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Rethinking the Prevention of Electronic Crimes Act

*How cybercrime laws are
weaponised against women*

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Rethinking the Prevention of Electronic Crimes Act

How cybercrime laws are weaponised against women



Human Rights Commission of Pakistan

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Introduction

The Prevention of Electronic Crimes Act (PECA) 2016 completed five years in August 2021. The debates on the draft bill spanned a year and a half before it was enacted as law. They took place because there was sustained pressure outside and inside parliament as a result of pushback by rights and industry groups, as well as the opposition, and not because the Pakistan Muslim League - Nawaz (PML-N) government intended for it to be so. Shrouded in secrecy and prepared behind closed doors, initially the copies of the bill were not even shared with members of the opposition, let alone the public. It was bulldozed through the National Assembly due to the PML-N and its allies' two thirds majority. However, even in the Senate, where the opposition was in majority, cosmetic amendments were made while glaring issues in the draft law were left unaddressed (Khan, 2016).

Rights groups and industry associations repeatedly pointed to the vague language of the law, room for abuse due to over-criminalisation through creation of speech offences, excessive powers given to the Federal Investigation Agency (FIA), and the establishment of a censorship regime under Section 37 by giving the Pakistan Telecommunication Authority (PTA) legislative and judicial powers. All this, it was pointed out, would stifle free speech—particularly political expression—and breach privacy.

The then state minister for information technology tried to deflect all criticism of the law, by labelling it as a 'foreign-funded' NGO agenda to sabotage a much needed law (Ghumman, 2016). She pointed out that, in the absence of such a law, women were committing suicide due to online harassment.

Just months after PECA was enacted, news emerged of the suicide of a female student at University of Sindh, Jamshoro. The final-year student was allegedly blackmailed on the basis of her photographs (Khan, 2017). In 2020, another woman committed suicide, reportedly due to the FIA's neglect.¹

There is news of the FIA registering cases or arresting alleged harassers and blackmailers, but little is known as to what happens after the cases are registered. There is little follow up of those who were assured protection of the law but face further harassment once a complaint is filed, the ensuing delays, and the additional harassment of female complainants due to the conduct of FIA officials (Abbasi, 2021).

The FIA's action against dissidents is now well documented through various court challenges—many of these facilitated by the Pakistan Bar Council's Journalist Defence Committee—recorded in proceedings of the human rights committees of both the upper and lower houses of parliament, communications

¹ Nighat Dad, 27 September 2020, <https://twitter.com/nighatdad/status/1310163110033006592>

to the United Nations and in various news reports and public disclosures made by targeted individuals. But what is not known or lesser known is how the same instrument and provision of law is being used against women alleging sexual harassment or violence, or those speaking up in support of the victims.

The stated aim of PECA 2016 was twofold: a security state narrative drawing cover from the National Action Plan, its purported agenda was to curb terrorism and hate speech online; the second intent was to save women from harassment. It has failed to achieve both. Instead, the law has been used to persecute dissidents and enable censorship, and further entrench a patriarchal system to silence women. This research aims to focus mainly on the second part of the law's intent.

Through a case study approach, this study seeks to document how the law measures up against its stated aim of protecting women. It documents how, instead, it has been used to silence disclosures about sexual harassment and violence. The scope of the study is confined to the victims' side of the story. It captures their experience as complainants and defendants, the motions they were put through and the violation of their rights as a result. This is assessed by recording litigants' experience with the FIA. Interviews were conducted with complainants who sought recourse against harassment under the law; women and men summoned/charged by the FIA for making/supporting sexual harassment violence disclosures online, and lawyers who represented these individuals. The interviews were supplemented by available court records and public information such as news reports.

The examples cited in this document are in no way exhaustive but illustrative of the bigger malaise. Many incidents of a similar nature remain undocumented for various reasons. Some individuals do not have the ability to reach out, their cases do not receive the attention or coverage as they are not well-known, or they do not speak up due to their fear of further repercussions.

Prosecuting Sexual Harassment and Gender-Based Threats Under PECA

One of the first cases registered under PECA 2016 in Karachi was filed by a female visiting lecturer at both private and public universities. Her morphed images were posted on the university's social media pages through an anonymous Facebook account.² She lodged multiple complaints with the FIA. It was after her third complaint that the FIA took action. An FIR was registered in October 2016 under Section 21—one of the three cognizable sections under PECA 2016. Four years and eight months, and 141 hearings later, the order was announced in June 2021 and the accused—an assistant professor at the University of Karachi's Psychology Department—was convicted (Sahoutara, 2021). But this is no achievement of the FIA; the case reached its conclusive stage in spite of the FIA's constant attempts to sabotage her case, which were challenged by the complainant every step of the way with the help of her private counsels who extended pro bono help.

From the time she lodged the first complaint with the FIA until the verdict was announced, she had to follow up on the progress of her case every step of the way. Once the accused was traced and arrested by the FIA and the case was ready to proceed before the court, the FIA became unresponsive towards the complainant. Even though Section 21 is a cognizable offence in which the state is the party, and therefore the FIA is responsible for investigation and state prosecutor has to lead the prosecution, the complainant had to rely on pro bono legal assistance throughout, as she was kept in the dark about her case and received no guidance from the FIA.

Despite repeated inquiries, the FIA would not inform the complainant about court hearings. She had to check case diaries, wait in court from 8:30 am to 2 pm, and eventually leave after her case was adjourned on account of the investigation officer (IO) and prosecutor's absence. Attending hearings turned out to be an exercise in futility as the court before which the FIA proceeded with her case did not have the jurisdiction to hear it since it was not the designated PECA court (only those judicial officers and courts that are notified as PECA courts have the jurisdiction to hear and try PECA cases). Repeated requests for a copy of her case filed by her counsels were ignored by the FIA. It was around this time, between January and February 2017, while the accused's bail application was pending before the Sindh High Court, that the police file went "missing." When asked to produce a copy, the FIA said they had no copy of the file.

Seven months after the registration of the FIR and multiple hearings before the court without jurisdiction, in May 2017, the case was transferred to the

² 947/2017 Sessions Court, East, Karachi, *The State vs. Farhan Kamrani*.

designated PECA court, by which time the police file was officially “missing.” When the complainant filed a complaint with the FIA about the missing file, she was verbally told by the then assistant director that in the absence of the seizure memo, the conviction of the accused would not be possible. From October 2017 to January 2019, the complainant filed numerous complaints applications before various forums, seeking the recovery of the missing file and submission of the forensic report, but to no avail.

Box 1: Section 21 of the Prevention of Electronic Crimes Act 2016

Offences against modesty of a natural person and minor.

(1) Whoever intentionally and publicly exhibits or displays or transmits any information which,

(a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or

(b) includes a photograph or a video of a natural person in sexually explicit conduct; or

(c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person; or

(d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

(2) Whoever commits an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:---

Provided that in case of a person who has been previously convicted of an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

Despite the missing police file, the examination-in-chief of the complainant was conducted, that too most irregularly, in two parts, first on 7 June 2018 and then seven months later, in January 2019. She was cross-examined a month later, in February 2019. At no point was she prepared for her examination-in-chief or cross examination despite repeated requests by her to the FIA. On the day of her examination-in-chief, she waited all morning in court; the hearing commenced in the afternoon once the accused’s lawyer showed up. Even though the statement was recorded in the chamber, the environment in which the statement was recorded left her shaken. She was surrounded by five men in the room: the judge, reader, accused’s lawyer, the accused, and the prosecutor. She was heckled by the accused’s lawyer and interrupted mid-sentence several times by the reader

so he could finish typing the sentence. During this time, he checked spellings after which he told her to continue exactly from the point she had left off. When she did not resume exactly from the last word she had uttered, she was told off and made to start over. There were times she was in tears and cried through her statement, only to be reprimanded later for doing so.

In January 2019, her remaining statement was recorded and part of her cross examination conducted. Though the time for the hearing was fixed for 2 pm, it started at 4 pm and ended past 6 pm. According to the complainant, the accused's lawyer's line of questioning was humiliating. He asked her to describe, in exact detail, the nature of her morphed images. She was asked to specify exactly whether these were completely nude images or whether she was attired and if attired, then in what. She was forced to respond with 'if wearing undergarments is considered wearing clothes then that's what was in the pictures.' The accused meanwhile sat grinning and smirking the entire time. The experience while recording her statement and the manner in which the cross was conducted was so humiliating that mid-trial, the complainant sought a female counsel to represent her. Despite various applications made by the complainant and her counsel, copies of the court file were not provided. It took months to finally obtain it when the judge was approached directly as the staff would refuse on one pretext or another.

Once the examination-in-chief and the complainant's cross were completed, it was the FIA's turn to present the evidence and produce its prosecution witnesses. But the file was still missing. After 35 applications before various forums, finally, in April 2019, the complainant filed a petition before the Sindh High Court³ against the FIA for negligence leading to the loss of evidence file in her case. It was not until September 2019, on the seventh hearing since the case was first heard in May 2019, that the IO informed the Court that the entire police file had been recovered and that the FIA was ready to proceed with the trial. A copy of the police file was provided to the high court. The file contained copies of the seizure memo and forensic reports of the seized electronic devices. No explanation for the sudden recovery of a file that had been allegedly missing for several months was offered. However, the next day when the case was called before the sessions court, the FIA failed to produce the police file before the trial court.

Meanwhile, the accused filed a bail application⁴ before the Sindh High Court. The bail application was not pressed in exchange for directions to the trial court to conclude the trial within a period of two months. The Sindh High Court, through its order dated 4 July 2019, directed the sessions court to conclude trial

³ CP 2332 of 2019, Sindh High Court.

⁴ Cr. Bail No. 478 of 2019, Sindh High Court, *Farhan Kamrani vs. The State*.

within two months and if this was not done, the accused could file a bail application before the sessions court. Despite being aware of the high court's directions, the FIA chose to produce a witness whose name was not even on the witness list provided to the accused and his counsel, or submitted to the court. There were several adjournments due to the non-appearance of this witness until the FIA ultimately filed an application to have him included in the list of prosecution witnesses. The application was accepted by the court in early September 2019. The second prosecution witness was produced and examined on 26 September 2019—the tenth hearing after the July 2019 bail order directing the trial to be concluded in two months.

By this time, the two months since the high court's July order directing the trial be concluded had passed, but the trial was nowhere near completion. This provided fresh grounds for bail. On 27 September 2019, bail was granted on the grounds that the trial was delayed and the then accused had already completed the statutory period (duration of punishment under the offence he was charged with). Three days later, the Sindh High Court disposed of the complainant's petition seeking the recovery of the missing evidence file. Though the complainant had requested an inquiry be initiated into the mishandling of evidence by FIA, this prayer in her petition was not granted, nor was any explanation sought from the FIA for why it had delayed the trial for many months due to the "loss" of evidence.

For a second time, the high court ordered the trial to be concluded within two months. But once again, its directions went unheeded. The FIA failed to proceed with the trial.

In January 2020, the complainant filed an application before the Sindh High Court.⁵ The Court called for a compliance report of the September 2019 order from the Sessions Court. The Sessions Judge wrote back stating the matter was adjourned without progress on every date due to the non-production of prosecution witnesses and the police file by the prosecution; that the delay was on the part of the prosecution and not the Court. The high court then issued a notice to the FIA to appear on the next date of hearing on 27 February 2020. However, before the next date of hearing, the trial court submitted a report saying that witnesses and evidence had been produced in compliance with the high court's order. In light of this report, the high court disposed of the complainant's application with the direction that in case of further delays she could file another application.

As before, there were delays, which led the complainant to file yet another application in October 2020. The high court once again ordered a report from the trial court. In April 2021, the high court disposed of the application noting

⁵ Section 151 of the Code of Criminal Procedure in CP. 2332 of 2019, Sindh High Court.

that the hearing of the final arguments had “lingered on from months on end.” For a third time, the high court directed the sessions court to complete the arguments and deliver a judgment within two months. As the two-month mark loomed, final arguments by the FIA were still not complete.

The FIR in this case was registered in October 2016. Copies were supplied to the accused on 3 August 2017, and the charge was framed on 10 August 2017. The examination-in-chief of the complainant was completed on 10 January 2019 while her cross-examination was completed on 7 February 2019. After four years and eight months since the registration of the FIR and over two years since the complainant’s cross examination was completed in February 2019, the case was finally concluded in June 2021, after being kept for final arguments for several hearings.⁶

The 141 hearings only account for those before the trial court since the transfer of the case to the sessions court. This number does not include the number of hearings between October 2016 and May 2017 before the judicial magistrate where the FIA ran the case though the court had no jurisdiction. It also does not include the various bail hearings over this period. Nor does it include the number of hearings the complainant attended after filing a petition before the Sindh High Court against the FIA for loss of evidence and its recovery, or the three applications after it.

This number also does not include the many applications filed by the complainant prior to approaching the HC, during which time she approached various forums regarding the loss of evidence, delay in trial and accountability of the FIA. These included the FIA’s Karachi and Islamabad offices, ombudsperson for harassment, Jail superintendent, MIT at the Sindh High Court, National Commission for Human Rights and the National Commission on the Status of Women. Many of these resulted in additional hearings or in person follow ups. There were times the complainant attended three hearings a week—one for trial, another for bail and the third in her petition seeking the recovery of the missing file.

Two judges changed from the time the case was transferred to the sessions court. Four different IOs were assigned to the case over time since the FIR was registered. Each time an IO was changed, the complainant was asked to resubmit evidence, incurring printing and copying costs over and over again, requiring additional time investment for something the FIA should have done. Serving reminders a day before the case and on the day, repeatedly calling the prosecutor and IOs to inquire about their whereabouts, while waiting in court herself so the case could proceed, became standard practice. Despite complaints to higher officers within the FIA and the issuance of bailable and non-bailable warrants

⁶ 947/2017 Sessions Court, East, Karachi, *The State vs. Farhan Kamrani*.

against prosecution witnesses by the court, the FIA officials failed to show up to complete evidence for long periods, delaying the trial.

Since the registration of the FIR and arrest of the perpetrator, the complainant faced constant harassment. At the time of arrest, the accused's brother called her from the FIA cybercrime circle, asking her to forgive his brother—the FIA provided him the complainant's number, breaching confidentiality. His mother and sister visited the complainant's house, asking her to forgive their son/brother. Unknown men visited the house of the complainant while she and her husband were away at work, showed a concealed weapon to their children who received them at the gate and told them they were there in relation to his mother's court case. The accused made a threatening advance towards the complainant on court premises right outside the courtroom after which she wrote to the jail authorities. Campaigns in support of the convict and against the complainant continue to run online to this day, despite complaints to the FIA.

During the pendency of this case, the complainant lost teaching jobs, first as a result of her morphed images posted to the university's official social media page, then due to the case itself. Over the course of this case, she was subjected to rumour-mongering at her workplace and defamatory campaigns online. On several occasions, she was asked to forgive the accused and give up the case, by the convict's family, by her own colleagues, but also FIA officers. Each time she pressed on about the missing file and delays, the FIA became more and more uncooperative and hostile towards her.

In her petition before the high court, she had stated she feared further hostility from the FIA and even adverse action in response to her petition. She was proven right. Her name was wrongly linked to another case of alleged harassment against a professor at her university in a report published by an evening daily. The source of this news was an FIA official. An impression was created that she had instigated female students to "defame" the professor in question. This news was then circulated in various university groups, leading to more gossip and enmity at her workplace, making her out to be a 'troublemaker,' even though she had no connection to the case at all. She reported this to the FIA too, but to no avail.

She filed a complaint with the FIA regarding defamatory campaigns against her in May 2019. Despite repeated follow ups with the FIA about this complaint and other online attacks against her during the course of the case, her complaint was not taken up. After one year and eight months, in January 2021, she received a notice for attendance asking her to appear before the IO assigned to her complaint and answer questions. The notice also asked her to "bring all the evidences related to the matter," which she had already submitted, multiple times, at the time of filing the complaint and after. On the phone, she was told by the IO if she did not appear and submit materials, they would dispose of her complaint.

In her first encounter with a deputy director of the FIA, she was told “women don’t follow through and waste our time.” She followed through but the FIA did not. Over all these years, the complainant has questioned why the FIA traced the perpetrator and placed him under arrest if they never intended to follow through with the prosecution? When she filed her complaint, she did not identify who was behind the accounts or pages as she herself had no knowledge of it. It was the FIA who identified and arrested him, which led to enmity and hostility towards the complainant by the perpetrator. Though convicted and sentenced for a total of 8 years under three sections of the law, the jail time has already been served while he was incarcerated, waiting out the trial. The conviction has already been appealed before the high court and stayed.

The uncertainty of the order being upheld or set aside in addition to yet another cycle of litigation with no predictable timeframe, is the cause for more anxiety. Despite the conviction, she is not at ease and remains worried for the safety of her family, uncertain about whether she will be rehired for jobs, whether there will be any social and administrative accountability of the perpetrator, and anxious about what will happen in the appeal.

Pursuing this case has caused more trauma for the complainant. She has been harassed inside and outside of court, faced vilification at her workplace, her children have been threatened, she has suffered financial losses and her emotional, psychological well-being has been impacted so much that it has resulted in physical ailments and medical conditions. When she filed her complaints, she wanted to know who had committed the act and that there should be accountability. Once apprehended, she wanted to know why he did what he did and if there was recognition of the wrong he’d done to her. The latter remains unaddressed, even after a conviction.

Over time, what the perpetrator did became secondary and, instead, the FIA became the culprit in her eyes. As someone who was a proponent of seeking legal recourse and initially guided her students and other women to report online harassment to the FIA, after her own experience, she says she will never advise anyone to go to the FIA or court. Why would any woman want to? What faith are the litigants, especially women, supposed to have in the legal process if they are deliberately frustrated and pushed to a point where they get exhausted and ultimately stop pursuing their cases or withdraw? Even those who follow through end up questioning the supposed gains against the costs incurred. After nearly five years, it is still not over for her, even after a conviction.

Box 2: Procedural flaws

Filing complaints itself is a cumbersome process. Those residing outside major urban centres are told to travel and visit offices. Sometimes cases are registered in those cities and so complainants and defendants have to travel each time for a hearing because it is more suitable to the IOs. Although guardians can file complaints on behalf of minors, there are instances in

which minors were instructed to appear at the FIA offices. Many complain that the online form does not work, they never receive a reply. Complaints always have to be followed up in person. Even then, despite the timebound and sensitive nature of the cases, and repeated follow ups, action is not taken. Some have filed various complaints over five years and yet there has been no response beyond the verification stage. Complaints may even include dangerous and false allegations of blasphemy.⁷

After investigation, there is pressure to settle and compromise with the harasser.⁸ Compromises are struck in offices where complainants are oftentimes forced to meet the accused and his family members.

Submission of no-objection certificates for bail in non-compoundable cases has become the norm in court (Bolo Bhi, 2019b). Complainants are made to sign on documents stating they have no objection to bail in non-compoundable cases as well, which are submitted to court. Often complainants sign upon the insistence of the FIA, unaware of how this prejudices their case or creates complications for them (Kamran et al., 2021).

Complainants and the accused are both pressurised into handing over devices during the investigation process. They are told to unlock their phones, provide passwords. Viewing content on their phones is not limited to the case itself but galleries and conversations unconnected to the case are viewed, discussed and shared with other officers, which has become part of the office culture. Information has also been leaked to other parties which includes contact information to try and secure a compromise. Often, complainants don't want families to find out, yet officers are not discrete and make decisions on behalf of complainants who are young adults. Allegations of corruption—officials seeking bribes to influence cases—have also been on the rise, but not everybody has the means to file a complaint against an official of the FIA, fearing retaliation and further obstacles in their cases. No effective remedy exists to hold them to account (*The News International*, 2021).

This is just one case. Case diaries are replete with show cause notices, bailable and non-bailable warrants issued against officers in other cases for not appearing or producing case property to run a case, but to no avail (Bolo Bhi, 2020). Then there are complaints which are never taken up at all.

In June 2018, journalist Laiba Zainab filed an online complaint with the FIA. She had put up a video on Facebook addressing the poster '*kbana kbud garam karlo*,' displayed at the Aurat March.⁹ For expressing her opinion, the comments section was filled with abuse hurled at her and her family. She was subjected to character assassination and even received rape and death threats. It took a toll on her mental health and she was forced to switch off notifications on her page. Later in the year, her pictures were taken and shared without her consent, captioned with insinuations about her character. This time, she filed a written application through her brother with the FIA in Lahore. Her brother went to the FIA's office in person and handed in her complaint. A complaint number was

⁷ Author's interview with Arfana Mallah.

⁸ Author's interview with Jannat Fazal and Muhammad Usman.

⁹ Author's interview with the respondent, 2020.

provided on a slip of paper to her brother who was told they would contact her, but never did.

Despite multiple online and in person complaints, nothing was done about the reported content or accounts, nor was there ever any response.

In September 2020, journalist Ailia Zehra filed a complaint¹⁰ with the FIA regarding rape and death threats issued to her on the social media (Naya Daur, 2020). She visited the FIA office in Lahore, gave her complaint in writing, was given a complaint number and told she would be contacted in two weeks. But there was no follow-up. She then contacted the FIA via email and phone, still there was no response. Eventually, she stopped following up.

¹⁰ Ailia Zehra, 19 September 2020.
<https://twitter.com/AiliaZehra/status/1307273789756055558?s=20>

Silencing Sexual Harassment and Violence Disclosures

While it was clear PECA would not provide efficacious remedies to women seeking recourse against online harassment, what was not anticipated was how it would become a patriarchal tool of repression to stifle the voices of women speaking about sexual harassment and violence perpetrated against them, as well as those speaking up in their support. Section 20 of PECA—colloquially referred to as the ‘criminal defamation’ section of the law—has become the primary instrument to do so.

2018 marked the #MeToo movement and advent of the Aurat March in Pakistan. Disclosures of sexual harassment, abuse, assault and violence were made publicly. Some spoke about their experience and what they were subjected to, others chose to name their perpetrators. In Pakistan, what ensued was a series of summons and the registration of FIRs by the FIA.

Box 3: Section 20 of the Prevention of Electronic Crimes Act 2016

Offences against dignity of a natural person.—

(1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

In June and July 2019, the FIA issued summons to various people—mostly women—for alleged defamation. This was in response to complaints filed against them by men who had been accused of sexual harassment and assault, alleging they had been defamed. Summons by the FIA were not only sent to those who had levelled the allegations, but also to those who had shared them, supported women who spoke up or covered the stories in a journalistic capacity. The most prominent of these was the complaint filed by singer Ali Zafar against Meesha Shafi and various other individuals, in May 2019 (*The Express Tribune*, 2019b).

Summons were issued in July 2019. Most of the summons were undated and received well past the date on which their attendance was required. Some summons were delivered to addresses where those who were summoned did not reside. The summons contained no details of the inquiry, or what they were being summoned in connection to, nor did they attach a copy of the complaint. Those who were summoned were verbally told that if they apologised and retracted what they had said, the case would go away.

When Leena Ghani received a summons, she contacted a lawyer and was told to appear at the FIA office, which she did. She went to the FIA office, sat and waited, but no one was there or saw her, so she left.¹¹ She then received a second summons, after which she met the investigation officer. When she asked him why he had summoned her, she was told “there was pressure from above at the behest of the complainant”. Despite appearing, she was sent a third summons, after which she filed a writ petition before the Lahore High Court. In her petition, she alleged that the IO “was abusing his authority by summoning her to his office to coerce her to withdraw her name from the list of witnesses submitted by Meesha Shafi.” She further contended that she “was made to sit in the FIA office for long hours... forced to answer irrelevant questions by a number of male officers.” She said she could sense “they were having a go at her to belittle, harass and humiliate her and make her withdraw her name from the list of witnesses of Meesha Shafi.” The court instructed the IO not to harass her (*The Express Tribune*, 2019b).

Several others were named in the same complaint and sent summons. They all wrote back to the FIA, requesting a copy of the complaint. Instead, they were issued a second summons and then a third, no copy of complaint was provided at any stage. Since the summons were issued by the FIA’s Lahore office, those who resided in Karachi put in requests to transfer the inquiry to their city of residence. This was not granted in each instance. In August 2020, a news report ran the names of Ali Gul Pir, Iffat Omar and several others, as the accused in this case, citing FIA sources, in clear violation of PECA Investigation Rules 2018. Pir took to social media and said he had received notices from the FIA and had already given his statement to them (*The Express Tribune*, 2019a). He said he was being silenced.

A year later, in September 2020, the FIA lodged an FIR against Meesha Shafi, Iffat Omar, Leena Ghani, Fariha Ayub, Maham Javaid, Ali Gul, Haseemuz Zaman Khan, Humna Raza and Syed Faizan Raza (Aziz, 2021). The FIR stated some had failed to turn up, other appeared but did not record statements, those whose statements were recorded were found to be unsatisfactory (Tahir, 2020). In the interim challan, which was submitted to the court in December 2020, it was stated: “During the course of investigation so far Meera Shafi alias Meesha Shafi, Iffat Omar, Maham Javaid, Leena Ghani, Haseemus Zaman, Fariha Ayub, Syed Faizan Raza, Humna Raza and Ali Gul Pir have been found guilty in this case as per available oral and documentary evidences. However, the complainant recorded his statement in favour of Hamna Raza to the extent of accepting her apology, thus she is not required in the investigation furthermore.”

¹¹ Author’s interview with the respondent, 2020.

Those in Pakistan obtained bail, which was still a cumbersome process for those living outside of Lahore, as they first had to obtain protective bail in their respective cities, then travel to Lahore, file for bail and join investigation, incurring additional financial costs, all this in the middle of a pandemic (Aziz, 2021). Since they are accused in criminal proceedings, their presence on every date of hearing is required unless dispensed with by court. These applications were made, accepted only for Meesha and Maham, for a temporary period, since they resided outside Pakistan.

In 2019, Maham Javaid was summoned by the FIA four times. The summons was delivered to her in-laws residence in Karachi—an address she had not lived at for more than a few days. The first summons was received on 20 July 2019, whereas she was required to be at the FIA office in Lahore, on 18 July 2019. This summons was titled “second notice,” the first was never received. As per legal advice, she responded to the notice informing the FIA she had received the summons two days late, requesting another date for appearing. In response, the IO telephoned her father in Lahore. How they had obtained the addresses and phone number is not known. Her father said she was not available on his mobile number, so then the IO called her father’s landline, she was told to visit the FIA the same week, via phone, which is not the equivalent of a legal summons. She then wrote a second letter to the FIA, seeking a copy of the complaint. In response to this, the FIA sent a third summons with “final notice” written on it. Since she had left the country for her job by then, her lawyer appeared on her behalf and once again asked for a copy of the complaint, to which he was told “she knows what this is about”. Her lawyer informed the FIA she would be back in the country by the end of the year and subject to the provision of the complaint, she would visit the office. Despite this, the FIA sent another notice to her parents’ house, knowing full well she was not in the country. Once again, the summons was received after the date for attendance had already passed. Despite receiving four FIA notices, two FIA phone calls and making one visit to the FIA office, she remained unaware of what the inquiry was about.

When the FIR was registered, she was residing outside Pakistan and the pandemic was in full swing. In January 2021, in the middle of the pandemic, she made a trip to Pakistan specially to appear before the FIA. She was given an appointment for one Thursday. When she appeared with her lawyer, no one was there at the FIA office. The person seated at the front desk told her if she was there to file a complaint she could not do so as there was no electricity or internet. There were three rooms in a dark, dingy hall. The signs read: IO, Forensic Lab and Additional Director (AD) Legal. The IO and forensic lab doors were locked. AD Legal’s office was open but nobody was there (this, despite the appointment). The next day was a holiday and she was only in Pakistan for a short while. The next hearing was on the following Tuesday.

The AD legal then showed up, claiming she did not know what the case was about and had not seen the file as it had not been forwarded to her, even though a hearing in the case had already taken place four days prior to this visit. The AD Legal then asked a staff member to bring her file.

Once the file was read, the AD Legal told her she would have to meet the IO. She told her he was not there. She was told to go meet the deputy director and let him know the IO was not there. Maham and her lawyer then went to the deputy director's office, who was also not there, so came back to AD Legal and informed her. She sent them to the help desk and told them to get their names written. By this time, the two people who were at the help desk earlier had also disappeared. It was 11 am by then. Maham and her lawyer left, only to get a call from the IO at 5 pm saying he was at the office and she should come over. Maham informed him it was not possible for her to visit again, so he told her to come back on Monday morning.

When she appeared before the IO on Monday morning with her lawyer, the first question he asked was whether she had obtained bail. On her lawyer's objection, the IO remarked he was saying it simply for her benefit. When her lawyer inquired whether he intended to arrest her, the IO said, "No, it would be good so she was not fearful". The questioning began in an intimidating manner, even though she was cooperating by joining the investigation and appearing before the FIA to record her statement.

The questioning was more like an interrogation, and the tone accusatory. The answer to everything he asked was self-evident in the tweet. Maham had not made direct allegations of sexual harassment, she had tweeted about her cousin's experience. The IO asked when the incident had taken place, why it was not reported earlier, how she knew Meesha Shafi and the other co-accused in the case. When she said she did not know any of them before, he said that was not possible and that she in fact did know them. He further probed why her cousin did not come forward, to which she replied due to the sensitivity of the issue and due to security reasons, her cousin could not. The conversation about sexual harassment took place between her and a male IO, in the presence of her lawyer who was also male, and three other male IOs sitting at their desks in the same room. Not only did being in a room with five men narrating this made it physically uncomfortable, the room was small, there was hardly any ventilation and other than her and her lawyer, no one else was masked, despite the pandemic, and she had to return home to her parents who were above 70 years of age.

The IO then told her she would have to sign the statement, which her lawyer objected to and an argument ensued over it. The entire time the IO asked her questions, he did not write any of her responses down, and later asked her lawyer to do so. Her lawyer told the IO it was his job to write, he told them to wait outside till he called them back. Previously there were five men in the room,

when she re-entered 15 minutes later, there were three more men sitting with another IO. By this time, there were eight men in the room. The entire questioning process started again, this time another IO wrote down what she was saying. This continued for another 20 minutes. There were constant interruptions while she was answering questions. Sometimes there were phone calls the IO attended, at other times some staff member or the other would interrupt, once to give a file, then car keys, all of which could easily have waited until after the statement had been recorded. By the time the statement was recorded, there were a total of 11 men—only four of these men worked for the FIA—in what was a small room. No one was masked. Sitting there she thought, this is how women are expected to record their statements, surrounded by men they do not know, disclosing personal and traumatic details of harassment?

Once the IO was done writing the statement, he read it out to her. The very first sentence said Maham had obtained bail, which was inaccurate. Since the statement was handwritten, it had to be redone entirely. The statement was recorded a third time. Again there was a debate about signing and not signing. By this point she was so harassed, she just signed the statement and left. It took two hearings and four weeks for the FIA to submit the statement to court.

In criminal proceedings, an accused is required to appear on every date of hearing unless attendance is dispensed with by the court - which is not granted indefinitely. While this was granted on the basis of applications for some of the accused, in September 2021, these applications were dispensed and arrest warrants were issued for Ali Gul Pir and Iffat Omar (Samaa TV, 2021). A year on since the FIR was registered, the accused are expected to travel from different cities and appear at every date of hearing, however the trial has yet to commence.

Even when there isn't an FIR, the pre-trial stage can be coercive. In July 2019, Shumaila Hussain Shahani, a Karachi-based lawyer and researcher, received a summons on a Friday, instructing her to appear at the FIA office on Monday morning.¹² In this instance, the complainant was not a man but a member from the trans community who was accused of raping another member from the trans community who happened to be less privileged and influential than the former. When the latter lost her life to murder, upon her demise, Shumaila as well as several others, repeated what was already public knowledge—the allegations of rape—in addition to comments on the complainant's threatening behaviour towards those who uploaded such posts. This became the subject of criminal proceedings.

The content of the post due to which proceedings against Shumaila were initiated were not known to her until much later. When the first summons arrived, it did not contain a copy of the complaint or any details with respect to

¹² Author's interview with the respondent, 2020.

what she was being summoned for. She sent a response the same day via email to the address listed on the summons, posted a copy and notified the IO whose number was provided on the summons, requesting a copy of the complaint, time to consult a lawyer and to appear at the office a week after the receipt of a copy of the complaint. Since the IO did not respond to her call, she left him a message. He later responded saying he did not know about any email and would be expecting her at the office on Monday, following which she sent an image of the response she had sent. To this, he said he'd be expecting her at the office on Monday regardless and in case of her absence, he would register an FIR.

Taken aback by the abrupt and uncalled for threat, as someone who is familiar with PECA and had spent the last two years observing cases under the law at the district court in Karachi, she appeared before the designated judicial magistrate to inquire whether any FIR had been registered against her. She produced the summons and a screenshot of the IO's message before the magistrate, and inquired whether the magistrate had granted permission for investigation to the IO in the enquiry number mentioned. To this, his answer was no. However, the court staff had no record of any permissions that had been issued to the FIA, so the magistrate summoned the IO.

When the IO appeared before the court he said he did not need to seek permission for investigation prior to issuing the summons. When questioned why he threatened to lodge an FIR, he said he didn't say he would register an FIR against her but that he would lodge one in the case, as though the two were somehow different. Asked why a copy of the complaint had not been provided, the IO said because then she would delete her post. The magistrate directed the IO to provide a copy of the complaint and held that the summons had no legal basis since issued prior to obtaining permission [and was] in violation of the law and Rules under PECA, which requires the court's permission in non-cognizable cases. The following Friday, she received another summons titled "second notice" with the same enquiry number on the summons as the one before it. This time, it stated the complaint pertained to "defamation," however, a copy of the complaint was not provided, despite the magistrate's directions. When she appeared before the magistrate to question the legality of the second summons, she discovered not only had permission for investigation been granted by the court but also for search and seizure, which the FIA had requested when it moved an application for permission to investigate. The magistrate had simply signed "permission granted" on the application seeking permission for both together.

Under PECA, a warrant has to be issued under Section 33 to conduct search and seizure. No warrant was issued. However, since the permission was not withdrawn, effectively, the FIA could conduct a raid any day. In order to challenge the search and seizure permission before another court, she required a certified copy of the order, which she could not obtain the same day. It appeared

the IO had taken the original permission with him. It took 13 days to obtain a certified copy of the search and seizure, all the while the threat of it looming over her. During this time, she also filed a complaint against the IO for harassment and questioned the legality of the second summons. While this was pending, a third summons was sent. This was received on a Saturday, which she found out about on Sunday. It required her attendance on Monday at 9:30am. Once again, there was no copy of the complaint, nor did it leave her much time to consult a lawyer.

On 22 August 2019, the magistrate disposed of her complaint observing that since the complaint was “regarding neglect, failure or excess committed by the police authority (FIA)... in relation to its functions and duties,” it did not fall within the jurisdiction of his court. He dismissed her complaint as non-maintainable while stating that she was “at liberty to file her complaint before the competent forum of law”. A week after obtaining a certified copy of the search and seizure order, she filed an appeal before the sessions court, from where her case was transferred to the additional district and sessions judge (ADJ). There, her appeal against the magistrate’s order granting permission for investigation and search and seizure was dismissed on the grounds that it was an administrative order and could not be challenged by way of appeal.

She then filed an appeal against the ADJ’s order before the Sindh High Court. By this time, a month had passed between the time the order granting search and seizure permission was issued, she was able to obtain a copy, file an appeal. Once the appeal was admitted in the High Court, a letter was sent by her counsels to the FIA informing them about the case and cautioning against coercive action since the appeal was pending. In response, the FIA moved an arrest application before the magistrate, insisting she was evading summons and delaying the investigation. Her counsel then had to appear before the magistrate to correct the record and informed the court that the FIA had refused to follow orders and, to date, had not provided a copy of the complaint. The FIA’s response was that since she now had a copy of the application made by the FIA which contained a copy of the complaint, they no longer needed to provide her with it.

In October 2019, the Sindh High Court granted a stay with directions to join the investigation. Despite court orders dated 17 October 2019, restraining the FIA from taking coercive action of any sort, a summons dated 16 October 2019 was mailed from the FIA office on 18 October 2019—a day after the Sindh High Court order was issued. To show her cooperation, she appeared at the FIA office. When the IO arrived, her lawyer was stopped from accompanying her into his office. After sitting around at the office for a few hours she was told that since there was no electricity, and it was unlikely to return till the evening, the statement could not be recorded. She insisted that the FIA mark her attendance in the register as proof that she came, which was resisted at first. It was only

after she and her counsel insisted, that they wrote down her name and the time she arrived and left.

On the next date of hearing, the FIA's latest summons was brought to the attention of the high court. A time and date for the FIA office visit was decided mutually in court. The FIA was instructed to ask a few questions, and provide a questionnaire. When she went to the FIA office, questionnaire comprising eight questions was waiting for her, which she answered. Despite the high court's order regarding no coercive action, question 8 read: "In pursuance of JM's order if I would voluntarily submit my devices?" She refused to submit her devices voluntarily, and wrote she did not wish to do so since the IO had failed to show her warrants for the search and seizure, and since the IO had all the screenshots of her post, there was no need either.

At no point before the IO or magistrate had she denied the post in question was uploaded by her, she only contended it was not defamatory. Once she had provided answers to the questionnaire, the IO proceeded to print out the document and insisted she sign the statement, which she was under no legal obligation to. She refused to sign and left the office. A report was submitted to the HC and the appeal was disposed of in December 2019. The order established that a warrant is required for search and seizure and instructed the FIA to act in accordance with the law.¹³ Although Shumaila recorded her statement in October 2019, the IO did not submit his final investigation report until 26 February 2020.

Around this time, she received a call from the IO asking if she would be in court as he intended to submit the interim challan. When she said no to him over the phone, as she was under no legal obligation to appear without a summons from the court, he told her he would have her declared an absconder by the court. The IO submitted the interim challan before the magistrate and recommended she be charged under Section 20 and 24 of PECA. The challan was partially accepted by the magistrate on 9 September 2020; the charge under Section 20 was accepted while Section 24 was dropped. She obtained bail and just as well, since the records reflected, arrest warrants had been issued. On 23 December, the charge was framed. The trial commenced with the complainant's examination-in-chief, which was conducted in February 2021. The complainant's cross-examination was completed in April 2021. The FIA was supposed to produce prosecution witnesses, however this did not happen until 25 August 2021 when the first of them was produced and later cross examined in September 2021. Between April and August, though there were hearings, no prosecution witness showed up, delaying the trial.

¹³ Cr. Appeal No. 522 of 2019, Sindh High Court, *Shumaila Hussain Shahani vs. The State*.

All this over one Facebook post she never denied she wrote or posted, only that she did not consider it to be defamatory.

More than the complainant, the FIA acted as a party in the case, issued threats, and violated the law and court's orders brazenly. Not only did this put Shumaila through an unending cycle of court appearances. There were times she had to stay away from court, to avoid illegal and coercive action, affecting her professional commitments since her work was observing the PECA cases in court and documenting the performance of the FIA. During the time the search and seizure order remained in effect, she was unable to reside at her own house, due to the fear of raid. Not because of any wrongdoing on her part but because it was wrong in principle to take her devices, and it would compromise the data of others including clients whom she was representing as counsel.

Conclusion and Recommendations

PECA is a political problem wedged in a broken criminal justice system.

It is the product of a false narrative and undemocratic legislative process an example of how the “protection of women” narrative was exploited to usher in an authoritarian regime which stifles dissent and maintains the status quo. Not only has it failed to remedy the grievances of women who are harassed and blackmailed, but it has established a regime under which they are silenced through the initiation of criminal proceedings against them and including those who speak up in their support. Some of this is due to the language of the law and how it is framed. A lot of it has to do with the implementation, abuse of power and impunity for flagrant violations. The latter ties in with lack of effective judicial and parliamentary accountability and the political climate and dispensation.

Sending vague, undated summons, refusing to provide copies of complaints with the summons or even after is a consistent pattern.

Initiating investigations without authorisation from the court is a clear pattern. Courts compel litigants to join investigations without any inquiry into the legality of the investigation or misconduct of officials, though brought on record.

The pre-trial stage is the most coercive where there are no checks and balances. Once at the FIA office, both complainants or those accused are at the mercy of the FIA. To the layperson, Sections 160 and 161 seem reasonable but in practice, those summoned, men, women or minors, are made to wait for hours, are called in repeatedly and treated as guilty from the day a complaint is lodged. There is no effort to distinguish between an accused and a witness; even the summons do not reflect this crucial distinction since no details are disclosed.

It is the pre-trial stage, at the investigation level, where the least amount of protections are available but are most needed. If the accused and their counsel are not provided with a copy of the complaint, how are they supposed to respond to the allegations. There can be no fair trial if the pre-trial procedure is not fair, directly impacting Article 10-A rights.

In 2019, the FIA’s excesses were brought to the attention of the Senate’s Committee on Human Rights (Bolo Bhi, 2019a). Letters from those aggrieved by the actions of the FIA were also submitted. An appeal was also made to decriminalise defamation (Bolo Bhi, 2019c). However, to date, there has been no effective oversight by the parliament of the FIA’s misconduct and excesses, nor have the courts penalised any officer or the Agency, even when they have disregarded the court’s directions. This has allowed violation of due process and mala fide application of the law to go unchecked, at the cost of citizens being deprived of any remedy or justice.

Parliament has also failed to extend oversight by ensuring the FIA submits bi-annual reports under Section 53 of PECA. Section 53 of PECA requires bi-annual reports to be filed before both houses of the Parliament. In 2017, the FIA submitted an in-camera report which was never released publicly. In September 2021, the FIA informed the court it submitted a bi-annual report to parliament (Kamran, 2021). Over the years, various amendments to PECA have been proposed, but not taken up with any seriousness.

Acting outside the law with impunity has become the norm. The actions of the FIA—whether at someone’s behest or of their own volition—as illustrated through the cases, violate procedures laid down in PECA and PECA Investigation Rules 2018, as well as established principles and protections as guaranteed under Article 4 and various fundamental rights enshrined in the Constitution. These are also in contravention of international human rights principles and Pakistan’s obligations under the ICCPR and CEDAW.

Accountability has to be immediate. One way to do this is through an external mechanism such as the ombudsperson’s offices under provinces, where issues pertaining to the FIA can be taken so that an independent institution provides remedy. But such remedy needs to be timely, otherwise it defeats the purpose if relief is not provided within certain timeframes. Mechanisms to hold investigating agencies to account for abuse of power, delay in investigation, manner of investigation which is harmful to dignity of the complainants or victims of false claims, are required within the law itself. It is relief enough for a defendant when a case against them comes to an end, they do not have the ability or resources to initiate malicious prosecution proceedings against officers, and there is always fear of further retaliation. No defendant or complainant is compensated for the time, expense and agony they are subjected to, during various stages of their case.

The cases documented in this report are but a handful. To gauge the magnitude of the problem posed by the PECA, a five year legislative review of PECA should be conducted by the parliament, They should do this by summoning bi-annual reports under Section 53, calling a public hearing and seeking testimonies in writing and in person to discuss abuse by the FIA; holding a collaborative session with the federal and provincial judicial academies on the implementation of PECA in courts and challenges faced by judicial officers and conducting a thorough review of the criminal justice system in which rights of the accused are violated and right of the complainant to seek remedy under the law is hampered; reviewing proposed amendments to PECA 2016, PECA Investigation Rules 2018, CrPC and Articles of the Constitution and enhancing protections at the pre-trial stage.

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