Act, 2016 (PECA) and other devices to establish the violent serenity of a repressive regime.³

Repressive regimes and warlike governments paradoxically accomplish silence through speech – excessive and continuous speech. An endless cacophony of ‘sound and fury signifying nothing’ by the state and corpo-

¹ One of the earliest books that broke the silence about women’s lives was Betty Friedan’s *The Feminine Mystique*. Written in 1963 it was one of the first books to fracture the myths surrounding the ‘peacefully happy lives’ of suburban housewives who were expected to be contented with their roles as housewives and mothers with no other aspirations

² Women have been held responsible for domestic peace by remaining silent about discord and disharmony, and even violence. In the subcontinent, this was emphasized by virtually every nationalist writer who defined her role. For example, Dipty Nazeer Ahmad in his famous *Mirat-ul-Uroos* (*The Bride’s Mirror*) emphasizes the primary task of women to keep peace in the home. Similarly, Akbar Allahabadi, the nationalist poet, holds her responsible for domestic discord in many a satirical couplet. For a detailed analysis of the work of these writers see Rubina Saigol’s *Homemakers and Home-Breakers: Construction of Women in Muslim Nationalism in Women, Narration and Nation-Collective Images and Multiple Identities* by Selvy Thiruchandran (1999). The following quote from Ruskin in *Sesame and Lilies* (1865) is also instructive in how women were conceived as rulers of and peacekeepers in the home: “The man, in his rough work in the open world, must encounter all peril and trial...often he must be wounded or subdued; often misled, and always hardened. But he guards the woman from all this; within his house, as ruled by her...This is the true nature of home – it is the place of Peace...And wherever a true wife comes, this home is always round her.... This, then, I believe to be...the woman’s true place and power....So far as she rules, all must be right, or nothing is. She must be enduringly, incorruptibly be good; instinctively, infallibly wise – wise, not for self-development, but for self-renunciation”

³ The ‘blackest of black press laws’ came about in 1960, (and its amendment in 1963) in the form of Ayub Khan’s Press and Publications Ordinance (PPO). It was called such because it gave the government total, absolute control, and journalists were reduced to mere stenographers. PEMRA (Pakistan Electronic Media Regulatory Authority) was created in 2002 through a Presidential Ordinance to regulate the growing electronic media in the country. In 2007 when the government of General Musharraf suspended the Chief Justice of the country leading to widespread protests by lawyers, intellectuals, political parties

rate media around the world achieves the singular most important function of cloaking the truth. It is worth noting that the government of Pakistan named its most violent, noisy and bloody operation against the Lal Masjid militants 'Operation Silence'.⁴

This oxymoron was the brainchild of a bunch of official, semi-official military and civilian morons. After months of letting the Lal Masjid/Jamia Hafsa militants get away with kidnapping, land grabbing, violating state law and remaining completely silent about the reasons for restraint, the latter imbeciles broke the silence with the deafening roar of guns, tanks, and gunship helicopters in the middle of an arrogant and self-righteous capital. 'Operation Silence' roared loudly about government and non-government sins over which a shroud of silence had been laid.

The deep bonds of the past between the militants and their official patrons, hidden from public view yet utterly visible to the discerning eye, finally erupted in a tragic bloodbath that reverberated around the world. The silence around the long litany of media denials about the relationship between the state and the militants was finally broken as droves of militants and terrifying quantities of arms and ammunitions emerged at a stone's throw from the Headquarters of the Inter-Services Intelligence. The truth could not be silenced any more despite the brave efforts of the 'Misinformation Ministry'.

The truth about the formation of Bangladesh was similarly buried under layers of silence until the Hamoodur Rahman Commission Report leaked out and gave the game away.⁵ Then, too, the atrocities of 1971 were only partially and grudgingly acknowledged by an embarrassed and cornered government. Official, state-sponsored textbooks did a successful job of cover-up. They either put in one-liners at the end of chapters attributing the whole episode to an Indian conspiracy or, much more creatively, told an entirely different story.

Bangladesh was written out of history through a series of half-truths and full lies. The best way to not tell a story is to tell a different story, to conjure up an alternative tale to cover up the real one. The 'other' story about Bangladesh splashed across several pages of textbooks never tells the unsuspecting future generations, eagerly rote-learning⁶ the official tale, the real reasons for the separation of East Pakistan. It remains silent on the elections of 1970, about who won that election and why the winner was not allowed to form the government. And there is a deathly silence over what the army did in Bangladesh. The alternative national narrative is about the suffering of the poor soldiers in unfriendly and hostile conditions, and the writers wax eloquent on this

and civil society activists, the protests were widely covered by the electronic media all over the country. PEMRA then came out with draconian regulations to strangle the media. These measures were staunchly resisted by journalists, lawyers, and human rights activists until PEMRA had to withdraw the controversial provisions. The offices of GEO TV in Islamabad were attacked and ransacked by the police and the offices of AAJ TV in Karachi were subjected to six hours of firing with no authorities intervening on May 12, 2007. These are some examples of the high-handedness of State authorities in their bid to silence the outspoken and daring electronic media in Pakistan

⁴ Early in 2007 the Lal Masjid (Red Mosque) was taken over by the madrassa students and their leader, Khateeb Maulana Abdul Aziz along with his brother Maulana Ghazi Rashid. The madrassa armed students, along with their female counterparts in the attached Jamia Hafsa, took illegal control of government land on which the mosque was built and unleashed a reign of terror in Islamabad. Armed with staves, the burqa-clad women of the Jamia Hafsa brigade engaged in the kidnapping and forced confessions of women in the Capital. The Burqa Brigade took control of the Children's library for months and the government authorities failed to take any action despite repeated calls from various quarters to deal with the issue. Acting as a State within a State, the Lal Masjid and Jamia Hafsa students announced the imposition of Shariat. The mosque compound was a stone's throw from the headquarters of the Inter-Services Intelligence, leading many to believe in the involvement of the secret agency in the activities of the land-grabbing, arms-toting 'religious' mafia. There were also speculations that General Musharraf was using the Lal Masjid takeover to show his patrons in the US that his removal would lead to a takeover of power by religious militants. He was thus using all manner of argument to desist from arresting the hooligans and bringing them to book. Early in July 2007 violence broke out, forcing the government to finally move on the issue. After days of waiting for the militants to give up arms and vacate the premises, the government conducted 'Operation Silence' leading to massive bloodshed of many innocent children and women who were held hostage in Lal Masjid. The operation, when it came, was much more bloody than it might have been had action been taken earlier. Maulana Abdul Aziz was arrested while trying to escape as a burqa-clad woman, while his brother Maulana Rashid was killed during the operation. The operation received widespread condemnation for being a bloodbath of innocent people on account of the government's reluctance to take action earlier

⁵ The Hamoodur Rahman Commission Report: The War Inquiry Commission was appointed by the President of Pakistan in December 1971. In its secret report, never made public in Pakistan the Commission, headed by then Chief Justice of Pakistan, Hamoodur Rahman, held widespread atrocities, other abuses of power by Pakistani generals and a complete failure in civilian and martial-law leadership responsible for the loss of East Pakistan. The report dwells on a range of sins: killing of thousands of Bangladeshis—both civilians and "Bengali" soldiers—rape, pan smuggling, looting of banks in East Pakistan, drunkenness by officers, even an instance of a Brigadier "entertaining" women while his troops were being shelled by Indian troops. It recommended a string of court-martials and trials against top officers. Nothing ever happened. The army's role in splintering Pakistan after its greatest military debacle was largely ignored by successive Pakistani governments

⁶ Editors Note. Learning by rote has its roots in the oral tradition in the Indo-Pakistan subcontinent. However, pedagogical reliance on this form of teaching methodology, precludes questions and discussion and raises the status of the written or 'taught' word to that of 'Truth.' As such it falls in with the dynamics of military rule or any other authoritarian form of government and is yet another form of silencing

tall tale. There is no mention of the three million butchered and over two hundred thousand raped during the genocide. Bangladesh, drenched in Pakistani blood and semen, becomes a gaping hole in national memory. The massive expenditure of energy on the alternative story enabled the state to absolve itself of responsibility and allowed the culprits to escape accountability.⁷

When incredulous students question and challenge helpless teachers on the absurd contradictions within officially woven tales, the latter resort to the time-tested devices of 'keep quiet', 'stop talking and do your work' and 'fingers on your lips!' The culture of silence begins early, is taught in schools, reinforced at home and enforced in the workplace. A common joke in many organizations is: "Rule No.1. The boss is always right. Rule No. 2. If the boss is wrong, refer to No. 1". Seniors and Superintendents refuse to tolerate any dissent, disagreement, or challenge from their positional juniors even though the latter may be right.

As in the home and at the levels of state and government, debate and differences of opinion are feared and blocked. The most violent reaction can follow the slightest disagreement or debate, which could be potentially enriching for the workplace. Seniors feel threatened, particularly when juniors are perceived as more intelligent or better qualified and educated. Workplaces reinforce the hierarchies of relationships taught at home and are upheld in the media, education and religious institutions. Obedience taught towards elders and males at home is transferred in the school to the teacher and principal (extensions of parents) and then reiterated in the workplace where seniors become extensions of both parents and teachers – ending in a deadly combination.

The same obedience learned from textbooks and teachers, and pulpits and preachers, is drawn upon by states and governments in the form and narratives of loyalty and patriotism. The more silent we are the more ideal we are as citizens – non-threatening, obsequious, self-effacing and acquiescent in the project of the state as much as those of our families and our workplaces. The latter includes not merely the state and privately-owned enterprises, but also so-called Civil Society Organizations that speak the language of human rights with such a nauseating consistency that they render the subject meaningless. The greater the noise about human rights and a rights-based approach, the lesser the tolerance for rights or for dissent and challenge – there seems to be an inverse relationship between the rhetoric and the actions. Perhaps the rhetoric is designed precisely to disguise and deny the actions and erase them from memory.

Thus, we are not silenced only by the state or the establishment. The process of silencing is much more hegemonic than that. We are silenced no less by our families, our friends, our schools, our workplaces and in our activism by our movements. Ultimately, we are silenced by ourselves in self-censorship that exceeds any silencing by an outside authority. Our fears of difference, our need to conform, our desire to fit in, our efforts to be amiable, and our concerns to keep the peace and not make waves render us speechless. We fail to say what we must and instead endlessly speak to cover up, conceal and mask what we feel, need, desire and fear.

The culture of silence pervades the international arena no less than it does the national, local, cultural, commercial, civil and domestic spheres. In the rich countries of the North, a powerful corporate media makes and un-makes the truth for the consumption of the majority of unsuspecting and often times gullible populations. The media, through its magical techniques, which can conceal and reveal, speak and refuse to speak, silence and give voice, creates mirages which pass for the truth around the world. In the US, the truth regime is dominated by CBS, NBC, CNN, and Fox News. There are others around the world, but these four by themselves create enough illusions and delusions that vast populations around the globe consume as 'truth'. What they choose to represent and what they frame out, together form the picture that the world sees in its drawing rooms.

Together with the governments, the giant media corporations can conjure up mass hallucinations that can afflict millions. Post 9/11,⁸ the drumbeat of war began from the White House. Mass deceptions had to be manufactured to justify war, conquest, and control over precious resources such as oil. The 'independent' media

⁷ For details of how Pakistani textbooks erase the story of the birth of Bangladesh through half-truths and full lies and by expending enormous energy on the alternative story to silence the truth, see Rubina Saigol's *Enemies within and Enemies Without: The Besieged Self in Pakistani Textbooks*. *Futures: The Journal of Policy, Planning and Futures Studies* (2005), Vol. 37, p. 905-1056

⁸ Editors Note. 9/11 refers to the September 11 attacks

acted like the White House and Pentagon's right arm in conjuring up pictures of Weapons of Mass Destruction⁹ lying all over Iraq. Satellite photos further corroborated the 'irrefutable' evidence presented by Colin Powell at the UN with former CIA Director, George Tenet, sitting right behind him and looking over Powell's shoulder to ensure that others could see what he saw. When the Germans and the French found it a little hard to see the clear and 'slam dunk' evidence of WMD in the pictures (they probably needed new eyeglasses), Powell pointed them out with his finger while trying to suppress an embarrassed smile.

While CNN and the others were a little bit more circumspect, Fox News made it its round-the-clock duty to prove that all of Mr. Bush's delusions were facts and that Iraq was indeed an imminent threat; that WMD definitely existed, and that the deep bonds between Saddam and Al-Qaeda were established truth. Furthermore, Iraq was deeply involved in the 9/11 attacks and there was no doubt about this in any credibly informed quarter. Relentlessly and mercilessly, thoughtlessly and senselessly – or rather deliberately and consciously – Fox News blew the war trumpet day in and day out. That its talk shows flew in the face of reality, that its news was given the lie by facts on the ground, that its analysis came close to being hilarious, and that its claims were outrageous, its presentation obscene in its unquenchable thirst for blood, made not a whit of difference to what it was doing.

The constant noise made by Fox News only served to Silence all other voices - it talked so much and so ruthlessly and endlessly about the war, that the reality of the war disappeared even from its own heartless camera. Even when it was becoming obvious to the world that all the premises of the war were wrong – there were no WMDs, there was no connection between Iraq and Al-Qaeda and there was no link between Iraq and 9/11 – Fox News did not relent in making such connections and drawing its own conclusions. Report after report by the Iraq Survey Group by Hanx Blix¹⁰ and others, could not stop the loud chatter of lies that Fox News disseminated to hide the truth and prevent it from raising its head. If every talk was used as a mechanism of silence, and speech was used to muzzle voices, it was Fox News that excelled in the art. It made such a mockery of 'free speech' that the very words 'free' and 'speech' needed redefinition. By the time several inquiries like the Chilcot inquiry report of 2016 proved the falsehood of the claims justifying the Iraq invasion, millions of Iraqis had lost their lives and the land was devastated.

Across the Atlantic, Tony Blair and the somewhat more respected BBC meanwhile were busy convincing highly sceptical populations that Saddam could attack the UK in 45 minutes. The millions who were marching on the streets of Rome, Paris, London, New York, Berlin, and San Francisco were liars and had to be silenced. What was the point of showing the four hundred thousand that marched in New York and Washington on TV? Useless waste of airtime; why not instead show one of Mr. Bush's highly inspiring speeches? Linda Ronstadt, a not very well-known singer, had to be stopped from singing in nightclubs and bars as she opposed the war. Hollywood actress Susan Sarandon had her appearances in certain events cancelled because she disagreed with the war and its premises. Michael Moore, the 9/11 filmmaker was booed at the Academy Awards for openly and candidly opposing the unjustified and illegal war. Anyone, and literally anyone, who disagreed or expressed a different point of view had to be ridiculed and threatened to be ultimately silenced. The silencing was not only by the state and its organs or multinational corporations in pursuit of war booty in Iraq, alterna-

⁹ WMD

¹⁰ The ISG (Iraq Survey Group) was made up of more than one thousand Americans, Britons and Australians, with the United States providing the bulk of the personnel and resources for the operation. These people included civilian and military intelligence and WMD experts, as well as a large number of people working to provide armed security and support. David Kay, a prominent U.S. scientist who searched for WMD after the first Gulf War, was chosen to head the group. The agency tasked as the head U.S. Government Agency of the ISG was a joint venture of the CIA and the DIA (Defence Intelligence Agency, the DoD counterpart to the CIA). The Iraq Survey Group was the successor to the United Nations inspections teams, UNMOVIC led by Hans Blix and from the IAEA led by Mohamed El Baradei, which had been mandated by the U.N. Security Council to search for illegal weapons before the conflict. After six months of searching for WMD, the ISG issued an Interim Progress Report on October 3, 2003. The team found evidence of "WMD-related program activities" but no actual chemical, biological or nuclear weapons were found. On January 23, 2004, the head of the ISG, David Kay, resigned from his position, stating that he believed WMD stockpiles would not be found in Iraq. "I don't think they existed," commented Kay. "What everyone was talking about is stockpiles produced after the end of the last Gulf War and I don't think there was a large-scale production program in the nineties." In a briefing to the Senate Armed Services Committee, Kay criticized the pre-war WMD intelligence and the agencies that produced it, saying "It turns out that we were all wrong, probably in my judgment, and that is most disturbing." Kay's successor, named by CIA director George Tenet, was the former U.N. weapons inspector Charles Duelfer, who stated at the time that the chances of finding any WMD stockpiles in Iraq were "close to nil." On September 30, 2004, the ISG released the Duelfer Report, its final report on Iraq's WMD programs. Among its key findings: Saddam ended his nuclear program in 1991. The ISG found no evidence of concerted efforts to restart the program, and Iraq's ability to reconstitute a nuclear weapons program progressively decayed after 1991. In March 2004, Hans Blix and El-Baradei reported that the US had ignored evidence against the existence of WMD in Iraq and that the basis of the war was unjustified. In 2004, Blix published a book, 'Disarming Iraq,' where he gives his account of the events and inspections before the coalition began its invasion. Ultimately, no stockpiles of weapons of mass destruction were found.

tive voices were silenced also by members of the media, film industry and those connected to the world of art, even though the latter are often considered the ambassadors of humane values able to transcend national and cultural boundaries.

The imagined international community (referred to as 'international' but actually consisting of the elites of powerful countries) incessantly reverberates with the sounds of human rights of which free speech is considered pivotal for a humane society, and as the hallmark of a civilized, modern and democratic society. The right to say and not say, speak and remain silent, and express and refuse to express are considered the cornerstones of being human, for language is known to be the feature that distinguishes humans from animals. Free speech, of course, has its limits, as it should. Without the boundaries that are so important, free speech could be so easily transformed into hate speech, and hate speech can end in violence. Within the bounds of reason, free speech is the distinct signifier of democracy, which presumes freedom of all kinds limited only by the necessary constraints imposed by other people's rights.

However, the limits on freedom can be extended to dangerous levels, well beyond those required for a just society. The curtailment of people's right to live freely as they choose and where they choose, and to move freely within their country and express their desires in their own unique way, tempered only by considerations of legality and decency, signifies a weak and threatened state and society where tolerance of difference is diminished to the extent to which the Establishment feels fearful of its people.

In contemporary Pakistan, silence is not only achieved by banning articles, TV shows, and anchors, it is also accomplished by performing the magical act of making people disappear from view. What I cannot see does not exist – says our insecure state that cannot tolerate opposition or critique. Journalists disappear in broad daylight, sometimes shot, murdered, mutilated, and shows and anchors disappear from TV screens if they do not conform to the current dominant narrative. Those who survive may face the wrath of the state in the form of its legal instruments like PECA. Our state feeds upon, grows and is fattened upon the silence it produces in abundance.

PART II

The state's fear of loss of control over the populace is most clearly apparent in the much spoken of yet silenced area of sexuality.¹¹ Sexuality – unbridled by rules, norms, regulations, values, and controls – threatens to overturn the precarious social order so deftly crafted by centuries of strictures and guidelines created by religion, law, and schooling and strictly implemented by the family. The fear of loss of control over women's reproductive capacities evokes one of the most ancient fears of MANKIND – the inability to establish paternity with certainty. Control over women's sexuality is the only way to ensure paternity with some certainty and this form of control can only be asserted through the control over women's movement, speech, association and interactions, in short, all their fundamental rights to live the lives of their choice. Human rights and patriarchy thus stand in stark opposition to each other, with their goals and aims contradicting each other at every point.

The rules of patriarchy are quite simple: a heterosexual union involving one man and preferably one woman to procreate for the family, nation, state and social group. Such a union is usually solemnized in a religious or legal ceremony and is recognized and supported by law, government, and society. The woman may not engage in sexual relations outside the union so that the paternity of her legally married partner may be certain. A man and his family can thus ensure that a child born of the union is biologically his offspring and may therefore be given his name and property. The monogamous, compulsory heterosexual union arose with private property

¹¹ In his famous work on the History of Sexuality, Volume 1 & Volume 2, French historian Michel Foucault revealed how sexuality, far from being an area that is taboo, is much talked about and new objects for medical and psychological intervention are created in the discourse on sexuality. The discourse mystifies the subject, and technologies of power are applied to new categories of sexual behaviour that emerge in the psychiatric and public discourses on sexuality. Very often, the excessive concern with sexuality masks and hides more than it reveals

and is the mainstay of the social relations of production and reproduction in classed societies.¹²

Forced monogamy and compulsory heterosexuality must deny any other form of sexual union – bisexual, homosexual, and group unions. As the foundation of patriarchy, forced monogamy and compulsory heterosexuality must deny any other expression of sexuality. Patriarchy must perforce recognize the existence only of men and women as polar opposites. It must deny and erase the existence of a range of multiple sexualities and genders, including transgender, trans-sexual and other variants. If the alternative forms are to be acknowledged at all, they must be as aberrations, deviations, transgressions and ultimately sins. What religion declares to be sin, law decrees as crime, thus making all differences punishable by a court of law.

When the rules and regulations of patriarchy constructed over centuries of repression are violated – inadvertently or deliberately – the entire social system quakes with fear and all kinds of controls including religious, legal, familial and social come into play to re-establish and reaffirm the basic order built on the subordination and control over women. Shahzina Tariq and Shumail Raj interrupted the monotonous tale of patriarchy, perhaps somewhat unknowingly.¹³ Quite innocently, they shook the foundation on which the patriarchal social order rests. Suddenly the entire apparatus of control and domination rose to reclaim the spaces that these two had created almost inadvertently. The family was up in arms, the High Court was outraged, the media was awash with their story and civil society was baffled at their courage; some were taken aback by their insolence, and others were excited by their audacity.

Shahzina and Shumail had interrupted the official version of sexual normatively. They had punctured the established and legitimized myth of two sexes, two genders, opposite-sex marriage with one partner forever and ever. They had punctuated the smooth flow of heterosexuality. They had blown apart the comfort of heteronormativity. They had released the hidden, suppressed and forgotten truths about the multiplicity of sexualities and genders. They had trespassed into our fairytale world of a prince and princess living (un)happily ever after. With their transgression, they had released many, many of us from the straitjacket of fixed binaries and Cartesian dualisms – masculine versus feminine, subject versus object, material versus spiritual, self versus other, outer versus inner and so on.

Ironically, Shahzina and Shumail did not break the silence over sexuality. What they did was to interrupt and cast doubt on the singularity of the long, dull, monotonous, one-sided, uninteresting and insipid tale of officially sanctioned sexuality (read heterosexuality). They disrupted the noise – the cacophony of endless homilies, strictures, rules, regulations, and discourses over sexuality that permeate an otherwise ‘sacred space’ in the land of the pure. Our public space is awash with conversations about sexuality – the Hudood Ordinances, the Zina Ordinances, Family Laws Ordinance, endless news items about ‘love marriage’ (often used derisively as though hate marriage would be preferable) and constant television talk shows on marriage and marital relations indicate an intense preoccupation with sexuality, especially with breeding. Books like *Bahishti Zewar* by Maulana Ashraf Thanvi, and its cheap variants that proliferate the markets, contain entire chapters that deal with sexuality and sexual relations.

The backlash against the speech of Aurat March, designed to break the silence about patriarchy and its binary norms, indicates clearly how noisy patriarchy and its state, its religion and its law become when threatened by

¹² For a detailed understanding of the way in which the rise of private property and monogamous marriage to ensure the paternity of offspring became the ‘world historical defeat of the female sex’. See *The Origin of the Family, Private Property and the State* (Penguin Classics) by Friedrich Engels (1884)

¹³ In 2007 the case of Shahzina Tariq and Shumail Raj broke into public discourse with their story splashed across major newspapers and talk shows about gender identity on a number of private TV channels. Shumail had undergone the necessary medical treatment to claim his identity as a male. Shumail and his cousin Shahzina, residents of Faisalabad, fell in love and got married. In 2007, they went to court to plead protection from family harassment and be allowed to live as a couple. In response, Shahzina’s father filed a petition before the Lahore High Court arguing that Shumail was a woman and the marriage, therefore, was null and void. The High Court ordered an examination. Shumail capitulated and stated that he was a woman to escape the humiliating medical examination. The High Court awarded them three years in prison on charges of perjury for saying that Shumail was a man. However, the Supreme Court granted them bail and expressed a greater understanding of their plight in light of new knowledge on transgender and transsexual issues. Shumail and Shahzina were assisted in their struggle by the ASR Resource Centre, a feminist group based in Lahore, post-Supreme Court proceedings. Which begs the question, should we instead talk about it in terms of imperatives or do we mean knowledge of gender affirmation procedures? Because this case opened up a Pandora’s Box of issues around transgender identity, the idea of multiple sexualities and multiple genders. For the first time in Pakistan, respected psychologists and psychiatrists and members of the medical profession appeared on public television to concede that transgender identities exist and that there is the possibility of more than two genders and that sexuality is much more complex than the one-man, one-woman heterosexual union

the truth of those who express a different reality.¹⁴ A nuclear state, armed to the teeth with its toys of destruction, felt threatened and insecure by the voices of women marching on the streets armed only with their speech, expression, and placards of resistance. Patriarchy roared and roared as it felt its foundations slipping beneath its crooked feet.

Public political discourse in Pakistan does not silence sexuality – it drowns its complex, many-sided reality in its noise. It makes alternative sexuality speechless through endless speech about ‘correct sexuality’. Other and different sexualities are suppressed, silenced and hidden beneath layers of exhortation and moralizing. Even though transvestites, transsexuals, trans-genders, cross-dressers, homosexuals, bisexuals and various expressions of sexuality and gender have existed among us for centuries, we live in collective denial.¹⁵ Our religious leaders have the propensity to locate such ‘unsavoury’ figures in Western countries. The official speech contends that alternative expressions of gender and sexuality are inventions of the immoral and depraved West. In our pristine Islamic cultures, such deviance does not exist. All that is immoral emanates from the ‘Other’.¹⁶

However, at conscious and unconscious levels, we have historically and collectively known and celebrated ‘deviance’ from the socially sanctified norms. The celebration of forbidden love is integral to people’s culture. We love the story of Bulleh Shah dressing as a woman and dancing to placate the *Beloved* as we recite: “Kanjri Baneyaan Medhi Izzat Na Ghatdi, Main Nach Nach Yaar Manaanan” (posing as a prostitute does not lessen my honour, I will dance and dance to seek my Love’s forgiveness). We love the mysterious and haunting tale of Shah Hussain and Madho Lal and annually celebrate their passion at Mela Charaghan. We love the poetry of Bulleh Shah and Shah Hussain. We love Sufi Sada Suhagan who invariably dressed as a woman and wore red to symbolize marriage.

Our cultural and Sufic traditions are replete with ‘forbidden love’, with transgression and crossing of borders. Our eternally loved and revered Heer went to court against her forced marriage and had it annulled before she was poisoned. The indomitable Sohni crossed the treacherous Chenab to meet her lover, until her husband’s sister contrived her death by drowning. We sing of these heroines of Punjab, and they are a valued part of our folk heritage. In our collective unconscious, we have always known and accepted sexualities other than those bound in a permanent heterosexual union.

The rigid binary oppositions between masculine/feminine, subject/object and material/spiritual were in fact considered a part of the duality of Western philosophy. Although Western philosophies are not monolithic and have many strands and differences as do Eastern philosophies, nonetheless the ideas of one-in-all and all-in-one have been concepts that are highly consolidated in the traditional philosophies of the subcontinent. Strict separations, divisions and binary distinctions, characteristic of Western epistemological traditions, have not been the hallmark of folk thinking in the history of the subcontinent.¹⁷

¹⁴ Dr. Rubina Saigol and Nida Usman Chaudhary. *Contradictions and Ambiguities of Feminism in Pakistan*. Friedrich Ebert Stiftung, 2020

¹⁵ Western science and research on sexuality have long-established that sexuality is not monolithic and that it has multiple equally valid and varied expressions and forms. The classical texts that reflect early research of the mid-twentieth century are the following: *Sexual Behavior in the Human Female* (1953) & *Sexual Behavior in the Human Male* (1948) by Alfred C. Kinsey, *Human Sexual Response* by William H. Masters and Virginia E. Johnson (1966), *Human Sexual Inadequacy* by William H. Masters (1970). The Hite Report: A Nationwide Study of Female Sexuality (1976) and *The Hite Report on Male Sexuality* (1981) by Shere Hite. Although psychoanalysts had pointed out the uncertain nature of gender and sexuality in the late nineteenth century, their views were considered heresy in the prudish atmosphere of Victorian times. Nevertheless, more recent studies on sexuality have revealed the many facets of sexuality that exist in nature and have no less validity than the officially and legalized forms

¹⁶ Editors Note. Ironically, in India and what is now Pakistan, homosexuality was criminalized under British colonial rule: Section 377 of the Indian Penal Code (IPC) 1861, inspired by the 1553 Buggery Act that outlawed homosexuality in England. It was reportedly imposed to protect soldiers and colonial administrators from “corruption” out of a fear that these men sent far from home (and their wives) would turn to homosexuality.

¹⁷ The strict binary distinctions and divisions between subject and object, self and other, masculine and feminine, material and spiritual and similar polar oppositions discernible in Western epistemologies have been challenged by feminists who have worked on the traditional notions of science and knowledge and have argued for a different way of knowing and understanding the world. In particular, the work of Elizabeth Fee is significant. See Elizabeth Fee’s *Is Feminism a Threat to Scientific Objectivity?* *Journal of College Science Teaching* (1981), Vol. 11, p. 84-91; *Science and the “Woman Question”, 1860-1920: A Study of English Scientific Periodicals* by Elizabeth Fee; Ruth Bleier’s *Feminist Approaches to Science*, Pergamon Press (1986), p. 42-56; and Marian Lowe and Ruth Hubbard’s *Woman’s Nature: Rationalizations of Inequality*, Pergamon Press (1984), p. 9-27. Also, significant in this regard is the work of Alison Jaggar, namely, *Feminist Politics and Human Nature*, Rowman & Allanheld (1983); Alison M. Jaggar and Susan Bordo, *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing*, Rutgers University Press (1989); and *Just Methods: A Reader in Feminist Methodology*, Paradigm Publishers (2007). Apart from Fee and Jaggar, the other feminists who have worked on alternative conceptualizations of nature and the world include Donna J. Haraway. See *Simians, Cyborgs, and Women: The Reinvention of Nature*, Routledge (1990); and Durre S. Ahmed, *Masculinity, Rationality and Religion: A Feminist Perspective*, ASR Publications (1994)

Western medicine and psychoanalysis were in fact late in discovering that sexuality can have myriad manifestations and that masculinity and femininity are not mutually exclusive, distinct and separate categories. It was in the late nineteenth century that psychoanalysis found that even biological sex is hard to determine, leading Sigmund Freud to say that:

...we shall, of course, willingly agree that the majority of men are also far behind the masculine ideal and that all human individuals as a result of their bisexual disposition and of cross-inheritance, combine in themselves both masculine and feminine characteristics, so that pure masculinity and femininity remain theoretical constructions of uncertain content.¹⁸

Freud, the biologist and medical practitioner, had found it hard to determine with certainty whether someone is a man/male or woman/female in the widely accepted sense of the words. A large number of sex change operations, and the increasing cases of “men feeling trapped in women’s bodies” and vice versa, now lend credence to psychoanalytic findings, as well as the wisdom prevalent within folk philosophies of our part of the world.

Normality, normalcy and normatively are social and discursive constructions which act as tools for the application of power.¹⁹ What is ‘normal’ has varied across histories and geographies. What was ‘normal’ in the past has undergone radical transformations in the present. What is quite ‘normal’ and accepted in one culture is taboo in another. This is not to argue that one can resort to crude cultural relativism, as that has its own dangers. Certain universal norms and principles are non-negotiable and necessary for civilization. However, the expression of sexuality cannot be and should not be universalized. This is where difference can and often does manifest itself. Sexuality is multiple and varied and in so far as it does not violate anyone’s rights or cause harm to anyone, its multiple variations should be permissible. As John Stuart Mill, in his discussion on liberty, writes:

.....the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong...from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others.....The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.²⁰

In a perfect world, where equality and liberty existed, Mill’s idealistic vision could prevail. However, in unevenly structured societies (and most societies are unequally organized) the question of who decides what is normal and abnormal becomes a question of power. Those who hold the means and methods of the production of ‘Truth’, whether it is priests, political leaders, corporate media moguls, judges, law enforcers, teachers or the medical profession, will invariably apply this power over others who become victims of imposition of the definitions of others upon their reality. Deviance can only be constructed once ‘normality’ has been established, without which it would cease to exist. Both deviance and normality then become instruments of power and control over those who dare to define themselves in their own way. Conformity to ‘normality’ is rewarded with approval and support, and deviance from ‘normality’ is punished with censure, ostracism, and incarceration. Shahzina and Shumail dared to defy others’ definition of their reality and have chosen to speak of themselves in the manner they want. They have not harmed anyone. They have broken the discourse, and punctured the ‘Truth’ as defined by the state and family. They have spoken the silence hidden beneath several layers of noisy chatter. In doing so, they have disturbed the peace that may be in silence, as Max Ehrmann’s poem quoted at the beginning says. It is only by disturbing the peace, creating chaos in the social order and speaking the un-said, that there can be hope for those whose realities lie quietly waiting for the moment of expression. There

¹⁸ Sigmund Freud. *Some Psychical Consequences of the Anatomical Distinction between the Sexes* (1925); and, *Three Essays on the Theory of Sexuality* (1905)

¹⁹ In his work on knowledge and epistemology, Foucault argued that knowledge produces ever new categories and classifications in discourse, and these in turn become the objects of intervention. Power is thus produced at various points and is not something that is imposed from above on those below. Power has multiple sites of application, one of which is the client/therapist relationship. See Michel Foucault. *The Archaeology of Knowledge: And the Discourse on Language* (1969)

²⁰ John Stuart Mill, *On Liberty*, Dower Publications (2002)

may be 'peace in silence' but there may be liberation in speaking. A peace built upon the silent cries of those whom the family, state, society, and culture do not want to listen to, is not peace. It is a quiet but seething war. In disagreement with Ehrmann's "remember what peace there may be in silence", I would like to invoke Dylan Thomas who said:

Do not go gentle into that good night
Rage, rage against the dying of the light.

My heart tells me to rage, rage. In my country, we do not rage enough. As quiet spectators we watch our rights trampled upon, our realities negated and our aspirations destroyed. We live in a deafening silence, surrounded by a noise meant to render us quiet. Even if there is peace in silence, I want to shun that peace for "I Speak, therefore I Am".



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