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**Debating the rules**

The advent of the digital age has prompted robust cybercrime legislation worldwide. The challenges arising from the increasing use of digital media are pushing governments to formulate new laws for a balance between freedom of expression and national security.

In Pakistan, the Prevention of Electronic Crimes Act 2016 (PECA) was promulgated to deal with the investigation, prosecution, and trial of electronic crimes. Human rights activists denounced PECA as "an incoherent mix of anti-speech, anti-privacy and anti-internet law.

Now, new rules titled ‘Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020’ framed under PECA have generated a heated debate as to the validity of the rules once again in Pakistan.

The rules set out measures regarding the regulation of social media and internet service providers. For example, rules 7 and 8 provide for blocking and removal of unlawful online content. Rule 9 stipulates further obligations of Internet Service Providers (ISPs) and Social Media Companies (SMCs). For example, it requires social media platforms (with more 500,000 users in Pakistan or in the list of ISPs or SMCs with the PTA): (a) to register with the PTA within nine months; (b) to establish a permanent registered office in Pakistan within nine months; (c) to appoint a focal person based in Pakistan to coordinate with the authorities for compliance with domestic law; and (d) to establish a database server in Pakistan within eighteen months.

Rule 9 further obliges ISPs or SMCs to issue certain community guidelines for access and usage of any online system. It requires social media companies to provide the designated investigation agency with any information or data in a decrypted, readable and comprehensible format. This information may include subscriber information, traffic data, content data and any other information or data.

Rule 9 (9) further prevents uploading and live-streaming through online systems in Pakistan of any online content for ISPs and the SMCs by deploying online mechanisms, related to terrorism, extremism, hate speech, pornographic, incitement to violence and detrimental to national security. Under Rule 9 (10) the ISPs and the SMCs could be fined up to Rs500 million for failing to abide with the directives of the PTA.

Tech giants and human rights activists essentially argue that PECA and the rules framed thereunder curtail freedom of speech; that the rules provide too much government involvement in the affairs of social media and unreasonably oblige ISPs and SMCs to deploy mechanism for identifying unlawful online content.

They also say that the rules create a bizarre demand for international social media companies in terms of registration with the PTA, establishing a local database and office in Pakistan and the provision of data to the investigation authorities. They maintain that such measures undermine the goal of the digital transformation of Pakistan. The Asia Internet Coalition (AIC) warns that the rules "would make it extremely difficult for AIC members to make their services available to Pakistani users and businesses."

Supporters have argued that PECA and the rules are a necessary step to eradicate terrorism providing an ability to government to monitor, locate and prosecute militant activity. They say that freedom of speech is important; however, no right or freedom is absolute. Article 19 of our constitution subjects freedom of speech to 'reasonable restrictions' imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan, public order, decency or morality. According to Article 260, the security of Pakistan includes the safety, welfare, stability and integrity of Pakistan.

In any case, rule 4 ensures freedom of speech and expression. Rules 10 and 11 provide an effective mechanism of review and appeal in any order against social media and internet service providers or users. Judicial oversight guarantees that the rules are not misused. Under the rules, no order can be passed against ISPs and SMCs without providing due notice and an opportunity of hearing. The rules, thus, envisage fair treatment to citizens and social media companies. The provision of remedy before high courts provides procedural as well as substantive due process of the law upholding the liberties and rights of the citizens.

Further, the protection of fundamental rights and freedoms hinges on states security. In modern democracies, 'national security' supersedes fundamental rights in extraordinary circumstances. The emergence of cyber warfare has challenged conventional modes of regulation. The increasing misuse of social media platforms for terrorism, extremism, hate speech and incitement to violence compels governments to prioritize national security.

Thus, to the extent, PECA and the rules strengthen our 'national security' are valid. In any case, it is for the courts to decide whether a restriction or obligation imposed under the rules is reasonable or not. While exercising judicial review powers, the courts can ensure that morality, ethics, religion, decency, and national security may not be used as an excuse to suppress dissent and fresh ideas. If there remain concerns, a 'broad-based' consultation may be conducted to refine social media rules to protect both national security and the digital economy.

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