

ANALYSIS OF PAKISTAN'S REMOVAL AND BLOCKING OF UNLAWFUL ONLINE CONTENT (PROCEDURE, OVERSIGHT AND SAFEGUARDS) RULES, 2021



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1. INTRODUCTION¹

Governments around the world are grappling with how to regulate the digital space and, in particular, with the enormous power and influence which social media companies wield over the public discourse. Internet access has become a critical aspect of the exercise of fundamental rights, chiefly the right to freedom of opinion and expression, but also the right to freedom of assembly, as well as other economic, social and cultural rights.² Particularly relevant across the Global South is the Internet's importance to the right of development, now recognized by the United Nations as a third-generation right.³

However, as with many new technologies, the increasing popularization of Internet access has also led to a migration of traditional harms into the online world. The frictionless nature of digital communication allows hate, abuse, and misinformation to flow as easily around the world as news and educational material. Online algorithms, which have been trained to serve web users more of whatever most engages them, can wind up amplifying extremist or discriminatory content. Adapting to this new communications dynamic presents a number of novel regulatory challenges.

While mass adoption of online communication is still a relatively a young phenomenon, the core international human rights standards for assessing laws impacting speech remain equally relevant today as when they were first developed. In particular, all States have an obligation to ensure that any attempts to regulate speech must meet appropriate standards of transparency, accountability, non-discrimination, proportionality, legality, legitimacy, and necessity.⁴ This analysis considers Pakistan's Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2021⁵ [the Rules] in the context of these international standards, as well as parallel regulatory efforts taking place elsewhere in the world, to provide commentary on their likely impact on the right to freedom of expression, and other human rights.

2. BACKGROUND AND CONTEXT

A. Freedom of Expression and International Human Rights Law

Under international human rights law, States are the primary duty-bearers for human rights, which includes a mandate to ensure an enabling environment for freedom of expression, including online.⁶ Most significantly, obligation requires that legislation comply with Article

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² *UNGA Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNITED NATIONS GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL (Mar. 30, 2017), <https://www.undocs.org/A/HRC/35/22>.

³ *UNGA Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Frank La Rue, UNITED NATIONS GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL (May 16, 2011), https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf.

⁴ *UN International Covenant on Civil and Political Rights, General Comment No. 34, Article 19: Freedoms of Opinion and Expression*, UNITED NATIONS, HUMAN RIGHTS COUNCIL (Sept. 12, 2011), <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁵ *Regulations*, Pakistan Telecommunications Authority (PTA), <https://www.pta.gov.pk/en/laws-&-policies/rules>.

⁶ *UNGA The Promotion, Protection and Enjoyment of Human Rights on the Internet*, UNITED NATIONS GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL (June 27, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/L.20. See also G.A. Res. 73/179 *The Right to Privacy in the Digital Age* (Jan. 21, 2019), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/179.

19(3) of the International Covenant on Civil and Political Rights [ICCPR], which Pakistan ratified in June 2010.⁷

The right to freedom of expression, as protected under the ICCPR, is crafted extremely broadly, and includes not just a right to convey ideas, but also a right to “seek” and “receive” information from others.⁸ In practical terms, this means that, in assessing the impact of a decision to block access to a particular online service, it is important to consider not only the expressive rights of speakers who are denied use of said service, but also the right of viewers and other passive participants who may be interested in accessing material distributed via that service. The same is true for decisions to block access for a particular user, or even a particular piece of content.

International human rights law also necessitates that any restrictions on speech must meet standards of clarity to be considered as having been “provided by law”.⁹ This includes the requirement that they are publicly accessible, constructed with “sufficient precision to enable an individual to regulate his or her conduct accordingly”, and possessing limited discretionary powers (i.e., of their execution). Partly, this standard is related to fundamental notions of procedural fairness, but it is also meant to limit, as far as possible, any potential chilling effect, where uncertainty about what is permitted causes people to steer clear of the line, and avoid controversial topics altogether.

The ICCPR also imposes a strict test of necessity and proportionality on restrictions impacting speech, such that a restriction is only justified if it “imposes the least burden on the exercise of the right and actually protects, or is likely to protect, the legitimate State interest at issue.”¹⁰ In other words, States must demonstrate that the restriction is not just necessary, but also impairs freedom of expression as little as possible in the process.

Standards of necessity and proportionality require that “restrictive measures ... must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest protected... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.”¹¹

B. Proportionality and Proactive Enforcement

In considering the application of restrictions to content posted on social media platforms, or to the platforms themselves, an important context underlying this necessity and proportionality assessment is the significant degree to which platforms already moderate in excess of legal

⁶ G.A. Res. 2200A (XXI) (Dec. 16, 1966).

⁷ *Id.*

⁸ See, e.g., *Claude Reyes et al. v. Chile*, Inter-Am Ct HR, (Ser C) No 151 (2006); *Társaság A Szabadságjogokért v. Hungary*, no 37374/05, ECHR 618, 53 EHRR 3 (2009).

⁹ *General Comment No. 34*, *supra* note 4.

¹⁰ *UNGA Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNITED NATIONS GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL (Apr. 27, 2016), <https://www.undocs.org/en/A/HRC/38/35>.

¹¹ CCPR General Comment No. 27, Article 12, UNITED NATIONS HUMAN RIGHTS COMMITTEE (Nov. 2, 1999), <https://www.refworld.org/pdfid/45139c394.pdf>; see also *Marques v. Angola* Communication No. 1157/2003, U.N. Doc. CCPR/C/83/D/1128/2002 (2005); *Coleman v. Australia*, Communication No. 1157/2003, U.N. Doc. CCPR/C/87/D/1157/2003 (2006).

requirements,¹² as a result of their own economic incentives.¹³ These incentives include a commercial drive to protect their brand and reputation from association with particularly toxic or controversial content, whose prevalence on the platform could jeopardize not only their user base, but also the willingness of advertisers to associate their product with the platform.¹⁴ While there are a few examples of platforms whose moderation policies only target material that they are legally required to remove, these typically exist on the fringes of the market.¹⁵

Virtually every major platform performs significant moderation against content that it deems legal but objectionable, beyond what they are strictly required to do under applicable law.¹⁶ These moderation actions are part of the platforms' exercise of their own expressive rights, in determining which content they will or will not host. Although it is not a perfect analogy, this may be compared to a newspaper's editorial decisions in deciding what to publish.¹⁷ Facebook, for example, in addition to responding to formal takedown requests from law enforcement, prohibits a number of additional categories of "objectionable content" which violate their own Community Guidelines, but which are typically not illegal.¹⁸ Facebook devotes an enormous amount of resources to enforce their Community Guidelines.¹⁹

Similarly, in dealing with content that is illegal, platforms often go far beyond what they are legally required to do. Child sexual abuse material [CSAM] is an area where enforcement is particularly aggressive, and generally driven by the platforms' own policies and technological investments beyond specific law enforcement demands.²⁰

None of this is to suggest that platforms are somehow above the law, or that they should not be subject to content-related regulation. However, the broader context underlying the content moderation sector is relevant to assessments of new regulatory proposals, such as the Rules, for two reasons. First, it demonstrates that social media users already face content restrictions that go significantly beyond the letter of the law due to autonomous private sector enforcement. This is relevant in considering the new regulations' necessity in combating problematic material, particularly if the platforms are already acting against these forms of content. Second,

¹² Anshu Siripurapu & William Mellow, *Social Media and Online Speech: How Should Countries Regulate Tech Giants?* THE COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/in-brief/social-media-and-online-speech-how-should-countries-regulate-tech-giants>.

¹³ Ashley Johnson & Daniel Castro, *Fact-Checking the Critiques of Section 230: What Are the Real Problems?*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems>.

¹⁴ *Id.*

¹⁵ Eric Goldman, *An Overview of the United States' Section 230 Internet Immunity*, OXFORD HANDBOOK OF ONLINE INTERMEDIARY LIABILITY (2020).

¹⁶ Michael Luca, *Social Media Bans Are Really, Actually, Shockingly Common*, WIRED (Jan. 20, 2021), <https://www.wired.com/story/opinion-social-media-bans-are-really-actually-shockingly-common>.

¹⁷ See Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 HASTINGS LAW JOURNAL (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4005647.

¹⁸ *Objectionable Content: Community Standards*, FACEBOOK, https://m.facebook.com/communitystandards/objectionable_content.

¹⁹ Adam Satariano & Mike Isaac, *The Silent Partner Cleaning Up Facebook for \$500 Million a Year*, N.Y. TIMES (Aug. 31, 2021), <https://www.nytimes.com/2021/08/31/technology/facebook-accenture-content-moderation.html>; Olivia Solon, *Inside Facebook's Efforts to Stop Revenge Porn Before It Spreads*, NBC (Nov. 18, 2019), <https://www.nbcnews.com/tech/social-media/inside-facebook-s-efforts-stop-revenge-porn-it-spreads-n1083631>.

²⁰ See, e.g., Paresh Dave & Greg Mitchell, *Facebook Used AI to Remove 8.7 Million Images of Child Nudity Last Quarter*, VENTURE BEAT, REUTERS (Oct. 24, 2018), <https://venturebeat.com/2018/10/24/facebook-used-ai-to-remove-8-7-million-images-of-child-nudity-last-quarter>; James Vincent, *Google Releases Free AI Tool to Help Companies Identify Child Sexual Abuse Material*, THE VERGE (Sept. 3, 2018), <https://www.theverge.com/2018/9/3/17814188/google-ai-child-sex-abuse-material-moderation-tool-internet-watch-foundation>.

it demonstrates that State interventions can often have an outsized impact, where platforms respond to legal pressure by going significantly beyond a law's strict requirements. This latter impact is particularly challenging, from a freedom of expression perspective, since the scale of online platforms means that moderation, if it is to be effective, has to be carried out to a significant degree by autonomous algorithms. Despite significant investments by the major platforms, these are still liable to make mistakes and remove legitimate content, as a number of recent decisions from the Facebook Oversight Board have demonstrated.²¹ This is particularly true for non-English content, where users constantly struggle against erroneous takedowns.²²

While the regulation of new technologies is a complex and subtle field of policy-making, the novelty of this space, along with the broad and interconnected web of technologies that shape our daily lives, mean that poorly drafted legislation can create negative impacts that snowball across the global information society. None of this is to suggest that the online world should be a lawless place. To the contrary, it is meant to emphasize the need for careful calibration in the precise structure of rules impacting online speech. As the next section demonstrates, the Rules, as currently drafted, pose a significant threat to freedom of expression in Pakistan, as well as that country's new and expanding digital culture.

3. ASSESSING THE RULES

Pakistan enacted the Rules on October 12, 2021, as the latest in a series of measures aimed at regulating online content.²³ The Rules provide the Pakistan Telecommunication Authority [PTA] with a basket of additional powers, including to unilaterally block and remove access to online content, both of its own volition, and in response to a complaint from either the government of a member of the public. The Rules also authorize the PTA to pass orders to service providers and social media companies to remove content within exceedingly short timeframes (12 hours in the case of emergencies), and they enable the PTA to impose high costs for non-compliance, including fines of up to 500 million rupees. Its publication on the Ministry of Information Technology and Telecommunication's website attracted significant criticism from journalists, civil society representatives, and social media business stakeholders; concerned over the rules' potential to negatively impact freedom of expression.²⁴

A. Vague Definitions

Among the most significant problems with the Rules are that they allow for content to be removed for extremely broad and vaguely defined reasons, which runs counter to the idea that restrictions impacting speech should be crafted as narrowly and precisely as possible.

The potential reasons for blocking or removal include categories of prohibited content imported from s. 37(1) of the Prevention of Electronic Crimes Act, 2016, which allow for such actions to be taken "the interest of the glory of Islam or the integrity, security or defence of Pakistan

²¹ *Oversight Board Selects a Case Related to an Al Jazeera post on Tensions between Israel and Palestine*, META, <https://transparency.fb.com/oversight/oversight-board-cases/al-jazeera-post-tensions-israel-palestine/> (last visited Dec. 7, 2021); *Case Regarding the Support of Abdulla Ocalan Founder of the PKK*, META, <https://transparency.fb.com/oversight/oversight-board-cases/support-of-abdullah-ocalan-founder-of-the-pkk/> (last visited Dec. 7, 2021).

²² Marwa Fatafta, *Facebook is Bad at Moderating in English. In Arabic, It's a Disaster*, REST OF WORLD (Nov. 18, 2021), <https://restofworld.org/2021/facebook-is-bad-at-moderating-in-english-in-arabic-its-a-disaster/>.

²³ See, e.g., *Pakistan: Comments on the Prevention of Electronic Crimes Act*, CENTRE FOR LAW AND DEMOCRACY (2014), http://www.law-democracy.org/live/wp-content/uploads/2014/03/Pak.Cyber_Mar141.pdf.

²⁴ Faisal Daudpota, *Understanding Pakistan's 2021 Social Media Rules: Suppression of Constitutional Right to Freedom of Expression Through Prior Restraint Censorship of Online Content* (May 26, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3597721.

or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.”²⁵ Although several of these categories of prohibited content are tied to definitions in Pakistan’s Penal Code by s. 3 of the Rules, these clarifications are expressly stated as applying “without prejudice to the generality of the powers under s. 37(1) of the Act”. In other words, while some of these categories of prohibited content are tied to existing criminal offences, they are expressly conceived as extending beyond these criminal standards, which is particularly problematic given that the power to make these assessments is vested in the PTA, as opposed to a judicial authority.

An even broader formulation is found in s. 7(5) of the Rules, which allows the PTA to order social media companies to “immediately” block any content “particularly related to terrorism, hate speech, pornographic [sic], incitement to violence and detrimental to national security.” Again, this is structured as an inclusive, rather than an exclusive, list, suggesting that the PTA’s blocking authority could potentially extend beyond these defined categories. It is difficult to conceive of how such a vague formulation, which vests tremendous discretion in the PTA, could possibly pass muster under the ICCPR’s standards for clarity.

B. Procedural Problems

Another major problem with the Rules is the fact that they concentrate tremendous power in the hands of an administrative agency, the PTA, including the authority to assess the boundaries of acceptable speech. According to a 2018 report by the United Nations Special Rapporteur on Freedom of Expression, States “should only seek to restrict content pursuant to an order by an independent and impartial judicial authority” and in accordance with due process.²⁶ The structure of the complaints process, which allows the PTA to initiate its own investigations, also raises natural justice concerns, since in these instances the authority would act as both the complainant and the adjudicator.²⁷

Although the Rules allow for a judicial appeal against PTA decisions, the speed with which content decisions are taken undercuts the value of the appeals process. The PTA has the power to issue directions to block or remove content in just 48 hours, shortened to 12 hours in the case of an emergency, the conditions for which are not defined in the Rules.²⁸ By contrast, a member of the public or a platform who is aggrieved by a decision of the PTA must first file an application for review before the PTA, which will trigger a hearing within 7 days, following which the Authority has up to 30 days to reconsider its position. Only once this process has elapsed can a complainant pursue a remedy in the High Court. Given how rapidly the modern political discourse moves, these delays can render appeals effectively meaningless.

The glacial pace of appeals is particularly problematic in light of the vast enforcement powers which the PTA is able to wield against social media companies deemed to be non-compliant with the Rules, including degrading their services, blocking them, or levying a fine of up to 500 million rupees.²⁹ Even if such a decision can eventually be reversed, blocking a service like Facebook or Twitter from Pakistan for a period of over a month is an enormous potential

²⁵ *The Prevention of Electronic Crimes Act, 2016*, <http://pakistancode.gov.pk/english/UY2FqaJw2-apaUY2Fqa-apaUY2Jvbp8%3D-sg-jjjjjjjjjjjj-con-15813>.

²⁶ *UNGA Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNITED NATIONS GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL (Apr. 6, 2018), <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>.

²⁷ *UNSC The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the Secretary-General*, UNITED NATIONS SECURITY COUNCIL, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PCS%20S%202004%20616.PDF>.

²⁸ Rules s. 5(2).

²⁹ Rules s. 7(2).

penalty for a company whose position is heavily dependent on market share and network effects, which will act as a heavy incentive in favor of overly aggressive enforcement. This incentive structure is exacerbated by s. 7 of the Rules, whose relatively open-ended enforcement obligations mandate that social media companies must not “knowingly host, display, upload, publish, transmit, update, or share any Online Content in violation of local laws”. In addition to a lack of clear definitions as to when a social media company will be deemed to have awareness of illegal content, the inclusion of a requirement to avoid even uploading such material implies that companies will need to employ upload filters, despite the fact that these are generally understood to constitute a form of prior censorship when mandated by government order, and therefore are unacceptable under international human rights standards.³⁰ According to the United Nations Special Rapporteur on Freedom of Expression, “States and intergovernmental organizations should refrain from establishing laws or arrangements that would require the “proactive” monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to pre-publication censorship.”³¹

It is also worth noting that, according to s. 3(2) of the Rules, an adverse finding by the PTA “shall prevail and take precedence over any contrary Community Guidelines and such Community Guidelines shall be deemed of no legal effect.” In addition to threatening to undermine the platforms’ own system of content enforcement, which is responsible for removing huge volumes of objectionable but legal content, this provision strikes at the core of the platforms’ own expressive right to manage their own content decisions.

4. SOCIAL MEDIA COMPANIES AND SPEECH REGULATION

Pakistan is one of many countries seeking to update the regulatory structures around social media platforms. The rapid expansion of power and influence of these companies over the past decade has made them a tempting target for autocrats seeking to exert control over the public discourse, as well as governments with more legitimate concerns around user privacy or the propagation of harmful online content. However, a key principle underlying regulatory processes in this sector is the need to carefully calibrate rules in order to avoid causing undue harm to the essential political discourse that these platforms host. Social media companies are ultimately rational actors, who will respond to legislative prompts in a manner consistent with their own commercial incentives. As a result, these rules need to be crafted carefully, in order to avoid incentivizing conduct which is harmful to the public discourse.

One fundamental ingredient to a healthy regulatory structure is to provide reasonable protections against direct responsibility for the speech of their users. Without this protection, and faced with potentially harsh consequences for hosting problematic content, platforms will be incentivized to remove anything remotely close to the line, to the detriment of users who rely on their services as a primary mechanism for self-expression. Intermediary liability protections are a cardinal component of a robust framework for guaranteeing human rights online, as recognized under the Manila Principles of Intermediary Liability:

- A) Any rules governing intermediary liability must be provided by laws, which must be precise, clear, and accessible;
- B) Intermediaries should be immune from liability for third-party content in circumstances where they have not been involved in modifying that content,
- C) Intermediaries must not be held liable for failing to restrict lawful content; and

³⁰ *Joint Declaration on Freedom of Expression and the Internet*, ORG. FOR SEC. & CO-OPERATION IN EUR., <https://www.osce.org/representative-on-freedom-of-media/78309> (2011).

³¹ *General Comment No. 34*, *supra* note 4.

- D) Intermediaries must never be made strictly liable for hosting unlawful third-party content, nor should they ever be required to monitor content proactively as part of a liability regime.³²

While specific implementation of this principle varies, it is common in some form across most developed democracies. In the European Union, the E-Commerce Directive includes a safe harbor principle, according to which “three types of online intermediaries who host or transmit content provided by a third party are exempt from liability under certain conditions.” These exemptions apply to intermediaries who play a role as i) “mere conduit service provider”, ii) “caching provider” or iii) “hosting provider”.

Under this safe harbor regime, “online intermediaries are immune from liability unless they are aware of the illegality and are not acting adequately to stop it.”³³ This framework is set to be revised under the European Commission’s proposed Digital Services Act (DSA), which expressly states that there will be no general obligations for intermediaries to monitor or actively find facts or circumstances indicating illegal activity.³⁴

Similarly, the United States offers strong protections against intermediary liability through s. 230 of the *Communications Decency Act*,³⁵ an approach which both Canada and Mexico are set to follow due to a recent trade agreement between the three countries.³⁶

Imposing a general obligation on platforms to monitor their users is problematic insofar as it creates an incentive for companies to remove content without adequate consideration or due process. This structure can create harmful impacts on the right to freedom of expression far beyond the specific takedown rules in the law. In considering the impact of the Rules, and their suitability as a key pillar of Pakistan’s framework for regulating online speech, it may be useful to consider an example closer to home for how poorly crafted legislation can be abused.

In India, legislation which is in many respects similar to the Pakistan’s recent reforms has had a disastrous impact on freedom of expression in that country.³⁷ In particular, the *Information Technology Rules, 2021*, which seek to entrench an aggressive structure of platform-driven enforcement backed by coercive State requirements, has a number of elements in common with the reforms passed in Pakistan.³⁸ Both sets of reforms concentrate enormous powers in the hands of the executive branch to determine unilaterally whether or not content is legal, and apply problematic incentives to platforms which encourage overly aggressive moderation structures. India’s takedown rules have been applied to facilitate broad blocking orders targeting enormous amounts of legitimate user speech, including against Indian Kanoon, Reddit, and Telegram.³⁹ They are also part and parcel of a broader backsliding in that country’s

³² Manila Principles on Intermediary Liability, <https://www.manilaprinciples.org/> (last visited Dec. 8, 2021).

³³ Tambiama Madiega, *Reform on the EU Liability Regime for Online Intermediaries: Background on the Forthcoming Digital Services Act*, EUROPEAN PARLIAMENTARY RESEARCH SERVICE (May 2020), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS_IDA\(2020\)649404_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS_IDA(2020)649404_EN.pdf).

³⁴ *Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*, EUROPEAN COMMISSION (Dec.15, 2020), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN>.

³⁵ 47 U.S.C. § 230 (1996).

³⁶ Vivek Krishnamurthy & Jessica Fjeld, *CDA 230 Goes North American? Examining the Impacts of the USMCA’s Intermediary Liability Provisions in Canada and the United States*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3645462 (2020).

³⁷ Torsha Sarkar, et al., *On the Legality and Constitutionality of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, MEDIANAMA (Jun. 22, 2021), <https://www.medianama.com/2021/06/223-legality-constitutionality-of-it-rules/>.

³⁸ Michael Karanicolas, *Authoritarianism as a Service: India’s Moves to Weaponize Private Sector Content Moderation*, INDIAN JOURNAL OF LAW & TECHNOLOGY (forthcoming).

³⁹ Torsha Sakar, *How India is Using Its Information Technology Act to Arbitrarily Take Down Online Content*, SCROLL.IN (Feb. 15, 2020), <https://scroll.in/article/953146/how-india-is-using-its-information-technology-act->

democratic structure, as exemplified by India's status as the global leader in Internet shutdowns.⁴⁰

5. CONCLUSION

By failing to give clear, appropriately tailored directives to social media platforms, and providing an avenue for undue government control over the public discourse, the Rules pose a significant threat to both freedom of expression and economic development in Pakistan. Platforms, as a result of the role they play in carrying user-generated speech, play a unique role as engines of the public discourse. While this function has led to legitimate concerns related to the consolidation of power in a relatively small number of private sector hands, policy-makers need to carefully consider the outsized impact that new rules can have on the ability of citizens to freely comment on matters of public import. While many countries around the world are grappling with how best to regulate online speech, and better practice standards are still developing, there is ample evidence that the Rules, as currently drafted, pose a significant threat to freedom of expression in Pakistan and, ultimately, the country's democracy and constitutional order.

[to-arbitrarily-take-down-online-content](#); Prabhjit Singh, The Caravan Contributor Mandeep Punia Granted Bail After More Than Two Days in Jail, CARAVAN(Feb. 2, 2021), <https://caravanmagazine.in/news/the-caravan-contributor-mandeep-punia-granted-bail>.

⁴⁰ *Shattered Dreams and Lost Opportunities: A Year in the Fight to #KeepItOn*, ACCESSNOW (March 2021), https://www.accessnow.org/cms/assets/uploads/2021/03/KeepItOn-report-on-the-2020-data_Mar-2021_3.pdf.