

Hate Speech, Freedom of Expression and Media Regulation

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Abstract

The modern media environment has escalated discussions on the frontiers of the freedom of speech and the hate speech especially in countries such as Pakistan where freedom of expression is provided in the constitution together with the legal and administrative restrictions of freedom of speech. The paper is a critical study of the legal, ethical and regulatory aspects of hate speech in the Pakistani media. It examines the mediation of constitutional guarantees of the Article 19 of the constitution of the state by the legislation like the Pakistani Penal Code, the Prevention of Electronic Crime Act 2016 (PECA) and the regulation of the Pakistan Electronic Media Regulatory Authority (PEMRA). Through contextualizing the approach followed in Pakistan in comparative models of the European Union and the United States, the paper determines the underlying tensions between the democratic pluralism and the control of the state in dealing with harmful speech. It states that international norms make it proportional and necessary to restrict speech, however, in the case of regulation, Pakistan is inclined to apply security in the rules and moralizes the rules, which becomes a boundary between the reasonable restriction and censorship. Another aspect of mechanism through which digital media and algorithmic amplification can reshape the discourse of the people is also identified and a rights-based regulatory approach that would reconcile the freedom of speech with the protection of incitement is also suggested. In the form of doctrinal analysis and allusion to recent media jurisprudence, this paper adds into the discussion about how to reconsider the constitutional vow to free speech and the social desire to restrain hatefulness-based discourse.

Keywords: Freedom of Expression, Human Rights, International Standards Hate Speech, Media Regulation, Comparative Constitutional Law, Digital Media, Pakistan, PEMRA, PECA

1. Introduction

Freedom of expression is amongst the major pillars of democratic governance and allows free flow of ideas, criticism of power as well as pushing the knowledge base of the society forward. In Pakistan, like in most developing democracies, the constitutional guarantee of freedom of speech in Article 19 of the Constitution of 1973 is restricted by wide and mostly vague factors in the name of religion, morality, security and order of the nation. Legal and political controversies around these restrictions have been heightened over the past few years due to the emergence of digital media and the increase of online conversation which spans across traditional control channels. The developmental issue at issue is, therefore, how much the state can actually limit expression without discriminating against

the fundamental nature of such right.¹

The issue of hate speech, which carries a broad definition of speech that provokes discrimination, hostility or violence to individuals or groups based on identity factors has become quite controversial in the socio-political situation in Pakistan. The pluralistic and repeatedly two-polar form of the society, together with the ideological bases of the state, have preconditioned that the control over the hate speech becomes both a law requirement and a political tool. Anti hate laws especially Prevention of Electronic Crimes Act (PECA) 2016 have been used by governmental regulatory bodies, especially the Pakistan Electronic Media Regulatory Authority (PEMRA) as well as the Federal Investigation Agency (FIA) to ban content, suspend licenses and prosecute individuals who engage in anti-hate speech. However, opponents of such acts claim that they tend to fulfill larger goals of suppressing dissent and controlling storytelling instead of having a true impact by countering hate crimes or safeguarding vulnerable populations.²

This conflict more than enumerable is a world conflict: freedom of expression versus the need to avoid harm in a media driven, networked world. Law Jurisdictions including the European Union have formulated effective legal provisions which explicitly outlaw incitement to hatred, but provide proportionality and due process, but the United States, which stems from a more absolutist culture of the First Amendment, puts a lot of emphasis on state non-intervention unless speech is a direct call to imminent lawlessness.³ Theories In Pakistan, where the language of international human rights is followed but the structures of colonial control are preserved, the problems of bringing normative commitments to life are obvious.

Moreover, hate speech accessibility and influence have been altered with the implementation of digital media and algorithmic communication technologies. Online sources help to spread contentious stories and the artificial intelligence programs applied in content moderation have become the subject of transparency, discrimination and due process.⁴ The new media ecology makes the role of the state as a regulator cumbersome and calls into question the suitability of the current legal structures to respond to technologically mediated harm.

This paper aims at critically evaluating the legal, constitutional and ethical aspects of hate speech regulation within the Pakistan media industry, by comparing these standards with the international and regional standards. It looks at the question of whether the existing framework is functional enough to strike a balance between the right to free expression and the obligation to prevent incitement and safeguard the order in the society. The study, relying on previous scholarly studies on the media law in Pakistan and the changing jurisprudence on the digital rights, seeks to establish principles that can guide right-respecting, transnational and accountable statutory regime.⁵

Finally, this question places the struggle of Pakistan in the context of larger global debate regarding the place of media in constructing the language of democracy, the obligations of the state and other mediators of privately and the morality of speech practices in fragmented societies. The results highlight the fact that the validity of any curtailment of speech rests, not only in the wording of the law itself, but in how it is conforming to constitutional provisions, judicial wisdom and the notion of international human rights.

2. Constitutional and Legal Liberty of Expression in Pakistan

Constitutional of Free expression In Pakistan, Article 19 of the Constitution of 1973 provides the

¹ Irtaza Hassan, Zeesham Zafar and Nimra Zafar, 'Comparative Study: Pakistani Media Laws vs. International Free Speech Norms (UN, EU, US): <https://doi.org/10.55966/assaj>. 2025.4. 1.076' (2025) 4 ASSAJ 1305.

² Azmat Rasul and Stephen D McDowell, 'Regulation and Media Monopoly: A Case Study of Broadcast Regulation in Pakistan'.

³ Emily Howie, 'Protecting the Human Right to Freedom of Expression in International Law' (2018) 20 International journal of speech-language pathology 12.

⁴ Shakaib Aleem Arshad and others, 'AI Judges and Robotic Justice: Are Pakistani Courts Ready for the Future?'

⁵ Chen Yongmei and Jamil Afzal, 'Impact of Enactment of 'the Prevention of Electronic Crimes Act, 2016' as Legal Support in Pakistan' (2023) 3 Academy of Education and Social Sciences Review 203.

constitutional basis of the freedom expression when it declares 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 by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan, friendly relations with foreign States, the public order, decency or morality, or in the relation of contempt of court, commission or incitement to an offence. This provision, even though stating the right, also grants a general scope of prohibitions that may take place in the state.⁶ The mentioning of religion, morality and national security among the reasons that may be used to justify the limitation is indicative of the complicated ideological basis of the constitutional system in Pakistan that attempts to balance the Islamic concepts and freedoms of the liberal democratic principles.

The discourse of the freedom of expression has been taken to clear boundaries in Pakistan by the judicial interpretation of Article 19. On many occasions, the Supreme Court has reiterated the idea that speech cannot be absolute at all; instead it should be evaluated wisely against competing interests in the society.⁷ At the same time, the Court has ruled that such a restriction should be reasonable, proportionate and not parsimonious. However, practically, the kind of latitude that is provided by these restrictive provisions has often been taken advantage of to restrain the utterances that criticize religion, the armed forces or governmental structures.⁸

PEMRA is the main administrative body which is established under the PEMRA Ordinance of 2002 and has the duty to license, regulate and supervise electronic media through the licensing, regulation and supervising of electronic media. The mandate of PEMRA includes the dismissal of the broadcast material against the ideological principles of the Pakistani state, the incitement of hate, or outbursts of the moral sentiments.⁹ Although these goals seemingly are in line with the imperative of public order, discretionary power of the Authority has occasionally been used in such a way that one would feel concerned with the selective application or bias toward politics. The stores that have been found to be critical of the state policy or the security agencies have faced fines, suspensions and license revocation thus putting a chilling effect on the freedom of journalism.¹⁰

On the Internet, the Prevention of Electronic Crimes Act (PECA) of 2016 contributes to the expansion of regulatory powers of the state. The Act has criminal penalties on hate speech on the Internet, defamation and the sharing of so-called fake facts, giving the Federal Investigation Agency (FIA) a wide range of investigation and prosecutorial powers.¹¹ Despite the intent to address cybercrimes and protect human beings against the dangers of cyber harassment, PECA, due to its generalization, has been criticized to ease government surveillance and restrict honest opposition.¹² Specifically, the section like 20 (criminal defamation) and Section 37 (removal or blocking of illegal content) have often been used to censor political speech on the social media.¹³

It is seen that, according to the constitutional perspective, the legal framework dealing with freedom

⁶ Pakistan and Pakistan National Assembly, *The Constitution of the Islamic Republic of Pakistan* (Manager of Publications 1973).

⁷ Barakat Ali and Hafiz Aziz-ur-Rehman, 'Public Interest Litigation in Pakistan: Islamic Constitutional Manifestation.' (2019) 39 *Pakistan Journal of Social Sciences* (PJSS).

⁸ Irtaza Hassan, Zeesham Zafar and Nimra Zafar, 'Comparative Study: Pakistani Media Laws vs. International Free Speech Norms (UN, EU, US): <https://doi.org/10.55966/Assaj>. 2025.4. 1.076' (2025) 4 *ASSAJ* 1305.

⁹ MAHNOOR FAROOQ, *Financial Accountability of Electronic Media Authority in Pakistan: Insights from Pakistan Electronic Media Regulatory Authority* (Retrieved September 2024).

¹⁰ Sajid Sultan, Muhammad Ahsan Iqbal Hashmi and Syed Mohammad Tahir Gohar, 'Parallel Justice and Fundamental Rights: A Critical Analysis of Jirga and Panchayat Systems in Pakistan' (2025) 3 *Social Science Review Archives* 2158.

¹¹ Chen Yongmei and Jamil Afzal, 'Impact of Enactment of 'the Prevention of Electronic Crimes Act, 2016' as Legal Support in Pakistan' (2023) 3 *Academy of Education and Social Sciences Review* 203.

¹² Zahid Shahab Ahmed and others, 'Digital Authoritarianism and Activism for Digital Rights in Pakistan' [2023] *European Center for Populism Studies* (ECPS).

¹³ András Koltay, 'The Protection of Freedom of Expression from Social Media Platforms' (2021) 73 *Mercer L. Rev.* 523.

of expression in Pakistan has depicted a severe inequality between the right and the restrictions. The boundaries of the restriction in Article 19 is, far more extensive, compared to the restrictions adopted by the international human rights instruments, which include Article 19(3) of the international covenant on civil and political rights (ICCPR), a document to which Pakistan is a subscribing member.¹⁴ The ICCPR expects that any form of restriction must be law-based, it must be pursued to achieve genuine goals and it should be both necessary and reasonable in a free society. These standards have not been fully internalized by the Pakistani courts and legislators thus leading to a certain gap between international requirements and national practice.

It is this legal bi-polarity, namely, constitutional protection within the context of vast lawful control, that defines Pakistan as a party of conditional liberty as far as the media is concerned. The cross effect of intersecting constitutional, statutory and administrative processes has created the culture of regulation where the freedom of expression is condoned and not guaranteed. As this paper argued, the unclear concept of reasonable restrictions has become the main tool of determining the acceptable limit of speech in the traditional and digital media domains.¹⁵

3. The concept of Hate Speech: Legal and Conceptual Grey Areas

The area of hate speech is one of the most disputable and indistinct areas of international and national human-right law. Although it is often invoked by the policymakers, media regulators and courts, there is no commonly agreed definition of hate speech. Such a deficiency of definition is predetermined by the contradiction between protecting people and groups against incitement to hate and the basic freedom of speech.¹⁶

International human-rights tools, where the dangers of hate speech are recognized, embrace more or less restriction. Article 19 of the ICCPR protects freedom of expression but the prohibition of any advocacy of national, racial, or religious hatred which is incitement to discrimination, hostility or violence is obligatory by Article 20 (2).¹⁷ The issue of interpretation is to balance these two provisions so that any valid criticism, satire or dissent is not considered as an act of advocacy of hatred. In its General Comment No. 34, the UN Human Rights Committee has emphasized that any type of censoring the expression should meet the needs of both legality, legitimacy and necessity warning the states that they should avoid censoring the expression in an overly comprehensive or unspecific manner that inhibits the democratic discourse.¹⁸

In the internal law of Pakistan, the concept of hate speech lacks any explicit definition in the Constitution of 1973 but exists implicitly in a number of laws that define such a concept, like the Pakistan Penal Code (Sections 295-298), the Pakistani PEMRA Ordinance of 2002 and the Pakistani Prevention of Electronic Crimes Act of 2016.¹⁹ All these are restrictions that outlaw speech that defiles religion, speech that creates sectarian disharmony, or speech that threatens the social order. However, a lack of concrete statutory definition of hate speech has promoted inconsistency in application. What is considered to be hate speech in a particular set up might be considered political

¹⁴ UN General Assembly, 'International Covenant on Civil and Political Rights'.

¹⁵ Sohail Aftab, 'Recommendations: A Privacy Law for Pakistan', *Comparative perspectives on the right to privacy: Pakistani and European experiences* (Springer 2024).

¹⁶ Jeremy Waldron, *The Harm in Hate Speech* (Harvard university press 2012).

¹⁷ Agnes Callamard, 'Expert Meeting on the Links between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred That Constitutes Incitement to Discrimination, Hostility or Violence' [2008] Geneva: UNHCHR.

¹⁸ Emily Howie, 'Protecting the Human Right to Freedom of Expression in International Law' (2018) 20 International journal of speech-language pathology 12.

¹⁹ Ihtaram Ul Haq and Shah Muhammad Zarkoon, 'Cyber Stalking: A Critical Analysis of Prevention of Electronic Crimes Act-2016 and Its Effectiveness in Combating Cyber Crimes, A Perspective from Pakistan' [2023] Pakistan's Multidisciplinary Journal for Arts & Science 43.

comment or journalism in another set up.²⁰

This ambiguity in definition has given a major discretionary power to the regulatory authorities and especially PEMRA to define what is considered as hateful or offensive material. The regulatory code also directs the broadcasters not to air content that will create hatred or contempt against a group or a person based on religion, ethnicity and gender.²¹ But in reality, these norms have been often selectively applied most of the time to the opposition voices, or to personalities who criticize the institutions of government. Such ambiguity of these provisions results in a paradoxical effect in the regulation: whereas the idea behind such clauses is to prevent social disunity, the outcome in many cases is seen in the estimation of expression.²²

Besides, the emergence of digital communication and social media has further made the structure of definition intricate. The distribution of online content takes place on even greater speeds, making it difficult to distinguish between the pernicious speech and offensive political rhetoric. The international discourse of hate-speech regulation in online environments, conditioned by both the debate of algorithmic content regulation, community terms and conditions and intermediary liability, show that the boundary between censorship and protection is becoming harder to see.²³ In Pakistan where the social media functions as an alternative public sphere, the attempts to block the online content by the government using the Rules on Removal and Blocking of Unlawful Online Content (2021) have been criticized because of the absence of transparency and due-process rights.²⁴

On a comparative basis, other jurisdictions like the European Court of Human Rights (ECHR) have established jurisprudence that places great care in the distinction of hate and offensive expression and that proportionality and intent is of paramount importance. By contrast, the Pakistani legal system is generally more favorable to public order and religious sensitivity than personal freedom and thus decides to criminalize speech which does not necessarily constitute incitement.²⁵ In Pakistan where the social media functions as an alternative public sphere, the attempts to block the online content by the government using the Rules on Removal and Blocking of Unlawful Online Content (2021) have been criticized because of the absence of transparency and due-process rights.

4. Media Regulation and Free Expression dilemma

Media control in Pakistan is a complicated nexus of constitutional rights, political and social pressures and a situation so complicated that scholars have likened this to a regulatory vacuum which is occupied by a cascade of overlapping state apparatus. Media has been historically regarded by the state as an instrument of national unity and as a source of perceived threat to state stability and this has led to a regulatory framework alternating between full facilitation and full control.²⁶ In the case of the Pakistan Electronic Media Regulatory Authority (PEMRA) in 2002, the liberalization and privatization of broadcasting was first brought into the spotlight as being spearheaded by the establishment of the body to marry the two objectives of advancing the Islamic values and ideology of Pakistan and enhancing the standards of the information, education and entertainment industry,

²⁰ Usama Bin Zafar, 'Digital Colonialism: Big Tech's Impact on Pakistan and the Global South' (2025) 3 UCP Journal of Law & Legal Education 29.

²¹ Mahnoor Farooq and others, 'Making Sense of Electronic Media Regulatory Agencies: A Case of PEMRA' (2017) 11 Journal of Managerial Sciences 437.

²² Irtaza Hassan, Zeesham Zafar and Nimra Zafar, 'Comparative Study: Pakistani Media Laws vs. International Free Speech Norms (UN, EU, US): <https://doi.org/10.55966/assaj.2025.4.1.076>' (2025) 4 ASSAJ 1305.

²³ Rashid Hashmi, 'Navigating the Digital Shift: Ethical Considerations and Technological Advances in Broadcasting' [2025] Innovative Applications and Changing Framework in Digital Broadcasting 87.

²⁴ Shipra Tiwari and Kerti Sharma, 'Information Technology Rules 2021: Are We Heading towards a Draconian Rule?' (2021) 8 RGNUL Fin. & Mercantile L. Rev. 247.

²⁵ Dilek Kurban, 'Strasbourg Court Jurisprudence and Human Rights in Turkey: An Overview of Litigation, Implementation and Domestic Reform'.

²⁶ Aqsa Iram Shahzadi, Amna Fazail and Muhammad Ahsan Iqbal Hashmi, 'Regulating Online Speech: Legal and Ethical Challenges of Digital Journalism in Pakistan'.

but the fact that the statutory aim of the organization is to advance the Islamic values and ideology of Pakistan and to ensure that the standards of the information, education and entertainment industry are promoted gives it broad discretion.²⁷

The boundary between regulation and censorship is usually obscured by this discretion. In actual sense, the interventions adopted by PEMRA through suspension of licenses, imposition of fines and issuing content advisory have often targeted all the media outlets that the regime may perceive to be oppositional or critical of state institutions.²⁸ This has been enabled by acts such as this which are rationalized by the need to uphold some sort of public order or guard against hate speech because it turns out that regulatory plans can be used to control the narrative and not necessarily enforced.²⁹ There is also no clear mandate and no external appellate scrutiny of the same, which serves as an additional concern to the issue of selective enforcement and self-censorship among journalists.

The problem of freedom of expression in media regulation is in the necessity to achieve three incompatible goals which are the preservation of people and communities, the maintenance of the society and national security and the preservation of the freedoms of democracy. Although Pakistan has legal framework which outrightly complies with the standards of international human rights, they tend to interpret the objectives in a securitized and moralized context.³⁰ This breeds a system of reasonable restrictions which turns into broad explanations of prior restraint. What makes the situation worse is that media control is not restricted to the statutory law, but it takes place in the form of unofficial pressure, administrative guidelines and political elite.

There has been unequal judicial reaction to media regulation. On one hand, courts have sometimes reinstated the significance of free press as part of the democratic process; on the other hand, these courts have approved the state interventions based on the national security or morality.³¹ An example of how judicial lassitude in decisions concerning matters of state order or Islamic values has constrained the judicial ability to form a coherent judicial jurisprudence regarding media freedom is exemplified by judicial interpretation of freedom of the press. As a result, media organizations have been walking on a thin line that is characterized not by law but by acquiescence.

This landscape is complicated further by the digitalization of journalism. PECA 2016 has extended the state control over online content allowing the authority to delete such that can be considered unlawful or against the integrity of Pakistan.³² This imprecise wording includes hate speech as well as political opposition, which supports a precautionary censorship culture.³³ Without procedural protection, The regulators are allowed to shut down entire sites or platform without any clear explanations.³⁴ The ensuing mechanisms restrict access to the information, besides contravening the Pakistan pledges in Article 19 of the ICCPR, which required that restrictions concerning speech, should be necessary, reasonable and not discriminatory.³⁵

²⁷ Azmat Rasul and Stephen D McDowell, 'Consolidation in the Name of Regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and The' (2012) 12 *Global Media Journal* 1.

²⁸ Muhammad Faiq Butt and others, 'The Interplay between Media and Child Abuse in Pakistan: Causes, Social Impact, and Policy Responses' (2025) 3 *Research Journal of Psychology* 11.

²⁹ Uroosa Ishfaq, Sumaira Gul and Kashif Ashfaq, 'Role of Media in Pakistan's Politics: Challenges and Way Forward' (2024) 8 *Journal of Social Sciences and Media Studies* 102.

³⁰ Emily Howie, 'Protecting the Human Right to Freedom of Expression in International Law' (2018) 20 *International journal of speech-language pathology* 12.

³¹ Barakat Ali and Hafiz Aziz-ur-Rehman, 'Public Interest Litigation in Pakistan: Islamic Constitutional Manifestation.' (2019) 39 *Pakistan Journal of Social Sciences (PJSS)*.

³² Eesha Arshad Khan, 'The Prevention of Electronic Crimes Act 2016: An Analysis' (2018) 5 *LUMS LJ* 117.

³³ Waqas Khan Aneel, Muhammad Saleem and Umair Ahmed, 'Freedom of Speech vs. Hate Speech: A Legal Perspective in Pakistan' (2024) 1 *Gwadar Social Sciences Review (University of Gwadar)* 43.

³⁴ Pieter Nooren and others, 'Should We Regulate Digital Platforms? A New Framework for Evaluating Policy Options' (2018) 10 *Policy & Internet* 264.

³⁵ Martin Scheinin, 'The International Covenant on Civil and Political Rights' (2007) 48 *Making Treaties Work: Human Rights, Environment and Arms Control* 66.

In addition to that, the increasing integration of the traditional and digital media brings new issues. The newsrooms are becoming more dependent on social media distribution and interaction with the audience and on algorithms on the Internet, which determine the appearance and the discussion. Broadcast media regulatory models find it hard to deal with these technological changes. As mentioned in a previous literature, the application of artificial intelligence in news creation and content filtering has established novel ethical issues, such as the amplification of polarizing stories by the algorithm.³⁶ Instead, however, of adopting co-regulatory or self-regulatory models where media literacy and media accountability plays a leading role, Pakistan continues to use punitive control.³⁷

The continuation of the same dilemmas also highlights the necessity of reforming the regulations based on the constitutional principles, as well as the human-rights commitments. The threat of regulatory capture should be reduced by re-aligning toward transparency, proportionality and independence as this would establish an atmosphere in which free expression and social harmony are both possible.³⁸ The main inquiry is not, therefore, whether regulation is necessary at all but how it can be designed in a way that would still maintain freedom but would help fight harm and this is one of the questions that the emerging structure of the media is in acute need to answer in Pakistan.

5. Comparison of Perspectives: EU, US and International Norms

Hate speech regulation debate in the world shows a major divergence between the liberal and the rights-based legal traditions. The United States believes in a very nearly absolute notion of free speech under the First Amendment, but the European Union (EU) and other jurisdictions propose a model of more repressive, yet rights-balancing, that puts more value on the notions of dignity, equality and social harmony.³⁹ The opposing development trend of these systems provides educative lessons to the Pakistani case where the constitutional liberties coexist with moral and religious limits. The even hostile and hate speech in the United States has historically been subject to protection under jurisprudence of the Supreme Court except in the case when lifeless violence is directly incited. The historic case in *Brandenburg vs. Ohio* (1969) provided that the restriction of speech could be only made when it was pointed to an inciting or producing imminent lawless action and it was probable to cause or produce an imminent lawless action.⁴⁰ This restrictiveness can be seen as a sign of faith in the marketplace of ideas by presupposing that counter-speech is the right cure and not repression. This results in the protection of most types of hate speech such as extremist or discriminatory speech under the constitution. Although this model asserts the expressive autonomy, it has been critiqued due to its underestimation of structural and social damages of the constant repetition of the hate narratives.

By contrast, the European Court of Human Rights (ECHR) and the European Union system adopt a more communitarian concept of a free speech, putting it into perspective of human dignity and democratic responsibility. The article 10 of the European Convention on human rights provides the right to freedom of expression but permits restriction which is required in the democratic society to safeguard the rights of others. Jurisprudence such as *Erbakan v. Turkey* (2006) and *Féret v. Belgium*

³⁶ Rashed Alrasheed and others, 'The Ethical and Political Impact of Artificial Intelligence Decisions on the News Production Process in Media and Journalism', *2024 International Conference on Decision Aid Sciences and Applications (DASA)* (IEEE 2024).

³⁷ MOHAMMAD AHMAD NISAR and SOHAIL ASGHAR MUHAMMAD, 'PRIVACY AS A LEGAL RIGHT: A COMPARATIVE STUDY BETWEEN PAKISTAN AND MALAYSIA' (2025) 3 JOURNAL OF ARTS AND LINGUISTICS STUDIES Учредители: Mega Institute for Advance Research and Development 839.

³⁸ Toby Mendel, 'The Fiftieth Anniversary of the Freedom of Information Act: How It Measures up against International Standards and Other Laws', *The US Freedom of Information Act at 50* (Routledge 2019).

³⁹ Toby Mendel, 'The Fiftieth Anniversary of the Freedom of Information Act: How It Measures up against International Standards and Other Laws', *The US Freedom of Information Act at 50* (Routledge 2019).

⁴⁰ Richard A Parker, 'Brandenburg v. Ohio' [2003] Free Speech on Trial: Communication Perspectives on Landmark Supreme Court Decisions 145.

(2009) maintained the prohibition of hate speech, by stating that the expressions which result in intolerance or weaken pluralism do not enjoy protection under Article 10.⁴¹ It is a tactic that shows European history with fascism and genocide and views hate speech not as an individual expression but as a danger to society.

At the global level, the international covenant of civil and political rights (ICCPR) provides a reconciled approach in the Articles 19 and 20. Article 19 confirms the freedom of expression but Article 20(2) compels states to ban a promotion of hatred that can bring discrimination, hostility or violence.⁴² According to the General Comment of the UN Human Rights Committee No.34, such restrictions should be strictly limited, reasonable and harmonious with the democratic principles. In the case of states that are signatories to the ICCPR like Pakistan, the main issue is balancing local law and these norms- to be able to ensure that the bans on hate speech are integrated into a means of state power.

These comparative frameworks outline three variations of philosophy: the libertarian model of the United States, the dignitaries model of the European Union and the hybrid model of the international law, which aims at achieving a balance between the two. The statutory prohibitions in Pakistan, although symbolically adhered to the international norms, generally reflect the European law model in their legalization of international norm but do not include the procedural restrictions that define democratic intervention.⁴³ Without visible application and judicial uniformity the well-intentioned motive of the regulation of hate-speech will be corrupted into discriminatory censorship.

Simply, the comparative experience hints that the validity of control over hate-speech should not be based on the presence of legal prohibitions as such but rather on the principles underpinning its enforcement. The best systems are where the role of the state is limited to the prevention of real incitement and not influencing the opinion of the people and that balance is yet to be achieved in the changing landscape of the media governance in Pakistan.

6. The Digital Media Reflex of Digital Media and New Opportunities

The development of digital media has essentially changed the structure of the public communication. The old gate keeping tools that are traditionally concentrated in newsroom and state regulators have been replaced by a free and participatory content production and distribution tool.⁴⁴ This transformation has contributed to the increased involvement in democracy, but on the flip side, the increased release of hate speech and disinformation has been increased. The online world is therefore creating a paradox: it allows expressing unprecedented manifestations but the harmfulness increases. The growth of the digital media industry in the last decade has been so intensified by the high rate of internet penetration, extensive use of social-media and the projection of mobile journalism in Pakistan. Facebook, X (previously Twitter) and YouTube are now the most important forums of political discussions. However, this has shifted in a manner that has taken the lines between journalism, activism and misinformation.⁴⁵ The hate speech on the internet has increased beyond a lonely act of bigotry to an automated narrative where digital structures (likes, shares and automated recommendations) are based on keeping users engaged rather than accurate.⁴⁶ This has been

⁴¹ Monica Macovei, 'A Guide to the Implementation of Article 10 of the European Convention on Human Rights' [2004] Human rights handbooks.

⁴² Antoine Buyse, 'Dangerous Expressions: The ECHR, Violence and Free Speech' (2014) 63 International & Comparative Law Quarterly 491.

⁴³ Muhammad Salman Shafiq and Peicheng Wu, 'Intellectual Property Refusals as an Antitrust Violation in Pakistan: How May the Present Strategy Be Enhanced?' (2025) 10 International Journal of Legal Discourse 431.

⁴⁴ Javier Díaz-Noci, 'Artificial Intelligence Systems-Aided News and Copyright: Assessing Legal Implications for Journalism Practices' (2020) 12 Future internet 85.

⁴⁵ Syed Inam ur Rahman, Muhammad Asghar and Nauman Sial, 'Business Monopoly, Cross-Ownership and Quest for Media Management in Pakistan' (2023) 8 Global Economics Review 167.

⁴⁶ Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (Yale University Press 2018).

especially evident at religiously charged or politically unstable instances, at which point online forums have become the catalysts in generating hostility in the real world.

The main legal tools of regulation of online communication in Pakistan are the Prevention of Electronic Crimes Act (PECA) 2016 and the Rules for Removal and Blocking of Unlawful Online Content (2021). These models enable the Pakistan Telecommunication Authority (PTA) to censor or delete online content it perceives to be against the public order, decency or morale.⁴⁷ Yet, the general terms of these provisions give too much discretionary decision-making authority to the state, which could become overreaching and obscure procedures. Human-right entities and digital-rights activists say that such censoring rules frequently lead to bias in the distribution of censorship, especially of journalists and political opponents.⁴⁸

Digital-media governance is a controversial world phenomenon. The Digital Services Act (2022) by the European Union aims at bringing transparency and responsibility to online platforms and permanent user rights and the freedom of expression.⁴⁹ Conversely, the model of Pakistan will be control-based, where the interests of security and moral regulation in the state over participatory governance are higher. The absence of an external control mechanism regarding decisions on content-moderation even increases the threat of arbitrary enforcement even greater. This lack of institutional check ensures that besides freedom of expression, there is also no faith and confidence of the people in digital governance.

One of the most important aspects of this discourse is the application of the artificial intelligence (AI) to content moderation and news production. Robotic systems are becoming more and more adept at detecting and eliminating so-called harmful speech through recognizing patterns with the help of algorithms, but are highly likely to label non-harmful contextual languages, satire, or minority dialects as hate speech.⁵⁰ I have mentioned in earlier work that algorithmic moderation in the absence of transparency has the potential to recreate biases and silencing of legitimate dissent in the name of ensuring civility. The absence of appeal procedures and human control over the AI-based moderation regimes highlights a larger issue, which is the replacement of human judgment by technological automation of the concerns related to the freedom of expression.

The multi-stakeholder approach that balances rights and the responsibility is required to solve these issues. Co-regulatory models on the basis of state vigilance, platform on accountability and involvement of civil-society are ways of providing more visible and more proportionate regulation of the digital. Such a framework in the case of Pakistan would mean the implementation of Article 19 of the international law in the ICCPR, procedural fairness and integration of the protection of rights in the digital governing environment. The ultimate victory of hate-speech regulation in the era of the digital era rather hinges in the amount of limitations than principles of proportionality, necessity and transparency of regulations that defines the procedure.

7. Making reforms in the Legal Framework: Rights and Responsibilities

In Pakistan, regulation of hate speech has shown previously existing loopholes on how constitutional provisions or statutes and actual implementation should be. Existing legal provisions, such as Article 19 of the Constitution, the Pakistan Penal Code, the PEMRA Ordinance of 2002 and the Prevention of the Electronic Crimes Act of 2016 give the state extensive powers of discretion.⁵¹ As has been

⁴⁷ Yasir Aleem, Muhammad Asif and Muhammad Umair Ashraf, 'The Prevention of Electronic Crimes Act 2016 And Shrinking Space for Online Expression in Pakistan.' (2021) 20 *Ilkogretim Online*.

⁴⁸ Rizwan Ahmad, 'From Screens to Streets: Populist Mobilization Through Digital Media in Pakistani Politics' (2025) 1 *International Journal of Advanced Studies in Social Sciences and Humanities* 41.

⁴⁹ Fernanda de Araujo Meirelles Magalhães and Irene Merino Calle, 'Consumer Protection in the Digital Age: A Reflection on Regulation 2022/2065' [2025] *A Digital Europe for Citizens: Data Governance, Data Markets, Data Services* 171.

⁵⁰ Khadim Hussain, 'Conflating Democracy and Authoritarianism: Revisiting Populism in Pakistan'.

⁵¹ Irtaza Hassan, Zeesham Zafar and Nimra Zafar, 'Comparative Study: Pakistani Media Laws vs. International Free Speech Norms (UN, EU, US): <https://doi.org/10.55966/Assaj.2025.4.1.076>' (2025) 4 *ASSAJ* 1305.

observed in the sections above, however, due to their broadness and the absence of procedural protections, the restrictions often lead to discriminatory application, internalization and restrictions of free discourse in the population.⁵²

A reform of the Pakistani legal system must be principled by focusing on clarity, proportionality and accountability. To begin with, hate speech as defined under the statute should be specific and both limited and focused, which makes a clear distinction between incitement to violence, discriminatory advocacy and the controversial or offensive speech.⁵³ The over-general or imprecise words, like those presently referred to in PEMRA and PECA rules, cause confusion that is disproportionate when it comes to journalists, civil-society groups and marginalized groups. Fourth, the legislative process should be innovative in ensuring that the consultations of the stakeholders are actively integrated i.e. media representatives, human-rights organizations and digital platforms so that regulations do not unduly limit free expression but reflect the realities of the society.⁵⁴

Second, the enforcement mechanisms should be transparent and independent. PEMRA and PTA administrative bodies ought to have explicitly spelled out content-review guidelines and make sure that the law is uniformly applied. A check on a random or politically inclined decision may be given by a self-governing appellate or review body. This practice is the European model, in which the European Court of Human Rights focuses on proportionality, intent and context when evaluating restrictions on speech.⁵⁵

Third, rights-based protection applied to digital media regulation must be implemented to mitigate the threats of online platform and algorithmic controlled content management. Co-regulatory models, involving both state regulation and platform responsibility, have demonstrated to be effective in areas like the EU Digital Services Act, where freedom of expression and protection against being hurt ought to be reconciled.⁵⁶ In Pakistan, the inclusion of the like principles like transparency in the procedures, avenues of appeal and the calculation of accountability would help to reduce the risks posed by automated content removal under PECA.⁵⁷

Last, the reform should be context-sensitive since it should align with the realities of the sociopolitical and cultural life of Pakistan, but be guided by the international human rights considerations. The ICCPR and the UN guidelines lay emphasis on the restrictions imposed on speech to have legitimate objectives, be essential in a democratic society and be proportional to the harm they avoid. The implementation of these norms on the national level would avoid the abuse of authority that is presently witnessed in the enforcement of the anti-hate speech and online regulations.⁵⁸

Overall, the legal reform must work towards reconciling the freedom and responsibility in such a way that society should not suffer the negative effects of the hate speech and the constitutional and international rights of the people to the freedom of dissenting, controversial and unpopular opinion must be secured. Not only would a transparent, coherent and rights-oriented structure also decrease

⁵² Muhammad Salman Shafiq and Peicheng Wu, 'Intellectual Property Refusals as an Antitrust Violation in Pakistan: How May the Present Strategy Be Enhanced?' (2025) 10 *International Journal of Legal Discourse* 431.

⁵³ Emily Howie, 'Protecting the Human Right to Freedom of Expression in International Law' (2018) 20 *International journal of speech-language pathology* 12.

⁵⁴ Rizwan Ahmad, 'From Screens to Streets: Populist Mobilization Through Digital Media in Pakistani Politics' (2025) 1 *International Journal of Advanced Studies in Social Sciences and Humanities* 41.

⁵⁵ Kent Roach, 'Must We Trade Rights for Security-The Choice between Smart, Harsh, or Proportionate Security Strategies in Canada and Britain' (2005) 27 *Cardozo L. Rev.* 2151.

⁵⁶ Fernanda de Araujo Meirelles Magalhães and Irene Merino Calle, 'Consumer Protection in the Digital Age: A Reflection on Regulation 2022/2065' [2025] *A Digital Europe for Citizens: Data Governance, Data Markets, Data Services* 171.

⁵⁷ Sajid Sultan and Ishfaq Ahmad, 'CPEC and Data Sovereignty: Legal and Cybersecurity Implications of Chinese Digital Infrastructure Projects' (2025) 4 *Pakistan Journal of Social Science Review* 906.

⁵⁸ Irtaza Hassan, Zeesham Zafar and Nimra Zafar, 'Comparative Study: Pakistani Media Laws vs. International Free Speech Norms (UN, EU, US): <https://doi.org/10.55966/Assaj.2025.4.1.076>' (2025) 4 *ASSAJ* 1305.

arbitrariness, it would also increase the level of confidence that people have in the media regulatory ecosystem to promote a more open, responsible and strong democratic discourse.

8. Conclusion

The control of the hate speech in Pakistan is an intricate game of constitutional rights, legal requirements and the needs of the society. Although freedom of expression is a right embedded in the Constitution of Pakistan, the wide-ranging limitations imposed by Article 19 and overlapping statutory and administrative provisions have been a common limit to the exercise of this fundamental right. It is not about whether or not expression should be controlled, but how to limit the freedom so that individuals and communities are not harmed and at the same time keep up the democratic discourse.

As indicated in this paper, there are some inherent contradictions in the existing structure of Pakistan: discretionary powers of regulatory bodies, the absence of statutory definitions and the procedures guarantee lead to inconsistent enforcement and misuse. The emergence of digital media also complicates the regulation process, because online networks take speech to a higher level, making it difficult to deal with it by the conventional legal and ethical standards. Social media virality, algorithmic moderation and cross-border content spreading require a reconsideration of regulatory mechanisms and legal norms.

The comparative analysis with the international and regional models, such as the United States, the European Union and the ICCPR, points out that the only way to regulate the situation effectively is to balance between freedom and responsibility. The U.S. model focuses on near absolute expression whereas the European is focused on human dignity, proportionality and contextual evaluation. By comparison, the legal system of Pakistan is indicative of moral, religious and security-oriented approaches, yet in most of the instances, there is a deficiency of institutional checks and balances that can be used to guarantee fairness and legitimacy.

Any effort at reforming the media regulation and hate speech system in Pakistan needs to be accurate in the law, open in application, rights protection of digital media and consistent with the international human rights standards. Through narrowing of definitions, separation of oversight and inclusion of procedural accountability, the state would be able to reduce risks of arbitrariness and create a media climate that would support the discussion of knowledgeable people. These reforms are crucial to the safeguarding of the fundamental rights as well as to the unification of a strong, pluralistic and democratic society.

To sum up, it is important to note that the establishment of a sustainable balance between freedom of expression and control of hate speech in Pakistan requires principled, consistent and context-sensitive strategy. Whether or not regulation is legitimate is ultimately based on whether it is compliant with constitutional values, democracy and international human rights requirements that the protection of society is not achieved at the expense of the very freedoms that it aims to protect.