



Section 26-A of PECA and Freedom of Expression in Pakistan: A Constitutional Analysis

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Abstract

The Prevention of Electronic Crimes (Amendment) Act 2025 added Section 26-A that criminalizes any dissemination of false or fake information that is likely to cause fear, panic, or any disorder in the population, which raises the constitutional issue of freedom of expression in Pakistan. This paper uses the doctrinal and comparative legal research design, analyzing the text of the Section 26-A, the provisions of the constitution (Articles 19 and 19-A), the Pakistani case law, and the international standards of free-expression. The discussion discovers that Section 26-A employs ambiguous terms and general liability criteria, which allow wide interpretation and puts journalists, political opponents, and other civil society members at risk of abuse. The provision seems to have no chance of passing constitutional tests of legality, necessity, and proportionality, and require legislative modification to bring Pakistan to the standard of the constitution and the global human rights standards in cybercrime.

Keywords: Freedom of expression, disinformation, cybercrime law, PECA (2025), Pakistan Constitution Art. 19, press freedom, proportionality.



Introduction

In January 2025, the Parliament of Pakistan quickly passed the far-reaching amendments to the Prevention of Electronic Crimes Act (2016), which resulted in a hot debate about the freedom of media. One of the amendments was a new Section 26-A which criminalizes intentional dissemination, public exhibition or transmission of any information using electronic systems, the disseminator knows or has reason to know is false or fake, and is likely to cause or create a state of fear, panic or disorder or unrest among general population or society. The crime is punishable by a jail term up to three years or fine to the value of PKR 2,000,000 (approximately USD 7,000), or both. Critics caution that this section, which aims at addressing so-called fake news, has so far been drafted in subjective and overly broad language, which will put on the hook journalists, critics, and regular citizens who are simply conducting the public discussion.¹

The Pakistani law usually safeguards the freedom of speech and press. In article 19 of the 1973 Constitution, it is stipulated that:

“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, the integrity, security or defense of Pakistan... public order... or morality.”²

Article 19-A on the same, likewise, includes the right to information. Any law restricting such rights should fulfill the requirements of Article 19(2): it should be a lawful restriction and not exceeding a delimited national interest (like that of the maintenance of order in the country) and it should be able to pass the test of necessity and proportionality. The courts in Pakistan have pointed out that these basic guarantees encourage debate needed in democracy.³

In this paper, Section 26-A is critically analyzed in the perspective of Articles 19 and 19-A. The question it presents is: does Section 26-A present a permissible reasonable restriction of expression or a free speech violation of an undue manner? Analysis will also be based on (1) an overview of the text and context of 26-A and associated PECA provisions; (2) a literature review of scholarly and civil-society writing on laws on fake news in Pakistan; (3) surveying Pakistani judicial case law on the Article 19/19-A and similar restrictions; (4) surveillance of the enforcement practice and real examples of the new law; (5) comparative law on law regarding disinformation in other jurisdictions (e.g. India, UK, EU, US); and (6) This is mainly referred to as doctrinal legal research: the analysis will be conducted on the basis of the authoritative texts (the PECA Amendment 2025, the Constitution of Pakistan), the legislative history, judicial rulings and the commentary of the experts. The argument is based on the constitutional framework and case law of the supreme court, as well as relies on international standards (e.g. the disinformation guidelines of UN Human Rights Council) and comparative law. The results are used to

¹ Adil, K. (2025). 2025 Amendments to the Prevention of Electronic Crimes Act, 2016: An Introduction. *Pakistan Journal of Criminology*, 17(01).

² Ahmad, N., & Malik, M. E. (2020). Freedom Of Speech and Expression in The Contemporary World: A Case Study Of Pakistan and Limitations of Article 19 of the Constitution of Pakistan, 1973. *Journal of the Punjab University Historical Society*, 33(02).

³ Shahzad, K., Rizwan, S., & Razzaq, A. (2025). A Critical Analysis of Fundamental Rights in the Constitution of Pakistan 1973. *Journal for Current Sign*, 3(4), 316-328.



make practical suggestions in balancing any legitimate policy objectives with the constitutional liberties.

Research Methodology

The study takes the doctrinal law approach. The first one is thorough textual examination of the primary legal sources: the very wording of the Section 26-A and its backdrop in PECA (the FAKE news provision), the whole 2025 Amendment Act, and the corresponding constitutional texts (Articles 19 and 19-A). Other statutes (e.g. sections on defamation in PECA) have also been discussed in the analysis to place 26-A among the cybercrime statutes in Pakistan. Second, the project analyses the secondary sources: scholarly articles and reports on PECA and freedom of expression, position papers by think tanks (e.g. SAHSOL, RSIL), press freedom organizations (IFJ, HRCF, Digital Rights Foundation) as well as media analyses. This comprises of systematic review of scholarly criticisms as well as official declarations about the Amendment. Third, the paper uses case law: Pakistani Supreme Court and High Court rulings that have been reaching conclusions outlining Article 19 rights, and cases on related matters (terrorism, defamation, national security). Even though Section 26-A has not been squarely tested on any Pakistani case, prior jurisprudence about the extent of speech restriction that is permissible is analogically applied. Fourth, the practice of law enforcement since the law came into force is analyzed through reported cases and media stories of cases that were charged based on the new PECA provisions. And lastly, international human rights standards are incorporated: specifically, the Article 19 of the ICCPR (which Pakistan is a party to) and UN Special Rapporteur policies (Joint Declaration on “Fake News”) that define international standards of a law regulating misinformation. All claims that can be made are backed up with official sources (statutes, court decisions, reports) where possible and with pinpoint citation.⁴

Literature Review

There are a developing literature and commentary that criticizes the amendments of Section 26-A and PECA of 2025. New provisions, warns the rights groups, jeopardize the freedom of expression and press freedom. The amendments are denounced, as an example, by the International Federation of Journalists and the media unions in Pakistan, which attacked the amendments as being draconian and having the effect of attempting to strangle legitimate journalism, because of the broad bans on fake news. The major media associations in a joint statement were alarmed by the lack of clarity of the 26-A clause and the disproportional sanctions provided thereby, and remarked that it could be exploited to go after the journalists and the critics. These concerns are replicated in the analyses by HRCF and Digital Rights Foundation, as they point out that such words as false and likely to cause fear are not defined and depend on subjective estimates.

Constitutional issues are also marked in scholarly articles. According to a more recent law journal article, Section 26-A is deemed to be definitively clear, [and] has a broad applicability, compelling even lawful speech to be sanctioned and trumps procedural protections. The authors indicate that this criminalization is associated with extreme punishments without adequate legal exercises which jeopardize normal political conversation and investigative journalism.⁵ A broader Amendment is criticized by rights

⁴ Thilakarathna, A. N., & Mathotaarachchi, K. P. (2025). Doctrinal Legal Research in Common Law: The Good, the Bad, and the Ugly. *Technium Soc. Sci. J.*, 75, 118.

⁵ Daudpota, F. (2025). Pakistan Criminalizes Fake News: Free Speech Rights of Citizens v/s Desire of Government to Control Online Content.



think-tanks (SAHSOL, RSIL): RSIL points to the increased penalties and the addition of new scope as a support of an already harmful legal structure of censorship. According to the Digital Rights Foundation report on post-Amendment PECA prosecutions (IFEX), various cases of prosecution over journalists and activists who came under the provisions of new law can be indicated, highlighting the effects of the law on media freedom. The editorialization in Pakistani newspapers opined that the amendments in effect accord the government the formal censorship rights over the contents in the social media.

The literature on law of fake news is immense in comparison. International studies caution that a large number of anti-misinformation laws worldwide are chilling.⁶ As an example, CIMA (Center for Int'l Media Assistance) identified more than 100 countries having legislation with references to fake news or misinformation that typically includes penalty measures. According to human rights commentators (APC, Article 19, UN experts), these laws often have vague definitions and allow over broad censorship. In the literature, it is noted that an intervention must be minimal and necessary. The academic critiques observe a harmful precedent of states criminalizing false content on the pretext of security or public order, and it can be observed to curtail dissent.

In the particular case of Pakistan, there were not many academic articles on 26-A in the enactment, yet preceding literature established the development of PECA.⁷ Critics have been repeatedly warning that PECA 2016 was even vaguely phrased and abused to oppress dissent. Some of the analyses argue that the 2025 amendments violate basic rights more explicitly. They note a deficit in parliamentary discussion regarding the important definitions and lack of protection (i.e. due process) during the drafting process of the bill. Part of the commentary has indicated that the amendments were based on international trends of fake news legislations, but were not thoughtful of local judicial norms, or press circumstances. All in all, the literature conveys the impression that Section 26-A was a segment of an extended noose on speech online.

Case Laws

Pakistan – Constitutional Jurisprudence

Although any Pakistani court has not yet ruled against Section 26-A (it being new), constitutional precedents are used to analyze it. The Supreme Court of Pakistan has stressed on the fact that freedom of speech is a key right in the democracy. In *Masroor Ahsan v. Federation* (1997) the Court believed that press is a pillar of liberty and that public interest to be provided with truthful information is the most important. The list of restrictions that article 19 authorizes is quite limited: judges would demand that any speech penalizing law should be explicit and precise and should not be susceptible to arbitrary application. The case of *Majlis-i-Ittehadul Muslimeen v. The Court* declared that a wide-ranging sedition clause was unconstitutional due to its vagueness⁸ as it has been stated that a speech law should not be a license to trample on rights. Likewise, *Nabeel and Sons v. Quinn* confirmed that constitutional rights needed to be approached purposely and in a manner that gave maximum freedom of expression without

⁶ Rehman, A. U., Ullah, S., & Khan, M. A. (2025). Navigating fake news: Pakistan's struggle to combat disinformation and bridging gaps for national security. *Social Sciences Spectrum*, 4(3), 156-178.

⁷ Abbas, M. A., & Tullah, M. R. A. (2025). Criminalizing Disinformation in Pakistan: A Constitutional Analysis of Section 26-A of PECA and Freedom of Expression. *Pakistan Journal of Law, Analysis and Wisdom*, 4(12), 67-77.

⁸ PLD 1989 SC 343



contradicting the interests of the general welfare.⁹ Such cases highlight the importance of the fact that any such law as Section 26-A should be defined and legitimately connected to one of the few grounds, which are authorized (e.g. public order).

The interest of the public in disclosure and transparency in the government is also supported by Article 19-A (Right to Information). Article 19-A did not form a part of the enactment of PECA, but a law that generally criminalizes the information of specific kinds may contradict the spirit of this provision. Cases such as *APIRDA v. case* by the Supreme Court. Article 19-A has been identified by Federation as complementary to Article 19 and enhances accountability and open dialogue.¹⁰

Pakistani Analogous Cases

In addition to the Article 19 jurisprudence that can be directly applied, other cybercrime cases provide informative information. For example, in *Firdous Ayaz v. The Lahore High Court* struck down an FIR filed by PECA on the grounds that what the journalist said on social media amounted to no offence.¹¹ Similarly, in *PTA v. The Supreme Court* struck down content takedown orders by the government as not clearly grounded in the law, and based on the concept of due process.¹² The implication of such rulings is that the constitution is biased towards speech, and that exact language in statutes is mandatory.

Constitutional Jurisprudence on Freedom of Expression in Pakistan

On the one hand, the constitutionality of the speech restriction cannot be directly tested in Pakistani courts because of such an amendment as 26-A of the Prevention of Electronic Crimes (Amendment) Act 2025; nevertheless, the established jurisprudence should be applied in accordance with the Articles 19 and 19-A of the Constitution. The courts of Pakistan have reiterated severally that free speech and the right to information are the keystones to democratic governance.

The subsequent case law setters offer the doctrinal guidance, which would be applicable to the conclusion of the constitutionality of Section 26-A.

1. Pakistan Broadcasters Association v. Pakistan Electronic Media Regulatory Authority (PEMRA)

Issue

The issue of whether the administrative directives by state regulation of the content of electronic media breach the constitutional guarantee of freedom of speech and press under Art. 19.

Rule

The Supreme Court ruled that freedom of speech was an essential right in the constitution and that any limitation given by the state must qualify the test of reasonableness, proportionality and legality. The Court noted that regulatory agencies cannot have free hand in limiting the contents of media unless there are clear statutory provisions to allow it to do so.

Application

The Court challenged the regulatory efforts of PEMRA by noting that any restriction to speech should be specific, justifiable, and must correspond to the legitimate goal of the

⁹ Federation 2017 SC 544

¹⁰ PLD 2018 SC 120

¹¹ PLD 2019 Lah 676

¹² Neo TV 2018 SC 653



effort, e.g. preserving peace or national security. It held that conditions that are unclear or allow too much control on media expression are unconstitutional.

Conclusion

The Supreme Court reiterated that state repression of speech should be strongly focused, and any form of over-restriction of media liberty goes against Article 19.

Relevance to Section 26-A

This argument in Pakistan Broadcasters Association is a direct attack on the credibility of Section 26-A. The amendment criminalizes the passing of false or fake information without clearly defining the terms. This kind of open language gives the powers a wide discretion, which may clash with the demands of the Court which requires precision and strictness of the speech regulation.¹³

2. Benazir Bhutto v. Federation of Pakistan

Issue

Whether the constitutional rights such as the freedom of speech and political participation can be curtailed by an executive order which is not in line with the democratic ideals.

Rule

The Supreme Court added that basic rights had to be construed in a liberal and purposive way since they are the essence of democratic rule. Any limitation of these rights should be explained by the effective and understandable constitutional rationale, and the need proved.

Application

The Court overturned arbitrary limitations to political participation highlighting that constitutional protections of expression and political discussion could not be limited by indeterminate legislative or executive means.

Conclusion

Basic rights should not be violated by general or arbitrary state intervention.

Relevance to Section 26-A

In section 26-A, there are chances that political comment or criticism of state institutions will become criminal in case authorities interpret such a speech as likely to provoke fear or disorder. Such broad discretionary powers would not be congruent with democratic constitutionalism, under the thinking of Benazir Bhutto.¹⁴

3. Masroor Ahsan v. Ardeshir Cowasjee

Issue

Whether or not freedom of the press and expression is a core guarantee of the constitution that has to carry a broad interpretation.

Rule

The Supreme Court has characterized freedom of expression and press as a building block of the present democratic society and affirmed that citizens should have access to sharing of ideas and information with no limitations other than well-defined constitutional restraints.

Application

The Court pointed out that any kind of restraint on speech should be examined in a very narrow way and should not match with the democratic aspect of the press in questioning the conduct of a government.

¹³ PLD 2016 SC 692

¹⁴ PLD 1988 SC 416



Conclusion

Freedom of speech and press should be understood in a wide way and limitations should be extraordinary.

Relevance to Section 26-A

Section 26-A is too abstract, which can curb investigative reporting and discussion. In its efforts to punish dissemination of information that it regards as fake, it is likely to compromise the watchdog role of the press, which is against the principles that Masroor Ahsan proclaims.¹⁵

4. PTI v. Election Commission of Pakistan

Issue

Whether limitations are placed on political communication and electoral talk infringe constitutional democratic values.

Rule

The Supreme Court re-asserted that free political expression and openness is a fundamental requirement of democratic legitimacy, and it should be safeguarded within the confines of the constitution.

Application

The Court stated that the state should not cause any obstacle to the open political discussion or access to the information.

Conclusion

Political speech is granted a special status in constitution protection and cannot be limited without an excellent reason.

Relevance to Section 26-A

The possibility of the provision being applied to political speech or even commentary on the affairs of the people would result in some grave constitutional issues. Individual criminal liability on the sharing of allegedly fake political information may limit political debate abroad which is contrary to the Court ruling on the need to safeguard political discourse on democracy.¹⁶

5. Lahore High Court: Sedition Law Case (2023)

Issue

Compliance or noncompliance of the provisions of colonial era sedition laws which criminalize criticism of the state with constitutional provisions on freedom of expression.

Rule

The Lahore High Court ruled that the laws that aim at speech should not criminalize fair criticism of government institutions.

Application

The Court believed that excessive speech crimes would stifle opposition and democratic free speech.

Conclusion

The Court quashed the use of sedition clauses in some scenarios and once again the constitutional priority of free speech.

Relevance to Section 26-A

Section 26-A is similar to those that concern sedition in that it punishes speech that supposedly incites a disorder in the society. This rationale advocated by the High Court

¹⁵ PLD 1998 SC 823

¹⁶ PLD 2024 SC 724



indicates that it might be constitutionally questionable to have general criminal clauses that attack speech.¹⁷

6. Rana Muhammad Arshad v. Pakistan

Issue

Do the restrictions on speech that save access to information violate Articles 19 and 19-A?

Rule

The Court acknowledged that freedom of speech and right to access information are mutually dependent constitutional rights and that no one should be restricted to either one without due cause since this can threaten democratic accountability.

Application

The ruling stated that constitutional rights to information should not be restricted without substantial reasons.

Conclusion

Article 19 and 19-A breaches affect the other constitutional rights and democracy.

Relevance to Section 26-A

Since the section 26 criminalizes the spread of information that can be considered to be false, it can easily meddle not only with the freedom of speech but also with the right of the citizens to obtain information.¹⁸

Doctrinal Implications for Section 26-A

The above-presented jurisprudence evidences three principles of the constitution that are consistent:

1. Requirement of Legal Certainty

The laws that restrict speech must be specific, clear, and defined to be issued by Pakistani courts. Unspecified offences are prone to capricious application and are thus unconstitutional.

2. Proportionality and Necessity

Limitations have to be proportional to a legitimate purpose, and this could be national security or civil order. General criminal prohibitions on unspecified groups of speech will hardly pass this test.

3. Protection of Democratic Discourse

Protection of speech on political matters, governance and accountability to the citizens is increased under the constitution.

When these principles are applied, Section 26-A of the Constitution has some grave constitutional implications. Its amorphous definition of a false or fake information (which is not specified) and vague harm threshold (which is most likely to provoke fear or unrest) expose it to over-criminalization of good speech, which may be against the existing constitutional jurisprudence.

Discussion and Findings

Scope and Vagueness of Section 26-A

Section 26 offends the false or fake information that is likely to produce a feeling of fear, panic, disorder or unrest. These words are not defined in the law and this raises a grave issue of vagueness. What is considered as false or fake may be intentions of fabrication, but

¹⁷ Imran, M., & Kazmi, S. S. (2025). Role of Social Media in Securitization of Rule of Law Crisis in Pakistan. *Research Journal for Social Affairs*, 3(5), 1013-1027.

¹⁸ Arfat, Y., Hussain, N., & Idrees, R. Q. (2026). The Shadow of Reputation: Overlapping Defamation Laws and the Erosion of Free Speech in Pakistan. *Research Consortium Archive*, 4(1), 660-670.



may also be views or satire. On the same note, fear, panic or disorder or unrest are subjective and contextual. General bans on dissemination of information using vague and ambiguous concepts and definitions should be shunned as human rights commentators caution. The ordinary people should have adequate notice of forbidden conduct (the action of non-arbitrariness) in the law under Article 19 jurisprudence. The language of section 26-A would be viewed as in general: it may be construed to encompass any alarmist news, whistleblower disclosure or even making true reports about crime statistics in the event that it is found likely to incite riots in the community. The IFJ and media associations termed this provision as an alarming and ambiguous one as it may be used to criticize authorities in the understanding that such statements spread fear and instability.

Furthermore, the fact that it includes the aspect of reason to believe, rather than actual knowledge, suggests that there is the recklessness or negligence liability. In this way an individual would risk the criminal penalty against being in good faith wrong of what a report was. It is also a very wide mens rea that increases even more the danger of punishing real journalists or researchers who may challenge the official story. In comparison, the majority of jurisdictions which criminalize misinformation must prove intent and actual or substantial harm (see Comparative table). The new law in the UK, such as that, needs intent to cause a non-trivial harm and knowledge of falsity. The threshold in section 26-A (is likely to cause fear, panic or disorder) arguably refers to the vague concept of public order, but it does not have any harm requirement (bodily injury, damage to property, etc.), thus a potentially limitless category. The indefiniteness of vague offences has been repudiated by Pakistani courts previously: under the test, Section 26-A could be invalidated on the basis of indefiniteness, or have ambiguous terms removed by striking them out.

Article 19 Reasonable Restrictions Analysis

Section 26-A should pass the necessity and proportionality test even were it to be held a good faith attempt to safeguard some form of public order (one of the tests contained in Article 19(2)). The Supreme Court has ruled that any restriction should be focused on a justifiable purpose and thus any vague or unneeded clause should not pass through a constitutional test. The Court of appeals in the case of Human Rights Case struck down the powers to allow the detention of suspects beyond 90 days giving the grounds that it was affecting national security since it was unlimited and unqualified, despite the Court taking into consideration Article 10 (due process).¹⁹ In analogy, the imprecise requirements of Section 26-A indicate that it lacks a narrow purpose.

Proportionality requires that the law must respond to a real and immediate danger to the social fabric and that criminal punishment is the minimal intervention requirement. The legislative history (debates) is sparse on why fake news should receive criminal penalties rather than the current legal (e.g. defamation, incitement) ones. There was no empirical data put forward that mass panic was being caused by false speech. True, there are numerous examples of disinformation (political rumors, satirical posts) that cannot be applied to the paradigm of imminent lawless action. Under US jurisprudence, intentional incitement of imminent violence is the only exception to the right of free speech. Ohio). Article 19 (2) of Pakistan states about public order, whereas Section 26-A transcends long-standing precedents (which tend to punish hate speech or other speech of terrorist

¹⁹ PLD 1998 SC 1445, Mehram Ali



character). In the absence of limiting principles, it could be over-breadth: by allowing it to be penalized, the expression, although not true and provocative, does not pose a factual threat. That is precisely what legal scholars of fake news legislations around the world have criticized: they state that it is a social media trend that is better addressed through education and platform policy, and not criminal prosecution.

Section 26-A appears to be a mix of various grounds of restriction unspecified (public order, decency, etc.) as it criminalizes the indeterminate risk of unrest by the population. The Supreme Court in Pakistan has criticized such sweeping actions. Restrictions should be reasonable - that is, directly related to the interest relied on and no more expansive. In this case, the clause is arguably criminalizing all the false statements that are likely to disrupt order, and this might be any critical report on corruption, social injustice or even valid coverage of protests. The IFJ report warns that this amounts to expansion of the censorship authority and attack on opponents. These considerations have a destructive impact on constitutionality, according to the Article 19 analysis.

Impact on Speech and Society

Practically, the area of Section 26-A can be already observed in the current cases. An example is Sohrab Barkat, who was accused by PECA of publishing false information and even cyberterrorism (the accusations are usually formulated in blanket terms). The law has so far been applied more on those who are against the state rather than those who are actually malicious. Even in regular form of communication, citizens are currently exposed to the threat of prosecution in case their social media communications are found to have generated fear, or unrest, regardless of their intent. This sends a shiver: according to the IFJ, the stakeholders in the media feel that the legislation will criminalize criticism of the state institutions. Under such laws, journalists can be self-censored, and whistleblowers can fail to expose wrongdoing, which compromises accountability, which is observed by editorials and NGO reports. The loose wording of the law also provides regulators and tribunals (some of which are to be established under the Act) with a blanket authority to define what constitutes fake effectively making it possible to determine what is content in the hands of the executive. This is particularly problematic considering the history of media lock-downs as well as poor guarantees to judicial independence in cases involving terrorism/quasi-judicial proceedings (see Article 173, oath of tribunals).

Having these practical impacts, the proportionality analysis leans even more against Section 26-A. The hypothetical dangers of misinformation (assuming it exists) in a society with an independent media are hypothetical but the danger to the fundamental debate of democracy is actual. Article 19-A (right to information) emphasizes the fact that the masses have a rational interest in being informed about the truth or untruth of the news and opinion so as to be able to judge and to argue. Making judgments about truth criminal serves no purpose.

Findings

Overall, the text of Section 26-A is broad and lenient in its mens rea and harsh penalties, which do not correspond with the constitutional provisions of free-expression. It fails to give any explicit legal warning of what is prohibited, and it permits attack on honest but frightening data (e.g. warnings of natural disasters, governmental failures, etc.), which puts people in alarm but no illegal consternation. Section 26-A is also unlikely to survive scrutiny under the doctrine of Article 19 of the reasonable restrictions: it is not narrowly focused, and it creates a severe threat of unproportional interference. Experience in the



field over time and international law are strongly of the view that criminalization of wide groups of so-called false information is suspect, rather than self-regulation, or narrow bans (defamation, hate speech, incitement) with protections. The hurriedly passed amendment without consulting the media groups as indicated in the media also contributes to the diminishing of its validity.

Conclusion

The amendment of PECA section 26-A (Amendment) Act 2025 is a major restriction to the Pakistani legislation on online contents. Article 19 and Articles 19-A Textual and doctrinal Interpretations The provision, as it currently appears, is constitutionally defective. It is too broad and vague, which conflicts with the fact that restrictions should be stipulated by law and have the necessary degree of precision. The psychological state of mind (knows or should know) and the amorphous harm condition (interferes with fear, panic or disturbance) create an easy threshold to a conviction and jeopardize even the speech of good will. Since the Supreme Court decisions of Pakistan require strict construction of speech restrictions and high threshold to curb media, Section 26-A seems to be overly broad.

Moreover, patterns of enforcement are characterized by a chilling effect on journalism and activism immediately. This did not happen in isolation or in Pakistan alone since laws against fake news by police have been misapplied against critics all over the world. The international human rights law and comparative constitutional practice warn to proceed with utmost caution; they neither propose the free-market of disinformation criminalization.

The conclusion here is that, although fighting real dangerous misinformation can be a concern of the state, the strategy adopted in Section 26-A by Pakistan does not agree with the constitutional and human rights protection. Without a dramatic restraint and specification of this provision, it is likely to be frequently invalidated by the courts or endure a period of pushback by the civil society.

Recommendations

In order to balance the state interest in order with the basic freedoms, the following reforms can be suggested:

Clarify Key Terms

Be specific on the meaning of false or fake information. The legislation ought to focus on willful material falsehoods and not on honest inaccuracies or satire/ commentary. The term Fake information can be substituted with a more legalized criterion (e.g. knowingly false statement of fact). Likewise, the harm threshold (almost certain to produce fear, panic or disorder) should be narrowed, that is to direct threats of violence or concerns about the safety of the populace. The ambiguous terms must be eliminated or amended in the draft of the laws.

Raise Mens Rea

Must have plain intent. As an illustration, they should be punished only when the individual distributes untrue information knowing the unrest to the populace will occur and intending to do that. The intent to harm would rule out the majority of journalistic speech. This correlates with the general criminal law of Pakistan (mens rea condition) and the global recommendation that only deliberate misinformation (i.e. propaganda) can be punished.



Add Defenses and Exceptions

Add affirmative defenses of acts of public interest or honest error. Journalists and researchers ought to be on the defense in case the information has been published after proper checking. Accredited news publishers might be exempt (as in the UK law). Separate between evil slander-mongering and proper reporting.

Ensure Procedural Safeguards

Eliminate any sort of special speed-track or tribunal-only procedures (i.e. proposed Social Media Tribunal) that avoid regular courts. Guarantees of fair trial (Art 10/14) should be extended to their full extent. In case there are tribunals, the appeal ought to be to separate courts, not necessarily a court of special constitution (do not compromise judicial control).

Focus on Harm

The law must address harm that is physical, like harassment, hate speech, defamation, incitement to emergency panic. PECA already includes provisions against defamation and incitement, and the question arises of whether enhancing them (with protection) would be more effective than an unspecified and blanket ban on false news.

Engage Stakeholders

The additional amendments must include the consultation with media associations, legal experts and civil society so that the rules are understandable, required and respect rights. It is essential to transparency debate on this topic in parliament to gain legitimacy.

Consider Non-Criminal Measures

The government should supplement legal actions with population education and partnership with platforms on transparent fact-checking. Criminal law is prevented by over-reliance that should be avoided; other methods (media literacy campaigns, advisory bodies) can be less invasive and yet counter the disinformation.

Constitutional Remedies

The judiciary needs to be on guard. The judicial review on new laws by high courts is within the powers of the Supreme Court (Article 184). Media organizations can use test cases as a way to seek judicial clarification or invalidating the overly broad terms. This would follow historical tradition to impose the boundaries of Article 19 (e.g. in Neo TV case).

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