

SHRINKING SPACES:

Online Freedom of Assembly and of Association in Pakistan

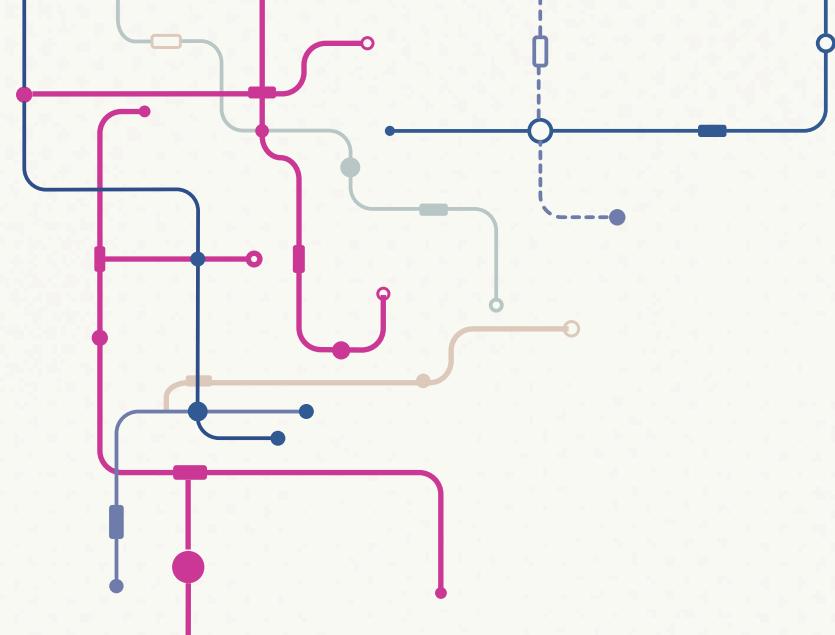
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ABOUT THIS REPORT

This report on the State of Freedom of Peaceful Assembly and of Association Online in Pakistan forms part of the 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, and freedom of assembly and association as enablers of human rights and democratisation.

Through awareness raising and capacity building, APC-IMPACT engages human rights defenders – activists, national rights institutes, media rights advocates, the judiciary, the legal sector, women's groups – and civil society in general, and provides them with knowledge, tools and networks so that violations can be monitored, reported and addressed.

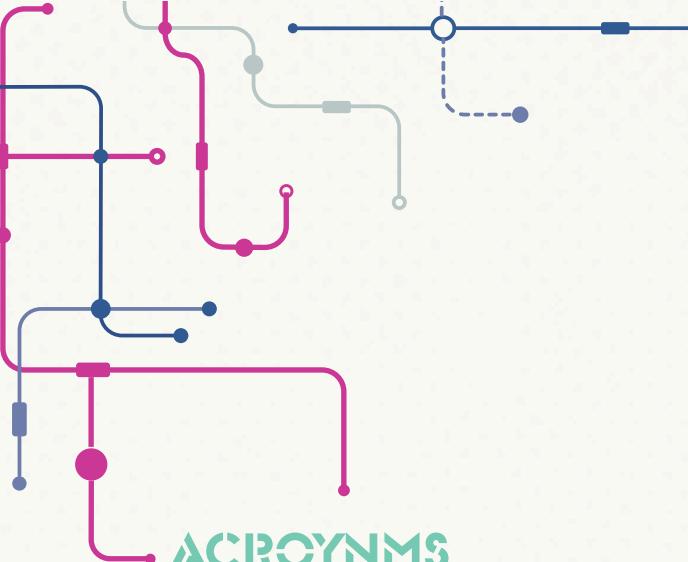
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ACROYNMS

APC	Association for Progressive Communications
B4A	Bytes for All
CGCS	Centre for Global Communication Studies
CIHR	Centre for Internet and Human Rights
COF	Collective of Freethinkers
CSOs	Civil society organisations
FoAA	Freedom of assembly and association
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTs	Information and communication technologies
NCHR	National Commission for Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
PPC	Pakistani Penal Code 1860
PTA	Pakistan Telecommunication Authority
PTI	Pakistan Tehrik-e-Insaf
T2F	The Second Floor
TPP	Tehrik-e-Taliban Pakistan
UDHR	Universal Declaration on Human Rights
UNHRC	United Nations Human Rights Council
UNSR	United Nations Special Rapporteur
VoIP	Voice over internet protocol



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CHAPTER I

INTRODUCTION

Rights to freedom of assembly and of association (FoAA) are among the fundamental human rights, enshrined in the domestic law of Pakistan and the International Bill of Human Rights.¹ Domestically, FoAA is outlined in Articles 16 and 17 of the Constitution of Pakistan.² Internationally, FoAA is outlined in Article 20(1) of the Universal Declaration of Human Rights (UDHR),³ Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR),⁴ and Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵ These rights are among fundamental requisites for a democracy and a vital means for exercising many other civil, cultural, economic, political and social rights, allowing people to express their political opinions, engage in artistic pursuits, engage in religious observances, form and join trade unions, elect leaders to represent their interests, and hold them accountable.⁶

UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai defines both rights separately. According to him, “*the right to gather publicly or privately and collectively express, promote, pursue and defend common interests*” is referred as right to freedom of peaceful assembly, whereas “*the right to join a formal or informal group to take collective action*” is referred as right to freedom of association. At the same time, both rights are interrelated. Although, freedom of association and freedom of peaceful assembly have the same meanings and are often used interchangeably,⁷ in his 2012 report to UNHRC, Kiai stressed that:

“...while the rights to freedom of peaceful assembly and association are clearly interrelated, interdependent and mutually reinforcing, they are also two separate rights. They are indeed in most cases governed by two different types of legislation and... they face different challenges. This implies that they should be treated separately.”⁸

1. International Bill of Human Rights. <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

2. National Assembly of Pakistan. *The Constitution of the Islamic Republic of Pakistan*. (2012). 2. *The Constitution of the Islamic Republic of Pakistan*. National Assembly of Pakistan. <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

3. Universal Declaration of Human Rights. http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

4. International Covenant on Civil and Political Rights. <http://www.ohchr.org/en/professionalInterest/pages/ccpr.aspx>

5. International Covenant on Economic, Social and Cultural Rights. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

6. UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. (n.d.).

What are the rights to freedom of peaceful assembly and of association? <http://freearmament.net/about/freedoms>

7. Cominios, A. (2012). Freedom of peaceful assembly and freedom of association and the internet. APC. <https://www.apc.org/en/system/files/cyr%20english%20alex%20cominios%20pdf.pdf>

8. Kiai, M. (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. A/HRC/20/27, para 4. www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf



In offline spaces, freedom of peaceful assembly and of association enable individuals to come together and struggle towards shared goals. Similarly, the internet or cyberspace additionally enables people to congregate, convene and meet online, and to establish coalitions, alliances, unions, etc. to come together for common objectives and actions. In essence, FoAA online refers to the people's ability to use information and communication technologies (ICTs) to exercise their rights of peaceful assembly and of association, either offline or online, though the online rights continue to evolve.⁹

On the internet, the right to freedom of peaceful assembly and of association is referred as:

*"Everyone's right to form, join, meet or visit the website or network of an assembly, group or association for any reason, and access to assemblies and associations using ICTs must not be blocked or filtered."*¹⁰ In this age,

when the internet has emerged as an additional space for performing day-to-day activities including facilitating interactions, accessing and sharing information and delivering services through e-governance initiatives, it has also made it easier for people to exercise their fundamental rights. Among others, FoAA is an important right, which is being exercised quite frequently now by individuals, groups and political parties for joining campaigns, collectives, and organising meetings, rallies and protests in online spaces. An exponential increase in the use of online tools has been witnessed, including social media platforms such as Twitter, Facebook and YouTube; blogs and online forums; mobile applications such as WhatsApp, Grindr, Tinder and others, for such activities online. Still, as documented in the Association for Progressive Communications regional report Freedom of Assembly and Association Online in India, Malaysia and Pakistan: Trends, Challenges and Recommendations, numerous examples

9. Venkiteswaran, G. (2016). *Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations*. APC. https://www.apc.org/en/system/files/Impact_Digital.pdf

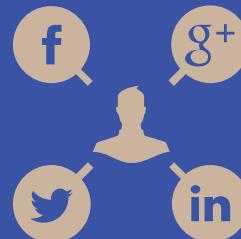
10. Internet Rights & Principles Coalition. (n.d.). IRP Charter Website. <http://internetrightsandprinciples.org/wpcharter/archives/50>

show how groups and individuals have used the internet to mobilise, and to come together on specific issues or interests, in some cases where physical gatherings were impossible or dangerous. These included the Arab Spring protests, and the Occupy movements in New York, London and elsewhere, just to name a few. Such movements have prompted global discussion on the right to FoAA online.¹¹

Besides its advantages, the internet also has its drawbacks. In November 2015, in an attack on LGBT community in Pakistan, identities of 189 homosexual men were disclosed from an anonymous Instagram account. The anonymous profile collected images of homosexual men from mobile social networking application Grindr which offers exclusive meeting, networking and dating services to the gay community across the globe. This incident discouraged the use of Grindr application which is an online tool that facilitates interactions among homosexual men.¹²

Such applications and online platforms are indispensable for marginalised communities to meet.

Regardless of their objectives, they provide them platforms to associate with each other. This online association also allows them to meet offline and carry on their relationships and form communities.



Connectivity and the internet have enabled new platforms for personal and social interactions which are undertaken virtually, extending the range of and enabling new forms of association.

Similarly, the right to FoAA, both offline and online has been trampled upon by state and non-state actors around the world, often under the guise of national security, public order or morality. In Pakistan's case, the government's arbitrary closure of mobile services,¹³ banning of websites and blogs,¹⁴ and implementation of laws such as sections 144 and 145 of the Pakistan Penal Code¹⁵ are a few examples of how FoAA is compromised.

11. Venkiteswaran, G. (2016). *Op. cit.*

12. Bengali, S., & Kaiman, J. (2016, 16 January). *In countries where gay sex is taboo, Grindr and other apps open a (sometimes perilous) window*. Los Angeles Times. <http://www.latimes.com/world/asia/la-fg-asia-grindr-20160116-story.html>

13. Pakistan Today. (2016, 21 March). *Mobile phone service suspended in Islamabad for Pakistan Day parade rehearsal*. Pakistan Today. (2016, March 21). <http://www.pakistantoday.com.pk/2016/03/21/city/islamabad/mobile-phone-service-suspended-in-islamabad-for-pakistan-day-parade-rehearsal>

14. Iqbal, A. (2013, 28 September). *'Don't hate us, know us', but PTA disagrees: Pakistan's first gay website banned*. The Express Tribune. <http://blogs.tribune.com.pk/story/19033/dont-hate-us-know-us-but-pta-disagrees-pakistans-first-gay-website-banned>

15. The Nation. (2014, 1 September). *Section 144 enforced in Punjab*. The Nation. <http://nation.com.pk/lahore/01-Sep-2014/section-144-enforced-in-punjab>

In view of this context, this report focuses on the following two objectives:

- To contribute towards local and international advocacy initiatives to improve Pakistan's compliance with international human rights law and practices in relation to FoAA online
- To build a knowledge and understanding of the context, and extent of practice, of FoAA online across communities and groups; to support the ability and literacy of civil society organisations (CSOs) and individuals on digital safety and security and strategies to encourage safe spaces for networking and engagement online.

To attain these objectives, the report:

- Maps the current status of FoAA in the country, including the existing legal framework
- Identifies potential opportunities and challenges that facilitate or restrict the right of peaceful assembly and of association online
- Recommends strategies on how to ensure FoAA within the existing socio-political environment.

The overarching aim of this document is to assist civil society organisations, journalists, national and international human rights activists and bodies, such as the National Commission for Human Rights (NCHR) to understand the state of FoAA in Pakistan – including the challenges and the shortcomings – and how best to move forward under the given situation, considering specifically, that Pakistan has ratified the ICCPR.

To maintain the safety of those who chose to come forward and share their experiences, names of some interviewees have been changed.

CHAPTER II

METHODOLOGY

The report began with an exhaustive review of the existing legal framework on FoAA in Pakistan, which has been carried out with the help of Barrister Sardar Muhammad Ali, partner at the leading law firm, Ali and Ali. After an in-depth literature review, and keeping in mind the research objectives, a questionnaire was developed for interviews (See Appendix I).

First-hand interviews were carried out with rights activists. It includes four case studies where FoAA has been a central theme of particular movements. These cases have been discussed at length in the interviews mentioned earlier. The report concludes with findings and recommendations vis-à-vis the current situation and a way towards better protection of freedom of peaceful assembly and of association online in Pakistan.

LITERATURE REVIEW:

This section analyses the literature available on FoAA, both internationally and locally, to better understand different aspects of the subject. This review includes reports of the UN Special Rapporteur on Freedom of Peaceful Assembly and Association Maina Kiai, and a comparative analysis of national and global human rights regimes.

The literature review also explores the relationship of FoAA with other fundamental rights such as the freedom of expression and opinion, and the right to privacy.

REVIEW OF EXISTING AND LEGAL FRAMEWORK:

An exhaustive review of existing legislation on FoAA was carried out with input from one of the leading law firms in the country. Any gaps, contradictions or caveats in the legal frameworks have also been explored.

CASE STUDIES:

Four distinct case studies were explored to fully grasp the theoretical concept of FoAA and what it translates into, on the ground in Pakistan.

These cases are:

Reclaim Your Mosques:

In the immediate aftermath of the terrorist attack at the Army Public School in Peshawar on 16 December 2014, which left at least 132 children dead, right wing cleric Maulana Abdul Aziz refused to condemn the attack on a national television show. Civil society came together, both offline and online, to force an apology from the cleric and demanded his arrest, through a campaign called #ReclaimYourMosques.

Coordinated Online Attacks:

Following the murder of peace activist Sabeen Mahmud, some civil rights activists tried to organise protests to not only commemorate her life and work, but also to bring attention to the cause, supporting which led to her assassination. One of the organisers was systematically targeted and attacked online with direct threats of rape and death, whilst others tried to incite violence against her.

Queer Pakistan:

This was an online portal focusing exclusively on the country's LGBT community, providing an alternative space for convening virtual meetings and working towards common goals. In a country where homosexuality is not only a taboo but also criminalised and considered against the religious teachings as well as norms and values, the portal was a rare space for the community to get together. The website was taken down by the Pakistan Telecommunication Authority (PTA) in December 2013.

Collective of Freethinkers:

In a country where apostasy is a crime, the existence of non-believers and progressive intellectuals in Pakistan's offline and online spaces raised many eyebrows. With a growing number of followers online, the Collective of Freethinkers website where such individuals were associating and assembling peacefully was shut down and two of its members were accused of blasphemy and are currently in jail.

INTERVIEWS:

In-depth interviews were conducted to understand the first-hand experiences of interview subjects with regards to FoAA online in Pakistan. The interview subjects were chosen for their direct involvement in movements and/or collectives that utilised the internet or dealt with subject matters considered taboo in the country. A standard set of questions (see Appendix I) was framed so to explore different dimensions of FoAA in Pakistan keeping the research objectives in mind. However, the conversation with different interviewees not only revolved around conceptual issues with FoAA, but also directed the needs of case studies selected for this report. Standard questions were asked of all interviewees to begin the discussions, however, supplementary questions kept emerging from the conversations and differed from interviewee to interviewee. The findings have been included both in the case studies and the recommendations section.

The interviewees were:

- Alim Murad (name changed): Gender rights activist
- Rabia Mehmood: Journalist, researcher, human rights activist
- Jamal Yusuf (name changed): Founder and ex-president, Collective of Freethinkers
- Karim Muhammad (name changed): Gender rights activist
- Muhammad Jibran Nasir: Lawyer, activist, independent politician.

CHAPTER III

LITERATURE REVIEW

The rights to freedom of peaceful assembly and of association have long been an integral part of the global fundamental rights regime, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. However, there is still very little material available on the subject, especially at the national level. Due to this scarcity, this research report takes on more importance, as it shall look to establish a baseline from which further work and studies can emanate.

UNSR Maina Kiai stressed the importance of this right for democracies to flourish:

Democracy involves more than just exercising the right to vote. For democracy to flourish, people must be guaranteed the whole range of fundamental rights and freedoms, including the rights to freedom of expression and of assembly, as a means to influence the public policies of the State.¹⁶

ICTs have grown rapidly in the past two decades. In fiscal year 2015-16, Pakistan's net foreign direct invest-

ment in the telecommunication sector was reported at USD 210 million, with year-on-year growth of 219%.¹⁷ In June 2016, another telecommunication operator, Telenor, purchased a 4G licence. This growth impacts human life exceptionally, with the internet and mobile phones facilitating the exercise of fundamental rights. The impact is not limited to personal and social interactions, but also changes the nature and scope of collective associations. Now individuals and like-minded groups – for example in case of sexual minorities – have more liberty to associate with others of their own choice.

The core focus of the debate around FoAA concerns the process of political organisation, particularly the organisation of protests and political dissent. However, there are other dimensions of FoAA, ranging from personal friendships to communal interests, solidarity to criminality, and so on. Therefore, realising the benefits, the UNHRC in its resolutions 20/8, 21/16, 24/5 and 32/13 also acknowledged the enabling role of information and communication technologies to freedom of peaceful assemblies and of associations.

16. Kiai, M. (2014). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. A/HRC/26/29. http://freeassembly.net/wp-content/uploads/2014/05/A-HRC-26-29_en1.pdf

17. Yasir, M. (2016, 21 July). Telecom sector FDI growth records 219% growth during 2015-16. Propakistani. <https://propakistani.pk/2016/07/21/telecom-sector-fdi-records-219-growth-during-2015-16>

Resolution 21/16 reminds states of:

(...) their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

Similarly the resolution 24/5 reiterates:

(...) the important role of new information and communications technologies in enabling and facilitating the enjoyment of the rights to freedom of peaceful assembly and of association, and the importance for all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.¹⁸

Referencing the resolution in his 2014 report to Human Rights Council, UNSR

Maina Kiai criticised unjustifiable limitations imposed by the governments on the internet and termed them unacceptable:

As such, laws that unjustifiably restrict freedom of expression on the Internet and limit the ability of people to associate over that medium are unacceptable. With youth being the most active social media users overall, restrictions placed on access to social media sites will disproportionately affect their ability to organize and mobilize for their common interests.¹⁹

In April 2015, participants at a two-day meeting of the Organization for Security and Co-operation in Europe (OSCE) reaffirmed:

*"The freedoms of association and assembly are the cornerstone of a vibrant, pluralistic and participatory democracy, and restrictions to these can only be allowed in line with relevant international standards and conventions."*²⁰

Hina Jilani, noted legal expert and veteran human rights activist, remarked at the meeting that "while the right to freedom of association is constitutionally guaranteed in most countries, there has been a notable rise in the number and range of laws and regulations infringing this right, resulting in serious obstacles to the work of human rights defenders."²¹

18. UNHRC. (2013). *The rights to freedom of peaceful assembly and of association*. A/HRC/RES/24/5. <http://freeassembly.net/wp-content/uploads/2013/08/A-HRC-RES-24-5-ENG.pdf>

19. Kiai, M. (2014). *Op. cit.*

20. OSCE. (2015, 16 April). *Freedom of association and assembly cornerstones of democracy and security, say participants at OSCE meeting*. <http://www.osce.org/odihr/151421>

21. *Ibid.*

An essential point to understand is that many aspects of human rights are so interlinked that if one is trampled upon, others are also affected. In Pakistan, the government has a long history of interfering with modes of communication in the name of national security.²² In first four months of 2016, mobile services were disrupted at least six times in the capital city Islamabad alone.²³ It is also a routine measure taken around the time of Muharram, a religious holiday with a history of sectarian violence associated with it.²⁴

By using the “kill switch”²⁵ or disconnecting the modes of communication in the name of national security, the government is also directly targeting the ability of individuals and groups to assemble. While Section 54(3) of the Pakistan Telecommunication (Re-organization) Act, 1996 does allow for the suspension of services *“upon proclamation of emergency by the President.”* However, when done arbitrarily, such use is a stark violation of UNHRC’s resolutions 21/16 and 32/13 in which the body has acknowledged and reiterated:

(...) the important role of new information and communication technologies in enabling and facilitating the enjoyment of the rights to freedom of peaceful assembly and of association, and the importance for all states to promote and facilitate access to the internet and international cooperation aimed at the development of media and information and communication facilities in all countries.²⁶

Thus, more and more people are connected by digital communications, including mobile phones and other voice over internet protocol (VoIP) services enabled through the internet, which facilitate peaceful assemblies. But in Pakistan, where internal threats and security situations are grave, the government uses the argument that network disconnections are necessary to prevent unforeseen terrorist activities. Network shutdowns or kill switch practices cannot be a long-term strategy for any government to avert terror threats, a fact that is detailed in the study *Security v Access: The Impact of Mobile Network Shutdowns*, jointly published by the Institute for Human Rights and Business, Bytes for All, the Centre for Internet and Human Rights and the University of Pennsylvania.

22. Kill Switch Timeline in Pakistan. <https://killswitch.pk>

23. Kill Switch Timeline in Pakistan – 2016. <https://www.killswitch.pk/2016>

24. Khan, M. H. (2015, 24 October). Bomb targeting Muharram procession kills 20 in Jacobabad. Dawn. <http://www.dawn.com/news/1215087>

25. “Kill switch” here refers to the practice of governments to shut down mobile services in emergency situations when they cannot be shut down in the usual manner.

26. OHCHR. (n.d.). Freedoms of peaceful assembly and of association. www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx

The research concludes that:

ICTs are used by citizens and terrorists alike, but without access to ICTs, law enforcement lose the opportunity to use communications for the purpose of fighting terrorism, and to disseminate important information to move people to safety, or to calm a concerned population. Advances in technology such as “crowdsourcing” can help develop early warning systems and cement co-operation between citizens and law enforcement to create a collective shield against terrorism.²⁷

The following table lists the details of network shutdowns that took place in Pakistan between 2014 and March 2016. The table contains brief summary of each network shutdown, reason, affected areas, and date. The table is drawn with the help of information mapped by B4A through its initiative Kill Switch in Pakistan, and contains 22 instances of network shutdowns between January 2014 and September 2016.

Timeline of network shutdowns 2014-2016

NETWORK SHUTDOWNS IN 2016

Date & City	Reason	Summary	Source
6 September 2016 – Rawalpindi and parts of Islamabad	Defence Day	Mobile services remained suspended between 4:00 p.m. and 11:00 p.m. in Rawalpindi and parts of Islamabad. Suspension of cellular services was part of security measures.	http://epaper.tribune.com.pk/DisplayDetails.aspx?EN_ID=11201609070486&EN_ID=11201609070154&EM_ID=11201609070077
5 September 2016 – Rawalpindi and parts of Islamabad	Defence Day preparations	Mobile services remained suspended between 4:00 p.m. and 11:00 p.m. in Rawalpindi and parts of Islamabad. Suspension of cellular services was part of security measures.	http://epaper.tribune.com.pk/DisplayDetails.aspx?EN_ID=11201609060348&EN_ID=11201609060131&EM_ID=11201609060077
14 August 2016 – 40 cities	Independence Day	In order to maintain security situation for flag hosting ceremony the government suspended mobile services.	http://epaper.tribune.com.pk/DisplayDetails.aspx?EN_ID=11201608150508&EN_ID=11201608150199&EM_ID=11201608150058

27. Wagner, B., & Ashraf, A. (2015). Security v Access: The Impact of Mobile Network Shutdowns. <https://content.bytes-forall.pk/sites/default/files/2015-09-Telenor-Pakistan-Case-Study.pdf>

Date & City	Reason	Summary	Source
30 March 2016 - Islamabad	Law & order / protest	Mobile services of Mobilink, Warid and Telenor remain suspended in E-11, F-11 and G-11, While Ufone and Zong were functional.	http://nation.com.pk/islamabad/30-Mar-2016/cellular-service-suspension-continues-to-irk-residents
30 March 2016 – Islamabad	Law & order / protest	Mobile phone services remained suspended across the city to hinder communication between supporters of Mumtaz Qadri, who staged a sit-in at D-Chowk. While Dawn newspaper reported that full cellular reception was witnessed at D-Chowk.	http://www.dawn.com/news/1248567
29 March 2016 – Islamabad	Law & order / protest	Mobile phone services remained suspended across the city to hinder communication between supporters of Mumtaz Qadri, who staged a sit-in at D-Chowk.	http://www.dawn.com/news/1248567
28 March 2016	Law & order / protests	Mobile phone service in selected parts of Islamabad/ Rawalpindi were shutdown in intervals on directions from Pakistan Telecommunication Authority for security reasons.	http://www.dawn.com/news/1248567/mobile-phone-services-remain-suspended
23 March 2016 – Islamabad and Rawalpindi	Pakistan Day parade	Mobile signals in twin cities remained suspended. Authorities informed that mobile signals were jammed to avoid any security related incident, and ensure foolproof security for the full-dress rehearsal of Pakistan armed forces.	http://dunyanews.tv/en/Pakistan/328829-Cellular-service-in-twin-cities-suspended

Date & City	Reason	Summary	Source
21 March 2016 – Islamabad and Rawalpindi	Pakistan Day Parade Rehearsal	Mobile services remained suspended between 5:00 a.m. and 3:00 p.m. on the directives of Pakistan Telecommunication Authority (PTA) for security reasons.	http://propakistani.pk/2016/03/21/mobile-phone-services-suspended-in-isbrwp-for-pakistan-day-rehearsals/

NETWORK SHUTDOWN IN 2015

18 December 2015 – Islamabad	Red mosque Friday sermon	Cellular services were suspended after a letter issued by the Interior Ministry in light of intelligence reports about impending security threats.	http://www.dawn.com/news/1227173
11 December 2015 – Islamabad	Red mosque Friday Sermon	Cellular services were suspended after a letter issued by the Interior Ministry in light of intelligence reports about impending security threats.	http://www.dawn.com/news/1225699
24 October 2015 – All major cities including Karachi, Lahore, Quetta, Peshawar, Islamabad, Rawalpindi, Faisalabad & Multan	Ashura	10th Muharram is the Ashura day in the Islamic calendar. The government suspended mobile services to avoid any act of violence and terrorism in the country.	https://www.thenews.com.pk/print/69223-cell-phone-service-remains-suspended-today-tomorrow
23 October 2015 – All major cities including Karachi, Lahore, Quetta, Peshawar, Islamabad, Rawalpindi, Faisalabad, and Multan	Ashura	9th Muharram in the Islamic calendar marks a very important day as the martyrdom of Hussain ibn Ali is observed. The government suspended mobile services to avoid any act of violence and terrorism in the country.	https://www.thenews.com.pk/print/69223-cell-phone-service-remains-suspended-today-tomorrow

Date & City	Reason	Summary	Source
14 August 2015 – Islamabad and Rawalpindi	Independence Day	In order to maintain security situation for flag hosting ceremony, the government suspended mobile services.	https://twitter.com/Zongers/status/631730836191055872
23 March 2015 – Islamabad and Rawalpindi	Pakistan Day	Cell phones and wireless internet services remained suspended as part of parade security measures.	http://www.dailytimes.com.pk/islamabad/23-Mar-2015/twin-cities-mobile-service-will-remain-suspended-today

NETWORK SHUTDOWN in 2014

3-4 November 2014 – All major cities including Karachi, Lahore, Quetta, Pesha-war, Islamabad, Rawalpindi, Fais-alabad, etc	Ashura	9th & 10th Muharram are Ashura days in the Islamic calendar. The government suspended mobile services to avoid any act of violence and terrorism in the country.	http://www.dailytimes.com.pk/islamabad/04-Nov-2014/call-to-observe-tolerance-as-nation-marks-ashura-today
23-27 August 2014 – Red Zone, Islamabad	Azadi March	Cellular services remained suspended for security reasons during ongoing political protest.	http://www.dawn.com/news/1124907
14 August 2014 - Red Zone, Islamabad and some parts of Lahore	Azadi/ Inqalab Marches	Cellular services remained suspended for security reasons during ongoing political protest.	
13 August 2014 - Red Zone, Islamabad	Azadi March	Cellular services remained suspended for security reasons during ongoing political protest.	http://www.dawn.com/news/1125220
8-13 August 2014 – Model Town, Lahore	Inqalab March	Cellular services remained suspended for six days in the area where ongoing political protest emerged.	http://www.dawn.com/news/1124907

Date & City	Reason	Summary	Source
20 July 2014 – All major cities including Karachi, Haiderabad, Muzaffargarh, Sargodha, Narowal, Chakwal, Jhelum, Rawalpindi and Attock	Youm-e-Ali	Mobile services remained suspended in few cities in the wake of terror threats.	http://tribune.com.pk/story/738264/youm-e-ali-processions-security-beefed-up-in-parts-of-pakistan/
14 January 2014 – All major cities including Karachi, Lahore, Quetta, Peshawar, Islamabad, Rawalpindi, Haiderabad, Sukkur, Mirpur Khas	Eid Milad-un-Nabi, Prophet's Day	The government suspended cellular services in different parts of the country to avert security threats.	http://tribune.com.pk/story/658956/eid-miladun-nabi-mobile-phone-services-suspended-in-various-cities/

There are serious social costs connected with network disruptions as it affects delivery of essential services including the ability to meet medical and emergency needs of persons in those areas. As network shutdowns are violations of international human rights law, they are never justifiable or proportionate response to anticipated terrorism activities. States must find more justifiable and proportionate actions to counter terrorism, instead of resorting to kill switches.

There are also legal impediments in Pakistan with regards to FoAA and a specific religious minority, the Ahmadis. According to Section 298-B(2) of the Pakistan Penal Code:

Any person of the Qaudiani²⁸ group or Lahori group (who call themselves Ahmadis or by any other name) who by words, either spoken or written, or by visible representation refers to the mode or form of call to prayers followed by his faith as 'Azan', or recites Azan as used by other 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.²⁹

28. Qaudiani is derogatory term used to refer to Ahmadi Muslims in South Asia.

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

And according to Section 298-C:

Any person of the Qaudiani group or 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 to 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.³⁰

With such legal restrictions placed on a minority group, there are reported cases where religious gatherings of Ahmadis were attacked or their rights to assemble peacefully and of association were denied. Punjab police arrested seven Ahmadis from their prayer place in Gulshan-e-Ravi, Lahore without first lodging a first information report in April 2013.³¹ In October 2000, four unidentified gunmen opened fire on a prayer of Ahmadiyya community in a village near Sialkot.³² Similarly, Lahore witnessed the killing of at least 86 Ahmadis

when their two mosques simultaneously came under attack by Tehrik-e-Taliban Pakistan's Punjab chapter on 28 May 2010.³³

Another important link to be understood is the interplay between the right to privacy and FoAA in online spaces, especially for human rights defenders and minority groups. It is one of the downsides of the internet that it simultaneously enables many online tools to act as a surveillance machines. In his 2011 address to students at Cambridge University, Editor-in-Chief of WikiLeaks Julian Assange said: *"While the internet has in some ways an ability to let us know to an unprecedented level what government is doing...it is the greatest spying machine the world has ever seen."*³⁴

Rapid technological advancement and inclusion of sophisticated intrusion software such as FinFisher and Hacking Team's surveillance malware has exposed citizens' personal lives, particularly our communications to governments and private actors. It is now easier for governments to keep an eye on communications and activities of individuals or groups through various technological means, such as

30. Ibid.

31. Tanveer, R. (2013, 30 April). Neighbourly acts: Seven Ahmadis detained without an FIR. Express Tribune. <http://tribune.com.pk/story/542170/neighbourly-acts-seven-ahmadis-detained-without-an-fir/>

32. BBC. (2000, 30 October). Gunmen kill five at prayer meeting. BBC News. http://news.bbc.co.uk/2/hi/south_asia/998648.stm

33. Jaija, S. (2013, 28 May). Three years on, no justice for 86 dead Ahmadis. Dawn. <http://www.dawn.com/news/1014484/three-years-on-no-justice-for-86-dead-ahmadis>

34. The Hindu. (2011, 5 April). 'World's greatest spying machine'. The Hindu. <http://www.thehindu.com/opinion/editorial/article1602746.ece>

by tapping mobile communications, sneaking into e-mail servers and surveillance cameras. This type of surveillance is not only intimidating but also restricts individuals from their individual or collective actions.

Former UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Frank La Rue stated:

“...while Internet users can enjoy relative anonymity on the Internet, States and private actors also have access to new technologies to monitor and collect information about individuals’ communications and activities. Such technologies have the potential to violate the right to privacy, thereby undermining people’s confidence and security on the Internet and impeding the free flow of information and ideas online.”³⁵

La Rue also “urged States to adopt effective privacy and data protection laws in accordance with human rights standards, and to adopt all appropriate measures to ensure that individuals can express themselves anonymously online.”³⁶

In Pakistan, the state continues to conduct widespread surveillance on its citizens under the cover of numerous laws,³⁷ some dating back to 1885, such as the Telegraph Act.³⁸

Other such laws include the Pakistan Telecommunication (Re-organization) Act of 1996, the Anti Terrorism Act of 1997 (amended in 2004), the Monitoring and Reconciliation of International Telephone Traffic Regulations of 2010, The Investigation for Fair Trial Act of 2013,³⁹ and the Protection of Pakistan Act of 2014. Currently, the parliament has passed the controversial Prevention of Electronic Crimes Act, 2016, which stands to further extend the state’s ability to surveil its citizens.⁴⁰



Surveillance mechanisms can also be used by governments to monitor or suppress political dissent or the behaviour of associations such as those of sexual minorities or faith groups.

35. La Rue, F. (2013). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/HRC/23/40. www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

36. La Rue, F. (2013). Op. Cit.

37. Khan, S. A. (2016, 25 January). The state bytes back: Internet surveillance in Pakistan. Herald. <http://herald.dawn.com/news/1153312>

38. The Telegraph Act, 1885. <http://www.ma-law.org.pk/pdflaw/Telegraph%20Act.pdf>

39. The Investigation for Fair Trial Act, 2013. http://www.na.gov.pk/uploads/documents/1361943916_947.pdf

40. Prevention of Electronic Crimes Bill, 13 April 2016. http://www.na.gov.pk/uploads/documents/1462252100_756.pdf

Regardless, the information the state gathers from such measures can be used to counter the ability of individuals and groups to peacefully assemble and associate.

In a 2013 report, then-UNSR Frank La Rue warned that:

(...) undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas. Restrictions on anonymity in communication, for example, have an evident chilling effect on victims of all forms of violence and abuse, who may be reluctant to report for fear of double victimization.⁴¹

Anonymity, for at-risk communities such LGBT people, agnostics or rights' activists and journalists working on sensitive issues, is essential to avoid compromising their physical safety and security. This was highlighted by the Association for Progressive Communications in its submission to the UNSR on the rights to freedom of opinion and expression report on encryption, anonymity and the human rights framework.

APC noted that:

Anonymity is an important enabler of the right to freedom of association and assembly online and the right to be free from discrimination. The relative anonymity that the internet offers enables individuals and minority groups, among others, to associate on sensitive matters such as sexual orientation or religion.⁴²

In his report to UNHRC's 26th session UNSR Maina Kiai took a detailed account of most vulnerable groups when it comes to exercising the right to peaceful assembly and of association.

He noted that:

Some of the groups that are considered in the present report to be most at risk are persons with disabilities; youth, including children; women; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers.⁴³

41. La Rue, F. (2013). *Op. Cit.*

42. APC. (2015, February). *The right to freedom of expression and the use of encryption and anonymity in digital age of communications: Submission to the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression by the Association for Progressive Communication (APC).* <http://www.ohchr.org/Documents/Issues/Opinion/Communications/AssociationForProgressiveCommunication.pdf>

43. Kiai, M. (2014). *Op. cit.*

In the same report by UNSR Kiai, the following recommendations stood out:

- Ensure that any restrictions on the rights of individuals belonging to groups most at-risk to freedoms of peaceful assembly and of association are prescribed by law, necessary in a democratic society and proportional to the aim pursued, and do not harm the principles of pluralism, tolerance and broad-mindedness. Any restrictions should be subject to an independent, impartial and prompt judicial review;
- Ensure that law enforcement authorities who violate the rights of individuals belonging to groups at risk to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body and by the courts of law; and

- Ensure that individuals belonging to groups most at risk who are victims of violations and abuse of their rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress.⁴⁴

As is evident from the preceding pages, FoAA is deeply intertwined with other fundamental human rights such as the right to privacy and freedom of expression. Therefore, online privacy is essential not only for the development or exchange of ideas, but also to assemble without fear of reprisal. Still, materials that discusses the finer shades of the freedoms of assembly and association in the online world remain quite limited.

44. *Ibid*

CHAPTER IV

REVIEW OF EXISTING LEGAL FRAMEWORK FOR FoAA

Article 20 of the Universal Declaration of Human Rights reads that "*everyone has the right to freedom of peaceful assembly and association, and that no one may be compelled to belong to an association.*"⁴⁵

This universal human right is further expanded upon in Articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

Article 21 states that:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

Article 22 states that:

1. Everyone shall have the right to freedom of association with others, including the right to form trade unions for the protection of his interests;

2. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others; and
3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."⁴⁶

After ratification of the ICCPR, Pakistan has committed to uphold this right in the national constitution.

FREEDOM OF ASSEMBLY

The rights of citizens pertaining to freedom of assembly are laid down in Article 16 of the Constitution of Pakistan, 1973, which provides as follows:

45. Universal Declaration of Human Rights. <https://www.un.org/en/universal-declaration-human-rights/index.html>

46. International Covenant on Civil and Political Rights, 1966. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

16. Freedom of Assembly

Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.⁴⁷

The freedom of assembly includes taking part in public meetings, processions and demonstrations. Freedom of assembly is cognate to the right of movement by which every citizen has the right to move freely and go anywhere she or he like and also to the right of freedom of speech and expression in Pakistan (subject to any reasonable restrictions imposed by law in the public interest). It has been held that the very idea of government, in the form of a republic, implies a right on the part of its citizens to meet peaceably for consultation in respect of public affairs and to petition for a redress of grievances.⁴⁸

FREEDOM OF ASSOCIATION

The rights of citizens pertaining to freedom of association are laid down in Article 17 of the Constitution of Pakistan, 1973, which provides as follows:

17. Freedom of Association

1. Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of

sovereignty or integrity of Pakistan, public order or morality.

2. Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.
3. Every political party shall account for the source of its funds in accordance with law.

Article 17 of the constitution provides three freedoms: the freedom to form associations, the freedom to form unions and the freedom to form political parties. The superior courts of Pakistan have held that freedom of association is a right guaranteed under the constitution and state functionaries cannot unreasonably take away or restrict this right. It has been held that the question whether a restriction is reasonable or not is for the court to determine and in determining it the court has to examine not only the reasonableness of the law imposing the restriction, but also the reasonableness of the mode of application of such a restriction.⁴⁹

47. Constitution of Pakistan, 1973. <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

48. Constitution of Pakistan, 1973.

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

49. Nasrullah Khan v. Government of West Pakistan: PLD 1965 (WP) Lahore 642.

STATE RIGHTS IN IMPOSING LIMITATIONS ON FREEDOM OF ASSEMBLY AND ASSOCIATION

Freedoms of assembly and association under articles 16 and 17 of the constitution are not unfettered and the state may impose reasonable restrictions on the same. However, such restrictions must fulfil the following preconditions:

- The restrictions must be imposed in the interest of "public order"
- In the case of article 17, the restrictions must be imposed in the interest of preserving "sovereignty or integrity of Pakistan, public order or morality"
- The restrictions must be imposed by law.

PUBLIC ORDER

The expression "*public order*" in the aforementioned articles of the constitution has not been specifically defined, but it was held in *Abdul Hameed Qadri v. S.D.M. Lahore*⁵⁰ and *Shukar Din v. Govt. of West Pakistan*⁵¹ that danger to property, human life and safety and the disturbance of public tranquillity fall within the purview of reasonable restrictions that may be imposed in the public interest by state functionaries and law enforcement agencies to avert danger or disturbances.

SOVEREIGNTY OR INTEGRITY OF PAKISTAN

The words "*sovereignty or integrity of Pakistan*" appearing in article 17 are of wide import and may be equated with the words "*security of Pakistan*" appearing in Article 260 of the constitution. The expression "*security of Pakistan*" has been defined in Article 260 of the constitution to include "*the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan*".

In this regard, in Islamic Republic of Pakistan v. Abdul Wali Khan it was held that:

Freedoms of speech, press, and assembly are dependent upon the power of the constitutional government to survive. If it is to survive, it must have the power to protect itself against unlawful conduct and under some circumstances, against incitements to commit unlawful acts.⁵²

RESTRICTIONS TO BE IMPOSED BY LAW

It has been held in *Civil Aviation Authority v. Union of Civil Aviation Employees* that it is not enough that the restrictions imposed are merely reasonable; they must have been imposed by law. Thus restrictions imposed on freedom of assembly and association by non-statutory regulations or instructions are generally not protected by the said article.

50. PLD 1957 Lahore 263.

51. PLD 1965 Lahore 521.

52. PLD 1976 SC 57.

Restrictions of freedom of assembly and association in the context of cyberspace

As discussed earlier, the state can impose reasonable restrictions to preserve public order and sovereignty or integrity of Pakistan through legislation.

Freedoms of association and assembly can be exercised in cyberspace through various means, including social media websites. However, cyberspace is dependent upon telecommunication systems. Under the above-mentioned enactments, where law enforcement agencies apprehend that the safety, welfare, stability and integrity of Pakistan are in danger or there is an apprehension of any offence, they may intercept electronic communications originating or terminating through telecommunication systems located in Pakistan.

In the context of cyberspace, the following enactments are relevant:

- Pakistan Penal Code, 1860 and Qanun-e-Shahadat Order, 1984
- Pakistan Telecommunication (Re-organization) Act, 1996
- Protection of Pakistan Act, 2014
- Prevention of Electronic Crimes Act, 2016.

Pakistan Penal Code, 1860 and Qanun-e-Shahadat Order, 1984 (the Law of Evidence)

Generally, offences against the state,⁵⁴ the armed forces,⁵⁵ public order⁵⁶ and morality⁵⁷ are outlined in the Pakistan Penal Code, 1860.

Trial of offences under Pakistan Penal Code, 1860 is largely dependent on the Qanun-e-Shahadat Order, 1984 (the Law of Evidence). Pursuant to the Electronic Transactions Ordinance, 2002, various amendments were made in the Law of Evidence to cover admissibility of evidence collected through electronic/digital means. Of particular importance is the amendment to Article 73 of the Law of Evidence relating to primary evidence, which permits the submission of electronic evidence. Consequently, if the crimes, including crimes against public order and morality etc., are committed in cyberspace, the authorities may use evidence collected in electronic or digital form to prosecute such offences.

Pakistan Telecommunication (Re-organization) Act, 1996, Prevention of Electronic Crimes Act, 2016, Protection of Pakistan Act, 2014

Under section 54(1) of the Pakistan Telecommunication (Re-organization) Act, 1996, law enforcement agencies have been authorised to intercept calls and messages through any telecommunication system for national security purposes or *in the apprehension of any other offence*.

54. Penal Code (1860), Chapter VI.

55. Penal Code (1860), Chapter VII.

56. Penal Code (1860), Chapter VIII.

57. Penal Code (1860), Chapter XIV.

Under section 54(3) of the Pakistan Telecommunication (Re-organization) Act, 1996, the federal government, after proclamation of emergency in the country, may suspend the operations, functions or services of telecommunication companies as it may deem necessary.

Under section 10(a) of the Prevention of Electronic Crimes Act, 2016, “any commission or threat with intent to coerce, intimidate, create a sense of fear, panic or insecurity in the government or the public or any section of the public or community or sect or create a sense of fear or insecurity in the society” is tantamount to cyber terrorism. This law empowers the state to crack down against any online protests which it deems threatening or creating fear, panic or insecurity in the government, the public or the society. Such acts can be declared as cyber terrorism and the perpetrators may be punished with up to 14 years imprisonment, a PKR 50 million (USD 478,000) fine, or both.

Lastly, the Protection of Pakistan Act, 2014 was enacted with a view to punish crimes against the state including waging war, insurrection or threatening the security of Pakistan. In this regard, the act provides a long list of offences in its schedule, including crimes against ethnic, religious and political groups or minorities including

offences based on discrimination, hatred, creed and race. An important section is item (xiv) of the schedule to the act, which provides as follows: “Cyber crimes, internet offences and other offences related to information technology which facilitate any offence under this Act.”

Article (3) of the schedule to the Protection of Pakistan Act, 2014 provides that preparation, abetment, attempt or conspiracy to commit an offence specified in the schedule shall also be an offence. Consequently, if a group of persons is found to be involved in the commission of a scheduled offence through the use of internet or in cyberspace, the same may be prosecuted under the act.

ANALYSIS

As is evidenced by the literature above, the legal framework on FoAA in the context of cyberspace is scattered amongst several enactments, including those discussed above, and there is a dearth of case law on the subject. Over the last many years, successive governments have tried to consolidate laws related to cyberspace (and cyber crime), but they have not been able to create a single comprehensive legal framework. Hence, there is no consistency and no certainty and/or clarity of what rights the citizens of Pakistan have in cyberspace, especially in relation to FoAA.

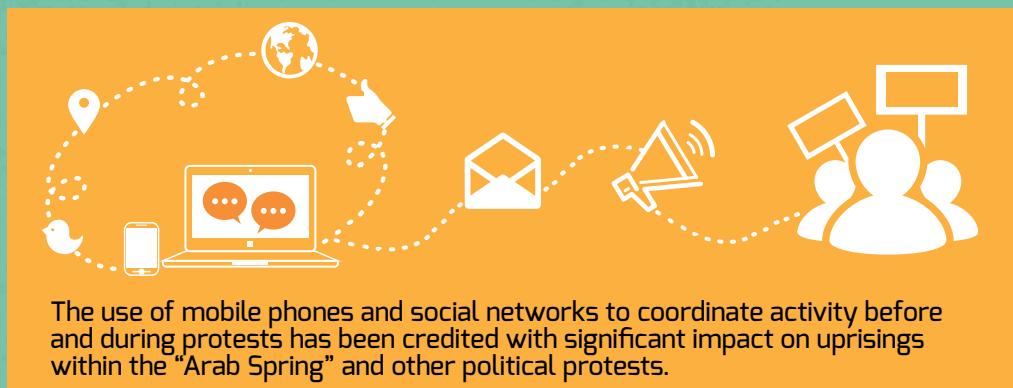
CHAPTER V

CASE STUDIES AND INTERVIEWS

1. RECLAIM YOUR MOSQUES

BACKGROUND

The Tehrik-e-Taliban Pakistan, a proscribed organisation, claimed the responsibility of heinous attack on the Army Public School in Peshawar on 16 December 2014, murdering 148 people, including 132 children.⁵⁸ It was a massive tragedy borne by the Pakistani nation because of huge toll of children's deaths. This incident was widely condemned around the world. But, the same evening, during a talk show on national television, a controversial cleric from the Red Mosque in Islamabad, Maulana Abdul Aziz, refused to condemn the killings⁵⁹ and said the only solution to such problems was the implementation of Islamic Sharia law in the country, which is also what the Taliban have been demanding.⁶⁰



The use of mobile phones and social networks to coordinate activity before and during protests has been credited with significant impact on uprisings within the "Arab Spring" and other political protests.

This stance from the cleric became the impetus for a wide cross-section of Pakistani society to come out against radical ideology and protest against terror advocates. Enraged citizens took to social media and came out on the streets, calling for the arrest of the cleric. The protests were spearheaded by activist and politician Jibran Nasir, who raised the slogan "Reclaim Your Mosques".

58. Marszal, A. (2014, 17 December). Inside the Pakistan school: Harrowing images reveal full terror of Taliban attack. *The Telegraph*. <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/11298802/Inside-the-Pakistan-school-harrowing-images-reveal-full-terror-of-Taliban-attack.html>

59. Waqt News. (2014, December 16). Maulana Aziz refused to condemn Peshawar incident (video). Dailymotion. http://www.dailymotion.com/video/x2cpne1_maulana-abdul-aziz-refused-to-condemn-peshawar-incident_news

60. AFP. (2014, 18 December). Protest outside Lal Mosque against Maulana Abdul Aziz. GEO. <https://www.geo.tv/latest/97082-protest-outside-lal-mosque-against-maulana-abdul-aziz>

"We want to reclaim our mosques, our communities, our cities, indeed our entire country from the extremists."⁶¹

Thus, the Reclaim Your Mosques movement was kicked off online and offline with hashtags #ReclaimYourMosques and #ArrestAbdulAziz on Twitter and Facebook.

CASE

The online campaign #ReclaimYourMosques aimed to provide a counter-narrative to the extremists' ideology in Pakistan. The campaign managed to gather hundreds of thousands citizens across the country. Later, this protest from online spaces also translated into physical assembly in all major cities, including Islamabad, Lahore and Karachi. A Facebook event page promoting the protests in various cities was also launched with same title, "Reclaim Your Mosques". As word spread, over 28,000 people were invited, and over 5,000 people consented to attend the protests physically.⁶² One of the protests was organised in front of the Red Mosque in Islamabad, where the cleric Abdul Aziz would deliver Friday sermons.

On 17 December 2014, very few protesters participated physically, but with growing momentum, the physical presence increased and three days later hundreds of people including men, women, youth, civil society and media persons were raising slogans against the cleric.⁶³ As pressure mounted, the city administration lodged a first information report against Abdul Aziz. Succumbing to the pressure, the controversial cleric was forced to issue an apology, saying: "*I condemn the killings of schoolchildren and apologise.*"⁶⁴

According to Jibran Nasir: "*The movement very quickly grew beyond the incident that had given birth to it – people needed a platform to voice their concerns, and #ReclaimYourMosques provided them exactly that.*"

However, it came at a price. Mr Nasir received a threatening call from the spokesman of the proscribed Tehrik-e-Taliban Pakistan's Jamaat-ul-Ahrar faction. "*If you do not take your actions back, and if you do not stop harassing the imam of the Red Mosque, then you are putting yourself, your family and your people at risk.*"

61. Rezwan. (2014, 21 December). *Pakistanis Say #ReclaimYourMosques From Radicalism in Rare, Bold Protests*. Global Voices. <https://globalvoices.org/2014/12/21/pakistanis-say-reclaimyourmosques-making-a-rare-bold-statement-against-taliban-apologists-and-extremists-everywhere>

62. <https://web.facebook.com/events/1585903991641215/permalink/1597223497175931>

63. Mukhtar, M. (2014, 20 December). *Tension at Abpara: Lal Masjid cleric booked on civil society's complaint*. Express Tribune. <http://tribune.com.pk/story/809617/tension-at-aabpara-lal-masjid-cleric-booked-on-civil-societys-complaint>

64. Tribune. (2014, 21 December). *Rendering apology: Maulana Aziz bows to society's pressure*. Express Tribune. <http://tribune.com.pk/story/810076/rendering-apology-maulana-aziz-bows-to-societys-pressure>

65. Waraich, O. (2014, 30 December). *Jibran Nasir: The quiet lawyer and activist who is taking on Pakistan's Taliban*. The Independent. <http://www.independent.co.uk/news/people/jibran-nasir-the-quiet-lawyer-and-activist-who-is-taking-on-pakistans-taliban-9950641.html>

Such risks, Mr Nasir feels, come with the territory of being an activist in Pakistan.

"There are certain segments of the society that genuinely do not want dialogue, they do not want a peaceful narrative and when you go out for activism, you need to understand these threats," he said.

This was not the first time online protests also spilled over into the streets of Pakistan. Mr Nasir feels online spaces have greatly facilitated activism and made it easier to generate support for human rights issues. The ability to be anonymous online makes it easier to openly debate and discuss with different schools of thought, something that is not possible in physical spaces in Pakistan. It is still challenging to bring people out of their homes for a movement or cause because of the threats associated with activism.

"The conversion ratio was not encouraging," he said. "Online, you may get massive support behind you, but only a handful will physically turn up at protests."

However, this lack of offline visibility is not necessarily a weakness, Mr Nasir believes.

"Small numbers on the ground have large numbers behind them online, so the movement does not really lose steam."

Another important reality was that numerous opposing sections of Pakistani society finally came face-to-face in online spaces.

"The progressive mindset confronted the fundamentalists, the left ran into the right, and they are finally conversing. This is something they never did before and this is the success," said Mr Nasir.

For the longest time, these opposing sections of the society have existed in isolation, simmering with hatred for each other without caring to hear the others' point of view.

With groups operating at opposing ends of the spectrum, the least that advocacy should do is try finding some common ground for the two to catch up. Jibran Nasir was successful in mobilising people against radical narrative and presented a counter-narrative of his own, but this might not have been possible without the support he generated online, helping pressurise the authorities to take action against the controversial cleric. He assembled their energies online and utilised them offline to challenge the radical mindset.

2. COORDINATED ONLINE ATTACKS

BACKGROUND

Social media has created an alternate space for the exercise of fundamental rights, such as the right to form associations and assemble peacefully online, access to information, exercising free expression, etc. However, it is not all about exercising liberty; there is also a downside to the Internet and social media, which includes online sexual harassment, rape threats, as well as incitement to violence by trolls against individuals, communities, and others. In Pakistan, several cases have been reported where individuals became targets for coordinated online attacks because they expressed their political or religious beliefs. For example, the Pakistan Tehrik-e-Insaf (PTI), a mainstream political party, has a huge online following, both on Twitter and Facebook, and criticising their policies or highlighting the party's wrongdoings usually results in harassment.⁶⁶ Trolls are not limited to political parties, several other pressure groups also exist that have been becoming source of harassment and intimidation in online spaces, ultimately ending up in damaging online campaigns for common causes and expression of dissent. One of the stories of online harassment leading to self-censorship as a result of coordinated attacks is that of Rabia Mehmood.

A well-known human rights activist, Sabeen Mahmud was assassinated on April 24, 2015. She was famous for her progressive ideas and known for facilitating conversations on themes and issues that were not usually spoken about openly. She founded The Second Floor (T2F), a café and community centre of sorts for open dialogue that provided citizens with a platform for bringing about social change through cultural activities, public discourse, and advocacy using progressive ideas and new media.⁶⁷ Saad Aziz, Sabeen's assassin, said in his confession that he had several reasons for killing her. "There was not one particular reason to target her; she was generally promoting liberal, secular values. There were those campaigns of hers, the demonstration outside Lal Masjid [in Islamabad], Pyaar ho jaane do (the 'Let There Be Love' campaign) on Valentine's Day and so on."⁶⁸ Another popular assumption was that she was killed because she hosted a debate on the controversial Balochistan issue. This was considered the only motive for Sabeen's killing until the confession surfaced on 22 May 2015. Balochistan has never been a comfortable topic to discuss in public, as human rights activists have long accused the Pakistani establishment for mishandling the situation, resulting in a separatist movement and creating

66. Venkiteswaran, G. (2016). *Op. cit.*

67. <http://www.t2f.biz/category/about>

68. Ali, N., & Zaman F. (2016, 12 May). Anatomy of a murder. *Herald*. <http://herald.dawn.com/news/1153209>

hatred against state institutions.⁶⁹ Soon after the scheduled talk concluded at T2F and Sabeen headed to home with her mother, she was gunned down by two gunmen on a motorcycle.⁷⁰ As soon as the news spread, Sabeen's followers took to social media in grief to condemn her killing. Progressive and like-minded groups began openly associating with the cause championed by Sabeen, and protesting via Twitter and Facebook. However, there were also other forces busy countering this peaceful online movement of association and assembly, by spreading fear and intimidating the most vocal voices.

ONLINE COORDINATED ATTACKS ON MS. MEHMOOD

Since Sabeen was loved by many, it was a shocking and difficult time for a lot of people. Widespread anger flooded Twitter and Facebook timelines with reactionary tweets from her friends and colleagues. Many were tweeting their grief, anger, disgust and disbelief at Sabeen's killing. One of many such tweets was one written in anger and outrage by human rights defender and journalist Rabia Mehmood , whose work primarily centred around research and writing on critical topics, including the persecution of religious minorities in Pakistan.

"We were all so shattered and angry, we did not know what to do, and each of us turned to whatever outlets we were

used to, to protest and scream, and in my case it was Twitter," Ms. Mehmood said. As a prolific social media user, Ms. Mehmood has a large following on Twitter. In her pain and anguish, she tweeted a rebuke to the country. While nothing happened that night, all hell broke loose over the next couple of days. "As friends of Sabeen, we were preparing for the 'Justice for Sabeen, Justice for Balochistan' protest in Islamabad on Tuesday, 28 April 2015 and motivating people to attend via Twitter and Facebook, when all of a sudden my four-day old tweet started floating around.", Ms. Mehmood recounted. It seemed that Ms. Mehmood tweet had already been marked for future use. "My tweet had been marked by an account, which had around 10,000 followers with high engagement, and the conversation revolved around targeting me", she recalled.

"The very next day, things got out of control. There was another account with a large number of right-wing, conservative followers and high engagement who was leading the barrage, sending multiple tweets simultaneously".

This was perhaps the first indication that there was a coordinated online attack happening in reaction to her tweet. Prior to the heavy engagement accounts tweeting at her, the night when Ms. Mehmood and her friends announced the protest on social media, there were some right wing accounts

69. Ahmed, A. (2015, 9 April). Outcry on social media as LUMS cancels talk featuring Mama Qadeer. Dawn. <http://www.dawn.com/news/1174886>

70. Dawn. (2015, 25 April). Director T2F Sabeen Mahmud shot dead in Karachi. Dawn. <http://www.dawn.com/news/1177956/director-t2f-sabeen-mahmud-shot-dead-in-karachi>

discussing her tweet amongst each other, including some expressing their desire to kill her. However, the response to those tweets was minimal and it did not reach her until the day of the protest. Journalists have allegedly faced torture and death for reporting critically on policies of the country's military and intelligence agencies.

"The threats were multi-dimensional, the day of our protest outside the National Press Club in Islamabad against Sabeen's cold-blooded murder. The threats were direct to the point of rape and death; or indirectly inciting others to commit violence against me".

Worried that the threats might move from the virtual to real life, Ms. Mehmood's friends convinced her to delete that one tweet interpreted as controversial, but it was too late: the attackers had already taken multiple screen shots. Activists tried to block and report the troll accounts to Twitter, but new ones kept popping up. The screen shots had now moved to Facebook, once again to a page that had all the markings of a propaganda site. With over 350,000 likes, the fire continued to spread. Their post regarding her controversial tweet had over a thousand interactions, mostly containing death and rape threats for Ms. Mehmood, along with vile language and commentary. The post was then further shared to another page, "Pakistan Defense" a well-known pro-Army propaganda site. Again, over a thousand interactions threatened her

with abusive language. By that time, two leading English newspapers had also run stories about the protests surrounding Sabeen's murder. Even the comments sections of these stories were hijacked by trolls attacking activists for speaking out in support of Sabeen. *"There were common commentators on all the platforms, many without their faces in display photos, a dead giveaway that this was a co-ordinated attack"*. Eventually, Ms. Mehmood and her friends decided to deactivate most of her social media accounts, though her friends continued to monitor accounts that had led the attack and found certain people celebrating how they forced her go offline. But by and large, the deactivation worked.

ONE MONTH LATER

Ms. Mehmood resumed her social media activities after a month, however, far more cautiously this time. *"Threats of rape and murder have a profound effect, even if they are online"*. She continued to receive threatening messages, but nothing like the barrage a month before.

"I always spoke out on other sensitive matters online including persecution of minorities, sectarian groups and jihadis, and received blunt criticism for that work and a hate message here and there, but never received such threats. Clearly, there are some subject matters that will get you attacked."

Because of the sensitive nature of her

job, Ms. Mehmood receives calls from unknown callers, which is another intimidation tactic. On one occasion, a man threatened her by telling Ms. Mehmood her address and the whereabouts of her family. Again, this is something that is part and parcel with subject matters believed to be sensitive to the state and/or non-state actors.

A year onwards Ms. Mehmood to this day gets tweeted at with reminders of what she tweeted over a year back. The vile commentary directed at her still gets favoured and acknowledged. Consequently, she approaches social media with immense caution

3. QUEER PAKISTAN

BACKGROUND

Pakistan criminalises homosexuality or same sex relationships under the Pakistani Penal Code 1860 (PPC) that is a mixture of British and Islamic laws. Section 377 of the PPC, titled as “Unnatural Offences” declares sexual relations other than against the order of nature as punishable with life sentence.

The PPC states that:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten

years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute carnal intercourse necessary to the offense described in this section.⁷¹

Furthermore, section 141 of PPC restricts assembly of sexual minorities when it states:

An assembly of five or more persons is designated an “unlawful assembly” if the common object of the persons composing that assembly is toresist the execution of any law, or of any legal process, or commit any mischief or criminal trespass, or other offense.⁷²

However, Pakistan, in contravention of UN treaties, namely ICCPR and ICESCR has always opposed and lobbied against the resolutions at the intergovernmental levels where equal rights for sexual minorities are demanded. A resolution on Human rights, sexual orientation and gender identity 27/32 was presented in UNHRC on 2 October 2014 calling on all nation states to ensure equal rights and end to discrimination and violence against people based on their sexual orientation and gender identity:

All human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as

71. *Pakistan Penal Code (Act XLV of 1860)*. <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>
72. *Ibid.*

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷³

The International Gay and Lesbian Human Rights Commission report on Human Rights and Transgender People in Pakistan painted a bleak picture of the rights of LGBT community. The report noted that:

The silences around sexualities, and deeply closeted status of most gay men and lesbians in Pakistan (many of whom live double lives to avoid revealing their sexual orientation) makes it difficult to accurately assess their living conditions and human rights situation. Anecdotal information from Pakistani gay people who have left the country describes fear, secrecy, isolation, suicides, forced marriages, family and community pressure to conform to heterosexual norms.⁷⁴

UNSR Maina Kiai, in his report to UNHRC's 26th session, criticised the legal provisions in national laws on freedom of peaceful assembly that have a disproportionately negative impact on certain groups:

In some circumstances, general laws governing assemblies may have a disproportionate impact on certain groups who exercise or seek to exercise their assembly rights. Those restrictions appear to be neutral on their face, but in practice, they may have a harsh impact on the assembly rights of certain groups most at risk. They may also be drafted to appear neutral, but in practice are applied only against certain groups.

The sociocultural norms and criminalising laws in the country have largely marginalised the sexual minorities in Pakistan and as a result they are pushed to the sidelines. Finding no place in physical spaces, they have had tried to rely on online spaces to assemble and associate peacefully with the help of technology so to work for their common interests. These digital spaces also have limitations and threats associated with them as witnessed in the 2014 case of Muhammad Ejaz who, according to police, developed relations with three homosexual men online, lured them out for dates and murdered them. During investigations, he confessed to the crime and said that "*he wanted to teach gays a lesson.*"⁷⁵

73. UNHRC. (2014). Human rights, sexual orientation and gender identity. A/HRC/27/L.27/Rev.1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/177/32/pdf/G1417732.pdf?OpenElement>

74. IGLHRC. (2008). Human Rights and Transgender People in Pakistan. <http://www.iglhrc.org/sites/default/files/73-1.pdf>

75. AFP. (2014, 28 April). Lahore's serial killer 'wanted to teach gays a lesson'. Express Tribune. <http://tribune.com.pk/story/701322/lahores-serial-killer-wanted-to-teach-gays-a-lesson>

CASE

It is dangerous for sexual minority members to openly associate and assemble in physical spaces in Pakistan as the law criminalises homosexuality and social attitudes present further dangers. In such circumstances, Queer Pakistan (www.queerpk.com and www.humjins.com) was an online initiative for the lesbian, gay, bisexual and transgender community, which was launched by an anonymous group in July 2013. The aim of the collective was to "*act as a virtual support group*"⁷⁶ for the community which has long been pushed to the peripheries of Pakistan's mainstream and largely conservative society.

Working under the tagline of "*know us, do not hate us*", the website looked to highlight the issues of the queer community and raise awareness among community members on issues related to sexual health, diseases, etc. The platform in very short time emerged as an important alternative space for Pakistani LGBTs and for those who support their rights. Perhaps most importantly, the website was an anonymous online space where the LGBT community members could peacefully associate to discuss matters without being ostracised.⁷⁷

The website was first taken down by the PTA in September 2013, and had around 8,000 visitors in short span of time.⁷⁸ The PTA did not give any reason for blocking the website. The anonymous group relaunched the website with new domain name www.humjins.com⁷⁹ which was again shut down on 14 February 2014, Valentine's Day.⁸⁰

Lahore-based gender rights activist Alim Murad opined that members of LGBT community have created many secret groups online to interact with fellow community members, but these groups are only functional as long as they can avoid being noticed by the government.

"The gender and sexual minorities in Pakistan live in a shroud of total anonymity. It is an existence devoid of any kind of rights," Mr Murad said in an interview with Bytes for All. "In a society where a person's right of being (LGBT) is challenged and taken away from them, no other civil liberties for them to enjoy are left either."

Taking up this matter with PTA would mean exposing their identities, and opening themselves up to further vulnerabilities, hate, social isolation, and scorn, and most importantly,

76. Munir, S. (2013, 13 August). Pakistan's gays show cyber pride. Al Jazeera. http://www.aljazeera.com/indepth/features/2013/08/201386115346584582.html#.Ugp8M15R_GM.wordpress

77. Nazish, K. (2013, 21 December). Queer Pakistan Under Attack. The Diplomat. <http://thediplomat.com/2013/12/queer-pakistan-under-attack>

78. Ebrahim, Z. T. (2013, 15 October). Pakistan's gay website ban reflects bigotry. Index on Censorship. <https://www.index-on-censorship.org/2013/10/pakistans-gay-website-ban-reflects-bigotry>

79. "Humjins" is an Urdu expression that means "homosexual".

80. <https://twitter.com/QueerPK/status/434508303758938113>

dangerous attacks. With the intent of not bringing them in limelight, Mr Murad informed B4A that still there are several online LGBT platforms available as additional spaces for assembly and association.

"The sheer amount of information available on these forums, to offer advice and education of the LGBT is astounding," he said.

The religious groups have always reacted harshly to any mention of the LGBT community and its access to fundamental human rights. For instance, riots broke out across the country in 2011 after the US Embassy in Islamabad hosted an event celebrating the LGBT community in the country.⁸¹ The religious groups have also been propagating that LGBT persons are threat to Islam in Pakistan, which has intensified the hatred against LGBT community. Among those rallying against the event was Mohammad Hussain Mehndati, then-city chief of the Jamaat-e-Islami Pakistan.

*"We condemn the American conspiracy to encourage bisexuality in our country," he said. "They have destroyed us physically, imposed the so-called war on terrorism on us, and now they have unleashed cultural terrorism."*⁸²

The very fact is that in Pakistan dif-

ferent aspects of life are being looked through the prism of religion, and open to one's own interpretation makes it difficult for individuals to exercise their civil liberties. The hard interpretation of religion especially undermines the fundamental human rights of already marginalised sections of the society. These circumstances leave a very narrow space for sexual minorities in Pakistan to debate their issues.

Karim Muhammad, another human rights activist based in Islamabad, believed that even within the LGBT community itself, there are some who have managed to assemble around their own sexuality and to a certain degree, also managed to gain some acceptance.

"The transgender and lesbian communities are very closely knit, and they guard their sexuality very well," he noted. "The marginalised are the gays and the bisexuals."

However, despite the long-term marginalisation, some form of secret assembly has been managed among these communities, but not to debate policy matters such as discriminatory laws and their rights.

81. AFP. (2011, 4 July). Protests in Pakistan over US gay rights event. Dawn. <http://www.dawn.com/news/641494/protests-in-pakistan-over-us-gay-rights-event>

82. Ibid.

CURRENT STATUS

The Queer Pakistan website is still offline and its presence on social media platforms such as Facebook⁸³ and Twitter⁸⁴ has been inactive for over a year. The fact remains that although only homosexuality is criminalised under Pakistani laws, any identity other than male and female is deemed illegal, immoral and against religious teachings, and their rights both offline and online continue to be denied. This is in violation of several global standards including UDHR and ICCPR. Pakistan is not only a signatory of ICCPR but has also ratified the document. Moreover, it is a sheer violation of the state's responsibility to promote, protect and fulfil the fundamental rights of its citizens. Advocacy to amend these local laws denying fundamental freedoms, both offline and online, may expose individuals and organisations to unwarranted threats. It is the larger responsibility of the government to recognise its administrative authority in ensuring equal rights to sexual minorities, and also take measures to eliminate hatred against them on the basis of their sexual orientation from the society.

In recently passed cyber crime bill, the government has employed very vague and subjective language such as "obscenity and vulgarity" and "glory of Islam" while imposing restrictions on

online expression in Pakistan. These terms will legitimise the government's arbitrary blocking of accounts and content disseminated by marginalised groups and the marginalised will remain vulnerable.

4. COLLECTIVE OF FREETHINKERS

BACKGROUND

Religion is among most sensitive topics in Pakistan, and particularly issues such as defiling or defamation of Islam, leaving Islam as a religion, or being agnostic may have harsh implications. Groups discussing such issues exist in the country and keep meeting in physical or virtual spaces but very privately. Associating with these collectives openly, holding their meetings and conducting intellectual debates using physical spaces can prove to be fatal by increasing the likelihood of dangers of threats or even murder.

Social media offers such groups space to come together, hold meetings and debate on their common goals and ideas. As such, safety and security of online spaces and digital communications is another important aspect when comes to exercising the right to freedom of association and peaceful assembly. Pakistan, as a conservative, security state⁸⁵ employs all types of practices including mass digital surveillance to track and filter online activities of citizens.

83. https://web.facebook.com/Humjins/?_rdr

84. <https://twitter.com/QueerPK>

85. Express Tribune. (2012, 22 March). *Supremacy of Parliament: Civil-military imbalance has made Pakistan a security state, says Babar*. Express Tribune. <http://tribune.com.pk/story/353291/supremacy-of-parliament-civil-military-imbalance-has-made-pakistan-a-security-state-says-babar>



In its report *Tipping the Scales: Security and Surveillance in Pakistan* Privacy International said that “*Pakistan has developed advanced communications infrastructure...and have moved towards the mass capture and storage of communications of ordinary citizens.*⁸⁶ In the absence of effective redressal mechanisms, such practices make the marginalised groups more vulnerable. Digital surveillance is no more a hidden practice carried out by the law enforcement agencies in Pakistan. On 4 June 4 2015, two of Pakistan’s intelligence agencies in a *suo motu* (on its own motion) hearing disclosed that they have been tapping thousands of phones every month.⁸⁷ On the other hand, certain independent conservative individuals or groups are also a looming threat to such online associations and their online gatherings.

From the onset of its existence, the online presence of a non-believers group in Pakistan called “Collective of Freethinkers”⁸⁸ has constantly been under pressure of conservative mindset and online attacks. The group’s website www.c-o-f.com⁸⁹ was routinely attacked by hackers in the past, but somehow it managed to stay online until 2010. Finally, the website was

taken down by the PTA in 2010, while their presence on social media platforms such as Facebook and Twitter is very limited.⁹⁰ COF’s existence and beliefs run contrary to the ideology of Pakistan, which according to the dominating narrative and the “*Objectives Resolution*” was borne out of a need for the Muslims of the sub-continent to have a piece of land of their own where they could lead their lives in accordance to the Sharia practices.

The “*Objectives Resolution*”⁹¹ was a resolution of Pakistan’s Constituent Assembly, passed on 12 March 1949, professing that Pakistan’s future constitution will be based on the ideology and democratic faith of Islam. This narrative sets the tone for the inevitable Islamisation of the country. Over 95% of Pakistan’s population practices the Islamic faith. After the era of General Zia-ul-Haq when the rise of political Islam and its influence in the country were finally cemented, there has been an ever-shrinking space for religious minorities in the country. However, the idea of “irreligious” is beyond the scope of any laws in the country.

Section 15 of the Pakistan Penal Code is titled “Of offenses relating to Religion”, and while section 295 provides

86. Privacy International. (2015). *Tipping the scales: Security & surveillance in Pakistan*. https://www.privacyinternational.org/sites/default/files/PAKISTAN REPORT HIGH RES 20150721_0.pdf

87. Dawn. (2015, June 04). Nearly 7,000 phones tapped in May, ISI tells SC. Retrieved June 27, 2016, from <http://www.dawn.com/news/1186013>

88. “Collective of Freethinkers” is a hypothetical name being used to hide the group’s actual identity for security reasons.

89. Hypothetical domain name is used again to protect the identity of the collective for security reasons.

90. Facebook Page, Collective of Freethinkers. Retrieved, April 18, 2016, from <https://www.facebook.com/>

91. The Objectives Resolution. <http://www.pakistani.org/pakistan/constitution/annex.html>

protection to worship places of all religions,⁹² it has traditionally been used exclusively by the religious extremists in the country. Other provisions of this section focus entirely on Islam, and at the very least, are discriminatory, as they do not accord the same protection to other faiths in the country. However, section 295-C of PPC is the most vague and dangerous among other laws pertaining to religion.

It reads:

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 the Holy Prophet Muhammad (PBUH) shall be punished with death or imprisonment for life, and shall also be liable to fine.⁹³

Importantly, all that is needed for a blasphemy charge is an allegation.⁹⁴ There is ample historic evidence of how mere allegations of blasphemy have led to imprisonment and even death.⁹⁵

CASE

Collective of Freethinkers launched their website in 2007 and Facebook page in 2008. Currently, it is being followed by over 7,000 people on

Facebook, while on Twitter it has over 3,800 followers. As an arbitrary practice, the PTA shuts down anything that it deems contradicting to Islamic ideology in Pakistani cyberspace (for example, see fate of www.c-o-f.com). Before the group's website was taken down by the PTA, it was also targeted by a group of hackers known as the Pakistan Cyber Army. However, some technologists within COF ranks saved the website from being hacked.

"From the moment we came online, the threats started pouring in," said the founder of COF, Jamal Yusuf. "From the moment we came online, the threats started pouring in."

In his case, these also included death threats received via email twice or thrice a week, whereas two members of the group fall into real trouble offline for their views.

"Both of them were charged under blasphemy laws," revealed Mr Yusuf. These incidents led other members of the COF to a high degree of insecurity and self-censorship. "We obviously cannot meet and express our agnostic views and thoughts openly in physical spaces, which was one of the reasons why the website was essential."

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

93. Ibid.

94. International Humanist and Ethical Union. (2015). *The Freedom of Thought Report 2015*. <http://freethoughtreport.com/download-the-report>

95. Dawn. (2012, 18 August). *Timeline: Accused under the Blasphemy Law*. Dawn. <http://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law>

96. Jamal Yusuf is a pseudonym used to hide the identity of the real person. Anonymity was requested to protect his security.

Still, the fear of being infiltrated and ratted upon is so real, the group has had to resort to an elaborate vetting process for members.

"Either an existing member vouches for someone, or we conduct an interview."

There is also the matter of recognition. The state recognises Islam, Christianity, Hinduism, Sikhism and most other religions. These options are available on all legal documents, including but not limited to passports, national identity cards, driving licenses, etc. There is obviously no "Atheist" check-box.

"Most of us have this dual personality, where for the majority, we continue to be religious within the faith we inherited, and the other is what we really are," said Mr Yusuf.

However, the group's single largest fear is dominant religious extremism finding out who they are and where they live. They have a justification to silence such associations. In a country where religion is officially sanc-

tioned and protected, the concepts of atheism, agnosticism and apostasy can be interpreted as derogatory to concepts of Islam, and existence of blasphemy laws makes the situation more vulnerable.

CURRENT STATUS

While the website of the COF is still offline, their Facebook and Twitter accounts are active with few interactions. On their Facebook page, a significant amount of aggressive retorts to the atheist views can also be read. On a positive note though, one of the benefits of anonymous online identities is that members of this group can at the very least defend their beliefs on the internet.

As mentioned by Mr Yusuf during the interview, the group does meet, but it is kept very private and closed, as the fear of being found out is very real. However, their ability to assemble online and take part in intellectual debates around their faith is linked to their anonymity.

86. Privacy International. (2015). *Tipping the scales: Security & surveillance in Pakistan*. https://www.privacyinternational.org/sites/default/files/PAKISTAN%20REPORT%20HIGH%20RES%2020150721_0.pdf

87. Dawn. (2015, June 04). Nearly 7,000 phones tapped in May, ISI tells SC. Retrieved June 27, 2016, from <http://www.dawn.com/news/1186013>

88. "Collective of Freethinkers" is a hypothetical name being used to hide the group's actual identity for security reasons.

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90. Facebook Page. Collective of Freethinkers. Retrieved, April 18, 2016, from <https://www.facebook.com/>

91. The Objectives Resolution. <http://www.pakistani.org/pakistan/constitution/annex.html>

CHAPTER VI

ANALYSIS AND CONCLUSION

Pakistan is, by and large, a conservative Islamic republic. While its legal system is a mash-up of colonial leftovers mixed with Islamic jurisprudence, the public remains traditionalist in thought. This leads to serious legal, ethical and religious impediments to the freedom of assembly and of association, both offline and online, as highlighted in different case studies.

Reclaim Your Mosques became one of the first documented examples of balancing religious sentiment online and offline in a positive way. The campaign organiser did face some backlash, but overall, the movement helped provide a counter-narrative to terror attacks and their connection with religion to a large extent. The online assembly was successfully translated into an offline gathering with a reasonable turnout. Although the campaign did not yield many practical outcomes, such as the banning or arrest of the controversial cleric, it was successful in uniting citizens and creating a space where activists countering extremism in the country could gather.

While freedoms of association and of assembly are universal human rights, protected both internationally and domestically, the protection of these

fundamental rights is not so simple, as evidenced by many scenarios. There are numerous examples of how these rights are not available to many sections of Pakistani society, specifically to those marginalised by religious or nationalist dogma, or non-conforming sexual orientations or identities. Mapping trends in the study reveals that various measures are required at different levels, including the discouragement of biases towards the marginalised and more vulnerable segments of society. These measures are also consistent with the Sustainable Development Goals (SDGs), and include the promotion and empowerment of socio-economic and political inclusion of all without any sexual or religious prejudices (goal 10.2); assurance of equal access to information through online spaces; and, digital literacy (goal 16.10). Another important measure which emerged out of the study is true and just interpretation of the constitution and reflection in the subsequent laws such as Pakistani Penal Code, 1860 (goal 16.3).

As is evident from the case studies, gaps exist in the legal framework when it comes to implementation and interpretation of existing freedoms of assembly and of association at the



national level. Articles 16 and 17 of the Constitution of Pakistan deal with this set of rights, and they are not discriminatory towards religious or sexual minorities or other marginalised groups. However, the penal code provides the basis of inequity with religious and sexual minorities and restricts the exercise of freedom of peaceful assembly and of association online and offline. For instance, blasphemy laws in the case of Collective of Freethinkers, and laws related to unnatural offences as discussed in the case of Queer Pakistan both point to lacunas obstructing free exercise of right to freedom of assembly and of association.

Both laws have strong religious foundations, and criminalise activities of non-religious and sexual minorities, such as holding meetings and debating issues in their collectives. Besides non-religious groups, blasphemy laws also provide the basis for religious hatred against minority faiths such as Ahmadis, Hindus and Christians.

The role of corporate intermediaries such as Facebook, Twitter, Google, blogging platforms, telecommunication companies and ISPs vis-à-vis rights to freedom of assembly and of association is important point of discussion. It should be noted that the social media presence of Queer Pakistan and Collective of Freethinkers is still intact, despite the national regulator blocking

of their websites. This is one positive indicator in terms of availability of alternative spaces which also served as venting spaces in these cases.

However, mobile companies owned by foreign investors are helpless in cases of network shutdowns. It is understandable that mobile companies operate under local licenses and are bound to follow the orders of the regulator, however, under the UN Guiding Principles on Business and Human Rights, they are required to respect global human rights laws and norms. Compliance with the regulator's arbitrary orders would not be a proportionate response to the situation, as such actions deny a set of human rights of citizens at large, including the rights to freedom of assembly and of association.

Another factor that emerged very strongly from the cases discussed and the literature studied was the need for the capacity-building of people in general and marginalised groups in particular, on the safe use of online spaces and social media. Particularly, in situations such as the one Ms Mehmood faced on social media, becoming a victim of coordinated online attacks resulting in psychosocial trauma. The attacks on Ms Mehmood (after Sabeen Mahmud's murder) were a clear backlash to the protests against Ms Mahmud's killing that were gaining momentum,

highlighting that on certain subject matters, large-scale coordinated attacks can take place online as well. Although the threats subsided after the deactivation of her social media accounts, the danger was very real and could be avoided from the very beginning if secure digital practices were employed.



Online gatherings need protection and safety measures to ensure that marginalised communities get to exercise their rights without the fear of being victimised in physical spaces, as happened in the case of the killings of gay men. To meet this requirement, a multi-stakeholder approach would be desired. Governments and education departments at the federal as well as provincial levels can introduce digital literacy chapters in the curriculum of high schools and colleges, which will help in building citizens' capacity on the safe use of online spaces. But responsibility does not lie solely with the government and private sector, but with civil society and non-governmental organisations who also have an important role to play in curriculum formulation and training marginalised groups.

ACCESS TO TECHNOLOGY HELPS EXERCISE OF FOAA

Similarly, uniform and easy access to technology and online spaces is very important for an inclusive society and the effective enjoyment of the online rights to freedom of peaceful assembly and of association. Internet penetration in Pakistan is around 29.32 million people⁹⁷ in a population of 190 million (approximately 15.4%) with a big urban-rural and gender-based digital divide. For the development of un-served and under-served areas, the government established the Universal Service Fund in 2006 with the help of telecommunication operators, who contribute 1.5% of their adjusted revenues to this fund every year with no government funding involved. In this regard, Section 33(B)(2) of Pakistan Telecommunication (Re-organization) Act, 1996 states: The USF shall be utilized exclusively for providing access to telecommunication services to people in the un-served, under-served, rural and remote areas and other expenditure to be made and incurred by the Federal Government in managing USF.

However, the government in 2013 had transferred over PKR 50 billion (USD 478 million) USF funds to the Federal Consolidated Fund so to pay off power sector's circular debts.⁹⁸ Such misuse of funds meant exclusively to expand telecommunication access for far-flung areas and cater to un-served populations is not only mismanagement but

also contrary to the goals of the World Summit on the Information Society's Plan of Action, specifically B(6).⁹⁹ This unmasks the government's intentions, which is to willingly deny access of telecommunication and broadband services to the remaining 85% of the country's population. As pointed out earlier, increased access to modern telecommunication tools enables people to exercise their right to freedom of assembly and of association. So in these terms, it seems the government does not want that people should enjoy this right in online spaces. Adding insult to injury, the state employs every possible tactic to discontinue access to telecommunication services where they are available to people in major cities, where it fears that people may use them for organising peaceful protests. Pakistan has been witnessing network disconnections in this context since 2005¹⁰⁰ and the government is inflexible in giving up its "*kill switch*" practices.

Undermining these basic rights and freedoms by continually shutting down websites, news portals and voices, is an impediment to a democratic, tolerant and diverse society and culture. Hence, it is imperative for the state and its institutions to take positive legislative and administrative measures in order to ensure that any community can exercise the rights to peaceful assembly and of association online and offline.

97. Haque, J., & Chaudhry, H. (2016). *Pakistan's Internet Landscape 2016*. Retrieved August 29, 2016, from https://content.bytesforall.pk/sites/default/files/Pakistan_Internet_Landscape_2016_Web.pdf

98. Attaa, A. (2013, 28 June). Over Rs. 50 Billion of Universal Service Fund Transferred to Government Kitty. Propakistani. <https://propakistani.pk/2013/06/28/breaking-over-rs-50-billion-of-universal-service-fund-transferred-to-government-kitty>

99. WSIS Plan of Action. <http://www.itu.int/wsis/docs/geneva/official/poa.html>

100. Wagner, B., & Ashraf, A. (2015). Op. cit.

CHAPTER VII

RECOMMENDATIONS

In view of the findings of this report, Bytes for All would like to make the following recommendations for the advancement of FoAA in online and offline spaces.

Government of Pakistan

- Comprehensive administrative measures must be implemented immediately to ensure the ability of citizens' to effectively exercise their fundamental rights, as highlighted in Chapter 1, especially, in consonance with Articles 16 and 17 of the Constitution of Pakistan and the state's commitments under international human rights law.
- The legislative framework in place and the processes involved should be reviewed by parliament, in order to bring them in accordance with the fundamental rights guaranteed by the Constitution of Pakistan, specifically referring to the Article 8(1) & (2), and the state's commitments under international human rights law.
- The government and its functionaries should stop intercepting, collecting and surveilling the private digital lives of all citizens, in

particular marginalised groups, civil society organisations and human rights defenders, as these practices are inconsistent with the global human rights regime and democratic norms.

- In cognisance of its obligations towards global human rights laws, the government should abide-by international commitments under ICCPR, particularly Articles 17, 19, 21 and 22 and UN resolutions 20/8, 21/16, 24/5 and 32/13 to facilitate free exercise of the rights to freedom of assembly and of association and associated rights with equity in online spaces, regardless of citizens' faiths, sex and ethnicities.
- Materialising the state's commitment under the SDGs,¹⁰¹ specifically in accordance with the SDGs 10.2¹⁰², 16.3¹⁰³ and 16.10,¹⁰⁴ the government must promote social, economic inclusion of all citizens (without discrimination), ensure rule of law, equal access to justice, citizenry's access to information and protect populace's fundamental freedoms.
- The government must ensure the enhancement of digital infra-

101. <http://www.undp.org/content/undp/en/home/sdgoverview/post-2015-development-agenda.html>

102. By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

103. Promote the rule of law at the national and international levels and ensure equal access to justice for all.

104. Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

structure in the country under the Universal Service Fund, in order to provide at least a basic and initial connection to the public telecommunications network, specifically in the rural and low-income urban areas including remote villages. As per good development practices, it should also provide “white spaces” to CSOs for the purposes of communications and sustainable development to enhance community informatics and community media infrastructures.

- Give a positive response to country visit requests (2011 & 2013)¹⁰⁵ of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Moreover, consider issuing a standing invitation to UN Special Procedures, demonstrating Pakistan’s commitment for the promotion and protection of human rights.

Federal Ministry of Human Rights (under its Human Rights Action Plan 2016)

- The ministry must include all fundamental rights guaranteed in the Constitution of Pakistan, especially freedom of assembly and of association, while developing the National Policy Framework for the Promotion and Protection of Human Rights, under thematic area I of Ministry’s HR Action Plan.¹⁰⁶

- It should review all existing and proposed legislation that does not conform with the standards of fundamental human rights, especially those inconsistent with the principles of freedom of assembly and of association. Moreover, it should propose amendments to the relevant state forums and institutions.
- It must ensure the implementation of International Covenant on Civil and Political Rights (ICCPR) along with the other international instruments and commitments, especially in the context of freedom of association and of assembly, under the thematic area IV (International/UN Treaty Implementation) of Ministry’s HR Action Plan.

National Commission for Human Rights

- The Commission must monitor and investigate matters breaching citizens’ rights to freely associate and peacefully assemble, both in online and offline spaces, even if *suo motu* (on its own motion) action is required to make sure that justice is carried out. Usually, the communities or individuals whose rights are compromised are already marginalised, which hinders their access to the human rights institutions or making complaint/s on their own.

105. <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx>

106. Ministry of Human Rights. (2016). Action Plan for Human Rights. <http://www.mohr.gov.pk/new/userfiles/Action%20Plan%20Booklayout.pdf>

Federal Ministry of Information and Technology

- In accordance with Ministry's Mission,¹⁰⁷ the practice of using network shutdowns must be discontinued. This not only stalls public services, productivity and affects socio-economic growth, but is also an impediment to the exercise of fundamental rights, including freedom of assembly and of association.
- The ministry must implement the state's commitment under the points 5.b¹⁰⁸ and 9.c¹⁰⁹ of the SDGs to develop programmes (in public-private partnership) to enhance digital literacy among the general populace. Enhancing the digital infrastructure would also require digital literacy, without which all improvements could go in vain.
- Digital literacy in general and digital security in particular should be enhanced among the masses through capacity building and awareness-raising sessions focusing on specific groups within the community, such as working women, the youth and particularly young girls in universities as well as marginalised communities in different geographic regions all over the country.
- Public-private partnership should be enhanced, in order to better reach out to marginalised communities and enhancing sustainability by sharing financial resources, knowledge and skills.
- All organisations should monitor and explore the online situation of freedoms of assembly and of association in Pakistan with a particular focus on marginalised groups, such as religious and sexual minorities.

Governmental and non-governmental organisations:

- Arbitrary practices including blocking websites and/or censoring online content by the Pakistan Telecommunication Authority should be discouraged, and a level playing field should be provided to all citizens.

107. 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 (<http://www.moit.gov.pk>).

108. Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.

109. Significantly increase access to information and communications technology and strive to provide universal and affordable access to the internet in least developed countries by 2020.

APPENDIX I

QUESTIONNAIRE

General questions

- Do you know about rights to freedom of peaceful assembly and of association?
- What is the state of freedom of peaceful assembly and association in Pakistan, both in online and offline spaces?
- How marginalised communities or special groups in Pakistan including religious or sexual minorities, journalists and civil society exercise their rights to peacefully assemble and to associate in online spaces?
- What restrictions they (these groups) face in terms of laws while exercising their rights to assemble peacefully and of association?
- What social pressures they confront in exercise of these rights and how they deal with them?
- Did the blocking authority informed about the reason of blocking their website?
- Do you feel this action was justified?
- What are the threats sexual minorities have been facing in Pakistan?

For case study on sexual minority group

- How sexual minority website platform “Queer Pakistan” was established and what were the motives behind?
- Why this platform was blocked and who blocked it?

For case study on religious minority group

- How they started with the idea of launching website www.c-o-f.com? And what were motives behind?
- Why this platform was blocked and who blocked it?
- Did the blocking authority informed about the reason of blocking their website?
- Do you feel this action was justified?
- What are the threats they have been facing in Pakistan?

For case study “Coordinated Online Attacks”

- What did really happen when you tweeted in reaction of Sabeen Mahmud’s murder?
- What was the three-word tweet? And what reaction you received?
- What nature of threats you received and what platforms were involved?
- Describe the nature of trauma you passed through?
- What measures did you take in reaction to what was happening?
- What do you think who were involved in harassment and coordinated online attack?
- Did you take any digital and physical security measures?
- Do you think the response of online campaign was appropriate enough when you protested offline? How many people joined your protests in Islamabad?
- Did you succeed in your objectives? Please elaborate.

For case study “Reclaim Your Mosques”

- What was the cause behind your campaign and how did you mobilise people online?
- Why digital spaces are important for campaigning for a cause?
- What were the results of your online campaign?

