



Cyber Crime Legislation in Pakistan: A Critical Analysis from Islamic Law Perspective

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Abstract:

The advent of IT era has lightened our life but at the same time it has created various complex problems like regulatory issues and use of IT for criminal and other nefarious purposes by various anti-social elements. Regulatory issues related to the use of information technology require a legal framework and laws. In Pakistan, the latest and most comprehensive of these laws is the "Prevention of Electronic Crimes Act (PECA) 2016". In fact, the subject of concern of this research work is understanding this law, its basic objectives, determining its effectiveness, and a critical analysis of the crimes and violations covered by this law in the light of Islamic law.

Key Words:

Islamic Law, Information Technology, Internet, Electronic Crimes, Pakistan.

Introduction:

The event that prompted politicians to consider a large-scale anti-cybercrime bill was the attack on the Peshawar school. On 16 December 2014, an armed group of six stormed a school in Peshawar and opened fire on its students and teachers. By the time the attack was suppressed, nearly 150 children and teachers had been killed, and over 100 wounded. It was seen as the worst attack in Pakistan and was termed barbaric across the board.¹

In response to this attack, the Pakistani government has approved the National Action Plan in January 2015 which considered ways and means to root out extremism. The plan consisted of 20 measures to eliminate extremism, including the establishment of military courts to try terrorism suspects, a new counterterrorism unit in the army, and other measures to halt the operations of extremist organizations.² In the aftermath of the attack, government officials said they needed unlimited ability to monitor, locate and prosecute alleged militants. This desire for absolute power permeated other laws that were under discussion at that time.³ One of these legal frameworks being debated at that time was the "The Prevention of Electronic Crimes Act, 2016". Drafting of this law started in early 2013 and has been overseen by a cybercrime expert. The draft was prepared over a period of 18 months and incorporated the input from industry experts and privacy groups. The final product, a 44-page draft (hereafter referred to as the "Stakeholder Draft") was welcomed and deemed a success because it reinforced the state's desire to effectively prosecute cybercrime while protecting freedom of expression. It has been submitted to the Standing Committee for consideration and vote. But in the wake of the Peshawar attack, the Standing Committee made several amendments to the stakeholder draft. The 44-page document has been reduced to 13 pages by removing privacy safeguards. The Standing Committee

also made several overbroad sections, such as a clause to remove content if necessary i.e. inappropriate or not in keeping with Islam. They drafted this "model legislation" and claimed that people should only trust the government not to abuse the law.⁴ On August 11, 2016, the "Prevention of Electronic Crimes Act (PECA)" was passed by the Pakistan National Assembly with the primary ambition to provide a comprehensive legal framework for defining different types of cybercrime, and mechanisms for investigation, prosecution and action related to cybercrime.

The Prevention of Electronic Crimes Act (PECA) 2016 covered a series of crimes related to the Internet and cyberspace. In all, it listed 23 offenses:

1. Unauthorized access to information system or data.
2. Unauthorized copying or transmission of data.
3. Interference with information system or data.
4. Unauthorized access to critical infrastructure information system or data.
5. Unauthorized copying or transmission of critical infrastructure data.
6. Interference with critical infrastructure information system or data.
7. Glorification of an offence.
8. Cyber terrorism.
9. Hate speech.
10. Recruitment, funding and planning of terrorism.
11. Electronic forgery.
12. Electronic fraud.
13. Making, obtaining, or supplying device for use in offence.
14. Unauthorized use of identity information.
15. Unauthorized issuance of SIM cards etc
16. Tampering, etc. of communication equipment.
17. Unauthorized interception.
18. Offences against dignity of a natural person.
19. Offences against modesty of a natural person and minor.
20. Malicious code.
21. Cyber stalking
22. Spamming.
23. Spoofing.⁵

Qualitative research methodology has been adopted in this research paper. Moreover, analytical and descriptive approach has been used to conclude the research work. The study consists of critically examining the Sharī'ah law with existing Pakistani law. The primary sources are utilized in the construction and writing of this article. Nevertheless, the secondary sources are also consulted and the opinions of the classical Muslim jurists are also discussed.

The core objective of this research paper is to bring awareness among the entire Muslim population in general and the Muslims living in Pakistan in particular that how does Shari'ah law conforms and differentiates with the existing Cybercrime legislation in Pakistan. Not only this, at the same time it also elucidates that how does the Islamic injunctions and principles of Islamic law laid down in the seventh century provide guidance with respect to the use of technology in the 21st

century. In order to know about these crimes, the following discussion and analysis is intended to assist in understanding the Islamic Law related to these crimes.

Discussion:

Chapter II of PECA, 2016 lists down offenses and punishments.

Articles 3, 4, 5, 6, 7 and 8: section 3 to 8 is with regard to unauthorized access, copying or transmission and interference with information system or data, and therefore the law (PECA, 2016) provides punishment for the offender.

Islamic Law prohibits unauthorized access to someone else information system or data. In the Holy Qur'ān Allah (SWT) says: “ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ ۖ حَتَّىٰ تَسْتَأْذِنُوا ۖ وَتُسَلِّمُوا عَلَىٰ أَهْلِهَا ۚ ذَٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ ۚ فَإِن لَّمْ يَجِدُوا فِيهَا أَحَدًا فَلَا تَدْخُلُوهَا ۖ حَتَّىٰ يُؤْذَنَ لَكُمْ ۗ وَإِن قِيلَ لَكُمْ ۖ فَارْجِعُوا ۖ فَارْجِعُوا ۗ هُوَ أَزْكَىٰ لَكُمْ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ” “O YOU who have attained to faith! Do not enter houses other than your own unless you have obtained permission and greeted their inmates. This is [enjoined upon you] for your own good, so that you might bear [your mutual rights] in mind. Hence, [even] if you find no one within [the house], do not enter it until you are given leave; and if you are told, "Turn back," then turn back. This will be most conducive to your purity; and God has full knowledge of all that you do”.⁶ Although the concept of access in the above verse refers to physical access it can still be applied in cases where one intends to access other's property such as the computer or Internet sites. The permission or consent is the requirement that needs to be fulfilled before the access.

Similarly, digital piracy which is another form of criminal behavior through the growth of the internet technology is prohibited in Islam. Digital piracy is defined as “the copyright infringing transmission in a form that does not utilize “hard media” of any copyrighted material included recorded data, motion pictures, software, books and journals as well broadcast and recorded performances covered by copyright”⁷. A number of prominent Muslim scholars hold copyright to be binding and breaking the copyright law is sinful. The Prophet (SAW) says: “مَنْ سَبَقَ” “Muslims should abide by their stipulations”⁸ and “إِلَىٰ مَا لَمْ يَسِقَ إِلَيْهِ مُسْلِمٌ فَهُوَ لَهُ” “Whoever precedes others in gaining a ḥalal (lawful) thing, will be more entitled to own it (than others)”⁹.

Copyright laws prohibit a person from making wide commercial use of something on the grounds that the person who invented it by his mental labor better deserves its commercial benefits, and no other person should be allowed to reap the monetary fruits of his former labor without his permission. It is clear that the author of the book who worked day and night to write a book is the best person worthy of publishing it for commercial purposes. If anyone else is allowed to publish the book without the author's permission, they are definitely violating the copyright, and copyright law protects them from such infringement of rights.

The above discussion is further endorsed by the declaration of the Fiqh Council of the Muslim World League in Makkah Al-Mukarramah. The Islamic Fiqh Council,

in its ninth session, held at the Muslim World League building in Makkah Al-Mukarramah from Saturday 12 Rajab 1406 AH to Saturday 19 Rajab 1406 AH, examined the issue of copyrights for authors of books, research and scientific messages: Are they established rights? It is owned by its owners, and is it legally permissible to substitute for it and contract with publishers for it, and is it permissible for anyone other than the author to publish and sell his books and research without his permission, on the grounds that they are permissible for everyone, or not? The council declared that the situation has changed with the change of time and the emergence of novelties in it, which has the main effect between what was and what has become, which requires a new view that preserves each one who exerts his effort and his right. It must be considered that the author and inventor have a right to what he composed or invented, and this right is legally his property, and it is not permissible for anyone to rob it without his permission, provided that the book or the research does not contain a call or preaching to legally denounced, heresy or any misguidance that contradicts the law of Islam. Otherwise, it must be destroyed, and it is not permissible to publish it. Likewise, it is not for the publisher with whom the author agrees, nor for anyone else to modify anything in the content of the book, or change something without the author's consent, and this right is inherited from its owner, and is bound by what is restricted by international treaties, systems and customs that do not contradict the Sharī'ah which regulate and specify this right after the death of its owner, a combination of his private right and the public right; Because every author or inventor uses the ideas and products of those who preceded him. As for the author or inventor who is renting from a publishing house to write a book for it, or from an institution to invent something for it for a purpose: what he produces is the right of the party renting it, and it follows the conditions agreed upon between them, which are accepted by the rules of the contract.¹⁰

The prominent Muslim Scholar Sheikh Ibn-e 'Uthīmīn¹¹ has also adopted a similar approach. According to him, "if the state is preventing it, then this is not permissible, because God has commanded obedience to those in authority, except in disobedience to God, and refraining from recording it is not disobedience to God. As for companies, what I think is that if a person copies it only for himself, there is nothing wrong with it. But if he copies it for trade, then this is not permissible. Because it causes harm to others, it is like selling to a Muslim. Because if they sell it for one hundred and you copy it and you sell it for fifty, this is a sale based on your brother's sale."¹²

Articles 9 and 10: Section 9 and 10 is with regard to Glorification of an offence, hate speech and Cyber terrorism, and therefore the law (PECA, 2016) defines punishment for the offender.

Some people seduce others into sin, in order to collect some of the benefits of this world, or to feel the taste of sin, and then to claim an excuse for themselves that what is happening is not a matter of exclusivity, but by the generality in which most people have fallen, and then continues to insist on this sin for itself. Glorification to commit a crime or sin is one of the most dangerous things that a person can do as decorating disobedience is the favorite job of Satan and his

soldiers, Allah Says in the Holy Qur'an, " كَمَثَلِ الشَّيْطَانِ إِذْ قَالَ لِلْإِنْسَانِ اكْفُرْ فَلَمَّا كَفَرَ " "Like the Shaitan when he says to man: Disbelieve, but when he disbelieves, he says: I am surely clear of you; surely I fear Allah, the Lord of the worlds."¹³

Glorification of crime or sin in the hearts of people comes in many forms, including what is to obtain worldly benefits, such as convincing from some drug dealers to their victims that hashish or heroin has a unique feeling, which makes them feel happy, and then insists on you to experience it, if you do so they catch you, you become addicted, ready to steal all because of entering into buying the drugs. It also includes the insistence of some of your colleagues at work or employment to receive the bribe, and to convince you that it is not a form of bribery but rather a tip. This is always in order to ensure that you participate with them in the crime, for fear that their matter will be exposed, or they will be reported. What is more severe is when you leave the room for others to commit crime, and then you watch him from afar even if he is assured that no one will see him, you surprise him and threaten him with payment, arrest him, or report him.

The Prophet (S.A.W) is reported to have said that, " يَا مَعْشَرَ مَنْ آمَنَ بِلِسَانِهِ وَلَمْ يَدْخُلِ الْإِيمَانُ قَلْبَهُ لَا تَعْتَابُوا الْمُسْلِمِينَ وَلَا تَتَّبِعُوا عَوْرَاتِهِمْ فَإِنَّهُ مَنْ اتَّبَعَ عَوْرَاتِهِمْ يَتَّبِعِ اللَّهُ عَوْرَتَهُ وَمَنْ يَتَّبِعِ اللَّهُ عَوْرَتَهُ يَفْضَحْهُ فِي بَيْتِهِ " "O community of people, who believed by their tongue, and belief did not enter their hearts, do not back-bite Muslims, and do not search for their faults, for if anyone searches for their faults, Allah will search for his fault, and if Allah searches for the fault of anyone, He disgraces him in his house."¹⁴

If the sources and means of committing crimes throughout the ages have been numerous, the sources and means in our time are more numerous, and its effects are more powerful and dangerous to help the offenders and friends of the evil, such as video, satellite broadcasting, the Internet and mobile phone in Spreading criminal behaviors, encouraging them and promoting them. This results on thinking of the people to underestimate in view of their need to use these modern innovations and modern technologies and their dependence on them in their daily lives. On the other hand if a person does not come under the effects of these modern means and guards himself against the negative impact of these devices and uses them to benefit according to the principles of the Shari'ah then he becomes safe from being preyed. Some of the minor and major sins that occur through these modern means especially in the younger generations of boys and girls, from neglecting the prayers, imitating the unbelievers and infidels, speaking obscenities, correspondence between young men and women, quarrels, looking at faults, hearing evil things, falling into ugly deeds, and vile traits, enjoying watching sins, and being happy with them, wasting time in collecting and watching them, and participating in publishing and sharing them. The Prophet (S.A.W) said, " من سن في الإسلام سنة حسنة فله أجرها، وأجر من عمل بها من بعده من غير أن يقنص من أجورهم شيء، ومن سن في الإسلام سنة سيئة كان عليه وزرها ووزر من عمل بها من بعده

”من غير أن ينقص من أوزارهم شيء“ “Whosoever introduces a good practice in Islam, there is for him its reward and the reward of those who act upon it after him without anything being diminished from their rewards. And whosoever introduces an evil practice in Islam, will shoulder its sin and the sins of all those who will act upon it, without diminishing in any way their burden”¹⁵

This Hadith explicitly condemns and denounce the act of seducing other people to commit a crime or sin, publishing or spreading any illegal thing with intent to chastise that thing to get followed and acted by others. Spreading and disseminating scandalous news and gossip is a widespread social evil. Particularly in the modern era it is carried out through computer systems, mobile phone and other means. Allah says in the Holy Qur’an, “*إِنَّ الَّذِينَ جَاءُوا بِالْإِفْكِ عُصْبَةٌ مِنْكُمْ ۗ لَا تحْسَبُوهُ شَرًّا لَكُمْ ۗ بَلْ هُوَ خَيْرٌ لَكُمْ ۗ لِكُلِّ امْرِئٍ مِنْهُمْ مَا*” “Lo! they who spread the slander are a gang among you. Deem it not a bad thing for you; nay, it is good for you. Unto every man of them (will be paid) that which he hath earned of the sin; and as for him among them who had the greater share therein, his will be an awful doom.”¹⁶ Similarly Allah Says, “*إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ*”

”أَلَيْمٌ فِي الدُّنْيَا وَالْآخِرَةِ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ” “Those who love (to see) scandal published broadcast among the Believers, will have a grievous Penalty in this life and in the Hereafter: Allah knows, and ye know not.”¹⁷

“The direct interpretation of the verse, in the context in which it occurs, is this: Those who cast aspersions, propagate evil, publicize it and bring Islamic morality into disrepute deserve punishment. The words in the text, however, comprehend all the various forms that can be employed for the propagation of evil. These include actual setting up of brothels, production of erotic stories, songs, paintings, plays and dramas as well as all kinds of mixed gatherings at clubs and hotels, which induce the people to immoralities. The Qur’an holds all those who resort to such things as criminals, who deserve punishment not only in the Hereafter but in this world as well. Accordingly, it is the duty of an Islamic government to put an end to all such means of propagating immorality. Its penal law must hold all those acts as cognizable offenses which the Qur’an mentions as crimes against public morality and declares the offenders punishable. “You do not know”: You do not visualize the full impact of individual acts on society as a whole: Allah knows best the number of people who are affected by these acts and their cumulative effect on the collective life of the community. You should accordingly trust in Him and do all you can to eradicate and suppress the evils pointed out by Him. These are not trivial matters to be treated lightly; these have very serious repercussions, and the offenders must be dealt with severely”¹⁸.

Commenting on the next point of Cyber terrorism, the Islamic Fiqh Council, in its sixteenth session, that has taken place at the Muslim World League, held from 21-27/10/1422 AH Corresponding to 5-11/01/2002 AD, defined terrorism as: “Aggression carried out by individuals, groups or states with the aim of

defrauding the human being, his religion, his blood, his mind, and his money unjustly that includes all kinds of intimidation, harm, threats, unlawful killing and what is related to the forms of enmity, intimidation of the way and commit in highway robbery and every act of violence or threat which takes place in implementation of an individual or collective criminal act, and what aims to sow terror among people or frightening them by harming them or endangering their lives, freedom, security or money. It also includes harming the environment, public or private facilities and properties, or exposing a national or natural resource to danger. All these are forms of mischief in the land. Allah Says, “وَلَا تَبْغِ

“and do not seek to make mischief in the land, surely Allah does not love the mischief-makers.”¹⁹²⁰ Similarly, the Almighty Allah has termed making mischief in the land as the destruction of crops and cattle. Allah says, “وَإِذَا تَوَلَّى سَعَىٰ فِي الْأَرْضِ لِيُفْسِدَ فِيهَا وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ ۗ وَاللَّهُ لَا يُحِبُّ

“When he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and cattle. But Allah loveth not mischief.”²¹

This means that mischief in land is everything that disturbs human life and stability, such as intimidation, threats, violation of one’s rights or encroachment on a person and money. The Almighty Allah has pledged everyone who commits mischief in the land with two great terrifying, one of them in this world, and that is the punishment of *Ḥarābah* (Waging war against Allah), and the other the painful punishment that awaits him in the Hereafter. Allah says, “إِنَّمَا جَزَاءُ الَّذِينَ

يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ”²² “The punishment of those who wage war against Allah and His messenger and strive to make mischief in the land is only this, that they should be murdered or crucified or their hands and their feet should be cut off on opposite sides or they should be imprisoned; this shall be as a disgrace for them in this world, and in the hereafter they shall have a grievous chastisement”²²

Islam is not only prohibits the practice of terrorism, but bars its support in various forms such as incitement, financing, sheltering it and propagating it. Islam encourages its followers to work together for the common good and not to work together in inappropriate matters. Cooperation in good deeds will increase good and virtue in society. The only way to discourage evil from spreading in society is when people don't work together for it when they don't support it; they refuse to help each other and through it they show disapproval of the act. This, in turn, will reduce the appearance of such evils in society. Allah says, “وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۗ

“وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ”²³ “and help one another in goodness and piety, and do not help one another in sin and aggression;”²³

Section 10 (b) of the PECA 2016, prohibits ‘advance inter-faith, sectarian or ethnic hatred’. From the Islamic perspective, the Muslim nation is part of the

various human groups that are diverse in their beliefs and religions. At the same time when Islam carry out the task of introducing its religion and calling on people to adhere to it as the true and final religion which is good among all religions and fit for all times, at the same time it is based on strong foundations in dealing with adversaries with respect and tolerance. Allah says, “لَا إِكْرَاهَ فِي الدِّينِ ۗ قَدْ” “There is no compulsion in religion; truly the right way has become clearly distinct from error”²⁴ Similarly, “وَلَا تُجَادِلُوا أَهْلَ الْكِتَابِ إِلَّا بِالَّتِي هِيَ” “And do not dispute with the followers of the Book except by what is best”²⁵ and “ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ ۗ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ” “Call to the way of your Lord with wisdom and goodly exhortation, and have disputations with them in the best manner”²⁶

Articles 11 and 12: Sections 11 and 12 of the PECA 2016 are about Electronic Forgery and Electronic Fraud.

The crime of electronic forgery is one of the newly emerging crimes associated with modern technological development so there is no classical definition of electronic forgery in Islamic law, nevertheless, forgery is an old term and therefore, it will be viewed in that perspective. The exact translation or terminology used in Arabic for “forgery” is “الرور الزور” which means ‘falsehood’ mentioned in the Holy Qur’ān in multiple occasions. “وَاجْتَنِبُوا قَوْلَ الزُّورِ” “and avoid false words”²⁷ the expression “false speech” is general and implies lies, false evidence, calumny, etc.²⁸ In another occasion mentioned in the Holy Qur’ān, “فَقَدْ جَاءُوا ظُلْمًا وَزُورًا” “so indeed they have done injustice and (uttered) a falsehood.”²⁹

Based on these verses we may conclude that according to Sharī‘ah, electronic forgery is the attempt of falsehood which changes originality of something in the computer system.

With regard to Internet fraud, the textual evidence necessary for the prohibition of fraud and forgery is found in the Qur’ānic verses and Prophetic Ḥadīth that forbid fraud and deception and criminalize the acquisition of property by illegal means.

Allah commands, “يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ” “O you who believe! do not devour your property among yourselves falsely, except that it be trading by your mutual consent; and do not kill your people; surely Allah is Merciful to you.”³⁰ This text clearly states that, in Islam, the purchase or acquiring the property of others is permitted only through fair trade and true means and with the full consent of both parties. In another verse, “فَأَوْفُوا الْكَيْلَ وَالْمِيزَانَ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تُفْسِدُوا فِي” “therefore give full measure and

weight and do not diminish to men their things, and do not make mischief in the land after its reform; this is better for you if you are believers”³¹ More specifically, any attempt to cheat in business transactions is highly criticized by God Almighty. This is explicitly stated in the following verses: “وَيْلٌ لِّلْمُطَفِّفِينَ الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ وَإِذَا كَالُوهُمْ أَوْ وُزِنُوا لَهُمْ يُخْسِرُونَ {٣}” “Woe to those that deal in fraud, Those who, when they have to receive by measure from men, exact full measure, But when they have to give by measure or weight to men, give less than due.”³² The Prophet Muhammad (S.A.W) prohibits cheating and other dishonest practices in the behavior of Muslims towards their fellow Muslims and non-Muslims alike. In this regard, the Prophet (S.A.W) is reported to have said, “مَنْ مَنَّا ”عَشَّئْنَا فَلَيْسَ مِنَّا” “He who acted dishonestly (cheat) towards us is not of us”³³ It is clear from the previous texts and sayings that Islam forbids fraud and requires Muslims to be frank in all their actions. Honesty, sincerity and truthfulness are the basic moral values of Islam. There is no room for fraud, deception and dishonesty in the Islamic framework for human relations.

Article 13: Section 13 of PECA 2016, is with regard to making, obtaining or supplying device for use in offense.

Anyone who introduces a sin or crime by any means with malafide intention will receive its sin and a burden of sin equivalent to that of those who follow it and will continue even after the death of that person no matter how many years or centuries pass. The Prophet (S.A.W) is reported to have said that, “لَا تُقْتَلُ نَفْسٌ ”ظُلْمًا إِلَّا كَانَ عَلَى ابْنِ آدَمَ الْأَوَّلِ كِفْلٌ مِنْ دَمِهَا لِأَنَّهُ كَانَ أَوَّلَ مَنْ سَقَّ الْقَتْلَ”

“No person who is killed unjustly, but the share of (this offence of his also) falls upon the first son of Adam, for he was the first to introduce killing”³⁴

Article 14: Section 14 of PECA 2016 prohibits the unauthorized use of identity information and provides punishment for the culprit.

The Sharī‘ah protects identities not only through general rules, but also based on specific rules and regulations (rulings). Laws of theft, forgery, fraud, espionage, and disclosure of secrets, as well as the sanctity of property apply to at least some forms of identity theft. In addition, other Sharī‘ah laws such as the sacredness of homes, the inviolability of human honor, the prohibition of espionage and the prohibition of confidential disclosure can also be used to reduce identity theft in the digital age. Following the rule of Sharī‘ah with regard to unauthorized use of identity information, we can say that from the Islamic law perspective keeping secrets is a matter of utmost importance. In a Prophetic tradition it is narrated that “عن أنس، رضي الله عنه قال: أتى على رسول الله صلى الله عليه وسلم وأنا أَلْعَبُ مع الغلمان، فسلم علينا، فبعثني في حاجة، فأبطأت على أمي. فلما جئت قالت: ما حبسك؟ فقلت: بعثني رسول الله صلى الله عليه وسلم لحاجة، قالت: ما حاجته؟ قلت: إنما سر. قالت: لا تخبرن بسر رسول الله صلى الله عليه وسلم أحدًا. قال أنس: والله لو حدثت به أحدًا لحدثتك به يا ثابت.

is in contradiction with the Prophetic traditions and the Holy Qur'ān which terms the mutual agreement core part of the transaction.

Article 16, 17 and 20: Section 20 of the Act is with regard to Malicious Code that can be read and understand together with section 16 and 17 which is the offense of tampering, etc. of communication equipment and Unauthorized interception.

The transformation of ICT into a necessity in almost all arenas of modern society and has given rise to some ethical challenges; primarily privacy and hacking which includes tampering of communication equipment and unauthorized interception. When people use the Internet or other ICT infrastructures, they do so with a certain level of confidence; this is evident in their registration of personal information on many online platforms. The providers of these platforms are responsible for maintaining the privacy of this personal information by protecting it from digital snooping or hacking. For this purpose they adopt different tools like the Unique Device Identifier (UDI) or the International Mobile Equipment Identity (IMEI). The user satisfaction breaches when attack occurs in the form of changes, alteration, tampering, reprogramming the UDI or IMEI or through unlawful interception and the culprit starts using or marketing such device for transmitting and receiving information. Islam as a system and complete code of life that includes comprehensive principles and provisions to address ethical issues that revolve around breach of privacy and digital intrusion - hacking. People's right to privacy and security online or offline holds a Notable influence in Islam. Therefore, providing a strong barrier to curb any illegal interference or invasion comes with great respect in Sharī'ah. For example, the Qur'ān narrates the story of some people who suffered from the corruption of the intervention from Gog and Magog (Yājūj and Mājūj). They said, “ قَالُوا يَا دَا الْقُرَيْنِ إِنَّ يَأْجُوجَ ”

“They said: O Zulqarnain! Surely Gog and Magog make mischief in the land. Shall we then pay you a tribute on condition that you should raise a barrier between us and them?”⁴¹

Islam sanctifies the privacy of each individual. This importance can be inferred from the strict measures stipulated in Islamic law against suspicion and espionage. The Prophet (S.A.W) emphasized the duty to protect the privacy of people's correspondence and communications whether they took place in a private place or not, even if the private communication was transmitted in the public environment. But today, with the development of information and communication technology, people invade the privacy of others to elicit Information that can later be used to either blackmail or bully their victims online.

Islam absolutely deplores such action. Narrated from the Prophet (S.A.W), “ مَنْ ”

“نَظَرَ فِي كِتَابِ أَخِيهِ بِعَبْرٍ إِذْنِهِ فَإِنَّمَا يَنْظُرُ فِي النَّارِ

الْبُرِّ حُسْنُ الْخُلُقِ وَالْإِثْمُ ”⁴² In another tradition, “

“Virtue is a kind disposition and vice is

what rankles in your mind and that you disapprove of its being known to the people.”⁴³ Likewise, unauthorized interception has fostered digital financial fraud which can sometimes lead to suicide. Thus, the consequences of unauthorized interception on the victims can be verified through Islamic injunctions that prohibit theft, fraud, suicide and anything that can lead to it.

Article 18 and 19: Section 18 and 19 of the PECA 2016 is related to offenses against dignity of natural person and offenses against modesty of a natural person and minor.

From the Islamic perspective defamation and offenses against modesty of a person is a cruel act and whoever does it is an ally of Satan. The Prophet (S.A.W) has said, “أَتَدْرُونَ مَا الْأُغْيَبَةُ قَالُوا: اللَّهُ وَرَسُولُهُ أَعْلَمُ قَالَ: ذِكْرُكَ أَخَاكَ بِمَا يَكْرَهُ قِيلَ: أَرَأَيْتَ إِنْ كَانَ بِي، “Do you know what

backbiting is?” They replied, ‘Allah and His Messenger (SAW) know best.’ He said, “It is saying something about your brother which he dislikes.” Someone asked, ‘Supposing that what I said about my brother was true?’ and the Messenger of Allah (SAW) said: “If what you say about him is true you have backbitten him and if it is not true you have slandered him.”⁴⁴ Hence, defamation and causing harm to the reputation of a person is definitely a sin, an evil act that Muslims are forbidden to do and they should avoid it no matter what happens. As stated in the following verse: “يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا

تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ

تَوَّابٌ رَّحِيمٌ “O you who believe! Avoid most of suspicion, for surely suspicion in some cases is a sin, and do not spy nor let some of you backbite others. Does one of you like to eat the flesh of his dead brother? But you abhor it; and be careful of (your duty to) Allah, surely Allah is Oft-returning (to mercy), Merciful.”⁴⁵

Defaming others is associated with a chain of reactions and that’s why it is included as a great sin. Before slandering, one should create an assumption and try to search for information. The person who commits the slander must have certain motives against which he may take revenge, envy him/her, make fun of him/her, or accuse him/her of a bad act. The Prophet (S.A.W) said, “الْمُسْلِمُ أَخُو

الْمُسْلِمِ لَا يَخُونُهُ وَلَا يَكْذِبُهُ وَلَا يَخْذُلُهُ كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ عَرَضُهُ وَمَالُهُ وَدَمُهُ التَّقْوَى هَا هُنَا

“The Muslim is the brother to the Muslim, he does not cheat him, lie to him, nor deceive him. All of the Muslim is unlawful

to another Muslim: His Honor, his wealth, and his blood. Al-taqwā is here. It is enough evil for a man that he belittle his brother Muslim.”⁴⁶ Al-Kasani, the Hanafi jurist, mentions “When one says to another ‘you sinner, you vile person, you thief’ or similar then the Imam has the option to reprimand them publicly”⁴⁷

The Hanbali school adds to this list of epithets, “You unfaithful, you cheater, you dog, you he-goat, you pimp, you player” and the like”⁴⁸

Moreover, playing with someone's face and changing his body with other through any mean is the worst form of offenses against modesty of person in particular when it is associated with sexual abuses. The perpetrator knows the repercussions of this illicit act but still he commits these offenses for his personal gains and benefits or to satisfy his heart with these acts. This act of tampering with the nature of God Almighty with which He created people, is a blatant interference with his creation. Allah says, “فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا ۚ فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا ۚ لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ۚ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ” “Then set your face upright for religion in the right state-- the nature made by Allah in which He has made men; there is no altering of Allah's creation; that is the right religion, but most people do not know”⁴⁹

The above verse mentions that changing God's creation is general, is an act which the Satan beautifies for its followers. It is evident from the above discussion that the offenses mentioned in section 18 and 19 of the PECA 2016 are prohibited in Islamic law.

Article 21: Section 21 of the PECA 2016 is with regard to the crime of Cyber Stalking and provides punishment for the offender.

From the Islamic law perspective spying on secret Information of brothers and sisters is forbidden. Because espionage leads to backbiting and backbiting is a great sin. Allah closed every path that leads to the evil of backbiting and forbade spying. Allah says, “يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ ۖ وَلَا تَجَسَّسُوا وَلَا

يَعْتَنِبْ بَعْضُكُم بَعْضًا ۚ أَيُّحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ”

“O you who believe! Avoid most of suspicion, for surely suspicion in some cases is a sin, and do not spy nor let some of you backbite others. Does one of you like to eat the flesh of his dead brother? But you abhor it; and be careful of (your duty to) Allah, surely Allah is Oft-returning (to mercy), Merciful.”⁵⁰

In today's world we use technology for many things. There are many influences of technology. With its dominating capabilities, internet technology has also opened up leakage gaps in the wall i.e. cyberstalking. Online stalkers are those who “use the Internet as a weapon or tool, of some kind, to assault, harass, threaten, or intimidate their victims, prey upon, or create fear among the victims. Use of the Internet, email, or other acts of harmful electronic communication can be considered Stalking and can be seen as mischievous and harmful acts. Allah says,

“وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ ۖ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا ۚ وَأَحْسِنَ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ ۖ وَلَا تَبْغِ

“And seek by means of what Allah has given you the future abode, and do not neglect your portion of this world, and do good (to others) as Allah has done good to you, and do not seek to make mischief in the land, surely Allah does not love the mischief-makers.”⁵¹

From the above discussion it is clear that Cyber Stalking is prohibited in Islam. Anyone who commit this heinous crime is liable to punishment provided by law of the land. The crime of Cyber Stalking may also be read with unlawful

interception discussed previously in section 17 and all the Qur'anic verses and Prophetic traditions provided with respect to the offence of unlawful interception are relevant with regard to Cyber Stalking.

Article 22 and 23: Section 22 of PECA 2016 is with regard to spamming and section 23 is with respect to the offense of spoofing and provide punishment for the offender.

From the Islamic law perspective both spamming and spoofing are prohibited acts. Harming other people or their property is sin. In a prophetic tradition it is reported that “لَا ضَرَرَ وَلَا ضِرَارَ مَنْ ضَارَّ ضَرَّهُ اللَّهُ وَمَنْ شَاقَّ شَقَّ اللَّهُ عَلَيْهِ” “Do not cause harm or return harm. Whoever harms others, Allah will harm him. Whoever is harsh with others, Allah will be harsh with him”⁵² Similarly Allah says in the Holy Qur’ān, “وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ” “And do not wrong men of their things, and do not act corruptly in the earth, making mischief”⁵³ Hence, the offense of spamming provided in the act is combination of a series of illegal acts that includes harming, fraudulent activity, misleading and unlawful interception. Therefore, the Islamic law approach mentioned for all of the above offenses are applicable to the offense of spamming. These are offenses which are discouraged in the Islamic law and therefore head of the state or law of the land can specify punishment for the perpetrator. The prophet (S.A.W) said, “عَلَيْكُمْ بِالصِّدْقِ, فَإِنَّ الصِّدْقَ يَهْدِي إِلَى الْبِرِّ, وَإِنَّ الْبِرَّ يَهْدِي إِلَى الْجَنَّةِ, وَمَا يَزَالُ الرَّجُلُ يَصْدُقُ, وَيَتَحَرَّى الصِّدْقَ, حَتَّى يُكْتَبَ عِنْدَ اللَّهِ صِدْقًا, وَإِيمَانًا وَالْكَذِبُ, فَإِنَّ الْكَذِبَ يَهْدِي إِلَى الْفُجُورِ, وَإِنَّ الْفُجُورَ يَهْدِي إِلَى النَّارِ, وَمَا يَزَالُ الرَّجُلُ يَكْذِبُ, وَيَتَحَرَّى الْكَذِبَ, حَتَّى يُكْتَبَ عِنْدَ اللَّهِ كَذَابًا (you people) to truth, for truth leads to good deeds and good deeds lead to Paradise, and if a man continues to speak the truth and makes truth his object he will be recorded as truthful before Allah. Avoid (you people) falsehood, for falsehood leads to wickedness and wickedness leads to Hell, and if a man continues to speak falsehood and makes falsehood his object he will be recorded as a liar before Allah.”⁵⁴

7.3.3 Conclusion:

The use of Internet and new technology is permissible as long as it is in conformity with the Sharī‘ah law and principles. Hence, the Muslims must always remember that there are certain acts which are allowed and some acts that are prohibited in Islam. The aim of this research is to highlight that observance of Islamic values and ethics is very important when using new media and such compliance with laws will help reduce cybercrime.

By Examining the PECA 2016, this researcher noted that the heinous crime of uploading and sharing blasphemous materials on the Internet and on social media was not mentioned. Although the proposed law speaks of the offense of “child pornography,” there is no word on those who spread pornography and contribute to the deterioration of the social values of our society.

This act does not firstly cover the blasphemy materials against any religion, and secondly it only talks about removing the objectionable materials and does not entail the punishment of the offender.

With regard to “pornography,” the source quotes Section 19 (1) (a) (b) (c) and Section 34. Section 19 1 (a) (b) (c) deals primarily with the offense against a person’s modesty, to which a person face is attached on sexually implied image. It is not stated anywhere in this section or in any other part of the act that those who upload and share real pornography will be considered to have committed a crime and will therefore be punished. Section 34 authorizes only the Authority (PTA) to ban any substance including that which is contrary to “public morals or decency” but does not consider it a punishable crime.



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professor at the College of Sharī'ah at Imam Muhammad bin Sa'ud Islamic University in Qassim, and a member of its academic council. Among his most important books are his 15-volume book on jurisprudence and his 10-volume book on the interpretation of the Noble Qur'an. He also used to teach at the Grand Mosque in Makkah during the month of Ramaḍan. See, Sheikh Muhammad bin Ṣaleḥ Uthīmīn, available on

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