



About Bolo Bhi

Bolo Bhi is a civil society organisation geared towards advocacy, policy, and research in the areas of digital rights and civic responsibility. This encompasses the right to information, free speech, and privacy online, so that the internet can be realized as a free and representative space for civic and political engagement for all segments of society, including marginalized communities and genders. Bolo Bhi believes that an informed citizenry with the knowledge, skills, tools and disposition towards civic engagement is integral for effective government transparency and accountability. For more information, visit our website at bolobhi.org.

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Introduction

Disinformation poses a significant threat to political participation, social discourse, and democracy in countries across the globe. The spread of disinformation online creates problems regarding access to credible information, political polarization, manipulation of social media, trust in the news media, the circulation of incorrect health information, and hate speech. However, while disinformation is a serious threat, government efforts to address it can impair the fundamental human right to free expression, as guaranteed by the Constitution of Pakistan and international human rights law. This is particularly true if laws are crafted to define disinformation in a manner that captures legitimate political dissent and critiques of the government or public officials.

This report examines Pakistan's regulatory response to disinformation in view of the general elections scheduled to take place on February 8, 2024. It does so through a question-and-answer format that defines key terms and concepts that are essential to understanding the debate over government measures to address disinformation. Our report finds that:

1. The overly broad definition of disinformation in Pakistani law, coupled with the increased enforcement authority of centralized government agencies, lead to the possibility of such laws being used to censor media contrary to the freedom of expression guarantees under the Constitution of Pakistan.
2. Current and proposed legislation infringes the freedom of expression of all Pakistanis and thus violates international human rights standards.

1. What is Disinformation?

The United Nations defines disinformation as inaccurate information that is intended “to deceive and is spread in order to do serious harm.”¹ This is often confused with misinformation, which is information that is false or misleading, but not intended to cause harm or deceive. Disinformation can range from knowingly false statements spoken by individuals in person, to coordinated disinformation campaigns by automated users on social media. Although disinformation is not new, the speed and efficiency with which new communications technologies—especially social media—can spread disinformation poses significant challenges to our ability to find reliable information online.

2. What are the challenges of regulating disinformation?

While disinformation on the internet undoubtedly causes harm, governments must take great care in attempting to regulate it. Governments often struggle to define disinformation in a way that draws a clear line between harmful disinformation and protected expression. Laws that define disinformation too broadly can allow government actors to censor individuals who are exercising their right to free expression. There are particularly strong concerns about laws targeting disinformation being used to silence political dissent or critical coverage of

¹ “Countering Disinformation.” United Nations. Accessed January 22, 2024. <https://www.un.org/en/countering-disinformation>.

government officials and policies by the media. These concerns are heightened in the lead-up to elections, when the free flow of political expression is especially important.

3. How does the Constitution of Pakistan protect the right to free expression?

Article 19 of Pakistan's Constitution states that "every citizen shall have the right to freedom of speech and expression." Article 19A adds that every citizen "shall have the right to have access to information in all matters of public importance." Any restrictions to the right of freedom of expression must be "reasonable" and in service of a goal specified by the Constitution. The Supreme Court of Pakistan has interpreted "reasonable restrictions" in a forward-looking manner to promote tolerance, freedom, equality, democracy, and social justice.² Furthermore, the Supreme Court has ruled that freedom of expression protects information and ideas which may not be favourably received by the State. These strong constitutional protections for free expression bar the government from crafting laws targeting disinformation that would permit the suppression of political dissent.

4. What currently enacted legislation in Pakistan targets disinformation?

[The Pakistan Electronic Media Regulatory Authority \(Amendment\) Bill \(PEMRA Amendment\)](#), passed in August 2023, regulates disinformation in a highly problematic manner. Critically, Section 3(ii)(ha) of the amendment broadens the definition of disinformation to mean:

1. any "verifiably false, misleading, manipulated, created, or fabricated information";
2. that is shared "without making an effort to get the other person's point of view or not giving it proper coverage and space";
3. with the intention of either:
 - Causing harm to the reputation of" any person; or
 - Harassing any person for political, personal, or financial interest or gains.

This amendment expands the definition of disinformation beyond the generally accepted definition by the United Nations (see question 1, above). Specifically, the PEMRA Amendment's definition of disinformation now includes sharing information without providing the other point of view. This provision is incredibly vague, leaving room for PEMRA to unilaterally determine the threshold for when the other point of view has been properly covered. This amendment is particularly concerning because it governs broadcasters in Pakistan, meaning that it could be applied against journalists seeking to disseminate news. This free flow of information is especially crucial in the lead up to an election. In addition to broadening the scope, Section 14 of the amendment also provides that spreading disinformation may amount to a "severe violation" and allows PEMRA to impose a fine of up to ten million rupees.

² *Mubeen v. Zuberi* (2020).

5. What proposed legislation in Pakistan targets disinformation?

Proposed measures regulating disinformation include the Prevention of Electronic Crimes Act Amendment (PECA Amendment), the 2023 Removal and Blocking of Unlawful Content Rules (RBUCL), and the E-Safety Bill.³

The proposed PECA Amendment would make two important changes to the regulation of disinformation. First, Section 20, would make it a criminal offense to spread “fake or false information.” For purposes of the offence, fake or false information is defined as any information which someone “knows or has reason to believe to be false or fake” and is “likely to cause or create a sense of fear, panic, or disorder or unrest.” Second, Section 37 of the proposed PECA Amendment grants the Pakistan Telecommunications Authority (PTA) power to remove additional “unlawful online content,” and it expands this to information that either:

1. “Incites or is likely to incite” the public to take the law into their own hands; or
2. “Contains aspersions against the judiciary or armed forces of Pakistan.”⁴

These provisions empower the PTA to require social media platforms to remove content, which has the effect of allowing the PTA to unilaterally make decisions on what content is unlawful. The dangers such provisions pose are exemplified by the recent creation of a Joint Investigation Team (JIT) pursuant to Section 30 of PECA to investigate a “malicious social media campaign” against the Supreme Court justices who set aside the Peshawar High Court’s order reinstating the PTI’s electoral symbol ahead of the elections on February 8.

The broad definitions in the proposed PECA Amendment are even more concerning because violators of Sections 20 and 37 could be punished with up to five years in prison and fined up to one million rupees. The PTA’s content restrictions gain increased enforcement power under the 2023 RBUCL. This rule would mandate that social media companies establish a local presence in Pakistan as a condition of offering their services in the country. It also seeks to hold the employees of social media companies accountable for “unlawful content” posted by social media users. Such onerous provisions will almost certainly lead to censorship or social media companies completely declining to serve the Pakistani market, further reducing the access to information for Pakistani citizens.

Next, Section 28 of the E-Safety Bill (which received the principal approval by the Federal Cabinet in 2023 but was not passed into law), aims to foster and promote safe online social network platforms, outlaws content which:

1. Is “against Islamic values and the ideology of Pakistan;” and
2. Involves “anything against the integrity, security, and defense of Pakistan.”

This law is concerning because it hinders the ability of journalists to report on stories that are critical of the government and its actions, and for citizens to express views critical of the government.

³ Though some documents may not have full versions in public circulation, there are news reports detailing their provisions. See *Silencing Pakistan*, Dawn, July 28, 2023, <https://www.dawn.com/news/1767243>.

⁴ *Silencing Pakistan*, Dawn, July 28, 2023, <https://www.dawn.com/news/1767243>.

6. What are the implications of Pakistan's enacted and proposed legislation?

Article 19 of the Constitution of Pakistan requires restrictions on free expression to be lawful and reasonable. A lawful restriction is clearly specified and achieves a purpose permitted by the Constitution. Reasonable restrictions must be necessary to achieve the government's aims as well as proportionate, meaning no more burdensome than necessary.

Both the PEMRA Amendment and proposed PECA Amendment fail to meet these standards. Not only are the definitions of disinformation and unlawful content overly broad in both laws, but the harsh punishments—including prison sentences and exceedingly high fines—make the restrictions unreasonable.

Allowing PEMRA and the PTA to unilaterally suppress certain types of expression, including political dissent, under the guise of stopping disinformation, violates Article 19 of the Constitution. These problems are amplified by the proposed E-Safety bill's definitions of "prohibited content," which bans media content critiquing the "ideology" and "integrity" of Pakistan. Correspondingly, those who wish to speak out about issues of public concern in the media—including journalists, opposition politicians, and members of minority communities—face serious risks of criminal prosecution for attempting to share constitutionally protected forms of expression with the Pakistani people. Neither law permits judicial review of such actions by PEMRA and the PTA.

The increased authority to censor and punish journalists is especially concerning given the extensive history of censorship and violence in Pakistan. The "Pakistan Press Freedom Report" from the Freedom Network stated that press freedom violations in Pakistan increased over sixty percent from May 2022 to May 2023.⁵ Between January and September 2023 alone, the Pakistan Free Press Foundation (PFF) documented at least 157 attacks on the media.⁶ Furthermore, Pakistan is already considered one of the most dangerous countries for journalists. In 2022, Reporters Without Borders (RSF) reported that ninety-three journalists have been killed in Pakistan over the past twenty years.⁷ The lack of press freedom and risks to journalists' safety effectively censors reporting. With the government legislating to further restrict press freedom as opposed to better protecting journalists, increased hostility, threats, and violence in response to honest reporting can be expected. This is especially concerning with the upcoming 2024 elections as press censorship is highly politicized.

⁵ *Threats, Attacks on Journalists in Pakistan Rise by Over 60 Percent – Report*, Arab News Pakistan, Updated May 1, 2023, <https://www.arabnews.pk/node/2295566/pakistan>.

⁶ *On International Day to End Impunity from Crimes Against Journalists, PPF Emphasizes the Need for an 'Open, Restriction-Free and Safe' Environment for the Media to Cover the Upcoming General Elections*, Pakistan Press Foundation, November 1, 2023, <https://www.pakistanpressfoundation.org/on-international-day-to-end-impunity-from-crimes-against-journalists-ppf-emphasizes-the-need-for-an-open-restriction-free-and-safe-environment-for-the-media-to-cover-the-upcoming-g/>.

⁷ *1,668 Journalists Killed in Past 20 Years (2003-2022), Average of 80 per Year*, Reporters Without Borders, December 30, 2022, <https://rsf.org/en/1668-journalists-killed-past-20-years-2003-2022-average-80-year>.

7. Do Pakistan's current and proposed measures comply with international human rights law?

No, Pakistan's current and proposed legislation regarding disinformation is inconsistent with the international human rights treaties that bind our government. Furthermore, similar laws regulating disinformation in other countries have been criticized for improperly restricting freedom of expression as outlined in international human rights law.

Pakistan's disinformation laws are not consistent with the protections granted to the right to free expression by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) Article 19. The ICCPR is an international human rights treaty ratified by Pakistan and 172 other countries. Parties to the ICCPR have a legal duty to protect a range of civil and political rights, including freedom of expression, which is defined as the "right to seek, receive, and impart information and ideas of all kinds."

Like the free expression protections specified in Article 19 of the Constitution, the ICCPR permits reasonable restrictions of the right to free expression only if such restrictions meet the following three requirements:

First, the principle of legality requires legitimate restrictions on free expression to be clearly provided by law. A law fails this test if it is too vague, as is the case with all the Pakistani laws and bills considered in this report. Scores of journalists in Pakistan have already been targeted under PECA, and the laws discussed in this report use vague language that could result in an increased number of attacks against the media.

Second, any restrictions must be necessary for the achievement of one of a narrow range of legitimate aims, such as the protection of public health or public morals. However, laws like the PEMRA and PECA Amendments, which have the effect of suppressing free expression on important public issues—notably relating to politics—fail this test. Furthermore, restrictions are unlikely to be narrowly applied to legitimate aims if broad enforcement authority is vested in one agency. This is the case with both the PEMRA and PECA Amendments, which vest enormous discretionary powers in PEMRA and PECA, respectively, to regulate creators, block unlawful content, and impose fines. The unilateral authority to take such actions can reduce the access of information to citizens in the lead up to an election.

Third, a lawful and necessary restriction must also be proportionate. That is, the means used to achieve the government's aim must be reasonable given the aim. The United Nations Human Rights Commission (UNHRC) has clarified that imprisonment is *never* a proportionate penalty for violating an otherwise lawful and necessary restriction on free expression.⁸ Correspondingly, since the PECA Amendment imposes criminal penalties, it is inconsistent with Pakistan's international legal commitment to protect the right to free expression.

⁸ Helen Jasper et al., "He Who Dares Not Offend Cannot Be Honest: United Nations Human Rights Committee Jurisprudence and Defamation Laws Under the ICCPR," GW Law Faculty Publications & Other Works 2023-31, no. 1679 (2023): 6, accessed January 22, 2024, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2932&context=faculty_publications.

8. Why do these disinformation laws matter in the context of the upcoming 2024 General Election?

As more and more Pakistanis turn toward online and broadcast sources for news on the upcoming election, it becomes vital to protect free expression, especially for journalists. This is particularly concerning because there appears to be a pattern of the Pakistani government selectively enforcing such disinformation laws against journalists and political dissidents. In the lead up to the 2018 General Election, laws that were aimed at stopping disinformation were used to prosecute journalists engaging in legitimate news coverage of the military and judiciary.⁹ The PTA has since continued this pattern of selective enforcement, recently blocking 315 websites with “anti-state content” and 942 websites with alleged blasphemy against Islam.¹⁰ These concerns are even more pressing given that Pakistan recently faced a nation-wide disruption to social media and internet services, allegedly caused by the government in the run-up to an online campaign event organized by the opposition party led by former Prime Minister Imran Khan.¹¹ The broad and vague language of the PEMRA Amendment, PECA Amendment, and the E-Safety Bill further enables the Pakistani government to selectively apply the laws to those whom they wish to silence, by criminalizing speech that does not fall within the UN’s definition of disinformation. To preserve the integrity of elections and allow individual citizens to make informed decisions when deciding who or what to vote for, the Government of Pakistan must refrain from using laws targeting disinformation as a tool to stifle political journalism, discussion, and dissent.

The PFF is currently advocating for an accessible and safe environment for journalists leading up to the 2024 elections. The Election Commission of Pakistan issued codes of conduct for the general elections, which aim to protect journalists from “undue pressure” and “violence of any kind.” However, the successful enforcement of these safety measures is called into question by the government’s long history of censoring opposition groups not in power. The new restrictions on media coverage right before the next election further threaten journalists’ safety in accurately reporting on the election and the Pakistani people’s informed political power.

⁹ Talal Raza, “Mapping Digital Disinformation Around Elections: A Case Study of Pakistan’s 2018 General Elections,” Center for International Media Assistance, October 21, 2019, <https://www.cima.ned.org/publication/mapping-online-disinformation-around-pakistans-2018-general-elections/>. See also “Pakistan urged to protect press freedom ahead of elections,” Al Jazeera, <https://www.aljazeera.com/news/2018/7/3/pakistan-urged-to-protect-press-freedom-ahead-of-elections>.

¹⁰ *On International Day to End Impunity from Crimes Against Journalists, PPF Emphasizes the Need for an ‘Open, Restriction-Free and Safe’ Environment for the Media to Cover the Upcoming General Elections*, Pakistan Press Foundation, November 1, 2023, <https://www.pakistanpressfoundation.org/on-international-day-to-end-impunity-from-crimes-against-journalists-ppf-emphasizes-the-need-for-an-open-restriction-free-and-safe-environment-for-the-media-to-cover-the-upcoming-g/>.

¹¹ Ayaz, Gul, “Pakistan Opposition, Critics Decry Internet Shutdown During Virtual Campaign Event,” VOA News, January 20, 2024, <https://www.voanews.com/a/pakistan-opposition-critics-decry-internet-shutdown-during-virtual-campaign-event/7448473.html>.

Conclusion

Although disinformation poses serious threats, attempts to regulate it can often be a cure that is worse than the disease by restricting lawful and legitimate social and political discourse. The currently enacted and proposed laws targeting disinformation in Pakistan are already inconsistent with the free expression protections provided by the Constitution and international human rights law. The PEMRA Amendment gives broad and unchecked authority to a government agency to remove and punish content creators for speech that it deems unlawful. Furthermore, the proposed PECA amendment would subject Pakistani citizens to criminal liability for sharing content that falls under the very broad definition of disinformation. To ensure that the upcoming elections are free and fair, and that the electorate is able to make an informed decision when they go to the polls, Pakistan's laws regulating disinformation urgently need to be amended to ensure their consistency with our country's Constitution and our international human rights commitments.