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Freedom of Expression vs. Hate Speech - An Ethical Dilemma

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Abstract

The controversies on intolerance for others and clash of opinions have raised a question of conflict between freedom of expression and hate speech. This dilemma needs to be addressed by legal and ethical considerations. The media, specifically social media, is such a platform that brings the consumers on a common board by providing the avenues of expression and raising the voices and issues of marginalized communities or groups. Whereas the power of social media is realized by providing immediate and high level of interactivity but the use of social media is questionable in this regard. The articulation of hatred against the targeted communities with the cover of freedom of expression is considerably important to discuss. The hate speech endangers the rights of the targeted ones. This paper attempts to draw the working narratives of freedom of expression and hate speech, to document the growth of legal framework for freedom of expression and hate speech, to focus on the ethical framework for the social media users. This paper argues for the need of collective and shared responsibility from the three stakeholders; state, media and individuals.

Keywords: *Freedom of expression, Hate speech, Social Media, Ethical Dilemma*

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Introduction

In the recent years, there have been many debates about the politics of hate and freedom of expression. The hate speech with the cover of freedom of expression raises certain questions about the ethical and administrative measures to protect the rights of others. The debate on this dilemma is being continues as the targeted communities and groups are marginalized. *Freedom of expression* incorporates the individual's liberty to hold and express opinions without any hindrance. Universal Declaration of Human Rights (UDHR), article 19, guarantees the right to have opinions without any kind of interference, it ensures the right to receive and impart information and also the right to express with freedom. The Constitution of Pakistan (1973, article 19) guarantees individual's freedom of expression with national security. The media, specifically social media, is such a platform that provides a forum to share and exchange opinions and ultimately builds a broad narrative on any issue. Here the trends and use of social media cannot be ignored. The power of social media is realized by providing immediate and high level of interactivity (Lipschultz, 2015). The globally accepted notion of right to freedom of expression is widely exercised through social media but the use of social media is crucially important to address in this regard. The rise of hate narrative against certain groups, communities and ideologies is definitely alarming and specifically, when such hatred is being articulated with the cover of freedom of expression. So it is considerably important to discuss and distinguish the right to freedom of expression and hate speech. The hateful expression on the media endangers the rights of the targeted ones. *Hate speech* incorporates any kind of expression that is offensive and discriminatory to any racial, ethnic, religious or specific minority groups (Walker, 1994; Walker, Spohn, & DeLone, 2012). Hate speech, Benesch (2014) cited, seeks to delegitimize the minority group members, reduce their social standing and acceptance within their society, based on hatred, intolerance, discrimination and hostility against minority group members. Benesch further referred to dangerous speech, narrower and more specific than hate speech, is that kind of speech that has special capacity to catalyze intergroup violence and that is not only specified to physical violence. Benesch also viewed dangerous speech as a contextual process that includes the analysis of speaker, audience, speech itself, social and historical context and means of dissemination (George, 2015). Leets (2002; Leets and Giles, 1999, Leets, Giles, & Noels, 1999) extensive work on harmful speech referred it to the intended utterances that cause damage to the receivers. It includes verbal and emotional abuse, dignity harm, hate speech, maltreatment, verbal and psychological abuse. This study focuses on the consequences of one type of harmful speech i.e., hate speech which takes place when the people being targeted and discriminated because of their religious belongings in the main domain of their social context. Bell (2009) reported that the majority of the victims of hate speech often lack social power and likely to belong to the groups that have been discriminated historically. Johnson-Cartee (2004) called hate speech as a propaganda practice that is pervasively used in the modern world while Whillock (1995) described hate speech as a trick to cause irreparable harm and ultimately conquer the opposite group.

Hate speech in South Asia and Pakistan

Online hate propaganda is becoming a serious problem in South Asia that is raising concerns to the implication of existing laws policies and a need for the counter narrative for intolerance. The women, religious communities, ethnic groups, political opponents (India and Pakistan) and LGBTQI community (Sri Lanka and India) are facing hate speech in South Asia (George, 2015). The trend of hate speech in Pakistan, whether online or through other forms of communication, is getting prominence and is being debated as it is a place with different ethnic and religious communities. There have been intergroup conflicts and violence as a result of intolerance and politics of hate speech with reference to minorities in Pakistan. Among the religious minorities, Christian community is significant to mention which is facing hatred, referring to the extremist and intolerant responses to the blasphemy cases reported historically in Pakistan.

Aim of the Research Paper:

This paper attempts to draw the working narratives of freedom of expression and hate speech, to document the growth of legal framework for freedom of expression and hate speech in Pakistan, to focus on the ethical framework for the social media users. This paper argues for the need of collective and shared responsibility from the three stakeholders; state, media and individuals.

The National Assembly and Senate passed Pakistan's first comprehensive cybercrime act, The Prevention of Electronic Crimes (PECA) in 2016, which allows censorship and could be used to punish online hate speeches. PECA authorize PTA to undertake content for blocking vibrant texts and online speeches especially blasphemous and anti-state (Haider, 2015).

Table 1:

Growth of legislative Measures with reference to freedom of expression

Constitution of Pakistan 1973

Guaranteed freedom of expression with national security.

PTA Act 1996 section 154(3)**Pakistan Telecommunication Act Section 54(3)**

Electronic Ordinance 2002 documented to control online speech. Electronic Ordinance 2002 is to control violation of privacy information system.

- **Penal Code 2002 section 124 defined**
- **Defamation Ordinance 2002.**
- **The Pakistan Electronic Media Regulatory Authority Ordinance, (PEMRA), 2002.**

Under section 124 Penal Code is defined to control enmity at name of freedom of expression. The 2002 ordinance can impose prison and fine under section 124 of penal code which broadly covers acts of sedition by visible representation in form of speech or words. Other laws threaten online speech under section 36 and 37.

2005 to 2009 Implementation of policies

PTA hold over authority to block and filter the content timely or unlimited time

Right to Information Law 19-A 2010

Amendment in Article 19-A guarantees Right to Information. Law allows dissemination of right information, biased content will be excluded.

Free Trial Act 2013

The free trial Act 2013 allows agencies to monitor online communication.

21st Amendment in Constitution of Pakistan 2015

By doing the 21st amendment in the constitution military courts were developed to monitor conflict content which was framed in January 2017. In March 2015, the PTA formally took the responsibility for internet content management.

First comprehensive Cybercrime Act and establishment of PECA 2016

National Assembly and Senate of Pakistan passed first comprehensive Cybercrime Act and developed PECA (Prevention of Electronic Crime) allows online censorship.

PECA authorizes PTA for blocking URLs anti state content 2017

The PECA authorizes PTA to undertake content for blocking vibrant texts and online speeches specially blasphemous and antistatic content. The government restricts connectivity and social media and communication platforms routinely.

First Cybercrime list under supervision of PECA 2018

FIA request to parliamentarian to relist the cybercrimes and a first list of cybercrimes is documented and PTA invited applications for web management. In February 2018, the PTA invited applications for the development of web management solutions that would identify and block content that PECA deemed illegal.

- Spreading false news (Three years jail and one million Pak rupee fine)
- Making explicit videos and pictures (5million rupees fine)
- Spreading explicit pictures (5million rupees fine)
- Child pornography (5million)
- Cyber stalking (Three year's jail without the will of other party)
- Hacking e-mail (One million rupees fine and three years jail)
- Distributing video and picture (up to 3 years in jail 1million)
- Spamming and spoofing (5 million rupees fine) whoever with a dishonest intention establishes a website or send information with a counterfeit source.
- Glorification of an offense (up to 7 years imprisonment and 10 million fine or both).
- Electronic fraud (2years, 10 million rupees fine)
- Unauthorized use of identity (3years prison and 5 million rupees fine).
- Cyber Terrorism (14 years prison and 50 million rupees fine).

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Table 2:

Legislative growth for hate speech in Pakistan

Pakistan Penal Code Section 153-A	Whoever prepares or distributes information system or device that triggers inner-faith, sectarian or racial hatred shall be punished with imprisonment for a term which may extend seven years or with fine or with both. Seven year prison according to the new list of 2018 of cybercrimes.
Maintenance of Public Ordinance 1960	Acts prejudicial to public safety or maintenance of public order. Maximum punishment 3 years, or fine or both.
Anti -terrorism Act, 1997	Hate speech means hatred against a group of persons defined by reference of religion, religion sect, persuasion, or religious belief. Act stir hatred as threatening, abusive, or deliberate defamation of any sect and community.
Constitution of Pakistan 1973, Blasphemy laws (Section 295-298)	In December 2017 the cabinet approved an amendment to add sections relating to blasphemy like 295 A, 295 B, 295 C, and 295 D. <ul style="list-style-type: none"> • 295A (Death penalty who defiles the name of holy prophet) • 295 B (Life imprisonment who wilfully damage the Holy Quran) • 295C (Out ragging the religious feeling, 10 years imprisonment) • 295 D (2 years imprisonment whoever damage the religious places of any sect, community and other religion). • 296 Disturbing religious assembly: Maximum one year or fine or both • 297 Trespassing on burial places. Maximum one year fine or both. • 298 Uttering words, deliberate intent to wound religious feelings.
2019 Cyber Vigilance Division	Established Cyber Vigilance Division (CVD) to handle complaints against unlawful online content under PECA Act. According to CVD, PTA has developed cooperation with Facebook, YouTube, and Twitter for content removal that does not match the standards of CVD under the prevention of PECA 2016. Sindh CTD steps up monitoring of social media to prevent spread of 'hatred militancy'. In effort to protect the cyberspace of the country, Khyber Pakhtunkhwa Information Technology Board (KPITB) has installed a state of the art Cyber Security lab in the province to give practical orientation and training to confront the cybercrimes.

Concluding Remarks / Ethical Consideration

This paper argues for the **need of collective and shared responsibility** from the three stakeholders; state, media and individuals. **Firstly**, the state as having the capacity to ensure the individual's right to freedom of expression. There is a visible growth in taking the legislative measures in Pakistan that ensures the individual's right to freedom of expression and also imposes restrictions so that freedom can be limited. **Secondly**, media as a powerful social institution can provide a common platform for exchange of opinions and build a collective consensus on the issues. The code of ethics for media practitioners addresses the rights and wrongs for their professional conduct. The press councils have adopted the code of ethics for self-regulation and accountability. The key concerns of such media ethics is the quest of professional freedom, quality and responsibility (Hamelink, 2000). Media, by providing spaces to multicultural voices, can ensure equality and diversity. However, now there is a need to consider ethical standards for social media. As social media is a forum that provides opportunities to its users to express and share opinions freely, the use of social media by certain groups or individuals with specific agenda to spread hatred against targeted groups can raise conflicts, feelings of discriminations and isolation in society. The policies of social media companies are working to restrict the content. **Thirdly**, the individuals as users and consumers of media need to be responsible considering the ethical values of the society. Specifically referring to new media, social media needs to be used with responsibility. Social media is definitely a platform that provides the avenues to express freely but this freedom of expression must be used with responsibility. Using social media through hate speeches against certain groups' results in discomfort and conflicts. This politics of hate needs to be addressed by highlighting and emphasizing the responsible behaviour from individuals. Here the responsibility demands for the respect and acceptance of others.

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