Policy Research Journal
ISSN (E): 3006-7030 ISSN (P) : 3006-7022 Volume 4, Issue 3, 2026

CONSTITUTIONALISM AT A CROSSROADS: FREEDOM OF EXPRESSION, DIGITAL GOVERNANCE, AND JUDICIAL REVIEW IN PAKISTAN

Fakhar Abbas*[1], Ghulam Arbi[2], Akhtar Ali Ansari[3]

*[1]LLM Scholar, Superior Law College, Superior University, Lahore, Pakistan
[2]Ph.D. Scholar, Lincoln University College, Malaysia (LUC)
[3]LL.M, University of Lahore (UOL), Lahore, Pakistan

*[1]fakharabbass7797@gmail.com, [2]arbighulam90@gmail.com, [3]akhtaraliansariadv@gmail.com

DOI: https://doi.org/10.5281/zenodo.24156960

Keywords
Constitutionalism, freedom of expression, digital governance, judicial review, Pakistan, PECA, Federal Constitutional Court.

Article History
Received: 07 January 2026
Accepted: 17 March 2026
Published: 31 March 2026

Copyright @Author
Corresponding Author: *
Fakhar Abbas

Abstract
This paper explores whether Pakistan's constitutional regime can still regulate state control over online expression. The paper argues that legal, structural, and remedial deficiencies have merged together since 2024. There have been legal deficiencies with vague and broad statutory limitations; structural deficiencies with regulators being executive-controlled and a reshuffled judiciary; and remedial deficiencies with slow, disjointed, and sometimes ignored judicial remedies. As a result, there has been a rise in textual constitutionalism, with Article 19 and 19A merely existing on paper, with the executive having discretion. This paper will examine how judicial review theory, comparative and international standards, have contributed to the Prevention of Electronic Crimes (Amendment) Act 2025, the blocking of X between 2024 and 2025, network shutdowns, and the establishment of the Federal Constitutional Court under the Twenty-seventh Amendment. The paper will conclude that Pakistan has reached a true tipping point. Its courts may become a tool used to legitimize executive decision-making in relation to digital governance or reattached to their role in protecting rights, as demonstrated by several high courts. Finally, recommendations will be made to reform legislation, regulation and judicial practice.

1. INTRODUCTION

The Twenty-seventh Constitutional Amendment was signed by President Asif Ali Zardari on 13 November 2025 after being passed by the Cabinet, making it one of the fastest and most controversial amendments to occur in Pakistani history. The amendment established a Federal Constitutional Court (FCC) to interpret constitutional law, resolve federal-provincial disputes, and enforce fundamental rights that were previously performed by the Supreme Court. (Malik, 2025; The Friday Times, 2025a). A month before this, the Prevention of Electronic Crimes Act 2016 (PECA) was amended in January 2025 by Parliament to criminalize sharing of "fake or false" information, establishing a new regulatory body, tribunal, and investigative body. (Dawn, 2025a; The Express Tribune, 2025a). However, between these events, there was an internet blackout on X on 17th February 2024 that lasted until 7th May 2025 during the armed conflict with India. There has been no conclusive ruling from any court as to

whether the blackout was legal. (Pakistan Press Foundation, 2024; The Express Tribune, 2025b). Usually, these events would be separated into different areas: media law, digital rights, and judicial politics. However, this paper will argue that they are all part of the same constitutional issue. Constitutionalism is more than just having a constitutional bill of rights; it requires real independent bodies (Munir, 2019). Freedom of expression can be a highly telling indicator of how well this is happening. Restrictions on freedom of expression are most likely to be abused, so if the body that is reviewing these is also being changed by the executive and legislature, then it will not be very effective.

This paper aims to explore how effective Pakistan's constitutional bodies and judiciary are at restricting state regulation of online expression, and how this has changed due to the 2024-2026 reforms. It will begin with an overview of the concepts involved, using research from the judicial review and online platform literature. It will then investigate the constitutional provisions, history of judicial review in Pakistan, and the digital governance provisions from 2024 to 2026. Finally, it will assess how the judicial system has reacted and how the courts have been restructured in 2024-2025. Recommendations for reform will also be made.

There are two points to note here. Firstly, many of the cases are ongoing, and many of the recent changes have been reported on in the media and civil society, so any claims will be tentative. Secondly, this paper is a criticism of the structure of bodies within Pakistan, but does not make any claims about the intentions of any particular body. There are valid reasons for governments to want to take action against online abuse, disinformation, and threats; however, we need to ask if they are doing it lawfully, proportionately, and with oversight.

2. Conceptual Framework

2.1 Judicial review and its justifications

The most classic concern regarding judicial review is that it results in counter-majoritarianism due to the fact that the judiciary, an unelected body, is able to override the will of the electorate (Bickel, 1962). Waldron (2006) developed this argument further by stating that it is difficult to justify judicial review within societies that have effective democratic systems and a sincere commitment to protecting rights. Disagreement over rights can be resolved better by the legislature rather than the judiciary. The whole argument is conditional on representative, deliberative, and non-captured legislatures and a non-questionable independent judiciary. However, where these conditions do not exist, an argument can be made that there is a greater necessity for meaningful judicial review. Considering Pakistan's history of executive dominance, military interference, and rushed legislation (Shah, 2014; Khan, 2017), it can be argued that individuals wishing to argue that speech can only be protected through parliamentary procedures will struggle (Munir & Mahmood, 2020).

Conversely, there can be concerns over juristocracy, whereby political matters are handed to judiciaries who may be interested in protecting the hegemonic elites (Hirschl, 2004). Pakistani literature supports both arguments. There has been a significant increase in judicial powers due to the public interest doctrine, but this has often been influenced or driven by strong political and institutional actors (Cheema, 2018; Kureshi, 2022; Newberg, 1995). Tushnet (2008) discusses the concept of weak-form judicial review. This means that judicial review can be strong or weak. The main issue within constitutional law is whether the judiciary is independent and whether its decisions are followed.

2.2 Abusive constitutionalism

'Abusive constitutionalism' refers to the use of constitutional change mechanisms (such as constitutional amendment and judicial restructuring) to undermine the integrity of democracy. This involves legal procedures at every stage (Landau, 2013). Typically, the constitutional changes target accountability institutions such as the judiciary, electoral commissions, and the media (Dixon & Landau, 2021). However, this cannot be applied universally. Judicial engineering, therefore, cannot be considered abusive by default. Many democracies have special constitutional courts to

deal with constitutional issues (Mahmood et al., 2026). Instead, you should consider: How inclusive was the process? How much time did they take to make these decisions? How were judges appointed? What were their tenure rules and immunity rules? Have there been any changes to increase or decrease citizen access to remedies?

2.3 Online speech and the triangle of governance

Online speech can be regulated through the state but also through the platforms themselves. This can be seen in the creation of the 'triangle' where online speech is regulated via the state, the online platforms, and the infrastructure used by the speaker. This is done through the state exerting pressure on the platforms and requiring them to have licensing and liability (Balkin, 2018). Platforms operate as a form of private governance system with their own regulatory and adjudicative mechanisms (Klonick, 2018). Therefore, in order to ensure there are no criminal sanctions applied to those speaking, a modern bill of rights would need to consider the effects of blocking orders, obligations placed onto intermediaries, registration requirements and network shutdowns.

2.4 Applicable standards

In 2010, Pakistan became a party to the International Covenant on Civil and Political Rights. Article 19(3) allows restrictions on free expression but only when imposed pursuant to law. The law must be sufficiently precise to guide individual behavior. It shall not allow discretion to those implementing it. Restrictions such as blanket bans on operating websites or information systems are not permitted. (Human Rights Committee, 2011). Further, the Human Rights Council (2016) has criticized efforts to deliberately prevent or hinder online access. The Indian Supreme Court has also taken a similar stance. In Shreya Singhal v. Union of India (2015), the Supreme Court ruled that the offense of being online was too vague and unconstitutional. The court then ruled in Anuradha Bhasin v. Union of India (2020) that internet shutdowns must be lawful, necessary, proportionate, and must be implemented using orders that are published and can be reviewed.

This is what has been used to form the three-pronged test throughout this paper. First, there must be a legal basis. This means that there must be a clear and specific law. Secondly, there should be some independence. This means that any decisions regarding the restriction of free speech must be made or reviewed by an independent body. Thirdly, there must be a remedy. This must be timely and enforceable. All three correspond to the issues identified in the Abstract.

3. Constitutional Foundations and the Record of Judicial Review

3.1 The textual guarantee

Article 19 of the Constitution of Pakistan (1973) guarantees citizens the right to freedom of speech and expression, and freedom of the press, however, this right may be restricted by law for the purpose of "maintaining the glory of Islam, the integrity and security and defence of Pakistan, friendly relations with foreign states, public order, decency and morality or the protection of the contempt of court and the prevention of the incitement to any offence". Article 19A inserted by the Eighteenth Amendment in 2010 further stipulates that citizens' have the right to access information on matters of public importance, however, this right "reasonable restrictions imposed by law". Article 8 makes any law inconsistent with fundamental rights void. Article 199 gives power to High Courts to issue writs in order to protect these rights.

This text has three key points. Firstly, there is a wide range of grounds to justify restriction of freedom of speech and expression. These include vague terms such as 'glory of Islam', "decency or morality". Secondly, unlike the Covenant, there is no explicit requirement for restrictions to be necessary or proportionate. The only requirement is that they are 'reasonable ', which will be determined by judges. Lastly, the restrictions must be by law. This element of the text is what causes most of the problems with blocking and shutdowns.

3.2 A history of episodic review

The judicial history of Pakistan can be seen as swinging between two extremes (Munir et al., 2020). The Federal Court approved the disbandment of the first Constituent Assembly (Federation of Pakistan v Maulvi Tamizuddin Khan [1955]), but went on to provide justification for a military coup through the doctrine of necessity (State v Dosso [1958]). This was rejected once the military regime collapsed (Asma Jilani v Government of the Punjab [1972]) but then re-established (Nusrat Bhutto v Chief of the Army Staff [1977]) and later (Zafar Ali Shah v Pervez Musharraf [2000]). There was also a period of more activist jurisprudence. Public interest standing increased (Benazir Bhutto v Federation of Pakistan [1988]). The right to life was interpreted broadly (Shehla Zia v WAPDA [1994]). And the Supreme Court nullified the 2007 emergency (Sindh High Court Bar Association v Federation of Pakistan [2009]). The lawyers' movement from 2007-2009 became a strong symbol of judicial independence (Kureshi, 2022).

However, scholars have noted that the judiciary hasn't necessarily expanded greatly. It has often had an up-and-down relationship (Cheema, 2018), and there has been a desire for supremacy from the judges in Pakistan for some institutional reasons (Kureshi, 2022). Therefore, the judiciary has acted as a check occasionally but also as a justifier repeatedly. This means digital rights cases will be faced with this issue.

3.3 The weak basic-structure safeguard

Another point to note is the uncertain nature of constitutional amendment limitations under Pakistani doctrine. Although there have been obiter comments and opinions referring to the salient features of the Constitution (Pakistan Lawyers Forum v. Federation of Pakistan [2005]), the Eighteenth and Twenty-first Amendments were upheld by the Supreme Court in District Bar Association, Rawalpindi v. Federation of Pakistan [2015]. Opinions have varied as to whether there is a basic structure doctrine to void constitutional amendments. In practice, the main limitation to constitutional amendments has been through Article 239, requiring a two-thirds majority in each House. As constitutional amendments can affect the structure of the judiciary, it can lead to a situation where the courts must consider the legality of their own restructuring. There are few legal tools available to allow this to happen, which will be very important in the years 2024 – 2025.

4. Digital Governance: Legislation, Blocking and Shutdowns

4.1 PECA: from 2016 to the 2025 amendments

The Prevention of Electronic Crimes Act 2016 has faced criticism since it was enacted due to the general nature of the offenses set out in the legislation. Section 20 criminalizes offenses against a person's dignity (defamation). Section 37 gives the Pakistan Telecommunication Authority (PTA) powers to remove online content if it falls into any of the categories below. The section was amended in 2022, making it cognizable and non-bailable and increasing the penalties under the section. However, the amendment was declared invalid by the Islamabad High Court (presided over by Chief Justice Athar Minallah). This ruling was welcomed by many journalists and digital rights groups (Digital Rights Monitor, 2022).

The Prevention of Electronic Crimes (Amendment) Act 2025, which has been assented to on 29th January 2025 despite protests, takes the legislation much further. Section 26A has been included in the bill that criminalizes the intentional spreading of false information that could cause fear and uncertainty. Offenders face up to 3 years in prison, a fine of up to Two Million Rupees, or both (Samaa TV, 2025). A Social Media Protection and Regulatory Authority (SMPRA), Social Media Complaint Council, Social Media Protection Tribunals and National Cyber Crime Investigation Agency have also been created. The SMPRA has the power to register/deregister platforms, place conditions on them, and require the removal of online content that is reported to be against the ideology of Pakistan or fake/false. Complaints will be addressed within 24 hours (Digital Rights Monitor, 2025a). The SMPRA will consist of officials, including the chairmen of the PTA and the Pakistan Electronic Media Regulatory Authority. The tribunal will be presided over by a

former High Court Judge who will be appointed by the government (Samaa TV, 2025).

4.2 Critique under the three-part test

Legality: There is no clear definition of what constitutes 'false or fake' under the final version of the law (Express Tribune, 2025c). As the law is used in a political context and there is often limited state access to information, it can be difficult to determine whether something is false. Vagueness around the offence of publishing false information will deter people from reporting facts (Human Rights Committee, 2011). An example of this can be seen in the ruling by the Indian Supreme Court that an offence similar to this should be struck down due to its vagueness. The reasoning given for the content of the law was that it was in contradiction to Article 19 because the reasons were not listed as they are under Article 19. Whilst it can be argued that this is a matter of interpretation with regard to the 'glory of Islam' or the 'integrity' of the state, it still remains unclear.

Independence: The structure of the law will mean that any disputes regarding freedom of expression will be decided by those who are either controlled by or greatly influenced by the executive. The petitioners argued that there is no independence or impartiality due to the tribunal and authority. It has been transferred powers that should traditionally be given to the courts (Pakistan Press Foundation, 2025). The blocking mechanism means that decisions will be made by those in the authority (controlled by the government), reviewed by the tribunal (appointed by the government), and enforced by the investigation agency (controlled by the same government).

Remedy Shortly after the passage of the Act, the Supreme Court and Islamabad, Lahore, Sindh, and Peshawar High Courts received challenges to the Act (The Express Tribune, 2025d). However, by December 2025, the Balochistan High Court was informed by the Additional Attorney General that a challenge to PECA had already been submitted to the FCC. The government requested that the petitions in Balochistan be rejected (The News, 2025). Even by April 2026, the Sindh High Court was allowing the federal government extra time to submit its comments (The News, 2026). After 15 months of the Act's passage, the main petitions have not been fully resolved. Enforcement has continued, with a lawyer and an activist being sentenced for a PECA case on social media. Their applications for sentence suspension are being adjourned in the Islamabad High Court in September 2026 (Pakistan Press Foundation, 2026a).

4.3 Blocking and the X episode

An example of where executive secrecy has been evident is the blocking of X. This became inaccessible to users largely in February 2024. For some time, officials denied it had been blocked. However, the PTA later informed the Sindh High Court that it was at the request of the Ministry of Interior. The Ministry of Interior later stated that the blocking of X had happened due to reports from intelligence agencies highlighting threats to national security (Dawn, 2024a; Pakistan Press Foundation, 2024). The Sindh High Court ordered it to be unblocked in February 2024, and the Ministry of Interior to either remove its letter within a week, or provide a legal rationale for the ban (Jurist, 2024; Pakistan Press Foundation, 2024). In April 2024, the court ordered a ban on it to be lifted. However, it is still inaccessible at times, with many users relying on virtual private networks. In September 2024, lawyers from the PTA gave conflicting information regarding whether the notification had been removed (The Express Tribune, 2024).

On 7 May 2025, access was restored during military conflict with India. A pro-government senator reportedly stated that the unbanning was part of a "narrative war" (Nukta, 2025; The Express Tribune, 2025b). Interestingly, from a constitutional perspective, the same rationale was given for the banning and unbanning, both related to national security. There was also no test of the necessity and proportionality of the ban. As a result of this decision, a ban that affected millions of users, including journalists and officials still posting on the blocked site (Dawn, 2025c), was decided upon at the executive's discretion. This highlights a lack of remedies, as although orders were given by the court, they were not followed quickly. Also, there was no resolution to the issue.

4.4 Network shutdowns and regulatory suspensions

This can affect an entire population. Mobile Internet services were cut off in some parts of the country in February 2024, and cases were brought to the Sindh High Court, as the court had previously ordered that Internet cuts would only be allowed if they were justified using specific sections of the law (Dawn, 2024b). This is usually carried out through Section 54 of the Pakistan Telecommunication (Re-organization) Act 1996, which allows the federal government to suspend/modify services in the interest of national security, or in times of emergency. This is unclear, with no mention of needing to publish orders, how long they should last, or independent oversight.

In the latest case, the internet was cut off in Azad Jammu and Kashmir (AJK) on 5th June 2026 due to security concerns. It was partially restored on 23rd July 2026 after 48 days. They were initially restored in Mirpur Division but will be restored in other divisions once security has improved (Pakistan Press Foundation, 2026b). This affected individuals and freelancers by disrupting their education, financial activities, and employment. It was claimed by opposition leaders that this undermined the integrity of any future elections in AJK (The Express Tribune, 2026a). Unlike internet disruptions due to technical faults. For example, there was a nationwide internet disruption in early July 2026 due to a fault in a Sub-SEA cable (SEA-ME-WE 5). This was resolved on 3rd July (Digital Rights Monitor, 2026a). These cases are often mixed up; however, only the first case is related to a constitutional issue. An example of a media suspension is when Geo News was suspended for 15 days in late June 2026 for airing an 'offensive' (Digital Rights Monitor, 2026b).

4.5 The government's case

In a critical piece, it is important to present the opposing arguments in their most persuasive form. The government argues that there are genuine issues caused by disinformation, coordinated trolling, deepfakes and security-based propaganda online. They claim that platforms do lack adequate legal accountability within Pakistan and so regulation via statute is justified (Business Recorder, 2025a). The premise that states should not be expected to ignore the role of intermediaries is supported by Balkin (2018). However, this does not mean regulation should be implemented – it should be implemented in a way that is lawful, independent, and provides redress. There are fewer broad options available to regulate such issues through specific offenses requiring proof of harm and intention, judicially supervised removal orders, and obligations to make platforms more transparent. This suggests that the main aim of the 2025 Act was to have control through consolidating wide-ranging executive powers.

5. Judicial Review in the Digital Domain: Achievements and Limits

The Pakistani judiciary has taken an active role in protecting Articles 19 and 19A. The Islamabad High Court ruled in 2022 that the criminalization of defamation (a chilling effect) was unconstitutional. It overturned FIA cases using Section 20 of PECA and resulted in 7,000+ complaints being closed by the agency (Digital Rights Monitor, 2022). In 2024, the Sindh High Court prevented mobile and broadband from being turned off without meeting legal requirements. It questioned who had the authority to turn off social media and ordered X to be restored (Dawn, 2024). This shows how effective the provisions are in holding the regulatory bodies accountable.

However, there are significant limitations. Firstly, most remedies were temporary and reliant on cooperation. Despite an order to restore X, it was still inaccessible in 2024, and users had to use a Virtual Private Network (ThePrint, 2024). Secondly, most of these cases were asking for justification of reasons or removal of the measure by the executive. There is no evidence that any court decided whether turning off social media nationwide based on intelligence reports that have not been disclosed can ever be proportionate. Therefore, ultimately the government can still decide to unblock social media for strategic reasons in 2025, as the case did not decide on the merits of the case. Thirdly, there are many different cases in different forums

and overlapping petitions, meaning delays are likely. After 2025, there will also be arguments about the forum (The News, 2025). Lastly, there is no clear doctrine surrounding proportionality or what should be included in Article 19A. Cases such as Shreya Singhal and Anuradha Bhasin demonstrate what this would look like, but due to the inconsistent nature of compliance in India, it cannot be guaranteed that a positive judgment will be the end of the story. Overall, whilst the Pakistani judiciary has provided some protection, it is inconsistent, and the reforms in 2024-2025 have changed the bodies that this protection relies on.

6. Re-engineering the Judiciary: The Twenty-sixth and Twenty-seventh Amendments

The Twenty-Seventh Amendment is an enhancement of the Twenty-Sixth Amendment, passed in October 2024. This created constitutional benches and changed the way that judges are appointed (The Express Tribune, 2025d). The FCC has been added at the top of the judiciary, responsible for constituting constitutional issues, Federal-Provincial disputes, and enforcing fundamental rights. It has reduced the role of the SC to a final Appellate Court and increased executive control by giving lifelong immunity to the President and the military (Dawn, 2025b). They have also increased the executive's control over appointments. The FCC claims that approximately 23,000 constitutional cases were moved to it from the SC. (Federal Constitutional Court of Pakistan, 2026). However, Amnesty International states that this new amendment is part of a pattern of undermining judicial independence. The FCC does not have any independence, and judges' tenure is undermined. (Business Recorder, 2025c). Finally, a senior judge has stepped down due to the hope of the Court regaining constitutional supremacy being lost (Bhatt & Joshi Associates, 2025).

However, there are good arguments for this new court. The Punjab Bar Council praised the new court as they had been campaigning for it (Business Recorder, 2025b). Specialized constitutional courts are a common precedent elsewhere. Supporters argue that this new reform limits judicial activism. (LEAP Pakistan, 2025). This is not unfounded, as there is a lot of literature showing how judicial power has often been used for institutional advancement within Pakistan (Cheema, 2018). (Kureshi, 2022). This reform also aims to reduce a heavy workload.

However, there are three factors that undermine the argument that this is a neutral reform. Firstly, the appointment/transfers and tenure rules mean that there is greater political control over those making decisions in favor of the executive. This is most relevant in cases concerning freedom of expression due to the adverse party being the state. Secondly, the top officials have immunity, meaning that there is no legal control over a portion of public power. This is a substantial change to the premise of Article 8. Finally, the concentration of constitutional matters has led to issues. The High Courts had primary jurisdiction over writs due to Article 199. This meant they were the main place to get fast redress for digital rights, as seen in the X and shutdown cases. However, it has been reported that judges in the Sindh High Court initially refused to deal with constitutional petitions as they had lost their powers. (The Express Tribune, 2025d). The federal law officer also cited the FCC being busy dismissing petitions in Balochistan relating to PECA (The News, 2025). Lastly, in November 2026, the Peshawar High Court removed some petitions from its cause list after an order from the FCC saying it could not deal with Preventive Detention cases. (ARY News, 2026). Overall, this has led to a reduction in local remedies and greater uncertainty. The main opposition party was also unsure if they wanted to go to the FCC at all. (The Express Tribune, 2026b).

Furthermore, the legal position has created issues. Due to the uncertainty around the basic structure doctrine (3.3) and the fact that only a two-thirds majority is required under Article 239, any challenges would need to be dealt with by courts that have been changed by this amendment. This creates a problem with self-regulation, and standing and justiciability cannot overcome this issue.

7. Critical Analysis: Where the Crossroads Lies

The three deficiencies compound each other. First, the lack of legality results in broad definitions being used to justify limitations such as 'fake'/false and ideology. Second, there is no independence in the regulators, tribunals, and increasingly the highest rights forum. Finally, there is no remedy where orders can be delayed, inadequate or not enforced. However, new enforcement bodies are being created. In October 2026, it was reported that the National Cyber Crime Investigation Agency had created dedicated units to combat fake news (Digital Rights Monitor, 2026c). This means that the state has more tools to limit speech. Therefore, there is a power imbalance between the ability of the state to limit speech and the ability of citizens to challenge this.

However, there are two routes. Landau's (2013) framework shows that although the process for abusive constitutionalism should be lawful, the route will depend on how the new bodies act. The FCC can consolidate by allowing executive actions on national security and the PECA petitions are not resolved or delayed. Orders to shut down are never published and therefore can't be challenged. Or alternatively, the FCC can re-connect by using a structured approach to proportionality, hearing PECA cases quickly, requiring justification for blocks and shutdowns, and seeing this as part of their remit. The argument that legislatures should decide disputes over rights (Waldron, 2006) doesn't provide much hope for the consolidation route. Both the Twenty-seventh Amendment and amendments to PECA went through with a lot of protest. They weren't well debated (Malik, 2025; Dawn, 2025c).

A realistic analysis must not make the mistake of assuming that the FCC won't be successful. Their history regarding digital rights is yet to be written, and most of the evidence I have looked at is based on reporting and reform. Furthermore, although we may hope that having a reformed court will mean that constitutionalism can return, the Pakistani experience shows that independence of the judiciary depends on political factors (Newberg, 1995; Shah, 2014). We should look for evidence that the FCC has decided on PECA cases on the merits and within a reasonable timeframe, required transparency (at least in private hearings) of why sites have been blocked on national security grounds, the executive has complied better with orders, and that the High Court can still issue writs for urgent relief.

8. Reform Pathways

This suggests four reform recommendations:

Statutory changes: Section 26A should be removed or amended to include that there must be knowledge that a verifiable fact is false; a serious and predictable consequence; and a public interest defence for journalism. The 'ideology of Pakistan' should be removed or limited to those listed in Article 19. There should also be a sunset clause included in the Act and a parliamentary post-legislative review.

Regulatory changes: The Authority, Complaint Council and Tribunals should be appointed by multi-party bodies or the Judiciary. Any orders for blocking or suspending networks should be reasonable, limited in duration, and published. They should also be quickly approved by the judiciary. This can be achieved by amending section 54 of the Telecommunication Act.

Judicial changes: The FCC should streamline and speed up PECA petitions. They should have a clear standard of necessity and proportionality in line with the standards set by the Human Rights Committee (2011). Article 19A should be developed into a right that can be enforced. The court should use in camera procedures to look at sensitive evidence rather than allowing unsubstantiated claims. There should be interim measures and monitoring of compliance, including contempt, if appropriate.

Parliamentary & Judicial changes: Parliament and the courts should make it clear that High Courts do have a route for urgent rights. Any future amendments which affect the judiciary should involve real consultation with the bar, bench and civil society.

Platforms also have obligations to provide transparency reports and uphold due process for users, but this will not replace lawful restraint by the state (Balkin, 2018; Klonick, 2018).

9. Conclusion

While the Pakistan Constitution provides constitutional guarantees in relation to freedom of expression and access to information, the courts have, at best, ensured the enforcement of these rights by regulators. Between January 2025 and November 2026, there has been significant change to the legal landscape. A general regime concerning content regulation has been introduced, with a wide range of blocking and shutdowns occurring with no judicial consideration. At the same time, the apex court structure and access mechanisms have been reformed. This presents a turning point for constitutionalism. The new institutions will either be passive and result in a formalistic approach to judicial review, which will permit executive discretion over the digital space, or provide clarity, independence, and effective remedies, resulting in the reforms being compatible with rights. Whether the latter happens will depend less on how any amendment reads, and more on the initial and sustained reactions from the courts and political branches to the pending cases.

REFERENCES

Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637 (India).

ARY News. (2026, November). PHC removes petitions against KP emergency from cause list. https://arynews.tv/phc-removes-petitions-against-kp-emergency-from-cause-list

Asma Jilani v. Government of the Punjab, PLD 1972 SC 139 (Pak.).

Balkin, J. M. (2018). Free speech is a triangle. Columbia Law Review, 118(7), 2011–2056.

Benazir Bhutto v. Federation of Pakistan, PLD 1988 SC 416 (Pak.).

Bhatt & Joshi Associates. (2025). Pakistan's 27th Constitutional Amendment: Dismantling judicial independence—A critical analysis for constitutional lawyers. https://bhattandjoshiassociates.com/pakistans-27th-constitutional-amendment-dismantling-judicial-independence-a-critical-analysis-for-constitutional-lawyers/

Bickel, A. M. (1962). The least dangerous branch: The Supreme Court at the bar of politics. Bobbs-Merrill.

Business Recorder. (2025a). Amendments to PECA aimed at overcoming challenge of fake news, says Tarar. https://www.brecorder.com/feeds/news/40346369

Business Recorder. (2025b, November 16). Punjab Bar Council welcomes 27th amendment. https://www.brecorder.com/news/amp/40392663

Business Recorder. (2025c). 27th amendment part of 'sustained attack' on judicial independence, says Amnesty. https://www.brecorder.com/news/amp/40401001

Cheema, M. H. (2018). Two steps forward one step back: The nonlinear expansion of judicial power in Pakistan. International Journal of Constitutional Law, 16(2), 503–526.

Dawn. (2024, February 23). X 'loadshedding' persists for 6th day despite SHC orders. https://www.dawn.com/news/1816417

Dawn. (2025a, February 7). Peca changes challenged in Islamabad High Court. https://www.dawn.com/news/amp/1890270

Dawn. (2025b, November). 27th Amendment: The end of an era. https://www.dawn.com/news/1955038

Dawn. (2025c, January 30). Zardari okays changes to Peca amid outcry. https://www.dawn.com/news/1888590

Digital Rights Monitor. (2022, May 7). FIA challenges IHC's verdict against PECA's Section 20 in Supreme Court. https://digitalrightsmonitor.pk/fia-challenges-ihcs-verdict-against-pecas-section-20-in-supreme-court/

Digital Rights Monitor. (2025a, February 18). Pakistan: Cybercrime law changes challenged in high court. https://digitalrightsmonitor.pk/pakistan-cybercrime-law-changes-challenged-in-high-court/

Digital Rights Monitor. (2025b, April 25). Peshawar High Court tells government to respond to petition challenging PECA amendments. https://digitalrightsmonitor.pk/peshawar-high-court-tells-government-to-respond-to-petition-challenging-peca-amendments/

Digital Rights Monitor. (2026a, June 29). Geo News suspended for 15 days over 'offensive' broadcast. https://digitalrightsmonitor.pk

Digital Rights Monitor. (2026b, July 3). Internet services restored across Pakistan, telecom authority announces. https://digitalrightsmonitor.pk/internet-services-restored-across-pakistan-telecom-authority-announces/

Digital Rights Monitor. (2026c, October 24). Pakistan cyber agency sets up special units to counter 'fake news'. https://digitalrightsmonitor.pk/pakistan-cyber-agency-sets-up-special-units-to-counter-fake-news/

Dixon, R., & Landau, D. (2021). Abusive constitutional borrowing: Legal globalization and the subversion of liberal democracy. Oxford University Press.

District Bar Association, Rawalpindi v. Federation of Pakistan, PLD 2015 SC 401 (Pak.).

Federal Constitutional Court of Pakistan. (2026). About us [Brochure]. https://fccp.gov.pk

Federation of Pakistan v. Maulvi Tamizuddin Khan, PLD 1955 FC 240 (Pak.).

Hirschl, R. (2004). Towards juristocracy: The origins and consequences of the new constitutionalism. Harvard University Press.

Human Rights Committee. (2011). General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34). United Nations.

Human Rights Council. (2016). The promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/32/13). United Nations.

Jurist. (2024). Pakistan court orders authorities to restore access to social media platform X. https://www.jurist.org/news/2024/02/pakistan-court-orders-authorities-to-restore-access-to-social-media-platform-x/

Khan, H. (2017). Constitutional and political history of Pakistan (3rd ed.). Oxford University Press.

Klonick, K. (2018). The new governors: The people, rules, and processes governing online speech. Harvard Law Review, 131(6), 1598–1670.

Kureshi, Y. (2022). Seeking supremacy: The pursuit of judicial power in Pakistan. Cambridge University Press.

Landau, D. (2013). Abusive constitutionalism. UC Davis Law Review, 47(1), 189–260.

LEAP Pakistan. (2025). The twenty-seventh amendment to the Constitution of Pakistan: A structural constraint on judicial activism and its institutional costs. https://leappakistan.com/the-twenty-seventh-amendment-to-the-constitution-of-pakistan-a-structural-constraint-on-judicial-activism-and-its-institutional-costs/

Malik, Z. (2025, November 28). Shifting the scales: How Pakistan's 27th Amendment undermines judicial independence and cements executive dominance. ConstitutionNet. https://constitutionnet.org/fr/node/19965

Mahmood, T., Munir, B., Ali, N., Batool, H., & Ali, G. (2026). The emergence of constitutional courts in Pakistan: Restructuring judicial power and constitutional adjudication. Policy Research Journal, 4(6), 167–177.

Munir, B., & Mahmood, A. K. (2020). Establishment of military courts in Pakistan and its effects on trichotomy of powers: International and domestic standards. Pakistan Vision, 21(2), 250-277.

Munir, B., Riaz, J., & Khan, A. N. (2020). Transformative preservation of military and its impacts on judicial autonomy and constitutionalism: A critical appreciation in the context of Pakistan. International Review of Social Sciences, 8(11), 191-203.

Munir, B. (2019). *Constitutionalism and the dilemma of judicial autonomy in Pakistan: A critical analysis* (Doctoral dissertation, International Islamic University Islamabad). Higher Education Commission Pakistan Repository.

Newberg, P. R. (1995). Judging the state: Courts and constitutional politics in Pakistan. Cambridge University Press.

Nukta. (2025). X restored in Pakistan to counter India in 'narrative war', says lawmaker. https://nukta.com/x-restored-in-pakistan

Nusrat Bhutto v. Chief of the Army Staff, PLD 1977 SC 657 (Pak.).

Pakistan Lawyers Forum v. Federation of Pakistan, PLD 2005 SC 719 (Pak.).

Pakistan Press Foundation. (2024). Sindh High Court orders restoration of social media platform X, seeks justification for ban. https://pakistanpressfoundation.org/?p=112850

Pakistan Press Foundation. (2025). PECA Amendment 2025 challenged in Supreme Court, high courts. https://pakistanpressfoundation.org/?p=112405

Pakistan Press Foundation. (2026a, September). IHC adjourns PECA sentence suspension pleas of Imaan Mazari-Hazir, Hadi Chattha. http://pakistanpressfoundation.org/ihc-adjourns-peca-sentence-suspension-pleas-of-imaan-mazari-hazir-hadi-chattha/

Pakistan Press Foundation. (2026b, July 28). Internet services partially restored in Azad Jammu and Kashmir after 48-day suspension. http://pakistanpressfoundation.org/internet-services-partially-restored-in-azad-jammu-and-kashmir-after-48-day-suspension/

ProPakistani. (2026, July 23). PTA starts restoring internet services in Azad Kashmir. https://propakistani.pk/2026/07/23/pta-starts-restoring-internet-services-in-azad-kashmir/

Samaa TV. (2025). PECA Amendment Act 2025 challenged in Lahore High Court. https://samaa.tv/2087328083-peca-amendment-act-2025-challenged-in-lahore-high-court

Shah, A. (2014). The army and democracy: Military politics in Pakistan. Harvard University Press.

Shehla Zia v. WAPDA, PLD 1994 SC 693 (Pak.).

Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India).

Sindh High Court Bar Association v. Federation of Pakistan, PLD 2009 SC 879 (Pak.).

State v. Dosso, PLD 1958 SC 533 (Pak.).

The Express Tribune. (2024, September 12). PTA withdraws notification on X ban, SHC adjourns hearing. https://tribune.com.pk/story/2495591/pta-withdraws-notification-on-x-ban-shc-adjourns-hearing

The Express Tribune. (2025a, May 7). Access to X partially restored in Pakistan. https://tribune.com.pk/story/2544463/access-to-x-partially-restored-in-pakistan

The Express Tribune. (2025b, February 4). Controversial PECA act challenged in Supreme Court. https://tribune.com.pk/story/2526500/entertainment

The Express Tribune. (2025c, February). PFUJ challenges PECA amendments in IHC. https://tribune.com.pk/story/2526928/1

The Express Tribune. (2025d, November). 27th Amendment throws SHC into disarray. https://tribune.com.pk/story/2577510/27th-amendment-throws-shc-into-disarray

The Express Tribune. (2026a, July). Internet services partially restored in parts of AJK after 48-day suspension. https://tribune.com.pk/story/2619875/internet-services-partially-restored-in-parts-of-ajk-after-48-day-suspension

The Express Tribune. (2026b, February). PTI holds back on FCC move. https://tribune.com.pk/story/2579159/pti-holds-back-on-fcc-move

The Friday Times. (2025, November 13). President Zardari signs 27th Constitutional Amendment into law after Parliament's approval. https://www.thefridaytimes.com/13-Nov-2025/president-zardari-signs-27th-constitutional-amendment-law-parliament-s-approval

The News. (2025, December 16). BHC hears petitions challenging Peca Act. https://www.thenews.pk/print/1387080-bhc-hears-petitions-challenging-peca-act

The News. (2026, April 22). Govt gets more time to comment on plea against Peca amendment. https://www.thenews.pk/print/1411440-govt-gets-more-time-to-comment-on-plea-against-peca-amendment

ThePrint. (2024). Pakistanis are using VPN to access X. Govt is defying court order to lift ban. https://theprint.in/go-to-pakistan/pakistanis-are-using-vpn-to-access-x-govt-is-defying-court-order-to-lift-ban/2135500

Tribune India. (2025, February 6). Pak journalist union challenges controversial PECA law in IHC, calls it attack on media freedom. https://www.tribuneindia.com/news/world/pak-journalist-union-challenges-controversial-peca-law-in-ihc-calls-it-attack-on-media-freedom/amp

Tushnet, M. (2008). Weak courts, strong rights: Judicial review and social welfare rights in comparative constitutional law. Princeton University Press.

Waldron, J. (2006). The core of the case against judicial review. Yale Law Journal, 115(6), 1346–1406.

Zafar Ali Shah v. Pervez Musharraf, PLD 2000 SC 869 (Pak.).

IEER
Institute for Excellence in Education & Research