

HATE SPEECH UNDER THE CYBER LAW OF PAKISTAN: A CRITICAL EVALUATION

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Abstract

This paper probes into the legal framework of cyber law in Pakistan under the Constitution and ordinary law. It deliberates on the scope and ambit of the different laws involving cyber law. It contemplates Pakistan's obligation to prevent hate speech under its international legal commitments. It contemplates what is meant by hate speech and engages in a detailed deliberation on the law involving hate speech and whether it is in line with the prerequisites of freedom of speech under the Constitution. It also critically evaluates some landmark cases involving hate speech. The main findings of this paper are that Pakistan's cyber law is incorporated within the Constitution and ordinary law as well. That these ordinary laws have their own particular scope and ambit. Hate speech refers to the expression of hatred towards a particular group for a particular reason. The law involving hate speech discusses it in different parameters, either in terms of interfaith, sectarian or racial hatred or anti-Islam, or against any other religion, anti-Pakistan or a traitor. That the law involving hate speech provides similar prerequisites in accordance with the freedom of speech in the Constitution. Also, even before there was any law that dealt with hate speech, the Supreme Court of Pakistan had laid down some guidelines for its prevention in a landmark case. The methodology used in this paper is doctrinal.

INTRODUCTION

Cyber law is an emerging law that has encompassed a new jurisprudence all over the world. Pakistan is no stranger to this development. Cyber law is the law that deals with each and everything related to the cyber space. After the advent of the 4th industrial revolution which saw the rise of technological advancements, the whole world went through a rapid change. There came the presence of social media. The world became more connected at a global level. In this new world, where people also possessed not just a physical presence but also a digital presence, it showcased new types of propositions that were never before seen in law. Do people have digital rights? Is a person's online presence his own presence or a separate legal

personality? Can a country's sovereignty be threatened by means of cyber-attacks? Naturally, legislations were promulgated, cases were brought to courts and thus new jurisprudence surrounding cyber security and laws were brought to light. All of this comes under the realm of cyber law, which refers to the field of law that deals with the internet, which encompasses statutes, regulations, disputes and cases that affect people and businesses that interact through a

computer.¹ It addresses issues of online speech and business that arise because of the nature of the medium, including intellectual property rights, free speech, privacy, e-commerce, safety and questions of jurisdiction.²

Pakistan is no stranger to this development. Pakistan has incorporated cyber law into its legal system as well. We will return to this point hereinbelow. One of the most interesting propositions involved in the realm of cyber law is the limitations of freedom of speech in cyber space. The freedom of speech has long been asserted as a fundamental right of virtue. Every person has a right to express themselves and say anything. Of course, this right is not absolute. It has certain reasonable restrictions imposed onto it by virtue of compelling public interest. Does the same go for the cyber space as well? Are there any compelling restrictions against the freedom of speech in cyber space? One such restriction is that of 'hate speech.' It has been deemed to be a reasonable restriction against freedom of speech.³ One must therefore scrutinize whether this is also the case for Pakistan; whether hate speech is a genuine restriction against the freedom of speech in Pakistan?

This paper shall briefly deliberate on the legal framework of cyber law in Pakistan; it shall evaluate what is the scope and ambit of all these particular legislations and sub-legislation; whether cyber law is incorporated within the Constitution of Pakistan as well; it appraises what is meant by hate speech; what is the scope and ambit of hate speech as incorporated

within Pakistani law; whether the law involving hate speech is constitutional *viz* Article 19 of the Constitution of Pakistan (freedom of speech); lastly, this paper also contemplates some landmark cases of the Pakistani superior courts that involve hate speech.

Literature Review

While the proposition at hand is based purely from a legal point of view, there is still some relevant literature that may be appraised. Batool et al have made a very interesting contribution in regards to user perspectives in relation to hate speech regulation in social media platforms.⁴ However, their work makes little reference to the law itself, albeit they did refer to international treaties. Raza Ullah et al⁵ have also recommended the passing of stringent laws against all forms of hate speech but did not contemplate the fact that there is already an existing legal framework of the same which in fact needs proper implementation. Naumana Suleman⁶ however does consider the existing law and also touches upon the Constitution of Pakistan, 1973 as a genuine reason for the existing legal framework needing to be strengthened. However, her legal analysis is not in depth as she does not appraise neither the law in detail or scrutinise any judicial decisions for that matter. Marvi Sirmed's⁷ work is of a similar nature albeit she does provide an analysis of the law. However, her analysis is dated due to the fact that she made her academic analysis prior to the promulgation of the Prevention of Electronic Crimes Act, 2016. The lack of scrutiny of judicial

¹ Henry Campell Black, "*Black's Law Dictionary*" in Bryan A. Garner (ed.), (West, Thomas Reuters, 9th ed., 2009), 443.

² Ibid, pp. 443-444.

³ For the sake ascertaining the importance of hate speech content, see: Muhammad Akbar and Aasima Safdar, Exploring Ethnic Discrimination and Hate Speech in Online Political Discourses: A Comprehensive Analysis from the Pakistani Context, *Annals of Human and Social Sciences*, Vol. 5, no. 1, (2024): 271.

<<https://ojs.ahss.org.pk/journal/article/view/477>> accessed 8th August 2025.

⁴ Sumera Batool, Maryam Aslam and Ehsan Elahi, Hate Speech on Social Media: A Study of User's Perspective, *Journal of Development and Social Sciences*, Vol. 5, no. 2, (2024): 303.

<<https://ojs.jdss.org.pk/journal/article/view/1058>> accessed 8th August 2025.

⁵ Raza Ullah Shah, Kashif Saleem and Azmat Ali Shah, Hate Speech in Mosques Versus Sectarian Violence in Pakistan: Causes and Recommendations, *The Dialogue*, Vol. 16, no. 2, (2021): 99.

<<https://journals.qurtuba.edu.pk/ojs/index.php/thedialogue/index>> accessed 8th August 2025.

⁶ Naumana Suleman, Hate Speech and Human Rights: A Social Justice Perspective in Pakistan, *The Informal: South Asian Journal of Human Rights and Social Justice*, Vol. 01, no. 1, (2024): 63.

<<https://www.nepjol.info/index.php/informal/article/view/69165>> accessed 8th August 2025.

⁷ Marvi Sirmed, Hate Speech and Restricted Speech: Striking a Balance, *Conflict and Peace Studies*, Vol. 7, no. 2, (2015): 59.

<<https://www.pakpips.com/article/book/conflict-and-peace-studies-vol-7-no-2-jul-dec-2015>> accessed 8th August 2025.

decisions are most likely due to the reason that judicial decisions on hate speech are very few in number. There is no proper jurisprudence developed on the subject. This work shall therefore attempt a proper academic scrutiny on the law and jurisprudence surrounding hate speech.

Legal Framework of Cyber Law in Pakistan

In order to understand the intricacies involving the constitutionality of hate speech in Pakistan, we must first attempt to understand the foundation of cyber law in the Pakistani legal system. In the Constitution of 1973, cyber law is incorporated under the scope and ambit of Articles 9 (right to life), 14 (inviolability of dignity) 19 (freedom of expression), 15 (freedom of movement), 16 (freedom of assembly), 18 (Freedom of trade, business or profession), 19 (freedom of expression), 19A (right to information), 24 (protection of property) and 26 (non-discrimination in respect of access to public spaces). In ordinary legislation, the legal framework of cyber security in Pakistan is incorporated within the following statutes and regulations:

- i. Pakistan Telecommunication (Re-Organisation) Act, 1996.
- ii. Electronic Transactions Ordinance, 2002.
- iii. Investigation for Fair Trial Act, 2013.
- iv. Prevention of Electronic Crimes Act, 2016.
- v. Pakistan Penal Code, 1860.
- vi. The State Bank's Regulations for the Security of Internet Banking.

Hence, the foundation of cyber law is vested in both the Constitution of Pakistan and even statutory law. As there are multiple statutes, we shall deliberate upon them briefly one by one.

The Pakistan Telecommunication (Re-organisation) Act, 1996

The Pakistan Telecommunication (Re-organisation) Act, 1996 (hereinafter referred to as the "PTRA") constituted the Pakistan Telecommunication

Authority (hereinafter referred to as the "PTA").⁸ The PTA has many functions, both administrative and quasi-judicial. It has to regulate the establishment, operation and maintenance of telecommunication systems in Pakistan.⁹ It also has the function of investigating and adjudicating on complaints and other claims made against licensees arising out of alleged contraventions of the provisions of the PTRA, the rules made and licences issued thereunder and take any action accordingly.¹⁰ Hence, it is the regulatory authority for all matters that are related to telecommunication. An appeal can be made against the decision of the officer of the PTA to the PTA itself within 30 days of receipt of said decision¹¹ and to the High Court or any other tribunal established for this purpose by the Federal Government on the ground that the decision is against the provisions of the PTA within 30 days of receipt of said decision.¹² Hence, the PTRA also provides for the remedies of revision and appeal as well. The PTA also has the power to grant licenses,¹³ modify them¹⁴ and issue enforcement of orders and penalties.¹⁵

The Electronic Transaction Ordinance, 2002

The Electronic Transaction Ordinance 2002, (hereinafter referred to as the "ETO") constitutes the Electronic Certification Accreditation Council (hereinafter referred to as the "Council").¹⁶ The Council may grant accreditation to certification service provider with its cryptography services, electronic signature or advanced electronic signature and security procedures who complies with the criteria for accreditation.¹⁷ The Council has the exclusive jurisdiction to grant, renew, suspend or revoke the accreditation to certification service providers, their cryptography services and security procedure notwithstanding anything provided in the PTRA.¹⁸ The Council can also decide matters with through a speaking order within a 90 days' timeframe or longer in exceptional circumstances.¹⁹ The ETO

⁸ The Pakistan Telecommunication (Re-organisation) Act, 1996 ("PTRA"), s 3.

⁹ *ibid*, s 4(a).

¹⁰ *ibid*, s 4(f).

¹¹ *ibid*, s 7 (2).

¹² *ibid*, s 7(1).

¹³ *ibid*, s 21.

¹⁴ *ibid*, s 22.

¹⁵ *ibid*, s 23.

¹⁶ The Electronic Transaction Ordinance, 2002 ("ETO"), s 18.

¹⁷ *ibid*, s 24.

¹⁸ *ibid*, s 22.

¹⁹ *ibid*, s 26.

itself deals with all matters relating to electronic documents, such as e-signatures, stamp duty etc.

The Investigation for Fair Trials Act, 2013

The Investigation for Fair Trials Act, 2013 (hereinafter referred to as the “IFT”) as the name title suggests was promulgated for investigating whether a fair trial was conducted or not. Its preamble provides that

“An Act to provide for investigation for collection of evidence by means of modern techniques and devices to prevent and effectively deal with scheduled offences and to regulate the powers of the law enforcement and intelligence agencies and for matters connected therewith or ancillary thereto”

The preamble is self-explanatory and has thus provided the scope and purpose of the IFT. Section 3(g)(i) of the same provides that for purposes of surveillance, the evidence shall also include any data, information or material in any documented form whether written or through audio visual device or CCTV or still photography or observation or any other mode of modern devices or techniques that are obtained under the IFT. Section 3(g)(ii) of the IFT for the purposes of interception, the evidence shall include mails, SMS, IPDR (internet protocol detail record) or CDR (cell detail record) and any form of computer based or cell phone-based communication and voice analysis. It also includes any means of communication using wired or wireless or IP (internet protocol) based media or gadgetry. Hence, for the purposes of obtaining evidence under the IFT, it allows for evidence available through electronic means.

The Prevention of Electronic Crimes Act, 2016

The Prevention of Electronic Crimes Act, 2016 (hereinafter referred to as the “PECA”) was promulgated as the title suggests to prevent electronic crimes. Originally, for crimes that fell under the category of electronic, the Pakistan Penal Code, 1860 (hereinafter referred to as the “PPC”) would be applied. For example, in case of electronic fraud, the

ordinary provisions of the PPC that dealt with fraud would be applied in such cases. In addition to this, there were certain category of offences therein under which hate speech could be broadly incorporated as we will see hereinbelow. Moving back to PECA, everything changed after the promulgation of the PECA as it exclusively deals with electronic offenses. Chapter II of the same provides different kinds of offenses, such as unauthorised access,²⁰ copying or transmission²¹ or interference with an information system or data²² and to critical infrastructure information system or data.²³ It also provides that providing information online that glorifies an offense is also an electronic offense.²⁴ The other electronic offenses it provides are cyber terrorism,²⁵ hate speech,²⁶ electronic forgery,²⁷ and electronic fraud²⁸ among others. It also provides for the establishment of an investigative agency that shall have the power to investigate offense committed under PECA.²⁹

The Pakistan Penal Code, 1860

The PPC is Pakistan’s primary statute that deals with offences and punishments. While it does not provide anything directly about hate speech, it may be evinced within certain provisions as already mentioned hereinabove. For example, Section 153A, PPC provides the offence of promoting enmity between different groups. It stipulates that there will be a punishment of up to five years with fine for whomsoever:

“(a) by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites, or attempts to promote or incite, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or public tranquility; or

(b) commits, or incites any other person to commit, any act which is prejudicial to the maintenance of harmony between different religious, racial, language

²⁰ The Prevention of Electronic Crimes Act, (“PECA”), s 3.

²¹ *ibid*, s 4.

²² *ibid*, s 5.

²³ *ibid*, ss 6-8.

²⁴ *ibid*, s 9.

²⁵ *ibid*, s 10.

²⁶ *ibid*, s 11.

²⁷ *ibid*, s 13.

²⁸ *ibid*, s 14.

²⁹ *ibid*, s 29.

or regional groups or castes, or communities or any group of persons identifiable as such on any ground whatsoever and which disturbs or is likely to disturb public tranquillity; or

organizes, or incites any other person to organize, any exercise, movement, drill or other similar activity intending that the participants in any such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence, or participates, or incites any other person to participate, in any such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in any such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community or any group of persons identifiable as such on any ground whatsoever and any such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community...”

Hence, we may conclude that any means of expression communicated in *anyway* which causes or attempts to cause incitement to commit actual violence on a purely discriminatory or prejudicated ground whether on an individual or organizational level shall be guilty of promoting enmity. In such a case, spreading or causing hate speech also comes under the ambit of promoting enmity. It should be noted however that the explanation provides that if such an act is done without any malicious intention or has been honestly removed, then it shall no longer amount to an offence.

Coming back to the topic at hand, hate speech is also evinced within Section 295A, PPC which provides for a up to 10-year imprisonment or fine or both for anyone who deliberately with a malicious intention insults or attempts to insults the religious beliefs or sentiments of any particular group amongst the citizens of Pakistan.³⁰ Hence, this may be categorised as religious hate speech unlike the former which encompasses all forms of hate speech. However, it should be noted that ultimately the offence itself in its original form is that of blasphemy. It may be

considered synonymous with the term religious hate speech. Lastly, Section 505 provides for the offence of “statement conducing to public mischief.” Under subsection 2, it provides that whoever makes, publishes or circulates any statement, rumour or report or alarming news

“with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment for a term which may extend to seven years and with fine.”

Hence, any statement, rumour, report or ‘alarming news’ which may create or promote enmity, hatred or ill-will on grounds of pure discrimination or prejudice between different groups on the basis of religion, race, casts, language or the other elements specified therein shall be punished with imprisonment of up to 7 years with fine. Hence, this too incorporates all hate speech on a very broad scale just like in Section 153 hereinabove.

Therefore, other than PECA, we can clearly see that hate speech is also incorporated within the PPC as well. They may be incorporated as such by interpreting all mediums of expression provided therein by including means of expression via social media or other relevant media as well. In such a case, then hate speech would unequivocally be clearly evinced within the PPC as well.

The State Bank’s Regulations for the Security of Internet Banking

As the title suggests, the State Bank has its own regulations that it follows so as to ensure that internet banking is secure for everybody. The preface of the regulations provides that

“...These regulations, therefore, would help banks in Pakistan to develop a formal Internet Banking Security Framework containing administrative, technical and physical safeguards based on best international practices. The major components of the framework would be Security Risk Assessment (of threats, vulnerabilities to systems and customers information), Security Controls Implementation based on the Security Risk Assessment and Security Controls

³⁰ The Pakistan Penal Code, 1860 (“PPC”), s 295A.

Monitoring. An effective customer awareness program is also necessary to mitigate the risks associated with Internet Banking. Banks, therefore, are encouraged to regularly update their customers about the identity theft and fraud techniques, enabling them to identify these techniques and take appropriate preventive measures.”

This preface is self-explanatory and thus requires no further explanation.

Hate Speech

Now that we have understood the foundation of cyber law in the Pakistani legal system. We shall not deliberate onto the primary focus of this work which is the constitutionality of hate crime. We will do so by first understanding the Nitti-Gritty involving it. A hate crime is a crime that is motivated by racial, religious, gender or other such prejudice.³¹ In that case, what is hate speech then? Can we simply define it as speech which is motivated by any sort of prejudice? Or a speech of hatred directed towards someone due to having some sort of prejudice against them? Or is it speech that carries no meaning other than the expression of hatred for some group such as a particular race?³² Especially in circumstances in which the communication will likely provoke violence.³³ Section 11 of PECA provides that hate speech is the preparation or the dissemination of information through an information system or device that causes or potentially causes interfaith, sectarian or racial hatred. Interestingly enough, the law does not provide any cause for concern to any potential violence that could be caused as a result of such speech but just that it causes “hatred.” Not even aggression, but just hatred. One can argue that hatred in this context can even refer to aggression or violence. It is considered a serious offense.³⁴ This provision provides that the punishment for hate speech is an imprisonment for up to 7 years or a fine or both. Hence, it is discretionary and shall be entirely dependent upon the facts and circumstances of the case.

Clause 23 of the Electronic Media Code of Conduct, 2015 (“Code”) provides that a licensee shall ensure

that hate speech by any of its employees and guests shall not be aired. It also provides that the licensee shall not allege someone within the ‘spectrum’ of hate speech, including calling someone anti-Pakistan, traitor or anti-Islam. Lastly, it provides that where a guest in a program uses hate speech, the channel and its representative must stop him and remind him as well as the audience that no one has the authority to declare any other citizen as a Kafir or enemy of Pakistan, Islam or any other religion.³⁵ Hence, a duty has been imposed to the licensee to not just stop any hate speech but also remind the person who said it and the audience that hate speech is not allowed. What is more interesting however is that the Code even provides for a specific type of hate speech. The Code emphasizes upon calling someone anti-Islam, or against any other religion, anti-Pakistan or a traitor. It provides that nothing that comes within the “spectrum” of hate speech is not allowed before providing the parameters mentioned hereinabove.

Hence, hate speech in this context has its certain parameters. While hate speech is not specifically mentioned therein, Section 20 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (“Ordinance”) provides for certain duties that are imposed upon the licensee which include ensuring the preservation of the integrity, sovereignty and security of Pakistan, ensuring the preservation of religious, cultural and social values alongside the principles of policy enshrined in the Constitution of Pakistan and lastly, ensuring that all programmes and advertisements do not contain or encourage any sort of violence, terrorism, racial, ethnic or religious discrimination or sectarianism or extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency. Hence, we can see that the programme must not violate these duties imposed upon them, especially the duty of making sure that any sort of program or advertisement does not further contain any violence or discrimination or hatred or any other type of offensive material that is against the common accepted standards of decency. This duty has

³¹ West’s Encyclopedia of American Law, (Thomson Gale, 2nd ed., Vol. 1., 2005), 444.

³² Black, Black’s Law, *supra* note 1 at p. 1229.

³³ *ibid.*

³⁴ *Suo Moto Case No. 7 of 2017*, PLD 2019 SC 318, para 37.

³⁵ *Independent Media Corporation (Pvt.) Ltd. v. PEMRA*, 2018 CLC Note 82 [Sindh], 86.

been further imposed by Rule 15 of Pakistan Electronic Media Regulatory Authority Rules, 2009 (“Rules”) which provides that a licensee is to conform to provisions of Section 20 of the Ordinance.

Hence, we may conclude from the above that hate speech has been well defined and well regulated under both ordinary and sub-ordinate legislation. However, there is still a notable difference between both. In the former, hate speech is any speech that causes interfaith, sectarian or racial hatred while the latter stipulates hate speech to be any speech that involves calling someone to be against Islam, the state of Pakistan or a traitor or against any other religion. This is very interesting as in the former hate speech involves the sharing of speech that may cause violence on a specific group of people while the latter involves calling someone to be against a particular religion, anti-Pakistani or against Islam. On a first glimpse, one might note a similarity of the potential of hatred being caused to a particular group. However, the particular group itself has been changed. The latter does not even consider race but mostly contemplates the integrity of a person who is accused of being against the State. The former did not specify any particular group like the latter did. It may be concluded that the latter may be considered an addition to the scope and meaning of hate speech under PECA, albeit it is exclusive to T.V. programs.

Testing the Constitutionality of Hate Speech

After deliberating in detail on the scope and meaning of hate speech, we shall move on ahead to testing its constitutionality on the touchstone of the freedom of speech as incorporated under the Constitution of Pakistan, 1973, Freedom of speech is incorporated within Article 19 of the Constitution of Pakistan. It provides that

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

³⁶ *High Court Bar Association v. Government of Balochistan*, PLD 2013 Balochistan 75, para 30.

Hence, every citizen has the right to freedom of speech and expression and there shall also be freedom of the press, subject to reasonable restrictions as imposed by law in the interest of the following prerequisites:

- i) Glory of Islam.
- ii) Integrity, Security or Defence of Pakistan.
- iii) Friendly Relations with foreign States.
- iv) Public order, decency or morality.
- v) In relation to contempt of Court.
- vi) Commission or Incitement of Offense.³⁶

Hence, the Constitution itself has imposed restrictions on the right to free speech of a person. A person cannot speak against Islam, against the integrity, security or defence of Pakistan, on Pakistan’s relations with foreign states, he cannot say anything against public order, decency or morality. He also cannot say anything in relation to contempt of Court and the commission or the incitement of offense.³⁷

The law that deals with hate crime also provides similar prerequisites. Section 11 of PECA provides that hate speech is speech that causes sectarian, racial or interfaith hatred. Paragraph 20 of the Code provides that no is allowed to call someone to be anti-Islam, against any other religion, anti-Pakistan and traitor. Section 20 of the Ordinance read with Rule 15 of the Rules imposes a duty on media channels to preserve the integrity, sovereignty and security of Pakistan also along with the religious, social and cultural values of Pakistan. It also imposes a duty to not show any sort of discrimination, violence or hatred, extremism or anything else that goes against the common standards of decency in their programs or advertisements. Hence, we can see that the prerequisites incorporated within Article 19 of the Constitution are also reflected in the ordinary and sub-ordinate legislation that involves hate speech. Therefore, the classification of hate speech is completely constitutional under Article 19 of the Constitution and thus, hate speech is completely unconstitutional.

Selected Landmark Decisions of the Superior Courts

Now that we have established the constitutionality of hate speech on the touchstone of the freedom of speech, we shall deliberate on some selected

³⁷ *Munir Ahmad v. Federation of Pakistan*, PLD 2020 Lahore 528, at para 22.

judgements in relation to hate speech. In a case where members of a particular sect were murdered and public interest litigation was initiated in the Balochistan High Court. The Court observed that extremists' groups have a pattern of justifying their extremist actions by spreading propaganda through hate literature, writing on walls and giving threatening and spiteful press releases.³⁸ The Court ruled that all of this is not allowed because they are against Islamic injunctions, they undermine the integrity, security and defence of Pakistan, public order, decency and morality and they are also crimes under Pakistani laws which incite others to commit crime.³⁹ This was before the promulgation of PECA, thus the Court made this observation by relying on the reasonable restrictions of free speech as incorporated within the Constitution itself.

Before PECA was promulgated, the Supreme Court had laid down guidelines in respect to hate speech and its prevention in "*Suo Moto Case No. 1 of 2014*"⁴⁰ The facts of this case were that a Church in Peshawar had been bombed by suicide bombers which led to the death of 81 Christians, 37 of whom were women and also 131 people were wounded. This occurred after a Church service on Sunday. This led to protests of Christians all over Pakistan in which they not only protested against such violence against their community but also demanded better protection from authorities. Justice Helpline, an NGO sent a letter to the Supreme Court in which they prayed for better protection of minorities' places of worship. A similar complaint was also filed from adherents of the Hindu faith. The Court discussed various issues that had been taking place against the various minorities in Pakistan, including the Christians, Hindus, Ismaili among others. A discussion was also made on the right to religious freedom⁴¹ and religious intolerance especially online in the form of hate speech.⁴² The Court held that the Federal Government should take appropriate steps to ensure that hate speeches in social media are not only discouraged but all who resort to it are brought to justice according to law.⁴³ Hence, this judgement may be considered an original and

landmark decision for its great discourse on religious tolerance and religious freedom, it is laudable that the Court also brought forth a guideline for the prevention of hate speech.

In "*Masood ur Rehman Abbasi v. The State*"⁴⁴, where the petitioner had been arrested for hate speech against the Chief Justice of Pakistan. The Court observed that "*It is noted that the judicial branch of the state has a pivotal role in the society. A judge is not immune from being criticised. The judiciary, because of the nature of functions assigned to it under the Constitution and the lofty position it enjoys in the society, is open to criticism. The independence of a judge is not affected in any manner because of public criticism. But unthoughtful criticism, using strong and intemperate language or utterances that are defamatory in nature, ought to be avoided. An independent judge, despite the harshness or tone of the criticism, cannot be provoked to react in such a manner that results in his or her becoming the subject matter of a criminal case because of the profound consequences in the context of due process and fair trial. Magnanimity, empathy and compassion, even otherwise, are the essential attributes of an impartial and independent judge...*"⁴⁵

This observation is laudable. While it is not mentioned explicitly therein, the Court was undoubtedly discussing the principle of *nemo iudex in causa sua* (no is to be judge in his own cause). Remarks that can provoke a judge whether hate speech or otherwise do not entitle said judge to prosecute said person and also sentence him, thus becoming judge, jury and executioner all at once.

Pakistan's Obligation to Prevent Hate Speech on Account of its International Legal Commitments

We must not forget that Pakistan is a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 ("ICERD"), ratifying it in 1969. Article 4(a) of the same provides that:

"States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ PLD 2014 SC 699.

⁴¹ *ibid.*, at paras 10-17.

⁴² *ibid.*, at paras 19-20.

⁴³ *ibid.*, at para 37.

⁴⁴ 2022 P Cr. LJ 439 [Islamabad].

⁴⁵ *ibid.*, at para 5.

or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;...”

Therefore, by virtue of this provision, Pakistan as a state party must undertake preventive measures to eradicate any form of communication that instils ideas of discrimination or racial superiority etc. In fact, they are obligated to promulgate legislation that shall punish any such actions along with incitements or violence thereof. While this provision does not directly provide for any definition of hate speech, from the elements mentioned therein, we can surmise that it may be accumulate into the offence of hate speech.

Conclusion

From the discussion hereinabove, we can conclude that due to the major technological advancements owing to the 4th industrial revolution, the era of cyber law commenced in the world including Pakistan. Pakistan’s cyber law is incorporated within the Constitution and also in ordinary legislations and sub-legislations such as the PTR, ETO, IFTA, PECA, PPC and the State Bank’s regulations for Internet Banking. Each of these legislations and sub-legislations have their own scope and ambit respectively. Hate speech is the expression of hatred towards a particular group. Section 11 of PECA provides that hate speech is the preparation or the dissemination of information through an information system or device that causes or potentially causes interfaith, sectarian or racial hatred. It also provides that the punishment for hate speech is an imprisonment for up to 7 years or a fine or both. In the case of the PCC, hate speech may be

evinced within the offences of ‘promoting enmity,’ ‘blasphemy’ and ‘statement conducing to public mischief’ as well. Clause 23 of the Code provides that a licensee shall ensure that hate speech by any of its employees and guests shall not be aired. It also provides that the licensee shall not allege someone within the ‘spectrum’ of hate speech, including calling someone anti-Pakistan, traitor or anti-Islam. Lastly, it also imposes a duty on the program or channel to stop the guest who has resorted to hate speech and remind him as well as the audience that no one has the authority to declare any other citizen as a Kafir or enemy of Pakistan, Islam or any other religion. Section 20 of the Ordinance read with Rule 15 of the Rules also imposes a duty on the licensee to ensure the preservation of the integrity, sovereignty and security of Pakistan, religious, cultural and social values alongside the principles of policy enshrined in the Constitution of Pakistan and lastly, also to ensure that all programmes and advertisements do not contain or encourage any sort of violence, terrorism, racial, ethnic or religious discrimination or sectarianism or extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency. Lastly, these provisions are necessary in the context of international law as well as they help Pakistan fulfil its international obligations under ICERD as well. All of these prerequisites discussed hereinabove are in line with the prerequisites incorporated within Article 19 of the Constitution of Pakistan which provides for freedom of speech. Lastly, the Pakistani superior courts have laid down guidelines on the prevention of hate speech even before the promulgation of PECA in some landmark cases.