

## Freedom of Expression vs. Hate Speech – An Ethical Dilemma

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### Abstract

The controversies on intolerance for others and differences of opinions have raised a question for deep understanding of the clash on the narrative of claiming freedom of expression and exercising hate speech against others. 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. The power of social media is realized by providing immediate and high level of interactivity to the users, whereas the practices and usage 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 continued that marginalize the targeted communities and groups. *Freedom of expression* incorporates the individual's liberty to hold and express opinions without any hindrance. The declaration of Human Rights seeks to assure the basic individual's rights of having opinions without any kind of interference, to receive and impart information and to express the opinions with freedom and liberty. The constitution of Pakistan (1973, article 19) guaranteed 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 referred it as 'dangerous speech' which is narrower and more specific than hate speech. Dangerous speech is the kind of speech that has power to initiate and maximize the inter-group violence that is not just specified to physical violence. Benesch also viewed dangerous speech as a contextual process that includes the analysis of speaker, audience and speech itself. Dangerous speech is also contextual to certain social circumstances, shares a historical background and analysis of means of distribution (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. At first level, this paper attempts to draw the working narratives of freedom of expression and hate speech where it is attempted to understand the concepts with reference to their usage. The people who are targeted in the name of freedom of expression just suffer their lives. This exercise of freedom of expression on public spaces, without knowing the rights of targeted ones, is a matter of concern. The victims of hate speech are compromised and lack societal collective powers. The hate

victims often belong to the communities who are marginalized and discriminated traditionally. 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 to 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.

#### **Table 1:**

*Growth of legislative Measures with reference to freedom of expression in Pakistan*

**Constitution of Pakistan 1973**

Guaranteed freedom of expression with national security.

**PTA Act 1996 section 154(3)**

Pakistan Telecommunication Act Section 54(3)

**Online speech Electronic Ordinance 2002**

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

<p><b>Penal Code 2002 section 124 defined • Defamation Ordinance 2002.</b>  <b>The Pakistan Electronic Media Regulatory Authority Ordinance, (PEMRA), 2002.</b></p>	<p>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.</p>
<p><b>2005 to 2009 Implementation of policies</b></p>	<p>PTA hold over authority to block and filter the content timely or unlimited time</p>
<p><b>Right to Information Law 19-A 2010</b></p>	<p>Amendment in Article 19-A guarantees Right to Information. Law allows dissemination of right information, biased content will be excluded.</p>
<p><b>Free Trial Act 2013</b></p>	<p>The free trial Act 2013 allows agencies to monitor online communication.</p>
<p><b>21<sup>st</sup> Amendment in Constitution of Pakistan 2015</b></p>	<p>By doing the 21<sup>st</sup> amendment in the constitution military courts were developed to monitor conflict content which was framed in January 2017. PTA held responsible of content monitoring and management on internet.</p>
<p><b>First comprehensive Cybercrime Act and establishment of PECA 2016</b></p>	<p>National Assembly and Senate of Pakistan passed first comprehensive Cybercrime Act and developed PECA (Prevention of Electronic Crime) allows online censorship.</p>
<p><b>PECA authorizes PTA for blocking URLs anti state content 2017</b></p>	<p>The PECA authorizes PTA to undertake content for blocking vibrant texts and online speeches specially blasphemous and antistatic content.</p>
<p><b>First Cybercrime list under supervision of PECA 2018</b></p>	<p>FIA request to parliamentarian to relist the cybercrimes and a first list of cybercrimes is documented and PTA invited applications for web management.</p>
<ul style="list-style-type: none"> <li>• Spreading false news (Tree years jail and one million Pak rupee fine)</li> <li>• Making explicit videos and pictures (5million rupees fine)</li> <li>• Spreading explicit pictures(5million rupees fine)</li> <li>• Child pornography (5million)</li> <li>• Cyber stalking (Three year’s jail without the will of other party)</li> <li>• Hacking e-mail (One million rupees fine and three years jail)</li> <li>• Distributing video and picture (up to 3 years in jail</li> </ul>	<p style="text-align: right;">1million)</p> <ul style="list-style-type: none"> <li>• Spamming and spoofing (5 million rupees fine) whoever with a dishonest intention establishes a website or send information with a counterfeit source.</li> <li>• Glorification of an offense (up to 7 years imprisonment and 10 million fine or both).</li> <li>• Electronic fraud (2years, 10 million rupees fine)</li> <li>• Unauthorized use of identity (3years prison and 5 million rupees fine).</li> <li>• Cyber Terrorism (14 years prison and 50 million rupees fine).</li> </ul>

The Prevention of Electronic Crimes (PECA) was passed in 2016 in Pakistan that allowed censorship and restricted speeches. PECA authorize PTA to undertake content for blocking vibrant texts and online speeches specially blasphemous and anti-state (Haider, 2015).

**Table 2:**

*Legislative growth for hate speech in Pakistan*

**Pakistan Penal Code**      Whoever prepares or distributes information system or device that **Section 153-A** 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)

- 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.

#### Cyber Vigilance Division 2019

Cyber Vigilance Division (CVD) was established 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.

### 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 impose the restrictions so the 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 the equality and diversity. However, now there is a need to consider ethical standards for social media. As social media is such a forum that provides opportunities to its users to express and share opinions freely but the use of social media by certain groups or individuals with specific agenda to spread hatred against targeted groups raise the conflicts, feelings of

discriminations and isolation in the society. The policies from social media companies are working that 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 need 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 need to be addressed by highlighting and emphasizing the responsible behaviors from individuals. Here the responsibility demands for the respect and acceptance of others.

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