

EXPRESSION RESTRICTED

AN ACCOUNT OF ONLINE EXPRESSION IN PAKISTAN



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Glossary

APC	Association for Progressive Communications
B4A	Bytes for All
BBC	British Broadcasting Corporation
FATA	Federally Administered Tribal Areas
FCR	Frontier Crime Regulation
FIA	Federal Investigative Agency, Pakistan
FIR	First Information Report
FLR	Frank La Rue
FoE	Freedom of Expression
FoI	Freedom of Information
HTTP/S	Hyper Text Transfer Protocol/Secure
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technologies
ID	Identity
IMCEW	Inter Ministerial Committee for Evaluation of Websites
IMDB	Internet Movie Database
ISP	Internet Service Provider
LGBT	Lesbian, Gay, Bisexual, and Transgender
MoIB	Ministry of Information and Broadcasting
MoIT	Ministry of Information Technology and Telecoms
NAP	National Action Plan
NGO	Non-Governmental Organization
PAT	Pakistan Awami Tehreek
PECB	Prevention of Electronic Crime Bill
PECO	Prevention of Electronic Crime Ordinance
PPP	Pakistan Peoples Party
PTA	Pakistan Telecommunications Authority
PTI	Pakistan Tehreek e Insaf
P@SHA	Pakistan Software Houses Association for IT and ITES
RTI	Right to Information
UNHRC	United Nations Human Rights Council
UNSR	United Nations Special Rapporteur
UPR	Universal Periodic Review
VoIP	Voice over Internet Protocol

About this Report

This report on the State of Internet Freedoms in Pakistan forms part of a baseline research conducted by the project APC-IMPACT (India, Malaysia, Pakistan Advocacy for Change through Technology), which aims to address restrictions on the internet by promoting and protecting internet rights.

A joint initiative of the Association for Progressive Communications (APC) and its members and partners – Digital Empowerment Foundation (India), Persatuan Kesedaran Komuniti Selangor (EMPOWER) (Malaysia) and Bytes for All (Pakistan) – the project works specifically to advance freedom of expression, freedom of information, freedom of assembly and association as enabler of human rights and democratization.

This report aims to assess the state of freedom of expression online by applying La Rue Framework,¹ a checklist developed by APC based on the work of Frank La Rue, the United Nations' Special Rapporteur on Freedom of Opinion and Expression. La Rue, set out a broad framework for assessing freedom of expression on the Internet in his 2011 annual report to the UN Human Rights Council.² APC developed Monitoring freedom of expression: La Rue Framework based on this report, and the Human Rights Committee's General Comment 34³ on Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

1 Monitoring freedom of expression: The La Rue framework <https://www.apc.org/en/node/16359/>

2 Frank La Rue. A/HRC/17/27 (2011)

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

3 Human Rights Committee. General Comment 34 (2011) <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

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INTRODUCTION



Introduction

Freedom of expression is a universally accepted human right. This right is defined in the International Covenant on Civil and Political Rights under Article 19, which says:

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) For respect of the rights or reputations of others;*
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

As a signatory of ICCPR, Pakistan has committed to uphold this right in the national constitution and through local laws. This report looks at how this right is framed in the legal structure in Pakistan and how it is practised, particularly in the digital spaces.

For this report, B4A has customised the APC-La Rue Framework, making some additions to effectively reflect the state freedom of expression on the internet in Pakistan.

This reports aims to assist journalists, civil society organisations, and national and global human rights activists in assessing the state of internet freedoms in the country, allowing them to look at the policy and the practice around internet freedoms within the country. Some indicators, important to the Pakistani scenario, especially those dealing with safety and security of journalists have been added. A few indicators in the original framework adapted by APC have been removed due to their irrelevance in the Pakistani scenario. For example, one indicator says "where blocked or filtered content is child pornography, blocking or filtering online content is connected with offline national law enforcement strategies focused on those responsible for production and distribution of content".

This indicator has not been analysed as all pornography is banned in Pakistan and an indicator dealing with child pornography is redundant for Pakistan, and has thus been removed. Similarly, a few indicators have been added or adapted. An indicator looking at the freedom of religious expression has been added as the issue is very relevant to Pakistan. The presence of discriminatory laws against religious minorities and the prevalence of intolerant behavior online make it important to treat religious expression as a especially pertinent subject. The indicator “there are no disconnections in the guise of countering security threats and/or possible law and order emergencies” has been added to highlight the common practice of disconnecting mobile, internet and telecommunication services under the pretext of possible security threats and/or law and order situations.

A basic legislative review has been conducted to identify laws related to freedom of expression. The report also highlights some of the legislative developments that are currently ongoing and thus requires an update once the relevant bills are discussed and formalised by parliament.

A significant part of this research consists of anecdotal evidence as hard statistics on these issues are hard to come by [in Pakistan]. The report refers to media reports of violations, statistics from transparency reports issued by corporations like Facebook and Twitter, and also draws from comments given by government and state officials at different times to inform the analysis.

At the time of the publication of this report in May 2015, various policy changes are on the horizon. The draft of new cybercrime legislation, Pakistan Electronic Crime Bill, 2015 (PECB) is being discussed in a parliamentary committee. There are reports of another Cyber Terrorism bill in the works. This report should be seen as a situational analysis up to 20th May 2015. It comments on some aspects of PECB 2015 but assessment against the indicators only reflects the legislative and legal regime in place as of 20th May 2015.

METHODOLOGY



Methodology

In this report we have assessed a set of seven key indicators and twenty three sub indicators. These indicators are based on APC-La Rue framework, but have been adapted to better evaluate the situation in Pakistan.

The following indicators have been assessed:

Indicator 1 - General Protection of Freedom of Expression

1. National laws or constitution protect internet based freedom of expression
2. State participates in multi-stakeholder initiatives to protect human rights online
3. There is demonstrated understanding of internet rights among the relevant policy makers

There exist implementation mechanisms for protecting constitutionally guaranteed internet based freedom of expression.

Indicator 2 - Arbitrary blocking or filtering

- 2.1 There are no generic bans on content
- 2.2 Sites are not prohibited solely because of political or government criticism
- 2.3 State provides lists of blocked and filtered websites
- 2.4 Blocked or filtered websites have explanation on why they are blocked or filtered.

Indicator 3 - Criminalising legitimate expression

- 3.1 Defamation is not a criminal offence
- 3.2 Journalists and bloggers, are not regularly prosecuted, jailed, or fined for libel
- 3.3. Journalists, bloggers and internet users do not engage in self-censorship
- 3.4 National security or counter-terrorism laws restrict expression only where:
 - (a) the expression is intended to incite imminent violence;
 - (b) it is likely to incite such violence; and
 - (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Indicator 4 - Imposition of Internet Intermediary Liability

- 4.1 State does not delegate censorship to private entities
- 4.2 Internet intermediaries are not liable for refusing to take action that infringes human rights
- 4.3 State requests to internet intermediaries to prevent access to content, or to disclose private information are:

- a) strictly limited to certain purposes such as for the administration of criminal justice*
- b) by order of a court or independent body.*

1) There are effective remedies for individuals affected by private corporations' actions, including the possibility of appeal through the procedures provided by the intermediary and competent judicial authority.

Indicator 5 - Disconnecting Users from the Internet

- 5.1 Internet access is maintained at all times, including during political unrest
- 5.2 There are no disconnections in the guise of countering security threats and/or possible law and order emergencies.

Indicator 6 - Freedom of Religious Expression

- 6.1 State provides freedom to engage in religious expression online, unless religious expression is being used to incite violence.
- 6.2 State ensures indiscriminate expression online by all religious groups, sects and minorities
- 6.3 State ensures protection of minorities targeted / harassed for religious expression online.

Indicator 7 - Media Safety

- 7.1 Journalists and bloggers are protected against abuse or intimidation
- 7.2 State provides mechanisms and procedures to legally pursue the cases of Journalists and bloggers targeted for expression online.

A basic literature review, legislative mapping and expert interviews have been performed. Different case studies have also been examined and referred to. Based on information gathered through these different sources, Pakistan's performance against each indicator has been assessed.

There are three different assessments made against the indicators:

Yes - There are legal frameworks in place and practices that protect the rights mentioned in the indicator

No - There are not any effective legal frameworks in place, or practices to protect the rights mentioned in the indicator

Uncertain - The evidence was inconclusive about the policy and practice to protect rights mentioned in the indicator.

INTERNET REGULATION FRAMEWORK IN PAKISTAN



Internet Regulation Framework in Pakistan

Internet governance in Pakistan falls under the Ministry of Information Technology and Telecom (MoIT). MoIT works to “create an enabling environment through formulation and implementation of policies and legal framework; providing ICT infrastructure for enhancing productivity; facilitating good governance; improving delivery of public services and contributing towards the overall socio economic growth of the country”.⁴ However, in practice, MoIT is not the only ministry or institution involved in regulation and governance of the internet. Pakistan is a self-proclaimed security state and security remains an important aspect of communication regulation. And so, the Ministry of Interior,⁵ Ministry of Information and Broadcasting⁶ and various sections of the security establishment play an active part in the actual regulation of the internet in Pakistan. The Pakistan Telecommunication Authority (PTA),⁷ established under the Reorganisation Act 1996 (of Pakistan Telecommunication Ordinance 1994) and falling under MoIT, is the main body that ‘regulates the establishment, operation and maintenance of telecommunication systems, and the provision of telecom service’.⁸ Apart from MoIT and PTA, the Ministry of Interior has been involved in decisions regarding disconnections of communication networks and at times the blocking of access to content. The Ministry of Interior is also involved in the regulation of the internet through the National Response Centre for Cyber Crime⁹ that is run by the Federal Investigation Agency. Responsibility for web content management was, until recently, invested in an Inter-Ministerial Committee for Evaluation of Websites (IMCEW). In March 2015, the Committee was disbanded by Prime Minister Nawaz Sharif,¹⁰ following a constitutional petition¹¹ filed by digital rights organisation Bolo Bhi. The powers of content management on internet have now been granted directly to PTA. PTA has also been given the mandate to devise effective mechanisms in this regard.

This regulatory framework is currently being run without a proper legislative framework to guide it. In 2009 the Prevention of Electronic Crime Ordinance 2007 (PECO), enacted by General Musharraf, expired. Since 2009, the government has failed to come up with legislation despite advocacy by various civil society actors for a legal framework that incorporates basic protections for internet consumers.

4 Ministry of Information Technology, <http://www.moitt.gov.pk/>

5 Ministry of Interior and Narcotics Control, <http://www.interior.gov.pk/>

6 Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, <http://infopak.gov.pk/>

7 Pakistan Telecommunication Authority, <http://www.pta.gov.pk/>

8 History of PTA, <http://www.pta.gov.pk/index.php?Itemid=320>

9 National Response Centre for Cyber Crime, <http://www.nr3c.gov.pk/>

10 PTA granted powers for content management on internet , The News,

<http://www.thenews.com.pk/Todays-News-7-308076-PTA-granted-powers-for-content-management-on-internet>

11 The IMCEW Challenge, Updates by Bolo Bhi,

<http://bolobhi.org/resources/timelines/imcew-challenge-updates-bolo-bhi/>

However, after a horrific terrorism incident¹² in Peshawar in December 2014, a National Action Plan (NAP)¹³ was enacted. One of the points in NAP states that, 'social media and the internet will not be allowed to be used by terrorists to spread propaganda and hate speech, though exact process for that will be finalised'. The premise of counter terrorism is being used by the government to draft the Prevention of Electronic Crime Bill 2015. This draft has been criticised heavily¹⁴ by rights activists and termed a danger to fundamental rights in the digital age, including the right to freedom of expression,¹⁵ right to information, privacy and right to association and assembly. The bill criminalises hate speech,¹⁶ gives arbitrary blocking powers to designated individuals and legalises disconnections from the internet and mobile networks.

However, as of 17th May 2015 the bill has not been passed by parliament and enacted into law, and therefore this research does not take the provisions of this draft into account. This research highlights the conditions for FoE and FoI in Pakistan under the current regulatory regime.

¹² More than 100 children killed in Taliban attack on Pakistan school, The Guardian, <http://www.theguardian.com/world/2014/dec/16/taliban-attack-army-public-school-pakistan-peshawar>

¹³ NA committee approves 'controversial' cyber-crime bill, Dawn, <http://www.dawn.com/news/1176299/na-committee-approves-controversial-cyber-crime-bill>

¹⁴ Leaked draft of Prevention of Electronic Crimes bill draconian and against principles of FoE and FoI, <https://content.bytesforall.pk/node/165>

¹⁵ Pakistan's New Cyber Crimes Bill Made Easy, Pointing out the perils - Part 2, Media Matters for Democracy, <http://mediamatterspakistan.org/pakistans-new-cyber-crimes-bill-made-easy-pointing-out-the-perils-part-2/>

¹⁶ Deconstructing Prevention of Electronic Crimes Bill 2015 - "Chapter II Offences and Punishments" - Part 1, Media Matters for Democracy, <http://mediamatterspakistan.org/deconstructing-prevention-of-electronic-crimes-bill-2015-chapter-ii-offences-and-punishments-part-1/>

ASSESSMENT

INDICATOR 1:

GENERAL PROTECTION OF FREEDOM OF EXPRESSION



Assessment

Indicator 1 – General Protection of Freedom of Expression

1.1 National laws or constitution protect internet based freedom of expression.

Status: No

Pakistan's constitution guarantees freedom of expression through Article 19,¹⁷ but the article itself is vague, ambiguous and restrictive. The article is also contradictory in nature and includes various caveats that are subjective and open to interpretation. The article states:

“ 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. ”

The right guaranteed in this article is thus curtailed through the addition of subjective boundaries. Nowhere in the constitution or the penal code is there a description of 'decency', 'morality' or 'reasonable', leaving these open to interpretation. There are no laws or constitutional articles that discuss the right to freedom of expression online in particular, but in theory, Article 19 can be extended online. Practically, however, the inbuilt restrictions and caveats contradict the open nature of the internet, rendering the provision itself virtually invalid.

Critical discussions on religious beliefs or of a theological nature might also result in invocation of Article 295-A¹⁸ of Pakistan's penal code which states:

“ Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both. ”

17 Constitution of Pakistan Chapter II, Fundamental Rights,
<http://www.pakistani.org/pakistan/constitution/part2.ch1.htm>

18 Pakistan Penal Code (Act XLV of 1860),
<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

Pakistan is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and as such is required to respect international norms governing the right to freedom of expression. As noted above, Pakistan's national legal framework does not comply with international standards, in particular the provision that limitations to freedom of expression must be made under very narrow conditions, and meet test of legality, legitimate aim, and proportionality set out by Article 19(3) of the ICCPR. Pakistan has never reported to the UN Human Rights Committee on its implementation of the ICCPR, however during the 2012 UPR cycle, Pakistan also accepted the following recommendations by member states to improve freedom of expression:

A - 122.27. Review and align the legislation with freedom of religion and belief and freedom of expression, as stipulated in the ICCPR (Sweden)

A - 122.29. Continue adopting measures in the framework of freedom of expression as the new legislation on freedom of expression was passed (Lebanon)

A - 122.101. Implement measures to protect the right to life and freedom of expression of human rights defenders, and ensure that the perpetrators of violence are brought to justice (Australia)

While these recommendations are about the general practice of freedom of expression, their implications also extend to the digital, online sphere. However, despite their adoption, not much has been done to actually improve the situation as recommended in the UPR report.

1.2 State participates in multi-stakeholder initiatives to protect human rights online

Status: Uncertain

The exact method of internet governance in Pakistan is currently ad hoc and arbitrary. There is no defined mechanism for internet governance in place. Due to the uncertainty surrounding actual mechanisms for internet governance, it is difficult to attribute responsibility for governance and participation to a particular government institution. The Federal Investigation Agency (FIA) is responsible for investigating cybercrime, the PTA is responsible for regulating licensing and lately content, but the governance itself is still influenced by multiple ministries. When it comes to international multi-stakeholder events like the Internet Governance Forum, or regional events like the Asia-Pacific Regional Internet Governance Forum, government representation remains inadequate.

At the UN, Pakistan has taken anti multi-stakeholder positions. At the 24th session of the Human Rights Council Pakistan, speaking on behalf of various countries, proposed the development of a new intergovernmental mechanism of internet governance. It was stated that:

“The existing mechanisms like the Internet Governance Forum established under paragraph 72 of the World Summit on Information Society- Tunis Agenda have not been able to deliver the desired results. A strategic rethinking of the global internet governance mechanism is inevitable. Further development of an international mechanism in the context of ‘Enhanced cooperation’ within the WSIS Tunis Agenda can be a concrete way forward. However we will need to be sincere in our efforts to ensure a transparent, free, fair and respectful international intergovernmental mechanism of internet governance and one that also ensures the right to privacy. ”

This position, promoting a non multi-stakeholder, intergovernmental approach towards internet governance was criticised by Bytes for All (B4A) and APC.¹⁹ Pakistan’s aversion to multi-stakeholder approaches is also demonstrated by the lack of participation in internet governance events. There was no participation from the Pakistani government at IGF 2014²⁰ or at NETMundial 2014.²¹

Within the country, there is minimal engagement with local civil society ahead of these international meetings. In February 2015, B4A arranged a multi-stakeholder event, the Pakistan Cyberspace Conference, ahead of the Global Cyberspace conference in The Hague. PTA did attend Pakistan Cyberspace conference and engaged with the participants, however despite various attempts from B4A, parliamentarians from the ruling party and MoIT did not attend. Even when representatives from PTA, MoIT and other relevant departments attend civil society led consultations, their participation remains symbolic.

While the government of Pakistan does not have any formal multi-stakeholder initiatives, some actors active in internet governance discussions do engage informally with the government, such as the Internet Society. Other corporate bodies like Pakistan Software Houses Association (P@sha) appear to be engaging with the government on different issues, including the discussions on a Cybercrime Bill.

19 Response to Pakistan’s submission to the 24th Human Rights Council on the importance of multi-stakeholder Internet Governance, <https://www.apc.org/en/pubs/response-pakistans-submission-24th-human-rights-co>
20 IGF 2014 Government Participation, <http://www.intgovforum.org/cms/147-igf-2014/2071-igf-2014-government-participants>
21 Net Mundial 2014 List of Participants, <http://netmundial.br/list-of-participants/>

1.3 There is demonstrated understanding of internet rights among the relevant policy makers.

Status: No

The current state minister for Information and Technology, Ms. Anusha Rehman, on her very first day in office in June 2013, hinted at putting a 'blanket ban' on Google, should it fail to remove objectionable (potentially blasphemous) material from YouTube.²² Her statement is indicative of the Government's general lack of understanding of internet rights and technical issues surrounding internet governance. One of the key examples of the government's lack of understanding of digital rights are the positions taken by the government during different hearings of the B4A internet freedoms case,²³ also referred to as the Youtube case.²⁴ On 29th April 2013, during the 7th hearing of the case, the regulator, PTA, discussed the possibility of blocking HTTPS in Pakistan, a decision that would have had serious consequences for digital security, privacy and freedom of expression. At another hearing the deputy attorney general expressed the opinion that the Bytes for All petition "must be dismissed because the Petitioner had gone to the UN Human Rights Council and instead contempt proceedings should be initiated against the Petitioner and the Petitioner's counsel"²⁶ – this is also indicative of the lack of comprehension regarding the international rights regime.

The draft of PECB 2015,²⁷ currently being debated in a parliamentary committee, includes provisions that criminalise broadly defined "offences against dignity of natural persons" and spamming, including transmission of any unsolicited intelligence without express permission. The draft also awards PTA or any other appointed authority the power to issue directions for removal or blocking of access to any intelligence through any information system with no protections built in for freedom of expression.

These and other provisions in the draft are testimony to the lack of understanding of digital rights and the lack of political will to protect them.

²² Anusha Rehman makes and early impression by hinting Google ban in Pakistan, Pro Pakistani, <http://propakistani.pk/2013/06/10/anusha-rehman-makes-an-early-impression-by-hinting-google-ban-in-pakistan/>

²³ Bytes for All vs. The Federation of Pakistan, writ petition filed in Lahore High Court, http://content.bytesforall.pk/sites/default/files/BytesForAll-NetFreedom-Petition_0.pdf

²⁴ The case was filed in Lahore High Court following the government's decision to ban Youtube in Pakistan to restrict access to a video deemed blasphemous, 'Innocence of Muslims'. In the petition, Bytes for All has also asked for a comma separated value list of all the banned/blocked websites along with reasons for each such site, the law and/or regulations that empower the Respondents to carry out such bans infringing the freedom of speech, expression etc of individual citizens, cogent and clear reasons and legal justification for the kill-switches for cellular telephony and clear and concise criteria under which individual websites are to be blocked or banned in Pakistan.

²⁵ Bytes for All Vs. Federation of Pakistan, Censorship is not a solution, it is a problem , <http://content.bytesforall.pk/node/98>

²⁶ Bytes for All Vs. Federation of Pakistan, Updates on Net Freedom Petition, <https://content.bytesforall.pk/node/96>

²⁷ Leaked draft of Pakistan Electronic Crime Act 2015, <http://www.netfreedom.pk/wp-content/uploads/2015/04/Pakistan-Electronic-Crimes-Act-2015.pdf>

1.4 There exist implementation mechanisms for protecting constitutionally guaranteed internet based freedom of expression.

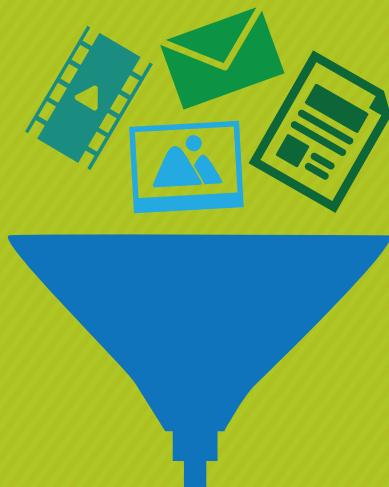
Status: No

Given the lack of constitutional guarantees for internet based freedoms in Pakistan, this indicator is rendered moot. The constitutional guarantee given via Article 19 of the constitution theoretically extends online; however, there is no express documentation within legislative documents – laws or policies – that define how this right is to be implemented online. Thus, we can conclude that there is a complete lack of laws, policies and procedures to protect freedom of expression, offline or online.

ASSESSMENT

INDICATOR 2:

ARBITRARY BLOCKING AND FILTERING



Assessment

Indicator 2 – Arbitrary blocking and Filtering

2.1 There are no generic bans on online content

Status: No

There are various generic bans on online content currently in place. PTA uses both the conventional methods of internet filtering (through IP addresses) as well as intelligent methods of systematic censorship. Although government officials have widely maintained that they do not have automated filtering technology, a notion which is also the basis of the blanket ban on YouTube, Citizen Lab, a Canadian interdisciplinary research group has proved otherwise. In June 2013 Citizen Lab reported substantive evidence for the active, nationwide use of Netsweeper, a sophisticated internet filtering technology, on PTCL, the country's largest broadband service provider, blocking political and social content at a national level.²⁸ Citizen Lab also pointed out the active use of DNS tampering, a less transparent method of web filtering, by internet service providers (ISP). The 1996 Pakistan Telecommunications Act incorporates provisions for a broad range of restrictions on expression and speech. This law is often cited by authorities to justify the filtering and blocking of content in the interest of national security and integrity of religion. International experts believe the Act provides the state with undue power to limit legitimate expression.²⁹ According to Article 19, an international NGO focused on freedom of expression, the law has many provisions which are “incompatible with the international obligations under international law and violates citizens’ right to express and to protect their privacy”.³⁰

YouTube continues to be inaccessible in Pakistan since September 2012 when it was shut down by the authorities in an attempt to block Sam Bacile’s video “Innocence of Muslims”. Recently the government has hinted about an indefinite ban on YouTube, until such time as suitable measures are in place to filter allegedly objectionable content.³¹ In May 2014 a resolution was presented and unanimously adopted by the National Assembly of Pakistan to lift the ban on YouTube³² – strangely though, the ban continues to be in effect. Prior to this, access to YouTube in Pakistan was curtailed in 2008, in response to an allegedly blasphemous film,³³ and again in 2010, in an attempt to contain potentially objectionable material generated on ‘Draw Prophet Muhammad Day’.³⁵

28 O Pakistan, We Stand on Guard for Thee: An Analysis of Canada-based Netsweepers Role in Pakistan’s Censorship Regime, Citizen Lab, <https://citizenlab.org/2013/06/o-pakistan/>

29 Telecommunications re-organization system, Act NO. XVIII of 1996, National Assembly Pakistan, http://www.na.gov.pk/uploads/documents/1329727963_180.pdf

30 Pakistan Telecommunication re-organization act (2012), Legal Analysis, Article 19 - <http://www.article19.org/data/files/medialibrary/2949/12-02-02-pakistan.pdf>

31 Youtube to remained blocked ‘indefinitely’ in Pakistan: Officials, Dawn, <http://www.dawn.com/news/1162139>

32 National Assembly unanimously passes resolution to lift ban on youtube, The Nation, <http://nation.com.pk/national/06-May-2014/national-assembly-unanimously-passes-resolution-to-lift-ban-on-youtube>

33 Pakistan blocks youtube website, BBC, http://news.bbc.co.uk/2/hi/south_asia/7261727.stm

34 Pakistan blocks Youtube over Mohammad depictions, The Guardian,

35 Pakistan blocks Youtube over Mohammad depictions, The Guardian,

<http://www.theguardian.com/world/2010/may/20/pakistan-blocks-youtube-sacrilegious>

In addition to blocking, PTA also issues take-down requests for content. Facebook and Google³⁶ transparency reports clearly state the requests made by MoIT and PTA to remove specific content. Assessment of online content was the responsibility of PTA along with an Inter-Ministerial Committee for Evaluation of Websites (IMCEW) with representatives from government, the Ministry of Religious Affairs, Inter-Services Intelligence³⁷ and Military Intelligence. In March 2015, following a petition about the constitutional status of IMCEW, the pPrime minister disbanded the committee and awarded PTA the authority to regulate content.³⁸ PTA is a technical body, previously tasked with licensing and oversight of technological development in the area of telecommunications. Giving it the additional responsibility to control content gives rise to concern. The current structure of the authority does not include the expertise to make judgements about content, nor does the Pakistan Telecommunication Act give the PTA the right to exercise control over content. The decision to give PTA this authority is ad hoc; to make the regulation effective, there is a need to define the process and specially procedures for challenging these decisions.

Twitter experienced similar bans in 2010³⁹ and 2012.⁴⁰ In 2010, Facebook was taken down on court orders in response to a petition filed by a group of lawyers called the 'Islamic Lawyers' Movement' on the grounds that the site hosted blasphemous content.⁴¹ The biggest instance of a blanket ban on websites came in 2011, when PTA imposed a ban on over 1000 porn sites – a newspaper reported that the original number of websites the regulator was trying to ban was 170,000.⁴² In September 2013, PTA blocked access to queer.pk, the country's first Lesbian Gay, Bisexual and Transgender (LGBT) community website. A mirror site was set up at humjins.com, only to be blocked as well.⁴³ It was speculated that the ban came as a response to an article published in Global Voices, interviewing one of website's founders.⁴⁴

36 Google Transparency Report, Pakistan,

<https://www.google.com/transparencyreport/removals/government/PK/?hl=en>

37 Banistan: Why Youtube is still banned in Pakistan, The New Yorker,
<http://www.newyorker.com/tech/elements/banistan-why-is-youtube-still-blocked-in-pakistan>

38 4th Hearing: IMCEW disbanded, PTA given powers for content management on internet m Bolo Bhi,

<http://bolobhi.org/resources/timelines/imcew-challenge-updates-bolo-bhi/>

39 Twitter blocked in parts of Pakistan, Express Tribune,

<http://tribune.com.pk/story/14986/twitter-blocked-in-parts-of-pakistan/>

40 Federal Minister for IT Slaps Nationwide Twitter Ban on Pakistani Citizens, Bytes for All,

<http://content.bytesforall.pk/node/51>

41 Pakistani court orders Facebook blocked in prophet row, BBC,

http://news.bbc.co.uk/2/hi/south_asia/8691406.stm

42 PTA approved over 1000 porn sites blocked in Pakistan, Express Tribune,

<http://tribune.com.pk/story/293434/pta-approved-over-1000-porn-sites-blocked-in-pakistan/>

43 PTA blocks Pakistan's first gay website, Express Tribune,

<http://tribune.com.pk/story/609751/pta-blocks-countrys-first-gay-website/>

44 No longer silent: Queer Pakistan, Global Voices,

<http://globalvoicesonline.org/2013/09/24/no-longer-silent-queer-pakistan/>

In February 2014, the British daily newspaper The Guardian's website was temporarily taken down in many cities across the country over at least three service providers, without any explanation.⁴⁵ Most recently the government temporarily blocked WordPress.com with little or no explanation, citing it as a concern for national security.⁴⁶ Incidentally, the ban came a day before 23rd March, the date scheduled for the Pakistan Day military parade.

2.2 Sites are not prohibited solely because of political or government criticism

Status: No

Under the law, the Government is not required to give a public explanation for banning any content. It is only in high profile, high impact cases like the Youtube ban that an official position is offered regarding the reasons behind the blocking of the content. However, looking at the patterns of online censorship, one can deduce that content is often systematically blocked because of political criticism. It is important to keep in mind that the security conditions in Pakistan make military and state security apparatus more powerful than under democratically elected governments. Thus in this research study, censorship of content that is critical of the security establishment is seen as being in the same category as censorship of political criticism.

In 2006, PTA issued a directive to internet service providers (ISPs) advising a permanent ban on Baloch nationalist websites, for allegedly disseminating misleading information.⁴⁷ Arbitrary bans on websites highlighting the Balochistan issue continues. In May 2013 a satirical music video by a Pakistani band that was critical of the military was blocked on Vimeo without any official explanation. The page was replaced by text saying the page is prohibited.⁴⁸ In July 2013, Al Jazeera's website was blocked in Pakistan following the publication of a document titled 'Pakistan's Bin Laden Dossier'.⁴⁹

In a similar incident in Nov 2013, IMDB was briefly taken offline. Although no official explanations were offered, critics believe 'The Line of Freedom', a short fiction film depicting Pakistani security agencies abducting nationalists, might have been a reason. IMDB was back online in 2014 but the particular page of the movie was blocked.

45 The Guardian website reportedly inaccessible in Pakistan, Express Tribune, <http://tribune.com.pk/story/666959/the-guardian-website-reportedly-inaccessible-in-pakistan/>

46 Wordpress temporarily blocked in Pakistan, Express Tribune, <http://tribune.com.pk/story/857401/wordpress-temporarily-blocked-in-pakistan/>

47 PTA Letter to ISPs,

<https://pakistan451.files.wordpress.com/2006/04/PTA%20-%20Blocking%20of%20website%202013-04-06.pdf>

48 Song Critical of Pakistani Generals in blocked online, no reason is given, New York Times,

http://www.nytimes.com/2013/05/05/world/asia/satirical-song-blocked-in-pakistan-but-no-reason-is-given.html?_r=1

49 AlJazeera Website blocked for publishing Pakistan's Bin Laden Dossier, Bytes for All,

<http://content.bytesforall.pk/node/106>

More recently, on 27th February 2015, the Facebook page “Beauty of FATA” was taken down. According to page administrator Iqbal Afridi, who contacted Bytes for All for help, the page was blocked following discussions on the Frontier Crime Regulation (FCR),⁵⁰ a law that has been in place since 1901.

As these examples demonstrate, blocking of content for political commentary that reflects on the security establishment in Pakistan is a fairly common occurrence. The gravity of the situation is compounded by the fact that no public explanation for the reasons these websites are blocked is given.

2.3 State provides lists of blocked and filtered websites

Status: No

Lists of blocked and filtered websites are not made public. The long list of porn websites that were blocked in 2011 was obtained by some newspapers, but, as a general practice, the government does not share any updated lists of blocked websites.

Digital rights organisations depend largely on word of mouth and media reports to keep track of new sites that are being blocked.

In the B4A Internet Freedoms case, one of the requests in the petition is the provision of a list of sites blocked and filtered by PTA. Media Matters for Democracy, an NGO, has also filed a Right to Information request with PTA for the provision of this list. However, no such list has yet been made public.

2.4 Blocked or filtered websites have explanation on why they are blocked or filtered

Status: No

No explanation is given about the reasoning behind blocking of websites. In some instances, there is a generic note saying the website cannot be accessed due to PTA regulations; in other cases a simple ‘website not accessible’ message is displayed. One of the common messages that is displayed on blocked websites states:

Surf Safely!

This website is not accessible

The site you are trying to access contains content that is prohibited for viewership from within Pakistan.

This message and other similar ones fail to offer any explanation of why that particular website cannot be accessed or why the content is prohibited for viewership.

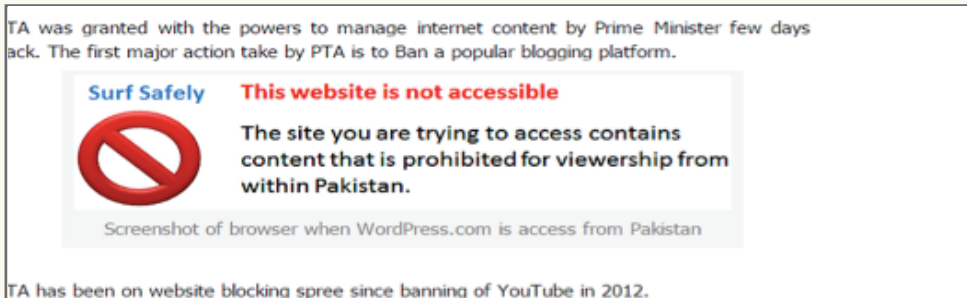
⁵⁰ Full text of FCR 1901, http://fatapakistan.blogspot.com/2011/11/full-text-of-frontier-crimes-regulation.html?fb_ref=Default%2C%40Total



Making censorship a digital safety issue

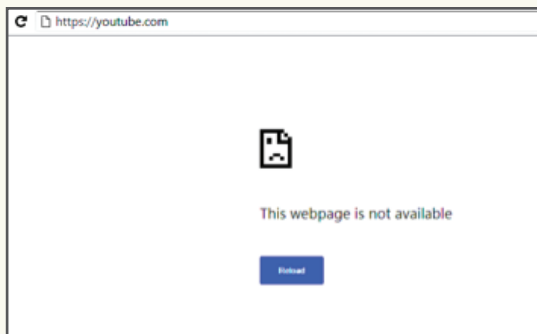
The message displayed on the Baluch - a website focused on Balochistan

In March 2015, when the blogging website WordPress was banned, the same message was displayed in a different manner.



WordPress banned temporarily without any explanation

In the case of Youtube, which has been banned for over two years, even this message is not displayed

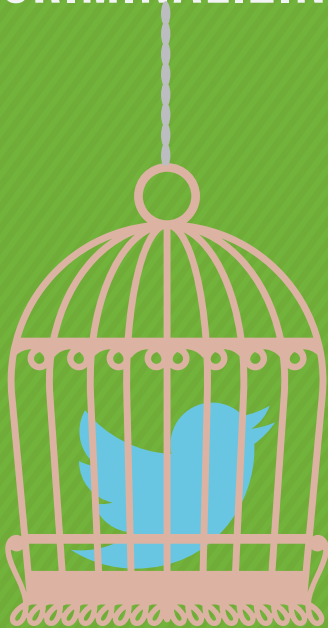


No explanation given: Accessing censored websites in Pakistan

ASSESSMENT

INDICATOR 3:

CRIMINALIZING LEGITIMATE EXPRESSION



Assessment

Indicator 3 – Criminalising legitimate expression

3.1 Defamation is not a criminal offense..

Status: No

Defamation in Pakistan constitutes a criminal act under Defamation Ordinance 2002 (LVI of 2002) which applies to publications as well as electronic communications. According to the ordinance:

“Broadcasting” means the dissemination of writings, signs, signals, pictures and sounds of all kinds, including any electronic device, intended to be received by the public either directly or through the medium of relay stations, by means of –

(i) a form of wireless radio-electric communication utilizing Hertzian waves, including radio telegraph and radiotelephone, or

(ii) cables, computers, wires, fibre-optic linkages or laser beams, and “broadcast” has a corresponding meaning.

Furthermore, in Section 3 sub clause 4 of the ordinance, defamation is defined as:

Any false written documentary or visual statement made either by ordinary form of expression or by electronic or other modern means or devices that amount to defamation shall be actionable as libel.

There have been a couple of cases of defamation on tweets, but none of these cases involved regular bloggers or journalists and were of a more personal nature. However, theoretically, defamation charges under this law can be applied to defamatory content online.

3.2 Journalists and bloggers are not regularly prosecuted, jailed or fined for libel.

Status: No

There have been multiple instances of mainstream media outlets being taken to court on accusations of terrorism⁵¹ and blasphemy.⁵² In addition to media channels, individual journalists have also faced court cases.⁵³ Two incidents have been reported of individuals being arrested as a result of their expression on social media.

51 Case registered against ARY, <http://www.dawn.com/news/1038671/case-registered-against-tv-channel>

52 Pakistan's Geo News becomes latest target in blasphemy accusation trend, The Guardian, <http://www.theguardian.com/world/2014/may/22/pakistan-geo-news-blasphemy-pakistan-sufi-song-wedding>

53 Zaid Hamid to pursue treason case against Hamid Mir, others in SC, The News Tribe, <http://www.thenewstribes.com/2014/05/07/zaid-hamid-files-treason-petition-against-hamid-mir-others-in-sc/>

Prominent blogger Marvi Sirmad survived an attack⁵⁴ on her life following a smear campaign on social media that included her family's identification and contact details. There have also been targeted and sustained hate campaigns against journalists who have tweeted anti-establishment material. A Christian blogger, in this case anonymous, was arrested in November 2013⁵⁵ – again on blasphemy charges.

Another high profile case is of Junaid Hafeez, a visiting professor at the English department at Bahauddin Zakariya University in Multan. Hafeez was charged and arrested⁵⁶ for alleged blasphemy on Facebook. His lawyer Rashid Rehman was later targeted and killed. His current lawyer, Shahbaz Gormani, has survived an attempt on his life.⁵⁷ While it cannot be said that the state regularly prosecutes bloggers and journalists, it is nonetheless a fact that bloggers are being targeted, smeared and consequently persecuted by non-state actors. In all these cases complete impunity prevails.

3.3 Journalists, bloggers and internet users do not engage in self-censorship.

Status: No

Self-censorship is an increasingly common phenomenon in Pakistan. Bloggers and journalists contacted for this study all hold that they have deleted or edited content they posted online due to fear of persecution. A journalist recounted sharing an excerpt from a book on Islamic history and later deleting it when comments on the shared image started getting hostile.

“It isn't wise to share anything that can be perceived as blasphemous. Even though the image I shared was credited from another book, I received various comments of a threatening nature on daring to share a perspective that was offensive. The sad thing is, I shared it on Facebook, where one assumes one is surrounded by family, friends and colleagues. I wasn't expecting such hostility. It did teach me a lesson. I now think a dozen times before sharing anything that can be perceived as 'offensive' to Islam.”⁵⁸

54 Marvi Sarmad escapes attack, Dawn,

<http://www.dawn.com/news/761505/marvi-sarmad-escapes-attack-report>

55 Man held over blasphemy allegation, Dawn,

<http://www.dawn.com/news/1144655/man-held-over-blasphemy-allegation>

56 Pakistan's tyranny of blasphemy,

<http://www.nytimes.com/2014/05/21/opinion/pakistans-tyranny-of-blasphemy.html?gwh=28955C98896EA7C3A4FBA2728058D68E&gwt=pay&assetType=opinion>

57 Junaid Hafeez's current lawyer escaped gunfire, Dunya News,

<http://dunyanews.tv/index.php/en/Pakistan/248444--Junaid-Hafeezs-current-lawyer-escaped-gunfire>

58 The quote has been given on conditions of anonymity

The interviewees also admitted to being 'careful' when framing tweets and statuses on sensitive issues like Baluchistan due to a fear of being marked for surveillance. An Ahmedi journalist interviewed for this research said that Ahmedi bloggers and writers conceal their religion online for fear of being harassed and targeted.

3.4 National security or counter-terrorism laws restrict expression only where

- a) the expression is intended to incite violence;*
- b) it is likely to incite such violence; and*
- c) there is direct and immediate connection between the expression and the likelihood or occurrence of such violence*

Status: Uncertain

Article 19 of the constitution of Pakistan states:

“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 defense 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”

The generic inclusion of security or defence of Pakistan or any part thereof creates the legal caveat that allows bans to be imposed in the name of national security. In addition, Pakistan's current counter terrorism policy has been framed under NAP,⁵⁹ a plan formulated in reaction to a terrorism incident in Peshawar⁶⁰ in December 2014. NAP appears to be a knee jerk reaction to the horrific incident – since the plan came into effect, the government has taken various steps that have disturbing implications for human rights, for example the creation of military courts and the lifting of the moratorium on capital punishment.

⁵⁹ Pakistan announces a national plan to fight terrorism, says terrorists' days are numbered, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/12/24/pakistan-announces-a-national-plan-to-fight-terrorism-says-terrorists-days-are-numbered/>

⁶⁰ In Pakistan school attack, Taliban terrorists kill 145, mostly children, <http://edition.cnn.com/2014/12/16/world/asia/pakistan-peshawar-school-attack/>

The plan might have serious implications for internet freedoms in Pakistan. The minister of state for Information Technology, Anusha Rehman, has asserted that the proposed cybercrime bill would be compatible with NAP.⁶¹ The adherence of legislation aiming to regulate electronic communications to a counter terrorism plan that is temporary in itself raises serious concerns regarding freedom of expression online. The counter terrorism subtext is obvious in the approved draft of PECB. In section 9 and 10 of the PECB, hate speech is criminalised and at times even seen as cyber terrorism. Section 9 of PECB states:

Glorification of an offence and hate speech: *Whoever prepares or disseminates intelligence, through any information system or device, where the commission or threat is with the intent to:-*

- (a) glorify an offence or the person accused or convicted of a crime;
- (b) support terrorism or activities of proscribed organizations; and
- (c) advance religious, ethnic or sectarian hatred shall be punished with imprisonment for a term which may extend to five years or with fine up to ten million rupees or with both.⁶²

In this draft, hate speech is not just a criminal offence but can actually be regarded as cyber terrorism if conditions further defined in Section 10 are met. If passed in its present form, PECB is likely to have serious implications for freedom of speech online.⁶³

61 Proposed cybercrime law to be NAP-compatible,

http://epaper.dawn.com/DetailImage.php?StoryImage=12_02_2015_152_006

62 PEC Bill As recommended by the National Assembly Standing Committee for National Assembly,

<http://moitt.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2lvaXQvdXNlcmZpbGVzMS9maWxIL0RyYWZ0JTlwUEVDJTlwQmlsbCUyMDIyJTlwQXByaWwIMjAxNS5wZGY%3D>

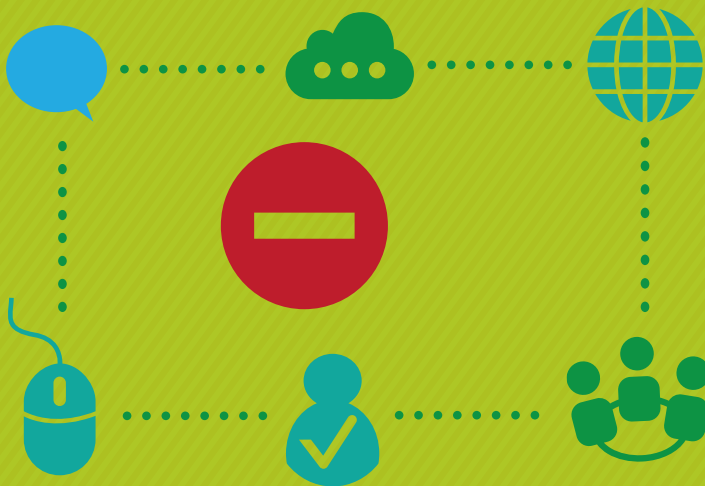
63 10. Cyber terrorism, PECB 2015,

<http://moitt.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L2lvaXQvdXNlcmZpbGVzMS9maWxIL0RyYWZ0JTlwUEVDJTlwQmlsbCUyMDIyJTlwQXByaWwIMjAxNS5wZGY%3D>

ASSESSMENT

INDICATOR 4:

IMPOSITION OF INTERMEDIARY LIABILITY



Assessment

Indicator 4 – Imposition of internet intermediary liability

4.1 State does NOT delegate censorship to private entities

Status: Uncertain

Censorship of online content is done through PTA. At times, the authority issues a notification to ISPs asking them to block certain websites. For example, in March 2015, to impose a ban on the blogging website WordPress, 'PTA has asked all Internet Service Providers in Pakistan to block the site'⁶⁴ through a notification. In November 2013 PTA issued a notification to block the Internet Movie Database (IMDb) website and later issued a notification to restore access.⁶⁵ Until March 2015, PTA issued these notifications to ISPs on orders from IMCEW. However, after a court petition against IMCEW, the committee was disbanded and the PTA itself was given powers to take decisions to block content. These powers have been given to PTA through a Prime mMinisterial directive.

PTA has also been accused of directly blocking access to VoIP services and websites providing VoIP services directly. News reports state that the Pakistan Internet Exchange, serving the purpose of the much-denounced National Access Point, was being employed to block these [Net2Phone] websites.⁶⁶ However, there are no reports of Pakistan Internet Exchange being used to directly censor content.

The issue of intermediary liability protection is also relevant here. In the absence of legislation governing content control online, it is difficult to make a judgement regarding the legal state of intermediary liability protections. In 2010, following the emergence of the 'Draw Muhammad Day' Facebook page, a first information report (FIR) was registered against Facebook co-founders Mark Zuckerberg, Dustin Moskovitz and Chris Hughes.⁶⁷ In 2012, another petitioner in the Lahore high court called for Mark Zukurberg's arrest on blasphemy charges.⁶⁸ The 2010 case led to a temporary block of Facebook and some other sites discussing 'Draw Mohammad Day' but the accusations levelled against Zuckerberg and others did not lead to any legal action. Talking about the YouTube ban in February 2015, state minister for IT Anusha Rehman said that "the government is in process of providing Intermediary Liability Protection for internet content providers through Prevention of Electronic Crime Bill 2014."⁶⁹

64 WordPress temporarily blocked in Pakistan, <http://tribune.com.pk/story/857401/wordpress-temporarily-blocked-in-pakistan/>

65 Access restored: PTA reverses block on IMDb after public outcry, <http://tribune.com.pk/story/635490/pta-reverses-block-on-imdb-after-public-outcry/>

66 KARACHI: ISPs, PTA bicker over voice chat, <http://www.dawn.com/news/65401/karachi-isps-pta-bicker-over-voice-chat>

67 FIR registered against Facebook owners, <http://propakistani.pk/2010/06/16/fir-registered-against-facebook-owners/>

68 Blasphemy: Arrest Mark Zuckerberg, Fleming Rose, says petitioner, The Express Tribune,

<http://tribune.com.pk/story/342031/blasphemy-arrest-mark-zuckerberg-fleming-rose-says-petitioner/>

69 Impossible to block all objectionable content on YouTube, admits Anusha, The News,

<http://www.thenews.com.pk/article-174259-Impossible-to-block-all-objectionable-content-on-YouTube,-admits-Anusha>

4.2 Internet intermediaries are not liable for refusing to take action that infringes human rights.

Status: Uncertain

Internet Services Providers stand to lose their license in case of non-compliance with the 1996 Telecommunication ACT and PTA directives. Clause 4 of 'registration form of Class Value Added Services' states:⁷⁰

“ M/S shall, in the course of provision of its services in the country, comply with the provisions of the Pakistan Telecommunication (Reorganization) Act 1996, the Rules/ Regulations and directions of the Authority, which may be issued from time to time. In case of any contravention/violation of any provision of the Act or the Rules/Regulations made there under or any term or condition of this registration, the Authority may initiate action as per the provision of the Pakistan Telecomm nation (Reorganisation) Act 1996.”

This section does not directly speak about content blocking or service disconnections; however, by including the condition to comply with any 'directions of the Authority, which may be issued from time to time', the ISPs / intermediaries are obliged to impose restrictions as may be demanded by PTA.

4.3 State requests to internet intermediaries to prevent access to content, or disclose private information are,

- a) Strictly limited to certain purposes such as the administration of criminal justice and*
- b) by the order of a court of independent body.*

Status: Uncertain

There is currently no transparency in the process of limiting access or data sharing by intermediaries. As such it is not possible to confirm independently whether the requests are strictly limited to administration of criminal justice.

Court orders for obtaining data are rarely used, apart from one high profile case where a judicial commission requested Blackberry to disclose private conversations of the former Pakistani ambassador to the United States, Hussain Haqqani. The commission's⁷¹ request was turned down by Blackberry.

⁷⁰ registration form of Class Value Added Services , Pakistan Telecommunication Authority , http://www.pta.gov.pk/media/cvas_im_261011.pdf
⁷¹ RIM refuses to hand over memo data to the commission, Pak Tribune, <http://paktribune.com/news/RIM-refuses-to-hand-over-memo-data-to-commission-246790.html>

4.4 There are effective remedies for individuals affected by private corporations' actions, including the possibility of appeal through the procedures provided by the intermediary and competent judicial authority.

Status: Uncertain

This indicator is difficult to judge as we have been unable to find any pattern in the remedies sought by individuals. People affected by censorship, for example, IT businesses that lost clients due to the Youtube ban, have not sought remedies except through protests. Most have simply started using circumvention tools to work around the ban. B4A has gone to court to seek a remedy to the ban, but after 27 hearings the ban is still in place.

Research conducted by B4A and APC to study technology related gender based violence in Pakistan showed that victims are not even using the remedies or reporting mechanisms offered by corporations like Facebook and Twitter. Neither has approaching the judiciary and law enforcement proved to be a popular trend. A member of Pakistan Software Houses Association for IT and ITES, P@SHA, expressed a deep distrust of FIA when it comes to seeking remedies, and recounted instances when people approaching FIA were later blackmailed by agency officials.

ASSESSMENT

INDICATOR 5:

DISCONNECTING USERS FROM THE INTERNET



Assessment

Indicator 5 – Disconnecting users from the internet

5.1 Internet access is maintained at all times, including during political unrest.

Status: No

Suspension of internet and GSM (mobile phone) services during high profile national events is regular practice.⁷² On 23rd March 2015, Islamabad and Quetta experienced service outage for approximately 12 hours during the National Day Parade.⁷³

In August 2014, following calls for protest by two political parties, Pakistan Tehreek e Insaaf (PTI) and Pakistan Awami Tehreek (PAT), the government issued orders to limit communications by suspending mobile⁷⁴ and internet⁷⁵ services in various cities in Punjab. Similar incidents of suspension of mobile and internet communications were reported during the tenure of the previous government led by the Pakistan Peoples Party (PPP).

5.2 There are no disconnections in the guise of countering security threats and/or possible law and order emergencies.

Status: No

Service suspensions are almost always justified by potential security threats, without substantive evidence or explanation.⁷⁶ In October 2013 there was an attempt to completely block instant messaging and internet based telephony Apps like Viber, Skype and WhatsApp for three months⁷⁷ in the province of Sindh. The Sindh Information m held that the ban was needed because Sindh law enforcement agencies were unable to monitor VoIP services being used by “criminal elements and terrorists”.⁷⁸ The ban was eventually not imposed following criticism from rights activists, but the effort reflects the approach that is regularly taken to block access to content or communication services.

Communication disconnections during political protests are also done under the pretext of security measures. The government maintains that political gatherings are likely targets for terrorists and suspending communications is a way to deter their activities.⁷⁹

⁷² Mobile internet services suspended for parade, The Nation,

<http://nation.com.pk/islamabad/23-Mar-2015/mobile-internet-services-suspended-for-parade>

⁷³ Mobile Internet service suspended in Islamabad red zone area, ARY News,

<http://arynews.tv/en/mobile-internet-service-suspended-in-islamabad-red-zone-areas/>

⁷⁴ Mobile phone service to be partially blocked in Lahore

<http://www.geo.tv/article-156257-Mobile-phone-service-to-be-partially-blocked-in-Lahore>

⁷⁵ Mobile phone services being suspended in parts of Islamabad,

<http://www.dawn.com/news/1124907/mobile-phone-services-being-suspended-in-parts-of-islamabad-pta>

⁷⁶ Eid Security: Cell Phone services may be suspended in Pakistan, Express Tribune,

<http://tribune.com.pk/story/424171/eid-security-cellphone-services-may-be-suspended-in-pakistan/>

⁷⁷ Sindh decides to block Skype, Viber, Whatsapp, The News,

<http://www.thenews.com.pk/Todays-News-13-25840-Sindh-decides-to-block-Skype-Viber-Whatsapp>

⁷⁸ ARTICLE 19 and Bytes for All condemn proposed ban on instant messaging,

<http://content.bytesforall.pk/node/113>

⁷⁹

In Balochistan, one of the armed conflict zones in Pakistan, disconnections by state and non state actors are fairly common. The province is an information dark area and conditions for FoE remain worse than in the rest of the country. In addition to official disconnections, the province also faces forced disconnections due to the unstable law and order situation. On 30th December 2014, five districts of the province were disconnected from the rest of the country when Nawab Riaz Jomezai, an affluent resident of the Qila Saifullah district and brother of a provincial minister, allegedly stormed the telephone exchange and damaged the equipment.⁸⁰ So in addition to disconnections for 'security', the lack of actual security measures is also leading to disconnection of communication services in the country.

⁸⁰ Balochistan: Local Bigwig Disconnects Telecom Services In Qila Saifullah, <http://www.pakvoices.pk/balochistan-local-bigwig-disconnects-telecom-services-in-qila-saifullah/>

ASSESSMENT

INDICATOR 6:

FREEDOM OF RELIGIOUS EXPRESSION



Assessment

Indicator 6 – Freedom of religious expression

6.1 State provides religious freedom to engage in religious expression online, unless religious expression is being used to incite violence.

Status: No

Article 20 of the Constitution of Pakistan states: ⁸¹

“Freedom to profess religion and to manage religious institutions, subject to law, public order and morality:-

(a) Every citizen shall have the right to profess, practice and propagate his religion;

(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”

The addition of morality as a condition to religious expression opens the door to subjective interpretation of the article. Of more concern are other laws in Pakistan’s penal code that have deeper consequences for religious expression in the country. The most debated amongst these is the Blasphemy Law, Article 295 - 198 of the Pakistan penal code. Article 298⁸² A was inserted through **Pakistan Penal Code (Second Amendment) Ordinance, XLIV of 1980**, by General Zia ul Haq, a military dictator. The article states:

298-A. Use of derogatory remarks, etc., in respect of holy personages: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa-e-Rashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

This clause doesn't factor in the ‘intent’ of an expression and its implementation over the years has also been questionable. In 2011, Sherry Rehman, then federal minister for Information and Broadcasting, made an attempt to reform the laws; however, she herself had to face violent resistance and withdrew her efforts.⁸³

81 Pakistani.org, <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

82 Article 295 - 298, Pakistan Penal Code - Article XV - Of offences related to religion, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

83 Pakistan MP Sherry Rehman drops effort to reform blasphemy laws, <http://www.theguardian.com/world/2011/feb/03/pakistan-blasphemy-laws-sherry-rehman>

She has since been taken to court on blasphemy charges.⁸⁴ Another politician, former Governor of Punjab Salman Taseer, was shot dead by his own guard⁸⁵ after publicly supporting Asia Bibi, a woman accused of blasphemy, and talking about the need to reform blasphemy laws.

As blasphemy is a crime under local laws, the government actively bans access to online content that is deemed blasphemous. According to Facebook's government requests report for 2014, Facebook blocked access to 1,173 accounts from January to June 2014 as ordered by the Pakistan Telecommunication Authority and the Ministry of Information Technology under laws prohibiting blasphemy and criticism of the state.⁸⁶ From July to December 2014, a total of 54 users were reported by the National Response Centre for Cyber Crimes under local laws prohibiting blasphemy.⁸⁷

In the 2012 Universal Periodic Review (UPR) cycle, a total of 10 recommendations were made to Pakistan suggesting repeal of blasphemy laws. For example, France recommended:

“Repeal the blasphemy law and respect and guarantee freedoms of religion or belief and of expression and opinion for all, including Ahmadis, Hindus and Christians.”

Other countries including Namibia, Belgium, Spain, Lebanon, Netherlands, Austria, Switzerland and Sweden made recommendations on freedom of religion and expression. Pakistan accepted Lebanon's recommendation stating:

“Continue adopting measures in the framework of freedom of expression as the new legislation on freedom of expression was passed.”

The rest of the recommendations were merely noted by Pakistan.

An increase in violence connected to alleged blasphemy in digital spheres has been witnessed. According to a report, “Four women were violently killed in rural areas of Pakistan for using digital technology, which their communities condemned as immoral. In the central province of Punjab, several people faced blasphemy charges based on SMS or Facebook messages, including one couple in their 40s who were sentenced to death, even though the phone they were accused of using was not in their possession”.⁸⁸

84 Blasphemy petition against Sherry Rehman,
<http://www.theguardian.com/world/2011/feb/03/pakistan-blasphemy-laws-sherry-rehman>

85 Salmaan Taseer murder throws Pakistan into fresh crisis,
<http://www.theguardian.com/world/2011/jan/04/punjab-governor-murder-pakistan>

86 Facebook Government requests report - Pakistan request for data,
<https://govtrequests.facebook.com/country/Pakistan/2014-H1/>

87 Facebook Government requests report, Pakistan request for data,
<https://govtrequests.facebook.com/country/Pakistan/2014-H2/>

88 A Round-Up Of Trends In Digital & Social Media Realm For Pakistan In 2014,
<http://www.fnpk.org/a-round-up-of-trends-in-digital-social-media-realm-for-pakistan-in-2014/>

6.2 State guarantees expression online by all religious groups, sects and minorities without discrimination

Status: No

The Pakistan penal code includes some provisions that would be termed discriminatory. One of the examples of discrimination within the legal structure is Article 298⁸⁹ that deals with the legal treatment and conduct of members of the Ahmedi community in the country. The articles, inserted by an ordinance titled “Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, XX of 1984” states:

298-C - Person of Qadiani group, etc., calling himself a Muslim or preaching or propagating his faith:

Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine

These sections outline a different framework for expression for people belonging to Ahmedi communities, which is not in line with the ICCPR. The discrimination is institutionalized across different state systems.

In the digital sphere, the discriminatory attitude prevails in form of sustained hate speech and incitement to violence against Ahmedis. The image here shows an image shared online that calls on Muslims in the name of the Holy Prophet and calls Ahmedis poison to the faith. It calls for the murder of Ahmedis, saying “Killing these people in an open market is Jihad”.

The circular has been issued by All Pakistan Students Khatm-e-Nabooat Foundation. It also asks Muslims to awaken their conscience and kill Ahmedis to become martyrs.



Such fatwas, illustrations and memes are quite common. There have also been instances of hates speech and incitement against Ahmedis on mainstream media⁹⁰ that led to murders of Ahmedis. The government also blocks some websites that track instances of violence against Ahmedis,⁹¹ like <http://www.thepersecution.org/>. Due to these circumstances, the counter narrative online is sadly missing. Fear of discrimination, persecution and worse keep Ahmedi journalists and bloggers in anonymity. An Ahmedi journalist contacted for this research stated that in their digital communications they never disclose the fact that they belong to the Ahmedi community. They said that it is usually not safe to even protest clearly about the rampant discrimination as even being seen as an Ahmedi supporter is now dangerous.

6.3 State ensures protection of minorities targeted / harassed for religious expression online

Status: No

Our research did not discover any cases where minorities targeted and harassed for religious expression online had actually approached law enforcement authorities for protection. In theory, the state should offer protection for such harassment, but in offline public spaces religious minorities, specially Ahmedis, are regularly persecuted on religious grounds and no protection is granted by the state. In cases where false charges of blasphemy are levelled, the victims are taken into 'protective custody' to ensure their protection. However, this situation has not yet been tested online.

90 Aalim Online: Inciting murder against Ahmedi's,
<http://teeth.com.pk/blog/2008/09/11/aalim-online-inciting-murder-against-ahmedis/>

91 GeoTV's Aalim Online abets Terror in Pakistan: By Sohail Husain MD,
<http://thepersecution-org.blogspot.com/2008/10/geotvs-aalim-online-abets-terror-in.html>

ASSESSMENT

INDICATOR 7:

PROTECTION OF JOURNALISTS AND BLOGGERS



Assessment

Indicator 7 – Protection of media practitioners

7.1 Journalists and bloggers are protected against abuse or intimidation

Status: No

Since 2000, approximately 105 journalists and media workers have been killed in the line of duty, most of them directly targeted.⁹² However, despite international and national efforts to improve safety and security conditions for journalist, complete impunity prevails. Since 2000, the only journalist whose killers have been brought to justice is Daniel Pearl, an American journalist killed in Karachi in 2005.

Saleem Shahzad, a known investigative journalist and bureau chief of the online news outlet 'Asia Times Online', was kidnapped and brutally murdered in May 2011. According to the Committee for Protection of Journalists (CPJ) 'the journalist had been telling friends that he had been warned by intelligence agents to stop reporting on sensitive security matters'.⁹³ Following his murder, a judicial commission was formed that eventually released a report,⁹⁴ but failed to identify his murderers.

Another well-known case of a blogger targeted purely for online expression is the murder attempt on Malala Yousafzai.⁹⁵ In 2009 Malala Yousafzai wrote an anonymous blog on the BBC website. The blog⁹⁶ narrated the story of her life as a schoolgirl in Taliban ridden Swat district in Pakistan. Following a military operation in Swat that broke the Taliban influence, Malala was subsequently identified as the girl behind the diary and rocketed to fame. In 2012, Malala was shot along with two of her friends on her way back from school. Malala is now living in exile and her friends have also had to emigrate from Pakistan. Malala, who has since won various prestigious awards, including a Nobel Peace Prize, remains heavily abused in Pakistani digital spaces, where she faces accusations for being a Central Intelligence Agency or Mossad agent. Sexualised abuse is also being hurled at her regularly. In these conditions it is impossible for Malala and her family to return to Pakistan. The government of Pakistan has helped the family in the United Kingdom, by providing employment for her father, but when it comes to providing security of life, the government has failed Malala.

92 Safe Nowhere - Plight of Journalists in Pakistan | Key Fact, Figures and Trends | Part - 1, <http://mediamatterspakistan.org/safe-nowhere-plaint-of-journalists-in-pakistan-key-trends/>

93 Saleem Shahzad. Asia Times Online, Killed May 29 or 30, 2011, in Mandi Bahauddin, Pakistan, <https://cpj.org/killed/2011/saleem-shahzad.php>

94 Saleem Shahzad murder inquiry, Report of the commission of Inquiry. <http://www.pid.gov.pk/REPORT.pdf>

95 rofile: Malala Yousafzai, <http://www.bbc.com/news/world-asia-23241937>

96 Diary of a Pakistani schoolgirl, http://news.bbc.co.uk/2/hi/south_asia/7834402.stm

Another case of a blogger targeted for expression online is that of Marvi Sirmad. Marvi runs a blog called Baghi,⁹⁷ meaning rebel, and is a frequent victim of hate speech. In late 2012, this hate speech campaign took a turn for worse and violence was incited against Marvi⁹⁸ and her family. In November 2012, soon after the smear campaign started online, Marvi Sirmad and her husband survived a targeted attack in Islamabad. The perpetrators of the attack and the hate campaign have not been identified or brought to justice as at May 2015.

7.2 State provides mechanisms and procedures to legally pursue the cases of journalists and bloggers targeted for expression online

Status: Unclear

The state is operating in a very ad hoc manner when it comes to investigation of crimes committed against journalists and bloggers. There are some mechanisms in place to deal with cybercrime, but their effectiveness is questionable. The National Response Centre for Cyber Crime⁹⁹ operates under the Federal Investigation Agency (FIA).

FIA's domain includes dealing with instances of "impersonation and defamation on social media (Facebook, Twitter, Google Plus)".

The centre can thus be approached in instances of online targeting. However, in practice, the centre has failed to provide effective remedies. The perception of the FIA also leads to reluctance on part of internet consumers to approach them in case they are targeted or abused online.

97 Marvi Sirmad Blog <http://marvisirmed.com/>

98 RAW Agent Marvi Sirmad exposed

<http://pakistancyberforce.blogspot.com/2012/10/raws-marvi-sirmed-aka-shazia-anwaar.html>

99 National Response Centre for Cyber Crime, FIA, <http://www.nr3c.gov.pk/index.html>

ANALYSIS & CONCLUSION



Analysis and Conclusion

The findings and cases discussed in this report makes for a sobering read. The non-availability of legal mechanisms to protect the rights identified in different indicators show that there is a need to increase the protections for exercise of the right to freedom of expression online. Starting with a constitutional stipulation, Article 19, and continuing through various laws of Pakistan Penal Code, freedom of expression faces various legalized restrictions. Most of these are against the spirit of the ICCPR that puts Pakistan's compliance with its international obligations in doubt. The detailed set of indicators that we have analyzed creates an impression of a very restricted and restrained digital sphere. The reality is more complex.

While there aren't legal protections in place for expression, and targeting of journalists and sometimes bloggers is common place, the digital spaces in the country are still vibrant. Despite threats, harassment, and incitement of violence, political expression continues. During a political showdown between the ruling party, Pakistan Muslim League, Nawaz, PMLN and PTI, we witnessed a very charged political debate developing on Twitter and Facebook. The political discourse included a significant amount of hate speech, trolling, and abuse being hurled by supporters of both parties. PMLN remained the primary target of sustained abuse by PTI supporters. Yet, there wasn't a crackdown against these workers. The inaction against political protestors online might appear to contradict the cases mentioned in Indicator 2.2. To understand the government's reaction we have to look at the context of the incidents where censorship has been done.

The most politically charged issue that continues to face blocks online is the Balochistan issue. Balochistan is not only an armed conflict area, but is also facing volatile, separatists' nationalist movements.

The province is also home to some of the worst human rights controversies in the country, including the issue of enforced disappearances and extra judicial killings. Another political issue that continues to face censorship is alternate discourse on the FCR. The FCR is a colonial law enacted since 1901 that allots a discriminatory status to the FATA region, excluding it from the judicial and legislative system prevalent in the rest of Pakistan. It appears that the political censorship, that we are looking at in Indicator 2.2, is usually limited to issues that are linked to both political structure and security threats. So, while critique on the general workings of the politicians and the governments are allowed online, if the matter under discussion is seen to be of a greater magnitude, content access is blocked.

Analysis and Conclusion

Another indicator that requires more contextualized analysis is indicator 3.2. The indicator says, 'journalists and bloggers are not regularly prosecuted, jailed, or fined for libel,' and has been graded 'uncertain.' There is a limited number of instances where journalists and bloggers have been issued legal notices. However, there is a much larger number being targeted in unconventional ways. Harassment of bloggers including violent hate speech and threats of violence are common. If expression is of religious nature, accusations of blasphemy and resultant life threats are also increasing. These actions also combine to threaten the freedom of expression but are not directed through state actors. The state's role here is to offer protections against such harassment to create an environment inductive to freedom of expression. So while the state isn't prosecuting people for expression online, it is leaving them vulnerable to a different kind of persecution.

Indicator 3.4 looks at national security laws that restrict expression. This is a difficult indicator to analyze. Pakistan is a security state and the country's volatile relations with its neighbors and inbred militancy has combined to create a very complex security situation. Since the beginning of the war against terrorism, the security situation in the country has worsened. Incidents of terrorism have increased. Religious fundamentalism and sectarianism, combined with threats from across the borders have added to the threats faced by the country. In this environment, counter terrorism has become the basis of all laws and policies. Counter terrorism is extremely important; however, as seen in the US and other countries, this counter terrorism narrative is also being used to compromise basic civil liberties and human rights. In Pakistan, the government actually has a strong argument to put restrictions on free speech; the fundamentalist agenda is rampant online. Hate speech including incitement to violence is not only common, but there have been instances where this speech has led to violent actions against bloggers. Mobile phones have been used by terrorists to trigger bombs that killed dozens. In essence then, the government's argument for imposing restrictions and initiating disconnections is based on some evidence.

So creating a pro freedom of expression, right to information and privacy narrative, is sometimes taken as a challenge to counter terrorism measures, making advocacy in this realm very challenging.

Analysis and Conclusion

Indicator 7 looks at the freedom of religious expression online. Looking at the cases under these indicators was an interesting experience. Going through blogs and Facebook posts of a religious nature makes for a one sided reading. There is no counter narrative coming from local bloggers. This is especially true for Ahmadi bloggers and websites. Even where websites are archiving incidents of Ahmedis being targeted and killed, there is no independent reporting or analysis. All the incidents are archived through cross posting of news items that have appeared on mainstream news websites. Comments and engagement on hate speech against Ahmedis or Shias has muted defense / counter narrative from the Ahmadi community, but even this comes usually from the majority sect and the community members remain quiet. It appears that the threat of life is so serious that religious minorities are exercising extreme restraint in digital spaces. This is a dangerous situation where a singular narrative is becoming ever dominant.

In a nutshell, Pakistan's status on the adaptation of APC-LaRue framework is alarming. There needs to be a serious effort from the civil society to advocate for rights based policies that protect freedom of expression online.

RECOMMENDATIONS



Recommendations

These recommendations are based on the status and analysis of the indicators researched in this report, and are geared towards three key groups; the government, the regulator and the political parties.

Recommendations for the government

1. To ensure general protection of freedom of expression the government should review the laws concerning freedom of expression and develop clear definitions for ambiguous and subjective terminology like 'reasonable', 'decency' and 'morality'.
2. The government should ensure progress on and compliance with international obligations regarding freedom of expression and human rights online, including FoE recommendations in the adopted UPR.
3. The government should report to the Human Rights Committee on its obligations under the ICCPR.
4. The government should ensure that the misuse and exploitation of Blasphemy Law, Article 295-A is countered and the law isn't used as a threat to curb genuine political expression.
5. The government should take a multi-stakeholder approach and engage with civil society, media and other interest groups to ensure protection of human rights, including freedom of expression online.
6. The government should ensure capacity building of relevant politicians, regulators and policy makers, in order to make sure that the policy drafted and implemented by them is made with an understanding of human rights online as there is a need to increase the understanding of international human rights and digital rights regime.
7. Removal of all generic bans, specially the ban on YouTube is a key recommendation for the government. This ban is counterproductive, leads to insecure digital practices, and is in essence a violation of the fundamental right to information.
8. The government should make public, the complete list of blocked websites, along with the reason behind the blocking. This is extremely important to ensure transparency and discourage content blocks for political reasons.
9. The government should ensure protection of bloggers from non-state actors involved in violent hate speech and direct incitement to violence.

Recommendations

10. The government should ensure that censorship and blocking of communication services in the name of 'security' are minimal and exercised only when there is a direct and immediate connection with the expression, with significant likelihood or occurrence of such violence.
11. The government should ensure that there are effective remedies for individuals affected by private corporations' actions, including the possibility of appeal through the procedures provided by the intermediary and competent judicial authority. The government should make efforts to develop capacity of judicial bodies to ensure that a competent judicial authority is in place to make these decisions.
12. The government should ensure that internet access is maintained at all times, including during political unrest. Access to communication services is a basic right of the citizens and blocking these services not only denies them the right but at times also puts them in dangerous situations due to a lack of immediate access to help and emergency services.
13. The government should ensure protection of journalists and bloggers by ending impunity and putting in place safeguards, mechanisms, and procedures to legally pursue the cases of journalists and bloggers targeted for expressing themselves online.

Recommendations for the regulator

14. The regulator, PTA, should ensure that the blocking of content or any limitation to FoE must truly be necessary i.e. if there are any less intrusive measures that serve the same purpose they should be employed instead of blocking access. For example, in YouTube's case a warning can be played before Innocence of Muslims rather than taking the whole platform off air.
15. PTA should create and make public a proper mechanism that details how the Authority makes decisions about blocking content. This mechanism should also outline other less intrusive steps that can be taken before access to any content is completely blocked. These might include measures like issuing a warning to the offending party, charging a modest fine or playing a warning before sensitive content.
16. PTA should create and make public a mechanism that allows people to file complaints and make a case for the unblocking content that the Authority has blocked on its own discretion

Recommendations

Recommendations for political parties

17. Political parties should make the protection of freedom of expression, right to information and privacy rights online a part of their party mandate and work towards protecting these rights when they are in the parliament.

Bytes for All (B4A), Pakistan is a human rights based think tank with a focus on Information and Communication Technologies (ICTs). It experiments and organizes debate on the relevance of ICTs for sustainable development and strengthening human rights movements in the country. At the forefront of the digital and Internet rights movement and struggle for democracy, B4A focuses on capacity building of human rights defenders on their digital security, online safety, and privacy.

Working on various important campaigns particularly against Internet censorship and surveillance in Pakistan, B4A focuses on cyberspace issues, awareness raising, and policy advocacy from civil liberties & human rights perspectives. The globally recognized and award winning Take Back The Tech! campaign is the flagship of B4A, which focuses on the strategic use of ICTs by women and girls to fight violence against women in Pakistan. B4A partners and collaborates with a wide network of local & international human rights defenders and civil society organizations, and its team's commitment lies in protecting civil liberties in Pakistan.

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How is freedom of expression in Pakistan’s digital spaces governed? What protections do journalists and bloggers enjoy? What is censored and how conducive is the environment for political and religious expression online? This research looks at these questions within the premise of an international framework on freedom of expression drafted by Frank La Rue, former United Nations Special Rapporteur on Freedom of Expression. This report on the State of Internet Freedoms in Pakistan forms part of a baseline research conducted by the project APC-IMPACT (India, Malaysia, Pakistan Advocacy for Change through Technology), which aims to address restrictions on the internet by promoting and protecting internet rights. A joint initiative of the Association for Progressive Communications (APC) and its members and partners – the project works specifically to advance freedom of expression, freedom of information, freedom of assembly and association as enabler of human rights and democratization.

