

Human Rights Defenders in the Clutches of Draconian Laws – Curtailment of Constitutional Rights in Pakistan

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ABSTRACT

‘Human rights defenders (HRDs) are the frontline warriors who upheld the falling democracies and the rule of law at the cost of their own fundamental freedoms and protection’ former Special Representative of the Secretary General on Human Rights Defenders.¹ In Pakistan, HRDs are subjected to extra-judicial killings, torture, forced disappearances, data retention, mass surveillance, and court martial amid the civilian governments and military coup d’état. Despite of ratifying international treaties for the protection and promotion of human rights, domestic laws of Pakistan are unable to address the grievances of HRDs. Prevention of Electronic Crimes Act, Army Act and the Official Secrets Acts are weaponised against Constitutional freedoms and protections available to HRDs in Pakistan. This study examines the restrictive cum draconian nature and consequences of domestic laws, along with newly passed amendments in the same, on the rights and freedoms of HRDs e.g., right to fair trial, security, privacy and freedom of expression etc. The study identifies an unreasonable approach of the legislature and security agencies towards security of the State that have unreasonably curbed fundamental rights of HRDs. Meanwhile the Superior Courts evaluated and criticised State practices from time to time which has also been discussed in the study. Lastly, the study extends recommendations for the legislature to bring these draconian laws in conformity with the Constitutional guarantees to protect those who strive for the protection of human rights and play a significant role in a functioning democracy.

Keywords: *Human Rights Defenders (HRDs), Fundamental Rights, Prevention of Electronic Crimes Act 2016, Army Act 1952, and Official Secrets Act*

1.1 Introduction

Human rights defenders are sheer advocates of human rights in a democratic setup, campaigning either individually or in association, to ensure human rights are opted as a grundnorm in each domestic legal framework, policy or programme designed and executed in a democratic system. HRDs are recognized as essential actors for the achievement of socio-economic rights, promotion and protection of civil and cultural rights, as well as for the realization of sustainable development goals of United Nations 2030 Agenda.² In Pakistan HRDs are actively involved in human rights promotion and protection, however they are subject to extra-judicial killings, enforced disappearance and mass-surveillance which is often

¹ Hina Jilani, “The Perils of Defending Human Rights,” *Alternative Law Journal* (Gaunt) 39, no. 3 (2014): 183

² Nolan, Helen. Protecting Those Who Protect Human Rights: Opportunities and Risks for Action at the UN. Stimson Center, 2022.

quoted in the interest of State and armed forces, whereas domestic laws have opted a draconian approach towards HRDs by introducing new avenues to curb various types of fundamental rights falling in the ambit of civil, social and political rights. History reveals that in Pakistan, HRDs have been subjected to discriminatory treatment from time to time which gotten severity over the years. Previously, these rights were curtailed via unannounced rigid policies and in present times several civil, social and political rights are being curtailed through the help of draconian laws either passed by the legislative assemblies (e.g., National Assembly and Senate of Pakistan) or Presidential authority.

This paper first explores Pakistan's international human rights commitments and pertinently its international obligations towards HRDs. Pakistan is not signatory to UN General Assembly Declaration which talks about rights of HRDs and duties of State parties to protect HRDs. However, Pakistan is still answerable under Universal Declaration on Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) to respect and protect privacy, right to fair trial, freedom of expression and association of HRDs. The Constitution of Pakistan provides protections and fundamental freedoms to every citizen on equal footing and settles a primary principle for every law to not be in derogation of fundamental freedoms except with some reasonable limitations. Inferring from the *Preamble* of the Constitution of Pakistan, 1973 a fundamental right is a right recognized, guaranteed and protected by the Constitution itself. Part II on *Fundamental Rights and Principles of Policy* of the Constitution stresses upon security of the citizens, fair trial, freedom of assembly and association, right to speech and information. Article 8 specifies that a law in derogation of any of the fundamental rights stands void. In *K.B. Threads (Pvt.) Limited Mian Saqib Nisar vs. Zila Nazim Lahore*, the high court settled an important principle that "fundamental rights are superior which cannot be interfered even by the State without strict recourse to the law."³ Though some reasonable restrictions can be imposed on fundamental rights by preferring interest of society over interest of an individual person. However, judicial decision as in *Rimsha Shaikhani vs. Nixor College* settled that such restrictions must be based on proportionality principle.⁴ Higher courts clarified that if the State is in danger, interests of individuals cannot be given preference over State interests. Meanwhile, judicial precedents signified that instance of putting State security and interest over and above the fundamental rights is subject to reasonable limitations. It implies that neither the legislature nor executive bodies have unbridled powers to restrict constitutional guarantees as

³ K.B. Threads (Pvt.) Limited Mian Saqib Nisar vs. Zila Nazim, Lahore (Amir Mehmood), 2004 PLD 376 (Lahore High Court).

⁴ Rimsha Sheikh vs. Nixor College, 2016 PLD 405 (Karachi High Court).

per their whims and wishes. Nonetheless, apex and higher courts of the country are playing plausible role by settling remarkable *ratio decidendi* in matters of extra-judicial killings, torture and State authorized surveillance to evaluate State practices of limiting the rights and freedoms of HRDs by introducing draconian laws regarding mass surveillance, unwarranted investigations and unreasonable censorship.

The three main pieces of legislation “*Prevention of Electronic Crimes Act (PECA)*, *Army Act and Official Secrets Act*” have undermined right to fair trial, right to security & privacy and freedom of expression in one way or another. Furthermore, the latest amendments in these laws shook up the confidence of HRDs on legislative system of the country. For instance, right to holding an opinion and expressing it on electronic or social media platforms is framed as criminal defamation under PECA law. It extends a demanded duty towards the legislature e.g., National Assembly and the Senate to review, rescind or amend the said domestic laws in light of Pakistan’s international obligations pertaining to HRDs and the Constitution of Pakistan, 1973 to bring domestic laws in conformity with the Constitution and international commitments.

Though, extensive research is available on human rights promotion and protection in Pakistan however, domestic laws curbing civil, social and political rights in context to HRDs are yet to be reviewed. Therefore, this research study has critically analysed the stringent effect of the said laws on HRDs in order to list down recommendations for the legislator and policy makers to bring the laws in conformity with the Constitution and international obligations to form legitimate nexus between democracy and human rights.

1.2 Research Methodology

The research is conducted by using qualitative research methodology and data is collected through using secondary sources. While using secondary sources, the prime focus was on desk-based analytical review of national and international laws on the subject under discussion, along with an in-depth study of relevant research papers, academic articles and experts’ reports. Furthermore, apex and higher courts judicial decisions, opinion articles, policy briefs and websites were also relied upon for the research study.

2.0 Pakistan’s International Commitments on Human Rights

Back in 1998, United Nations General Assembly adopted a declaration, titled '*the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*' which is not of binding nature however recognizes the rights and responsibilities of HRDs working across UN member states.⁵ It is pertinent to mention that there is no universally accepted definition of HRDs neither UN declaration directly uses the term "human rights defender." However, the mandate of the declaration has made HRD a settled term to be used in international and national legal frameworks.⁶ Furthermore, the UN declaration does not articulate any latest right and emphasizes on the accessibility of fundamental protections to HRDs by the member states.⁷ For instance, Article 1 of the declaration exhibits prime responsibility of all individuals to promote human rights and their collective right to protection. Article 5 entitles the HRDs to assemble for the promotion & communication of human rights along with forming an association with the non-governmental organizations (note: one of the cases of human rights defender from Pakistan 'Idris Khattak' has been discussed later in this study, who was subjected to court martial for being associated with some international agencies.) The declaration further acknowledges the right to publish, discuss, and disseminate information or opinions regarding human rights violations in a State under its Article 6. Currently, in Pakistan PECA law, Army Act and Official Secrets Act limits most of these rights which have been analysed later in the study. Furthermore, Article 8.2 of the declaration permits to HRDs to submit pieces of criticism or suggestions to government institutes on its human rights' centric policies and initiatives. The declaration further allows to HRDs to attend court proceedings to determine the compliance status of domestic legal frameworks and to raise judicial enquiries on compliance with international obligations. In context to Pakistan, it has been observed that HRDs who were facing judicial trials were not permitted in the past to hire private counsels to defend them in military courts as it happened in Idris Khattak case, whilst the current scenario on right to higher private counsels for defence purposes in the military courts has slightly improved over the time.⁸

Though, the declaration itself is not legally binding; however, it places a major reliance on other international human rights instruments to invoke the responsibility of state parties to

⁵ UNGA. "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms." Resolution 53/144 (1998).

⁶ Caitlin Eaton, "Human Rights Defenders in the United Nations Framework," *Human Rights Defender* 25, no. 1 (April 2016): 5.

⁷ Ibid, 5

⁸ Ibid. 5

protect HRDs by calling in aid the *Universal Declaration of Human Rights* (UDHR), and the *International Covenant on Civil and Political Rights* (ICCPR) that has been ratified by Pakistan.

2.1. Article 2 of UDHR

Article 2 of UDHR sets forth the entitlement of every individual to fundamental rights and freedoms irrespective of any distinction / discrimination. It further undermines State practices to distinct between individuals in order to refuse any of the rights, freedoms and protections guaranteed in UDHR.⁹ It implies that HRDs who advocate for human rights protections during civil democracies as well as coup' d'état in Pakistan are entitled to right to fair trial, right to live peacefully without any surveillance and right to form or become part of an association / organization adhering to the rule of law. Unfortunately, the actual practices have been quite contrary to it and left HRDs at the mercy of weak domestic laws which are often amended to attain ulterior or political motives. Detail of such legislative frameworks and practices is discussed hereinbelow.

2.2 Article 2 of ICCPR

ICCPR, basically, protects civil and political rights of an individual. With reference to civil rights "right to life, freedom of speech, freedom of assembly and pertinently right to fair trial" stands on top of human rights protections under ICCPR. It obliges the State parties to opt for necessary legislative steps or other relevant measures to grant hinderance free civil and political rights to every individual. As a matter of fact, passing domestic laws or policies on HDRs protection is a rare practice across the globe.¹⁰ Speaking of Asia, so far Mongolia has adopted a law "*Law of Mongolia on the Legal Status of Human Rights Defenders, 2021*" that granted a legal status to HDRs and listed obligations of the State pertaining to HDRs along with establishing a comprehensive mechanism for their protection. Pakistan is also amongst such countries that lacks in passing laws, policies, or mechanisms to protect rights of HRDs particularly. We can set this aspect aside, as the actual concern is not about Pakistan having HDRs' centric legislation, in fact, the effectiveness of already available pieces of legislation, and implementation of protections and freedoms granted under these legislative instruments e.g., Constitution of Pakistan, is a matter of consideration here.

⁹ UNGA, "United Nations Declaration on Human Rights," Resolution 217 A (1949), Article 2.

¹⁰ "Protection Instruments," *International Service for Human Rights*, accessed August 1, 2023, <https://ishr.ch/defenders-toolbox/national-protection/>.

Furthermore, ICCPR prohibits the State parties to make an individual subject to torture, cruel or inhuman treatment. In fact, neither domestic laws can allow any of such degrading treatment neither national courts can inflict such punishments.¹¹ It is followed by right to security from arbitrary arrests and detentions. Hereunder, we shall go through the adverse type of practices against HRDs' security & protection in Pakistan that are sheltered by domestic laws which are being amended from time to time to restrict Constitutional freedoms of HRDs. Later in 2016, UN Human Rights Council introduced a resolution pertaining to HRDs' protection, working individually, or in groups on economics, social and cultural rights.¹² Pakistan voted against the said resolution and called it a western agenda to interfere in domestic setup of the country. The country further stance that HRDs cannot be labelled as special group neither it can be awarded any special status.¹³ Apparently, it goes against Pakistan's commitment to protect HRDs in 2nd Universal Periodic Review (UPR) cycle, where it made a commitment to implement recommendations w.r.t freedom of expression, press & information, and misuse of blasphemy laws to restrict free speech, however, Pakistan did not comply with any of these recommendations and subsequently opposed UN Resolution pertaining to economic, social and cultural rights of HRDs.

3.0 Current Situation of HRDs in Pakistan

Before unfolding domestic laws on HRDs' protection, let's discuss what sort of grave human rights violations towards HRDs are being committed in Pakistan. It is being argued by the experts on HRD subject that in times of conflict HRDs are targeted by armed groups as well as by State actors and security forces, due to their core agenda of promoting peace amongst the masses.¹⁴

3.1 Enforced Disappearances

Enforced disappearances of HRDs is not something new to the citizens of Pakistan. Without delving into the history of how and when, it is pertinent to highlight that since military coup

¹¹ International Covenant on Civil and Political Rights, Article 7, opened for signature December 19, 1966, 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

¹² UNGA, "Resolution on Protecting Human Rights Defenders, whether Individuals, Groups, or Organs of Society, Addressing Economic, Social, and Cultural Rights," Res. A/HRC/31/L.28, 2016. <https://www.sahrc.org.za/home/21/files/SAHRC%20international%20and%20regional%20report%20FINAL.pdf>

¹³ International Service for Human Rights, "Human Rights Council: Adopt resolution on human rights defenders and reject hostile amendments," *ishr.ch*, accessed August 10, 2023, <https://ishr.ch/latest-updates/human-rights-council-adopt-resolution-human-rights-defenders-and-reject-hostile-amendments/>.

¹⁴ Hina Jilani, "The Perils of Defending Human Rights," *Alternative Law Journal* (Gaunt) 39, no. 3 (2014): 183

d'état of General Pervaiz Musharaf, there has been constant reporting of thousands of missing persons including whosoever speaks for his own rights or rights of a society.¹⁵ Commission of Inquiry on Enforced Disappearances (COIOED) formulated by the federal government released statistics regarding involuntarily disappearances that crossed a digit of total 8000 disappearances mostly from Baluchistan and Khyber Pakhtunkhwa since 2011 onwards.¹⁶ At this point in time, when number of missing persons is surging exponentially given the current political and democratic instability in the country, the very essence of established commission has become doubtful. In fact, the HRDs have zero confidence in the statistics of COIOED and claimed that actual numbers are higher than the numbers issued by the Commission.¹⁷ Few of the activists also showed concerns over biasness of the body and its miserable failure to prosecute even a single case since its formation.¹⁸

Once the Commission was formulated and it started practicing within its domain, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) visited Pakistan and issued a report on the status of missing persons along with recommendations for government to recover missing persons.¹⁹ A big chunk of the recommendations was left unaddressed that further gave rise to enforced disappearances in 2015-16.²⁰ However, there are two significant advancements at the part of judiciary and legislator that needs consideration. In a missing persons case "Human Rights Case No.29388-K of 2013" the Supreme Court of Pakistan held that to meet the ends of justice, the court will observe the provisions of International Convention for the Protection of All Persons (ICPPED) despite the fact that Pakistan is a not signatory to the convention.²¹ The apex court further labelled it as a crime against humanity and violation of article 10 of the Constitution that offers protection against enforced

¹⁵ Cerys Williams, "Pakistan Declared a World Leader in Number of Enforced Disappearance Cases," *The Organization for World Peace*, accessed August 11, 2023, <https://theowp.org/pakistan-declared-a-world-leader-in-number-of-enforced-disappearance-cases/>.

¹⁶ "Missing Persons List," *Commission of Inquiry on Enforced Disappearances*, 2022, accessed August 11, 2023, <http://coioed.pk/missing-persons/>.

¹⁷ Zahra Kazmi, "Enforced Disappearances in Pakistan Raises Questions," *Made for Minds*, accessed August 11, 2023, <https://www.dw.com/en/enforced-disappearances-in-pakistan-raise-questions-over-role-of-secret-services/a-62969115>.

¹⁸ Ikram Junaidi, "Call to legislate limits for state institutions over disappearances," *the Dawn*, August 31, 2022.

¹⁹ UNGA Human Rights Council, "Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Pakistan," UN Doc. A/HRC/22/45/Add.2, February 26, 2013, <https://www.refworld.org/publisher.UNHRC,,PAK,,0.html>.

²⁰ United Nations General Assembly, Human Rights Council, "Report of the Working Group on Enforced or Involuntary Disappearances," UN Doc. A/HRC/42/40, July 30, 2019,

²¹ Human Rights Case No.29388-K of 2013, 2014 PLD 305 (Supreme Court).

disappearance. Recently, Karachi High Court issued a verdict in *Mst. Asma Nadeem vs. Federation of Pakistan* stating that;²²

“State was duty bound to protect its citizens. State has the power and ability to prevent such practices as missing persons/enforced disappearances and to pass appropriate legislation to such effect, High Court observed that the onus rests on federal government to put an end to such illegal practices....”

In another ruling of Islamabad High Court in *Mahera Sajid vs. Station House Officer*, it was held that the effect of enforced disappearances is complex and it virtually suspends fundamental rights of the victim.²³ The court further added that behind every missing person’s case the involvement of the State exists either directly or indirectly. Undoubtedly, such judicial precedents of the apex and higher courts highlights grave urgency and leads the lower judicial forums to address missing persons cases as a matter of public importance.

The legislator also took a crucial step and introduced a criminal amendment Bill, titled “The Criminal Laws (Amendment) Bill, 2021 in National Assembly that criminalized enforced disappearances by the agent of the State or on the order of State.²⁴ The Bill has a provision on fake complaints filed by family members of missing persons. This provision heated a public discussion on its tendency to engage family members of the victim in a separate agony. The Bill once passed was referred to the Senate, which was returned to National Assembly along with some recommendations. The fate of the Bill is yet to decide that must not be delayed for an unreasonable amount of time given the deteriorating human rights situation in the country.

3.2 Torture and Extra-Judicial Killings

It is an undisputed fact that human rights defenders have been subjected to torture along with their families due to their audacity to challenge the violations of fundamental rights.²⁵ Given the political upheavals since March 2022 in Pakistan, journalists from all across the country continued broadcasting the unpredictable political scenario. It all led to arrest and custodial torture of journalists, lawyers and political workers.²⁶ If we unfold history of inflicted torture on HRDs many cases come in mind including the case of human rights activist Salman Haider

²² Mst. Asma Nadeem vs. Federation of Pakistan, 2022 PLD 264 (Karachi High Court).

²³ Mahera Sajid vs. Station House Officer, 2018 CLC 1858 (Islamabad).

²⁴ Criminal Laws (Amendment) Bill, 2022. Available at: https://senate.gov.pk/uploads/documents/1644816630_522.pdf

²⁵ Hina Jilani, “The Perils of Defending Human Rights,” *Alternative Law Journal* (Gaunt) 39, no. 3 (2014): 185

²⁶ “Pakistan: Journalists and Activists Criminalized and Abducted While Government Seeks More Powers,” *CIVICUS*, accessed August 12, 2023, <https://monitor.civicus.org/explore/pakistan-journalists-and-activists-criminalised-and-abducted-while-government-seeks-more-powers/>.

who raised voice for minorities and religious communities' rights. He kept on receiving threat calls and eventually got arrested in the capital city of Pakistan. The kidnappers were unknown to everyone, even the State refused to take the responsibility of his illegal abduction. Salman Haider later revealed that he received serious physical torture while abduction. At last, Slaman Haider got acquitted as the police could not find any evidence for conviction purposes.²⁷ It is neither the first case of illegal abduction and torture nor always the victims find safe release, and most often it ends with extra-judicial killing of the defenders.

Let's comprehend the term "extra-judicial killing" described in a report of Amnesty International as "*an unlawful and deliberate killing carried out by order of a government or with its acquiescence*". The report further states that extra-judicial killings in one way or the other is outcome of a government policy of any level to eliminate targeted individuals avoiding the risk of their arrest and fair trial as per the rule of law.²⁸ Extra-judicial killings are often handled by the executive authorities which is clearly not their ambit of work.²⁹ It's a prime duty of judicial bodies to conduct the trial of an accused and announce his fate after examining pro & contra evidence. In *Benazir Bhutto vs. Federation of Pakistan* the apex court held that "Extra-judicial killings by State machinery violates fundamental rights and right to life cannot be taken away except as provided by the law."³⁰

In 2023 national report submitted by Pakistan pursuant to Human Rights Council resolution No. 5/1 and 16/21 lacked figures and significant advances on behalf of the State to address extra-judicial killings. It merely mentions the Bill to criminalize enforced disappearances and talks about the COIOED as a designated working body on extra-judicial/arbitrary killings. The report poorly lacks the prominent actions on behalf the State, and provincial governments to protect HRDs from extra-judicial detentions that lead to murder as well.³¹ In addition to this, the report highlights efforts of provincial governments e.g., Punjab, Khyber Pakhtunkhwa and Baluchistan to safeguard HRDs and journalists by announcing welfare and relief funds for their

²⁷ Tazeen Inam, "A victim of torture, blogger continues fight for human rights in Pakistan," *New Canadian Media*, accessed August 12, 2023, <https://newcanadianmedia.ca/a-victim-of-torture-blogger-continues-fight-for-human-rights-in-pakistan/>.

²⁸ Amnesty International, *Israel and the Occupied Territories: Israel Must Put an Immediate End to the Policy and Practice of Assassinations*, AI Doc. Index: MDE 15/056/2003, accessed July 2023, <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde150562003en.pdf>.

²⁹ Faisal Daudpota, "Pakistan: How to Suppress the Offence of Extra-Judicial Killing in the Light of Superior Courts' Decisions – (Reforming Criminal Justice Series)," SSRN 25, no. 2 (May 2019), 104, <http://dx.doi.org/10.2139/ssrn.3380948>

³⁰ *Benazir Bhutto vs. President of Pakistan*, 1998 PLD 388 (Supreme Court).

³¹ UNGA Human Rights Council, "Seventy-second year, "National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21," A/HRC/WG.6/42/PAK/1, November 10, 2022. https://www.ohchr.org/Documents/HRBodies/HRCouncil/A-67-53-Add-1_en.pdf

services.³² These positive developments deserve appreciation however, it fails to safeguard right to life, right to security and ensuring an enabling environment for HRDs and journalists. Such schemes work as a band-aid once the violation is committed by way of arbitrary detention and extra-judicial killing and does not provide legal precaution to HRDs' rights violation.

3.3 State Authorized Surveillance

Targeted surveillance of HRDs is not a latest item on the list of human rights violations. It is something happening across the globe for its assistive use in capturing terrorists and criminals.³³ In 2018, the Amnesty International conducted a four-month long investigation on mass surveillance of HRDs in Pakistan. To surprise of many, human rights defenders or activists are subject to chain of surveillance attacks in form of malicious emails and messaging.³⁴ The report highlights a case of fake Facebook profile approaching HRDs working in civil society organizations to track their activities and to gather their personal information. Quite often, these fake IDs pretend to be working with renowned authorities like Human Rights Commission of Pakistan, to avoid doubts and to build trust with HRDs to further tap their activities. Another way of surveillance is through sending malware via email and by creating phishing pages to collect google credentials of HRDs. It is reported that this practice goes back to 2016 and has a longer history of mass surveillance.³⁵

We may count such type of surveillance as private surveillance instigated in personal hostility or a type of surveillance which is not backed by the State machinery. However, State authorized surveillance suggests otherwise. For instance, Digital Rights Foundation mentioned in its report that technologies which Pakistan's government uses for censorship is also being used for surveillance that strikes against right to privacy of HRDs in Pakistan.³⁶ Later the State, justifies it as a tool to prevent circulation of pornographic and blasphemous material. The State provided some sort of autonomy to intelligence agencies to identify the security threats to the State, which eventually results in mass surveillance from phones tapping, wiretapping to social media accounts hacking.³⁷ PECA law which allows surveillance and data retention clashes with

³² Ibid, 10.

³³ "Demand an end to the targeted surveillance of Human Rights Defenders," *Amnesty International*, accessed August 14, 2023, <https://www.amnesty.org/en/petition/targeted-surveillance-human-rights-defenders/>.

³⁴ Amnesty International, *Human Rights Under Surveillance: Digital Threats Against Human Rights Defenders in Pakistan*, Report No. ASA 33/8366/2018. accessed August, 2023, <https://www.amnesty.org/en/documents/asa33/8366/2018/en/>.

³⁵ Ibid, page 28.

³⁶ Digital Rights Foundation, "Impact and Legality of Surveillance" (14 October 2020), 1-32.

³⁷ Areeba Itzaz Qureshi, "Should Intelligence Agencies be Given Access to Social Media and Technology for Surveillance Purposes? Policy Analysis," 2018, *LUMS Center for Business and Society*, accessed August 16, 2023, <https://cbs.lums.edu.pk/sites/default/files/2021-11/Abstract%2056.pdf>.

the Investigation for Fair Trial Act, 2013. The said Act placed checks on law enforcement agencies / investigation authorities while interception and surveillance of the masses. Under this Act, the agencies are supposed to get prior warrant from High Court for interception / surveillance purposes along with submitting diligent reasons for court satisfaction. On the contrary, PECA permits that the investigation agency can issue a written request to information provider directly and Court permission for data collection and retention can be taken afterwards within 24-hours' time period. Here the court can be any court with competent jurisdiction even the trial court. It implies that PECA law removed judicial oversight to State as well as the intelligence agencies authorized surveillance to a negligent level. In *Qazi Justice Faez Issa vs. the President of Pakistan* the court argued that in Pakistan surveillance is allowed in limited areas under judicial and executive oversight, and surveillance in other areas of the country is constitutionally prohibited.³⁸ The Supreme Court of Pakistan declared surveillance without judicial and executive oversight unconstitutional which ultimately questions the validity of provisions of PECA law that allows surveillance and retention of data of the citizens. It prioritizes security of the State and armed forces over privacy rights of the public to an unreasonable extent which sometimes ends with enforced disappearance of HRDs.³⁹

Likewise, it is observed that journalists and HRDs run their campaigns on human rights promotion on social media. The surveillance on the part of State may frame these campaigns as cyber terrorism under PECA law which is discussed hereunder.⁴⁰ If the State continues to authorize mass surveillance by intelligence agencies under draconian laws the infringement of privacy rights will be continued. Subsequently, it will lead to no accountability culture, non-transparent data collection & removal practices that would affect not only human rights defenders but to the society as a whole. The Supreme Court of Pakistan held in *Justice Qazi Faez Isa vs. The President of Pakistan*⁴¹ that "intrusion by the State into the sanctum of personal space, other than for a larger public purpose, was violative of constitutional guarantees." Moreover, the apex court showed concern regarding manipulative use of illegally procured information and its impact on individuals security and dismantled information. HRDs are the one who help in strengthening rights of citizens in a democratic State, if the defenders themselves are subject to insecurities and mass surveillance then fundamental rights of a common man will be a distant dream to achieve.

³⁸ Justice Qazi Faez Isa vs. The President of Pakistan, PLD 2021 SC 1

³⁹ Ibid.

⁴⁰ Haroon Baloch, "Internet Rights and Legislation in Pakistan: A Critique on Cyber Crime Bill, 2016," 1.

⁴¹ Justice Qazi Faez Isa vs. The President of Pakistan, PLD 2021 SC 1.

4.0 Domestic Laws Effecting HRDs

State is the prime authority responsible in above-listed international legal instruments for human rights promotion and protection, along with protection of those who defend and fight for fundamental rights and freedoms. Pakistan is signatory to UDHR, ICCPR and similarly opted for UN General Assembly declaration on HRDs' protection back in 2018.⁴² Let's unfold both decrepit & draconian pieces of legislation that have been deployed from time to time to restrict HRDs activities rather than providing a safe and secure place to unanimously promote fundamental rights in the country. Given the reason that Pakistan has not yet legislated specific law on human rights defenders' protection the Constitution of Pakistan is basic legal document for HRDs to be relied upon which have previously been discussed in detail. Though the legislator made some advancements by criminalizing custodial torture etc., it is not adequate to balance the unconstitutional impact of the draconian laws which are perused hereinbelow one by one.

4.1. Penalization of Custodial Torture, Death and Rape

Despite several attempts in the recent pass to criminalize custodial torture, finally, in 2022 a significant piece of law titled *Torture and Custodial Death (Prevention and Punishment) Act, 2022* was passed by the Parliament of Pakistan on criminalization and penalization of custodial torture, death and rape. The law is an achievement in itself due to its prime intent to provide protection to citizens during arrests by public officials. It designates Federal Investigation Authority (FIA) to investigate into the matters of custodial torture, death and rape which shall be tried before the Court of Session.⁴³ However few gaps are identifiable in the Act as it does not speak about mental torture, neither it has gender-neutral language that leave female human rights defenders and transgender rights defenders at highest risk to face custodial torture. Secondly, HRDs face torture at the hands of intelligence authorities who get abducted and forcefully disappeared without following any legitimate procedure. Section 2(f) under its Explanation-II states that a person is deemed be in custody when the due process of arrest and detention is followed. This definition somehow limits its application of enforced disappearances, and the victim has to prove first that he was arrested following the due process of law and then he is supposed to prove that he was subjected to custodial torture. Hence, the Act can work as double edge weapon for HRDs.

⁴² Ibid.

⁴³ "Torture and Custodial Death (Prevention and Punishment) Act 2022," Act No. XXVI of 2022, Section 6.

Secondly, this Act involves two statutory bodies at a time as FIA has investigatory role while National Commission on Human Rights (NCHR) has a supervisory role. However, the provisions are unclear about their designated role, especially the role of NCHR which can possibly create operational clashes between the two bodies. Moreover, territorial jurisdiction of NCHR is limited to the Federation and not extended to the provinces which can create hindrance in supervision of custodial torture, murder and rape that occurs outside the Federation. Thirdly and most importantly, the Act talks about *mala fide* complaints which is enough to pressurize the family members and even the victim itself to get manipulated by the hands of those who are at powerful positions. There must be some proper process to check the validity of the complaint through reasonable means.

4.1 Cyber Laws Enabling Mass Surveillance

Prevention of Electronic Crimes Act, 2016 (PECA) is considered deterrent to the right to privacy and freedom of expression especially at current times when most of the defenders voice out their opinions and concerns regarding human rights violations through social media platforms. Latest proposed amendments in the Act have instigated severe reaction amongst HRDs, civil society organizations and journalists both nationally and internationally. Hereunder, paragraph (A) discusses the pre-amendment issues with PECA regarding right to privacy and freedom of expression, whereas paragraph (B) discusses the post amendment implications of PECA law.

A. The Act has been a controversial piece of legislation as it provides a way for mass data surveillance by permitting service providers to retain data u/s 32 of the Act without proposing any data safeguard measures and without disclosing who will have access to retain data besides the Government.⁴⁴ PECA, invokes the application of the Electronic Transactions Ordinance, 2002 Act that requires the service providers to retain data u/s 5 & 6 which is also silent about data safety measures. Hence, PECA allows retainment of citizens' data in absence of mandatory data protection measures. Phone tapping is a common practice and recently a plethora of audio calls of politicians, and judges were released amid the political war between different political parties in the country that gives a strong indication that HRDs' data can be

⁴⁴ "The Prevention of Electronic Crimes Act 2016," Act No, XL of 2016, section 32.

acquired and misused at any time. Previously, it was allowed under Mobile Cellular Policy of the Ministry of Information and Technology, which made it a pre-condition to intercept phone calls and messages of the users to get a license. However, PECA allowed retention of data for year long time period which has caused much severity to anti-privacy practices in the country⁴⁵. One can easily infer from this practice that security & privacy of HRDs is relatively at higher risk as cyber laws are permitting both censorship and mass surveillance through the help of “pocket surveillance” technologies.⁴⁶ Though the Act criminalizes unauthorized access to information system, however, it is not a matter of much concern, as personal data of HRDs holds more value and needs more protection.

Secondly, Pakistan Telecommunication Authority (PTA) has power to remove unlawful content from electronic media u/s 37 of the Act. It describes unlawful content as content that goes against the glory of Islam, poses threat to the security, a threat to public order and morality principles.⁴⁷ However, the Act misses the parameters to determine what type of content can fall in any of such categories. The proposed Rules of PECA Act has also not given procedure on how to exercise power to remove unlawful data from electronic media. It leaves another possibility that human rights campaigns operationalized by HRDs on social media can be removed by giving it a colour of unlawful content or political rivalry. The Act has allowed censorship and surveillance in absence of accountability and transparency mechanisms. In addition to this, HRDs need a law which can promote proportionality principle between State security and curtailment of freedom to expression and privacy rights which has not been met so far.⁴⁸ Clearly, the restrictions placed in light of unlawful data are unreasonable because HRDs who are banned to made appearance on national T.V. channels cannot run campaigns on social media as well. It does not only curtail freedom of speech, but also, it is a direct strike on human rights promotion and protection in Pakistan.

Section 10 of the Act on cyber terrorism though addresses the intent of legislation, however, the vagueness of the actions defined that amount to cyber terrorism are not serving the purpose.⁴⁹ It creates a possibility that any campaign run by HRDs e.g., awareness campaign on

⁴⁵ Mobile Cellular Policy, 2004 (Pakistan: 2004), 20. <https://www.pta.gov.pk/assets/media/mobile-cellular-policy-jan-28-2004.pdf>.

⁴⁶ “State of Privacy Pakistan,” *PI*, January 26, 2019, <https://privacyinternational.org/state-privacy/1008/state-privacy-pakistan>, accessed August 15, 2023.

⁴⁷ “The Prevention of Electronic Crimes Act 2016,” Act No, XL of 2016, section 37.

⁴⁸ Eesha Arshad Khan, “The Prevention of Electronic Crimes Act 2016: An Analysis,” *LUMS Law Journal* 5 (2018): 117.

⁴⁹ *Ibid*, 119.

religious minorities rights, can be made fallen into cyber terrorism as it can instigate public hatred amongst a specific group/community. What sort of actions amount to cyber terrorism needs clear definition, whereas the PECA does not provide definition of cyber terrorism at all.

B. An amendment was proposed in PECA, titled “Prevention of Electronic Crimes (Amendment) Ordinance, 2022” that heated a socio-legal debate amongst legal fraternity, national statutory bodies e.g., National Commission for Human Rights, civil society organizations and HRDs. On the face of amendment, it provided definition of term “person” u/s 2 to further include any company, association, authority or body established by the Government. Secondly, it declares online defamation a non-bailable offence and enhanced its punishment from three-years to five-years u/s 20 which also uses the term person. A collective reading of both sections reveals that no statement can be made against government, judicial and military bodies either in form of accountability question, healthy criticism or an unfavourable statement by HRDs.⁵⁰ The amendment is all in all the curtailment of freedom of expression. It is worth nothing that such amendments are being introduced at times when UN Human Rights Committee in General Comment No. 34 directed the State parties to decriminalize defamation.⁵¹ Another worrisome problem with the amendment is that it was introduced through an ordinance while both Houses were in session and no national emergency was reported that instigated the need to pass such crucial amendment through a presidential ordinance avoiding the legislative debate. This undemocratic step amounts to violation of legislative procedure and *ultra vires* of the powers granted to the Presidential chair under the Constitution.

Islamabad High Court took a bold stance that will be written in golden words in judicial history by declaring PECA amendment unconstitutional and strike it off.⁵² The Court held that the very essence of the amendment opposes the fundamental freedom and guarantees. The court directed the Federal Government to propose reasonable amendments in Defamation Ordinance, 2002 and also ordered to look into abuse of power by FIA. Through this order Islamabad high court

⁵⁰ “Pakistan: Repeal Amendment to Draconian Cyber Law,” *Human Rights Watch*, February 28, 2022, <https://www.hrw.org/news/2022/02/28/pakistan-repeal-amendment-draconian-cyber-law#:~:text=While%20PECA%20already%20contained%20broad,association%2C%20or%20body%20of%20persons%2C>.

⁵¹ United Nations Human Rights Office of the High Commissioner, “General Comment No. 34 on Article 19: Freedoms of Opinion and Expression,” July 29, 2011, accessed August 20, 2023. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>.

⁵² *Meera Shafi vs. Federation of Pakistan*, 2022 PLD 773.

acted as guardian of right to freedom of expression and somehow lessened the severity of this draconian legislation.

4.2 Official Secrets (Amendment) Act, 2023

After PECA, amendment in Official Secrets Act (OSA) has brought great surprise to fundamental freedoms of citizens whereas, HRDs are at risk to get victim of another draconian law. Amendment in OSA is disowned by the then Presidential power of Pakistan by not signing the amendment Bill, which eventually got published in official gazette avoiding the due process of law.⁵³ Nonetheless, it also seeks apex or higher courts declaration on the legitimacy and validity of OSA amendment just as Islamabad high court's declaratory order regarding PECA Amendment 2022. In addition to this, the amendment conferred excessive powers upon intelligence agencies and targeted digital means of communication as well. Let's look into the amended provisions hereinbelow;

- The expansion in the meaning of “enemy” has severely affected the principle of natural justice which places a liability of “spying” on a person who unintentionally happens to work with a foreign power or organization. Secondly, the term “work” is quite ambiguous to ascertain what type of work in collaboration with any foreign power, organization, or association is considered prejudicial to the State security.
- Amendment in section 3, sub-section (2) can possibly exacerbate the severity of the actions which are counted as offences against the defence, security or interest of the State. Initially, presence of a person with some sketch or plan at prohibited/defence places at the time of war was punishable without conditioning the offence to be proved beyond a reasonable doubt, however, the latest amendment criminalized the presence of a person at prohibited places during peace times as well. It clearly restricts freedom to movement in peaceful times that amounts to an unreasonable legislative approach and unreasonable restriction as the major interest of the community is missing here.
- The amendment further authorizes the formation of joint investigation team to investigate civilian espionage. FIA can also be assigned the investigation of civilian espionage however it is at the whim and wishes of Director FIA. The investigation team will consist of persons from intelligence agencies and one to two persons from the federal or provincial governments as the Director FIA deems appropriate.

⁵³ Ibid.

- A new insertion of sub-section (2A) in section 11 that has permitted open access to intelligence agencies to enter any place at any time without warrant. It has given an unquestionable, unaccountable power to intelligence agencies over civilians as agencies can conduct search operations at any time, on any person without being accountable for their actions. Law professional raised serious concerns and evaluated such provisions a great threat to a functional democracy like Pakistan.⁵⁴

Nonetheless, HRDs, lawyers, journalists, CSOs are prone to these search operations in absence of any oversight mechanism which means no law or legal system can come to their rescue in presence of these draconian laws.

4.3 Army (Amendment) Act, 2023

Amendments in Official Secrets Act and Army Act were passed on same day without following the due process of law as alleged by the then Presidential power of Pakistan. Army Act is a military legal code and its application is limited to army personnels. However, during military coup d'états and emergency situations trial of civilians is also conducted under Army Code e.g., terrorist attack on Army Public School Peshawar in 2014. Recently, the latest amendments in Army Act conferred more powers to the Chief of Army staff and protected the interests of Army by suppressing freedom of expression. Let's review the amendments in respective sections one by one;

- A newly inserted section 26A criminalizes the disclosure of information by an ex-army personnel which can be threatful to the State security or the armed forces itself. It not only imposes 5-years rigours imprisonment, but also invokes relevant provisions of the Official Secret Act that confers an unlimited power to investigate, either a place or a person, on an apprehension that an ex-army personnel might have disclosed information to some foreign organization or institute. Likewise, another section permits military trial of civilians who are accused of sharing secret information with any foreign organization or power. Irrespective of the intent of the legislature behind inserting this amendment, plain reading of the section reflects that the provision intimidates and creates a holistic environment for human rights defenders and violates

⁵⁴ Aamir Saeed, "Protests by lawmakers block approval of bill granting blanket powers to Pakistani spy agencies," *Arab News*, August 2, 2023, <https://www.arabnews.com/node/2348511/pakistan>, accessed August 20, 2023.

constitutional guarantee of right to fair trial and IHL.⁵⁵ Lawyers, journalists and human rights activities criticized the amendment and called it a blatant violation of constitutional rights and international human rights as military trials are highly secretive and only one right to appeal is granted before the military appellate tribunal and ousted the power of judicial review of superior judiciary. Though the Supreme Court reasoned in *District Bar Association, Rawalpindi vs. FOP* that the orders of military courts are subject to judicial review by both High Courts and Supreme Court.⁵⁶ However, this remedy of forum is limited to two grounds; 1. coram non judice, orders passed without jurisdiction, 2. orders passed with *mala fide* that does suffice the curtailment of judicial review.

- It further talks about “conflict of interest, electronic crimes and defamation” under newly inserted sections 55-A, 55-B and 55-C respectively. Section 55-B invokes the application of PECA law against civilians for scandalizing, ridiculing or undermining the armed forces of the country. The three terms clarify that armed forces cannot be made part of any dialogue / discussion either it is in the form of healthy criticism or part of any accountability practice. PECA law considers it criminal and electronic defamation and imposes severe punishment in severe manner as described earlier. Whereas section 55-C makes the same offence committed by the former army personnels punishable under Army Act with two years’ imprisonment and fine.

It is quite evident that Army Act, Official Secrets Act and PECA law go hand-in-hand to restrict fundamental freedoms. A recent example of simultaneous application of these laws was witnessed in military trial of human rights defender “Idris Khattak” who was convicted of espionage and leaking the sensitive information to foreign powers which were concluded to be threatful to the State and armed forces’ security.⁵⁷ Idris Khattak, a Pakistani civilian and a human rights defender was forcefully disappeared for eight months and later tried under Army Act and Official Secrets Act. In fact, a writ petition of *habeas corpus* was filed before Peshawar High Court which bore no fruits. Eventually, Idris Khattak was convicted of espionage constituting a blatant abuse of power by military forces and violation of human rights law and

⁵⁵ Abid Hussain, “Pakistan’s controversial Army Act: What is it, how does it work?” (*Aljazeera*, 18 May 2023) <<https://www.aljazeera.com/news/2023/5/18/pakistans-controversial-army-act-what-is-it-how-does-it-work>>

Accessed 20 August 2023

⁵⁶ District Bar Association, Rawalpindi vs. FOP, PLD 2016 SC 401.

⁵⁷ Ibid.

Pakistan's international commitments on the subject. Court martial of Idris Khattak ended in 2021, whereas given the current amendments in the said draconian laws has great potential to silence the voices of HRDs. These laws permit full fledged data surveillance, retention, at spot investigation without warrant the court as well martial of civilians without any oversight mechanism.

5.0 Recommendations & Conclusion

A thorough review of domestic laws, in the light of international commitments of the State and Constitutional guarantees conferred upon HRDs filtered down a list of recommendations for the legislature. These recommendations are in pattern of general to specific and requires immediate actions by the legislative bodies to ensure fundamental protection and freedoms to HRDs.

- Firstly, the legislative bodies are suggested to recognize the status of HRDs and legally back their work in human rights advancements. A legal recognition may be granted through a Constitutional amendment, which seems a distant dream at this stage. Other possibility can be through introducing a separate piece of legislation that not only grants a legal status to HRDs, but also, acknowledges their rights and duties of the State towards HRDs protection.
- It is suggested that laws which place limitation on HRDs activities in the promotion of human rights either should be repealed or amended by the legislator in conformity with Constitutional freedoms and international obligations of Pakistan.
- Forced disappearances, judicial torture, and mass surveillance needs to be publicly condemned by the legislatures at first. The condemnation should not be limited to oral condemnation, in fact relevant authorities must be held accountable and answerable before the judicial and legislative bodies.
- It is suggested that the designated / responsible authorities must be relieved from inter and intra departmental pressure while investigating the cases of threat, harassment, or intimidation against HRDs.
- It is recommended to introduce effective oversight mechanism for the cases which are being dealt by FIA e.g., custody or investigation of an HRD under PECA law, Army Act and Official Secrets Act. Storing power into one body, in absence of any oversight and accountability measure can possibly leads to *ultra vires* and abuse of power. To

ensure unbiased and transparent case investigation the provincial human rights commissions may also be assigned the oversight and supervisory role.

First of all, the Act titled *Torture and Custodial Death (Prevention and Punishment) Act, 2022* needs adherence to gender neutral terms / language to provide protection to female defenders and transgender activists. Moreover, a clear wording of the Act can assist the courts to correctly interpret the intent of the legislator in order to provide relief to the victims of custodial torture, death or rape. Moreover, the ambit of the Act is limited to physical torture and it does not address mental torture which is often inflicted on the victims. It is suggested to revise the definition of term “torture” to include mental torture just as the Protection from the Workplace Harassment Act, 2010 addresses the mental harassment on equal lines to physical harassment. In addition to this, it is commendable that NCHR has a supervisory duty to oversee the performance of FIA, however, it is suggested to distinguish the functions of both bodies as their duties apparently are bit unclear. Secondly, the requirement of due process to be followed for arrest and custody purposes limits the application of the protections available to the victims. Most often HRDs are forcefully disappeared hence, the victim has to go through double procedure under the law to prove that he was abducted following the due process and subsequently he is required to prove the custodial torture. It implies a need to widen the scope of section 2(f) to equally disperse legal protections to HRDs. Thirdly, provision regarding *mala fide* complaints discourages the idea of filing complaints and leaves the victim and his family members at the mercy of unbridled powers inflicting custodial torture. Therefore, it is recommended to introduce a preliminary investigation process to ascertain the validity of the complaints in order to avoid exploitation of the resources as well as to provide immediate relief to HRDs.

With respect to online surveillance, this study supports the idea of transparent and informed surveillance to ensure a reasonable balance between State security and privacy rights of HRDs. It would be a reasonable practice to introduce few important provisions in PECA law regarding circumstances when State surveillance can be allowed, technologies which are being deployed for mass surveillance, and nature of data which can be retained sufficiently for maximum six months with a court warrant to avoid the misuse of retained data. Likewise, it must be made a legal requirement for intelligence agencies to register their online surveillance activities in order to oversee agencies’ surveillance activities and to undermine the practice of illegally

obtained information. These provisions can also pave way to the formation of a legitimized and informed-surveillance policy.⁵⁸

Intent of PECA law is to regulate the online space which arbitrarily suppress the freedom of expression by criminalizing the online speech as discussion in PECA law section. The law significantly missed the protection on freedom of expression and standards to evaluate the nature of content being shared on social media to avoid the application of cyber terrorism and criminal defamation. Law must be equipped to segregate piece of information, awareness campaigns and information shared by whistle blowers to address human rights violations - a mandatory point to be entertained by the legislature.⁵⁹ Similarly, blocking or removal of online content from social media sites must be conducted by adhering to the transparency principles. It is an unreasonable step on the part of legislator to grant unbridled powers to PTA for data censorship. It is recommended to establish legislative guidelines to interpret the content shared by HRDs. In present times, HRDs conduct most of human rights campaigns through social media, which are often banned or removed by PTA without adhering to any transparency measure.

In addition to this, detailed analysis of latest amendments in Official Secret Act and Army Act lays down few important suggestions for the legislature in context to its consequence on HRDs. Firstly, the definition clauses need revision as term enemy, or work are ambiguous and dangerously expands the ambit of the law which is also applicable on civilians. In addition to this, fundamental rights cannot be restricted until or unless the intent of the law is to ensure major interest of the community which clearly lacks in this scenario. Freedom to movement at peace times in restricted places needs a crystal cut intent of the legislature, hence this point needs a review as well. Thirdly, the Act needs to define “civil espionage” to ascertain the necessity of intelligence agencies involvement in FIA investigation team and to weigh down its merits and demerits in context to right to fair trial of every civilian including HRDs. Lastly, the newly inserted sub-section (2A) in section 11 should be repealed immediately as it violates right to safety & security, violates dignity of a person, and violates the safeguard to arrest and detention simultaneously. This section particularly entails more instances of misuse than a legitimate use for State security purposes. There is a highest probability of its ulterior uses

⁵⁸ Areeba Itzaz Qureshi, “Should Intelligence Agencies be Given Access to Social Media and Technology for Surveillance Purposes?” 40.

⁵⁹ Media Matters for Democracy, “White Paper on Reforms for the Prevention of Electronic Crimes Act (PECA) 2016 (White Paper, 2020).”

against human rights defenders. It can also give rise to enforced disappearances in the country. It terminates judicial accountability and executive oversight that will lead to a chaotic outcome.

Whereas amendments in Army Act invokes the application of PECA law and Official Secrets Act to a dreadful level. In a way the amendment extends the application of army code upon civilians and legitimizes the court-martialling of civilians that stands as grave violation of Constitutional rights and curtails the power of judicial review of superior courts. Instead of authorizing military courts for conducting civilians' trial it is better to equip civilian courts to efficiently and timely decide the heinous crimes like terrorism, or espionage etc. Furthermore, in present times electronic and print media is subject to grave censorship and immense pressure to not broadcast anything against the State and agencies interests, HRDs revert to social media as last resort to highlight human rights violations.

Hence, PECA law, Official Secrets Act and Army Act are striking down the work ambit of human rights defenders. Initially, the Fair Trial Act reasonably conditioned State surveillance for investigation purposes and somehow created a reasonable balance between constitutional protections available to HRDs and State security, and intelligence agencies sanctity. However, PECA Act started restricting the freedoms and rights of HRDs by curtailing judicial oversight on State surveillance and censorship. Similarly, it badly influenced freedom of expression by criminalizing the statements, or discussion contrary to State interests. Then, amendments in Army Act and Official Secrets Act touched unreasonable level of State surveillance and censorship. Nonetheless, a tranquil balance between domestic laws and human rights guarantees available to HRDs is a need of the hour that rests with the legislators to address.