

Punjab Defamation Act 2024

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Introduction

The Punjab Defamation Act (PDA) 2024, passed by the Punjab Assembly in May 2024 despite widespread opposition from political parties, journalists, legal professionals and civil society groups, is a controversial law that threatens freedom of speech and the press in Punjab.

Despite the law's stated aim to prevent the proliferation of false information across digital, social and conventional media against public officials and private citizens, its diverse and extensive number of critics view it as a disproportionate and potentially harmful response to the issue of defamation in the digital era. The 2024 law is perceived to be designed to suppress dissent, primarily against public officials, rather than address defamation in a balanced and rights-respecting manner.¹

The PDA 2024 has faced backlash due to its excessively harsh penalties, vague and broad language, and potential for misuse, in particular its ability to stifle free speech and expression, freedom of the press, open public debate and legitimate critique of public officials. Legal experts and civil society warn that several of the PDA's expansive provisions violate fundamental rights and protections guaranteed by the Constitution of Pakistan. There is growing concern that the law could enable self-censorship for journalists, activists, citizens alike, and enable a culture of lack of accountability for public officials.

Shortly after its enactment, the PDA was challenged in the Lahore High Court for contravening fundamental constitutional rights, including the right to fair trial (Article 10-A), equality before the law (Article 25), freedom of speech (Article 19), amongst others.

¹ M. Malik & W. A. Sheikh. (2024, May 22). Analysis: The defamation conundrum. *Dawn*.

Petitioners also argue that the Act undermines judicial independence and grants excessive power to the government to silence dissent.

At the time of writing, the matter is still pending before the Lahore High Court.² However, in earlier hearings, the Lahore High Court has already suspended the Act while it reviewed its constitutionality. Justice Muhammad Amjad Rafiq ordered the suspension of Sections 3, 5 and 8 of the Act and declared that no legal proceedings can take place under the PDA 2024.³ In September of 2024, the Advocate General of Punjab also assured the Court that the PDA was not being enforced in the province.

By critically examining contentious aspects of the PDA, we can better understand the potential harm this Act poses to fundamental freedoms and democratic values in Punjab.

² Misc. Writ CM/1/58368/24; Misc. Writ 58368/24

³ Pakistan Press Foundation. (2024, September 30). LHC issues notices on challenge to Punjab Defamation Act 2024. <https://www.pakistanpressfoundation.org/lhc-issues-notices-on-challenge-to-punjab-defamation-act-2024/>

Scope of the law

Definitions under the PDA

The PDA 2024 includes definitions that expand its reach significantly to a wider segment of society. Section 2 of the Act explicitly includes all digital and social media platforms under the ambit of '*broadcasting*' or '*broadcast*', which in 2(b) is stated as:

the dissemination of writings, signs, signals, pictures and sounds of all kinds, including any electronic device, intended to be received by the public through social media websites, applications and platforms (including but not limited to Facebook, Instagram, X/twitter, WhatsApp, TikTok etc.), either directly or through the medium of relay stations, by means of:

- (i) a form of wireless radio-electric communication utilizing Hertzian waves, including radio telegraph and radio telephone; or
- (ii) cables, computers, wires, fiber-optic linkages or laser beams; or
- (iii) any other electronic or information technology medium or technology.

This is further supplemented by an all-encompassing definition of a '*Journalist*' under Section 2(m) which includes '*any person who creates and uploads social media news*'. It is hard to see who will not be covered by this provision, yet it remains clear that the definition now includes vloggers, bloggers, and all social media users who create and share news or current affairs content without distinction. In the absence of a clear criteria to differentiate professional journalists from social media content creators, who could very well be interested citizens sharing their opinions, it exposes many individuals to a high risk of persecution under the law.

Similarly, the Act also provides a broad definition of a '*Newspaper*' under Section 2(o) which includes '*a website, application or other*

social media platform containing public news, intelligence or occurrences or remarks or observations or containing only, or principally, advertisements, printed or electronically or digitally issued for distribution to the public and published or issued periodically or in parts or numbers...' further blurring the distinction between journalistic content and other materials shared by groups engaged in open public discourse. It also discourages a wide range of groups from engaging with public information in their own way.

By equating social media content creators and social media platforms with professional journalists and traditional newspapers, these provisions impose the same stringent regulations, including content monitoring and censorship, on informal, user-driven platforms. It fails to account for the spontaneous and opinion-driven nature of social media content, which differs fundamentally from traditional journalism with its editorial oversight and professional standards. It also fails to recognize the role that social media plays in empowering ordinary people to document and share news, including real-time information, providing professional journalists and other state actors with valuable leads and perspectives.

Such an approach also fails to recognize the diversity of users of social media platforms, which also include survivors of sexual and other forms of violence who increasingly resort to social media platforms to share their stories. Public engagement with their stories is a way of building solidarity, support networks and grass-root movements on pressing issues demanding State attention, not its threat of persecution. The threat of defamation, as has already been seen in the case of Pakistan and several other countries, has been used to silence and retraumatize survivors and victims of abuse and will deter others from speaking out against their perpetrators.

The Act is unfair in holding digital creators to the same standards as professional journalists as most of these content creators lack the resources for rigorous fact-checking and have not been trained in legal and journalistic standards. The Act's overreach has a chilling

effect on these diverse group of digital creators and social media users who will naturally be hesitant to speak out on important issues.

The far-reaching implications of the law also shift focus from addressing legitimate concerns about misinformation or harm to an individual to exerting greater control over the flow of information in online spaces, especially against powerful groups. Instead of fostering accountability, the provisions can be used to suppress critical voices and limit the role of digital platforms as spaces for open and diverse discourse. It is therefore clear to see the PDA's provisions as a direct attack on freedom of expression and the vital role digital creators as active citizens, academics, activists, writers, survivors etc. play in holding those in power accountable.

The definition of '*Defamation*' itself under the PDA along with the above definitions and processes outlined under the Act (discussed below) create significant challenges in interpretation and risk of abuse. For example, the Act employs vague terms like '*false information*', '*defamatory content*' or '*defamatory act*' without defining a clear and narrow scope. Ambiguity in language leaves room for arbitrary interpretation and selective enforcement, granting excessive discretion to claimants and tribunals.

Without in-built safeguards, public figures or institutions can exploit the law by framing legitimate criticism as defamation, targeting critical voices. Frivolous lawsuits with harsh penalties can intimidate critics, disproportionately target certain already marginalized groups, overburden the legal system, and stifle necessary public debate on issues of public importance.

Problems with the process

Section 3: Definition of defamation

Under Section 3 of the PDA, defamation is a civil wrong, and claimants can file lawsuits '*without proof of actual damage or loss.*' Moreover, Section 23 of the Act states that general principles under the law of evidence, '*The Qanun-e-Shahadat 1984 (PO No. 10 of 1984) shall not apply to the proceedings*' of the PDA. This cumulatively raises serious concerns about how parties will prove their claims outside of established evidentiary standards and safeguards and its implications on the right to fair trial under Article 10A, especially with the risk of severe penal consequences.⁴

The penalty for defamation is at an extremely high minimum of PKR 3 million as '*General Damages*,'⁵ which can extend '*up to ten (10) times the quantum of General Damages*' as '*Punitive Damages*', that is, PKR 30 million plus additional penalties when defamation is proved. These include requiring the defendant to issue an unconditional apology, which must be accepted by the claimant; ensure the apology is published with equal prominence as the original defamatory statement; and the suspension or blocking of the defendant's social media account or any platform used to disseminate the defamatory content (Section 21 of the PDA).

It is also pertinent to emphasize that the minimum threshold of damages can be passed by the tribunal as a '*Preliminary Decree*', without the defendant even having to respond to the accusation of

⁴ With regard to the Code of Civil Procedure 1908, the PDA states that it will apply 'where no specific procedure of provision is supplied under this Act [PDA 2024]' (Section 22; see also Section 10).

⁵ Section 2(K) of the PDA, which cites 'General Damages', refers to damages to be granted by the tribunal at the time of granting a preliminary decree if the defendant fails to obtain leave to defend in terms of Section 13 of this Act, with a minimum of PKR 3 million.

defamation against them.⁶ Moreover, once this preliminary decree is made, *'it is automatically converted into an execution proceeding without the need to issue any fresh notices to the defendant'*, already termed as a *'judgment debtor'* (Section 16). Therefore, enforcement of the punishment begins immediately, using excessive measures such as recovering dues as arrears of land revenue or detaining the defendant, including by using law enforcement agencies such as the Punjab Police.

In cases of an objection relating to *'the attachment or sale of any asset or property of the judgment-debtor for the purpose of satisfaction of the decree'*, it is to be investigated and concluded *'within thirty (30) days of filing of such claims or objections'*. Moreover, a penalty of up to 20% of the property's sale price can be imposed if a tribunal deems objections (made on the sale of asset) to be mala fide or intended to delay proceedings.

These measures are disproportionately punitive when applied to preliminary decrees that have not even been adjudicated. They bypass essential procedural safeguards, such as notifying the defendant and allowing them to contest or comply with the decree before enforcement actions commence, amplifying their risk of financial and personal harm and exposing them to potentially unjust and unforeseen consequences. Legal experts see this as closer to criminal defamation in its essence under the garb of a civil complaint, given the seriousness of the punishment attached to the law, which can be imposed as soon as a complaint is filed.⁷ It is also pertinent to note here that Section 24 of the PDA does prejudice any subsequent action for criminal defamation under other laws in force.

⁶ Section 2(K) of the Punjab Defamation Act 2024 empowers a tribunal to grant a preliminary decree, 'if the Defendant fails to obtain leave to defend in terms of section 13 of this Act, with a minimum of Rs. 3,000,000/- (Rupees Three Million)'

⁷ M. Malik & W. A. Sheikh. (2024, May 22). Analysis: The defamation conundrum. *Dawn*.

Sections 8 and 10: Tribunal establishment, powers and jurisdiction

Under Section 8 of the PDA, specialized tribunals are granted exclusive jurisdiction to handle defamation cases and '*shall decide the case within one hundred and eighty (180) days from the date of the first appearance of the Defendant*' [Section 10(6)]. The provincial government has the power to appoint members of these tribunals (in consultation with the chief justice of the Lahore High Court) and set criteria for their selection and terms of service, including additional allowances and benefits.

This is contrary to principles of transparency and judicial independence, which include the process of selection, appointment, removal as well as rules of operation within its ambit. Empowering the provincial government to appoint tribunal members, even with the chief justice's consultative role, gives the executive considerable influence over the adjudicative process, in violation of Article 175 of the Constitution. This is particularly concerning in cases of defamation involving the government itself, as tribunal members may feel pressured to favour their appointing authority. Such an arrangement compromises judicial autonomy, creates potential conflicts of interest, and erodes public trust in the impartiality of these tribunals.

It also remains questionable why there was a need to establish a separate judicial structure with considerable executive influence to adjudicate defamation claims, in the presence of existing judicial structures and frameworks. Unlike traditional courts, these tribunals operate without established safeguards such as appellate oversight (and established principles of law of evidence), which increases the risk of arbitrary decision-making, and with the 180-day limit, also hasty punitive decisions.

There is a further disparity in the way these tribunals are intended to function if a claim for defamation has been filed by a public official or private person in violation of the principles of equality before the

law, dignity and fairness. Section 10(4) mandates a separate process for constitutional officeholders, which are defined in Section 2(f) as

... the President, Governor, Chief Justice of Pakistan and Judges of the Supreme Court, Chief Justice and Judges of the Lahore High Court, Prime Minister, leader of the Opposition in National Assembly, Speaker of the National Assembly, Chairman of the Senate, Chief Minister, leader of the Opposition in Provincial Assembly, Speakers of Provincial Assemblies, Chairman and members of Election Commission of Pakistan, the Auditor General of Pakistan, the Chairman, Joint Chiefs of Staff Committee, the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff;'

A claim of defamation filed by one of these offices/officials would be before a special single bench of the Lahore High Court (Section 4). These individuals can bypass the tribunal used for claims by ordinary citizens. In this way, Section 10(4) creates an unequal framework by providing constitutional officeholders access to a specialized judicial process, while ordinary citizens are confined to the tribunal, which operates under a different procedural framework and lacks the same authority as the High Court. This is clearly in violation of Article 25, which affirms that all citizens are entitled to equal protection under the law, without arbitrary distinctions based on their status or office. This also has implications for citizens' rights under Articles 10 and 14.

Moreover, the rationale for granting constitutional officeholders' preferential treatment in defamation cases is fundamentally flawed, particularly through the lens of democratic accountability and the role freedom of speech plays in that. Officials of the state, such as the prime minister, judges and military chiefs occupy positions of immense influence and wield significant power. This amplifies the need for their actions to be subject to heightened scrutiny and public accountability. In democratic societies, public figures must endure greater criticism because the public has a rightful interest in their actions.

Allowing constitutional officeholders preferential treatment in defamation claims under the PDA undermines these principles. Rather, the threshold for permitting such claims of the State against citizens in courts should be higher, not lower. Courts must rigorously scrutinize these claims to prevent the misuse of legal processes, which could otherwise stifle free expression and discourage public discourse and dissent. Moreover, the procedural framework established by Section 10(4) raises concerns about judicial consistency. This dual system risks creating discrepancies in the adjudication of defamation claims, leading to inconsistent legal precedents and outcomes as well.

Section 10(7) of the PDA significantly expands the tribunal's jurisdiction beyond Punjab's geographical boundaries. It allows the tribunal to hear defamation cases if the alleged defamatory content is '*disseminated, circulated, received, read or viewed*' within Punjab, or if the defamed person resides, works, or carries out official duties in the province 'temporarily or permanently' and has been defamed. This broad jurisdiction raises serious concerns about legal overreach, particularly in the digital age. As online content is accessible nationwide, the tribunal may assert control over cases with minimal connection to Punjab, potentially implicating individuals outside the province and extending the reach of state officials broadly linked to Punjab.

To illustrate, a Sindh-based journalist's article read or shared online in Punjab could give the tribunal jurisdiction, even if the article's source and primary intended audience are outside of Punjab. This departure from traditional legal principles, which demand a clear connection between the alleged harm and the jurisdiction, opens the door to potential misuse. The implications are especially significant for constitutional officeholders, as alleged defamatory content from outside Punjab against them could fall under the tribunal's purview simply by being accessed or discussed within the province. Additionally, if these officeholders reside or work in Punjab and their reputation suffers there, the Act could also be invoked.

It is also pertinent to recall that constitutional officeholders under the PDA have an extra layer of legal protection under Section 10(4). Unlike ordinary citizens who must pursue their defamation claims before the tribunal, high-ranking officials have the option to bypass the tribunal entirely and file their claims directly before a specially designated single bench of the Lahore High Court. This grants them a procedural advantage and creates an unequal legal system. In effect, the Act strengthens defamation protections for those in power while leaving ordinary citizens, including potentially those outside of Punjab, with fewer legal options.

Section 11: Procedure of the tribunal

Another provision that provides a discriminatory process is found under Section 11(3) of the PDA, which allows only constitutional officeholders to file claims through an authorized officer or attorney, allowing them to avoid personal appearances in court during defamation proceedings. Statements made by their representatives are treated as if they were made by the officeholder themselves. Furthermore, even if these individuals leave their positions or their status changes, the proceedings continue as though they still occupy their original office.

Unlike holders of constitutional offices, ordinary individuals must personally attend all court proceedings, often disrupting their daily lives, work, and financial stability. This requirement affects their earnings, mental well-being, and overall stability. In contrast, constitutional officeholders are exempt from such obligations and cannot be cross-examined, creating an unfair double standard. This disparity is unjustified and goes against the principles of equality, justice and fairness.

Section 12: No comment on pending proceedings

Section 12 of the PDA prohibits any comments or statements regarding proceedings pending before the tribunal. This restriction applies to all individuals associated with the proceedings, including parties, counsel, legal advisers, witnesses, tribunal members, court

staff, and even third parties. Violations are subject to severe fines, starting with an initial penalty of PKR 50,000 and an additional PKR 10,000 per day for continued noncompliance. The provision does not allow any defences, such as fair comment, public interest, or good faith.

The provision infringes upon the fundamental rights to freedom of speech and expression (Article 19) and access to information (Article 19A) granted by the Constitution. Restrictions on free speech are constitutionally permitted only under narrowly defined circumstances and defamation tribunal proceedings do not fall within these exceptions, making the blanket prohibition imposed by Section 12 unreasonable and unconstitutional. Moreover, defamation cases often involve matters of public interest, especially when involving the government, and this sweeping restriction stifles public debates and discussions that serve democratic engagement through punitive and excessive penalties, especially given the lack of a compelling justification for such far-reaching restrictions.

Section 13: Leave to defend

Despite certain '*Defences*' to defamation being outlined under Section 4 of the PDA 2024,⁸ Section 13 requires a person accused of defamation to file a separate written application as '*Leave to defend*' themselves, before being allowed to defend themselves. Moreover, if they are not able to get this leave (as it may be accepted or rejected by the tribunal), they will be fined PKR 3 million (as a preliminary decree) without a trial and a chance to defend themselves.⁹ This is in blatant disregard of principles of natural justice, due process and fair trial rights.

This provision places an unreasonable procedural hurdle on defendants and effectively transforms the right to defend—an essential ingredient of a fair trial—into a privilege contingent on the

⁸ The provision in Section 4 (Defences) is sufficiently undermined and does not provide any protection when linked with the requirement of prior '*Leave to defend*' under Section 13.

⁹ See further Section 13(11) on rejection of the leave to appeal.

discretion of the tribunal. By making the ability to defend dependent on procedural approvals, Section 13 directly contravenes Article 10A, which guarantees an unimpeded right to defend oneself in legal proceedings. A critical aspect of a fair trial is the principle of *audi alteram partem* (no person shall be condemned unheard), a cornerstone of natural justice upheld consistently by Pakistan's judiciary; the right to be heard must be read into any law affecting civil rights.

Section 13(9) exacerbates the problem by giving the tribunal discretion to demand cash deposits or security as a condition for granting leave to defend. This provision imposes significant financial burdens, particularly on defendants with limited resources, further restricting their ability to access justice. Such financial requirements not only deter defendants from seeking to defend themselves but also create a system that favours defendants with greater financial means, undermining the principle of equality before the law enshrined in Article 25 of the Constitution.

Section 14: Claim by or against a female or member of a minority community

This section provides for the availability of services of an attorney/advocate/pleader through the office of the district attorney in proceedings before the tribunal and by the office of the advocate general for proceedings before the high court to women and members of minority communities in defamation cases by or against them. It also contains the possibility of having an in-camera proceedings in such cases, decided on the merits of each case.

The provision does little to afford protection to women and other marginalized communities who are equally susceptible to being implicated by the far reach of the defamation law itself and the risks that alone poses to their person. Moreover, Section 14 does not mitigate the discrimination that women and minority groups, as part of the category of citizens vs constitutional office holders, face under the PDA. It is also pertinent to emphasize that marginalized communities have longstanding genuine and legitimate grievances

from the state, including as victims or survivors of state neglect or repression; these groups remain at risk of being targeted by the PDA provisions.

Section 18: Ex-parte proceedings

Tribunals can pass an ex-parte order if they determine that the defendant has intentionally avoided service or chosen not to appear. However, this discretionary power, lacking stringent safeguards, increases the risk of misuse. Defendants absent due to unavoidable circumstances may be unfairly judged as wilfully avoiding proceedings. Subsection (2) prohibits appeals against ex-parte orders but permits them to be set aside if the defendant applies within 30 days. Subsection (3) further requires defendants seeking to set aside an ex-parte order to furnish 'sufficient security' equivalent to the decree amount. This condition places a substantial burden on defendants and can deter individuals from pursuing remedies, further restricting their access to justice.

Conclusion and Recommendations

The PDA 2024 is cause for concern. Ambiguities in definitions, disproportionate penalties, and procedural inequities question the law's purpose, compromise its fairness and challenge its constitutionality for being in violation of several fundamental rights and freedoms. The Act risks silencing dissent, legitimate public discourse and investigative journalism, undermining the principles of transparency and accountability essential for democratic governance. These gaps call for a comprehensive reassessment to align the Act with Pakistan's constitutional guarantees. The following key recommendations are proposed as a starting point:

1. *Review/repeal provisions of the PDA 2024 to ensure compliance with constitutional rights.* Several provisions of the PDA conflict with constitutional rights and principles, including Articles 10 (safeguards as to arrest and detention), 10A (right to fair trial), 14 (inviolability of dignity), 19 (freedom of speech, etc.), 19A (right to information) and 25 (equality of citizens) of the Constitution of Pakistan. Therefore, several provisions must be repealed to align the state's obligation to protect fundamental rights and prevent risks to the same. In particular:
 - a. Section 2, in which the definitions of a 'Journalist' and 'Newspaper' are too broad and vague
 - b. Section 3, which does not require proof of damage or loss before imposition of penalty
 - c. Section 8, which establishes a parallel judicial structure for defamation claims without ensuring judicial independence and transparency
 - d. Section 10, subsection 4 which creates a distinct complaint forum for state officials

- e. Section 11, which allows only state officials to file claims through an authorized representative and evade in person appearances in defamation cases, discriminating against citizens
 - f. Section 12, which limits comment on pending proceedings without reasonable justification.
 - g. Section 13, which requires an accused of defamation to apply for leave to defend themselves
 - h. Section 15, 16, 18, and 21 which reinforce severe penalties without proof and trial
 - i. Section 23, which dispenses with the law of evidence, the application of the Qanun-e-Shahadat 1984 to defamation cases
2. *Revise existing laws, such as the Defamation Ordinance 2002 and the Punjab Defamation Act 2012, through a consultative process that reflects a balanced rights-based approach to addressing defamation and misinformation in a digital era.* In the presence of existing laws, including defamation laws, the need for new standalone legislation on defamation has been questioned. Existing laws can be revised through meaningful engagement and consultation with journalists, legal experts, digital rights activists, and civil society organizations before making any further amendments to protect individuals' reputation without stifling free speech and critical discourse. This will help ensure a more balanced and just legal framework that upholds fundamental rights and democratic values in Punjab. Any such revision must:
- a. Incorporate robust procedural safeguards, including protecting the anonymity of digital content creators who express opinions on matters of public interest
 - b. Mitigate overreach through clear, precise and measured terminology
 - c. Be cognizant of disproportionate processes and penalties

- d. Ensure procedural equities and principles of non-discrimination and proportionality
 - e. Protect certain forms of speech such as satire, constructive criticism, and public interest reporting to uphold the role of the media and ordinary citizens in a democratic society
 - f. Provide robust defences for truth, fair comment, and public interest, allowing for robust debate and criticism of public figures and institutions
- 3. Promote media literacy by investing in public education and media literacy programs to help citizens critically analyse information and distinguish between fact and opinion.
 - 4. Develop dedicated materials to help citizens identify fake news/information and misinformation, especially on digital platforms.

Annex: Text of the Act

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TEXT

THE PUNJAB DEFAMATION ACT 2024 (II of 2024)

[7th June, 2024]

An Act

to make provisions in respect of defamation.

It is necessary to make provisions in respect of defamation and for matters connected therewith and ancillary thereto.

Be it enacted by Provincial Assembly of the Punjab as follows:

1. Short title, extent and commencement.— (1) This Act may be cited as the Punjab Defamation Act 2024.

- (2) It shall extend to whole of the Punjab.
- (3) It shall come into force at once.

2. Definitions.— In this Act:

- (a) "Act" means the Punjab Defamation Act 2024;
- (b) "broadcasting" or "broadcast" means the dissemination of writings, signs, signals, pictures and sounds of all kinds, including any electronic device, intended to be received by the public through social media websites, applications and platforms (including but not limited to Facebook, Instagram, X/twitter, WhatsApp, TikTok etc.), either directly or through the medium of relay stations, by means of:
 - (i) a form of wireless radio-electric communication utilizing Hertzian waves, including radio telegraph and radio telephone; or
 - (ii) cables, computers, wires, fiber-optic linkages or laser beams; or
 - (iii) any other electronic or information technology medium or technology;
- (c) "claim" means the claim in the form of a plaint or application instituted before the Tribunal under section 11 hereof, for grant of decree for damages and costs in favour of the Claimant and against the Defendant;
- (d) "Claimant" means the person who, being aggrieved of defamation, institutes a claim before the Tribunal under this Act;
- (e) "Code" means the Code of Civil Procedure 1908 (V of 1908);
- (f) "Constitutional Office" means the President, Governor, Chief Justice of Pakistan and Judges of the Supreme Court, Chief Justice and Judges of the Lahore High Court, Prime Minister, leader of the Opposition in National Assembly, Speaker of the National Assembly, Chairman of the Senate, Chief Minister, leader of the Opposition in Provincial Assembly, Speakers of Provincial Assemblies, Chairman and members of Election Commission of Pakistan, the Auditor General of Pakistan, the

Chairman, Joint Chiefs of Staff Committee, the Chief of the Army Staff, the Chief of the Naval Staff and the Chief of the Air Staff;

- (g) "costs" mean and include the costs to be imposed and granted by the Tribunal to the Parties to the proceedings under the Act;
- (h) "defamation" means publication, broadcast or circulation of a false or untrue statement or representation made orally or in writing or visual form either by ordinary form or expression or by electronic or other modern medium, means or devices or through social media or any online or social media website, application or platform, which injures or may have the effect of injuring the reputation of a person or tends to lower him in the estimation of others, or ridicules him, or exposes him to unjust criticism, disliking, contempt or hatred, and such defamation shall also include comments, statements and representations targeted towards certain genders and minorities as contained in section 14 of this Act;
- (i) "Defendant" means the person who has allegedly committed defamation and against whom a claim has been filed by the Claimant before the Tribunal;
- (j) "editor" means a person having editorial or equivalent responsibility for the content of the statement or the decision to publish or circulate it, and also includes the operator or user of a social media account or medium, as defined in clause (b) of this section;
- (k) "General Damages" means damages to be granted by the Tribunal at the time of granting preliminary decree, if the Defendant fails to obtain leave to defend in terms of section 13 of this Act, with a minimum of Rs. 3,000,000/- (Rupees Three Million);
- (l) "Government" means Government of the Punjab;
- (m) "Journalist" means any person who is professionally or regularly engaged by a newspaper, magazine, news website or other news broadcast medium (whether online or offline), and includes any person who creates and uploads social media news or current affairs content or otherwise has a substantial track record of freelancing for any newspaper, magazine, news website or other news broadcast medium;
- (n) "Member" means a Member of the Tribunal appointed under section 8 of this Act but does not include a specially nominated Single Bench of the Lahore High Court;
- (o) "newspaper" means a newspaper and includes a website, application or other social media platform containing public news, intelligence or occurrences or remarks or observations or containing only, or principally, advertisements, printed or electronically or digitally issued for distribution to the public and published or issued periodically or in parts or numbers, and includes such other periodical works as the Government may, by notification in the official Gazette, declare to be a newspaper;
- (p) "originator" means the initiator of the defamatory statement or any other defamatory act;

- (q) "Parties" means the parties to the proceedings before the Tribunal, i.e., the Claimant and the Defendant;
- (r) "prescribed" means prescribed by the rules made under this Act;
- (s) "publication" means the communication of the words or visual statement or representation to at least one person other than the person defamed, and includes a newspaper or broadcast;
- (t) "publisher" means a commercial publisher, that is, a person whose business is to publicize or disseminate any material to the public or a section of the public and who issues material containing the statement in the course of that business;
- (u) "Punitive Damages" means the damages in cases demonstrating malice, bad-faith or repeated conduct by the Defendant, which may extend up to ten (10) times the quantum of the General Damages;
- (v) "rules" means the rules made under this Act.
- (w) "Special Damages" means the damages to be granted after the final conclusion of the proceedings, if the Claimant seeks to proceed further with the case after issuance of the preliminary decree and has been able to establish his/her claim for such damages, which shall be in addition to the General Damages granted by the Tribunal; and
- (x) "Tribunal" means the Punjab Defamation Tribunal constituted under section 8 of this Act and shall also be used interchangeably for the specially nominated Single Bench of the Lahore High Court where the jurisdiction is invoked by the holder of a Constitutional Office under this Act.

3. Defamation actionable.— Subject to the provisions of this Act and any other law for the time being in force, defamation shall be a civil wrong and the person defamed may initiate an action under this Act without proof of actual damage or loss and, where defamation is proved, General Damages shall be presumed to have been suffered by the person defamed.

4. Defences.— In defamation proceedings, a person shall have a defence if he shows that:

- (a) he was performing journalistic activities and broadcasted true news for the information of the public;
- (b) he was analyzing or discussing a situation in a fair and transparent manner in the public interest through online platform;
- (c) the matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact;
- (d) the statement is based on truth;
- (e) assent was given for the publication by the Claimant;
- (f) the matter complained of was privileged communication such as between lawyer and client or between persons having fiduciary relations; and

- (g) the matter is covered by absolute or qualified privilege.

5. Absolute Privilege.— Any publication of statement made in the Federal or Provincial Legislatures, reports, papers, notes and proceedings ordered to be published by either House of the Parliament or by the Provincial Assemblies, or is part of judicial proceedings or record or any report, note or matter written or published by or under the authority of the Government, shall have the protection of absolute privilege.

Explanation.— In this section legislature includes a local legislature and court includes any tribunal or body exercising judicial powers.

6. Qualified Privilege.— Any fair and accurate publication or broadcast of parliamentary proceedings, or judicial proceedings which the public may attend and statements made to the proper authorities in order to procure the redress of public grievances shall have the protection of qualified privilege.

7. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

8. Establishment of Tribunal.— (1) The Government may, by notification in the official Gazette, establish as many Tribunals as it considers necessary to exercise jurisdiction under this Act and appoint a Member for each of such Tribunals and, where it establishes more Tribunals than one, it shall specify in the notification the territorial limits within which each of such Tribunals shall exercise its respective jurisdiction under this Act.

(2) A Member shall be appointed by the Government in consultation with the Chief Justice of the Lahore High Court, and no person shall be appointed as a Member unless he has been a Judge of the Lahore High Court; or is or has been a District Judge or is an Advocate of Supreme Court of Pakistan, qualified to be appointed as a Judge of the Lahore High Court.

(3) For the purposes of sub-section (2), in order to achieve effective, meaningful and purposive consensus, and to ensure transparency, the process for appointment of the Member shall be as follows:

- (a) where the Member is to be appointed is from the judiciary, the Chief Justice shall nominate three (3) qualified persons, and the Government shall appoint one of such three as the Member. In case the Government is not satisfied as to the qualification or suitability of any of the three nominations, it shall return the recommendation with reasons to be recorded in writing, whereupon the Chief Justice shall send a fresh recommendation of three nominees, till a Member is appointed as per the procedure prescribed herein;
- (b) where the Member is to be appointed is from the legal fraternity, the Government shall nominate three (3) qualified persons, and the Chief Justice shall approve one of such three as the Member. In case the Chief Justice is not satisfied as to the qualification or suitability of any of the three nominations, he shall return the recommendation with reasons to be recorded in writing, whereupon the Government shall

send a fresh recommendation of three nominees, till a Member is appointed as per the procedure prescribed herein.

(4) A Tribunal shall hold its sittings at such place within its territorial jurisdiction as may be determined by the Government.

(5) A Member shall be initially appointed for a term of three years or till reaching the retiring age, whichever is earlier, from the date on which he enters upon office.

(6) The term of the office of the Members shall be subject to renewal after every eighteen (18) months after evaluation of their performance by a Performance Review Committee, to be constituted under the Rules. The Committee shall evaluate the Members on the following touchstone:

- | | |
|---------------------------------------|-----|
| (a) adherence to statutory timelines; | 50% |
| (b) competence and fitness; | 25% |
| (c) integrity. | 25% |

(7) The retiring age of the Member, not being a serving District Judge, shall be seventy (70) years.

(8) The salary, allowances and other terms and conditions of service of a person appointed as a Member, including that of a serving District Judge while discharging his duty as Member, shall be such as the Government may determine by the Rules. In case of a serving District Judge, he will be entitled to such additional allowances and benefits, which shall equate his benefits as that of any other Member appointed by the Government in terms of this section and the Rules made under this Act.

9. Resignation and removal of Member.— (1) A person, not being a serving District Judge, appointed as a Member under section 8 may, by notice in writing under his hand addressed to the Government, resign from his office.

(2) A person appointed as a Member under section 8 may be removed from the office by the Government prior to completion of his tenure, after seeking consultation with the Chief Justice of the Lahore High Court.

10. Powers and jurisdiction of the Tribunal.— (1) Subject to the provisions of this Act, a Tribunal shall, while exercising jurisdiction under this Act, have all the powers as are vested in a civil court under the Code.

(2) A Tribunal shall in all matters with respect to which the procedure has not been specifically provided in this Act or under the Rules, follow the procedure laid down in the Code.

(3) Subject to sub-sections (4) & (5), no other court or tribunal or judicial/quasi-judicial forum, other than a Tribunal constituted under this Act, shall have jurisdiction or may exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under this Act.

(4) For the purpose of any claim to be filed by the holder of a Constitutional Office, the claim in terms of sub sections (2) & (3) of section 11 shall be filed before the Lahore High Court, and the jurisdiction under this Act for such a claim shall be exercised in the same manner as provided under this Act and the

Rules. For the purpose of this Act, a special Single Bench shall be nominated from time to time by the Chief Justice of the Lahore High Court as a Special Bench at the Principal Seat of the Lahore High Court, Lahore, notwithstanding any bar that may otherwise exist on its territorial limits or jurisdiction.

(5) All proceedings pending in any court or tribunal under the Defamation Ordinance, 2002 shall continue to be heard and disposed of by the same court having jurisdiction under the said Ordinance, and all other remedies under the said Ordinance shall be available in the same manner as were available before the coming into force of this Act.

(6) The Tribunal shall decide the case within one hundred and eighty (180) days from the date of the first appearance of the Defendant.

(7) Notwithstanding anything contained in the Code or any other law for the time being in force, the Tribunal shall have jurisdiction regarding any claim or actionable wrong, which has either been disseminated, circulated, received, read or viewed within the territorial precincts of Punjab or, as a result of such material being published or broadcasted, a person who resides, works for gain or discharges his functions/duties, either permanently or temporarily, within the territorial limits of Punjab, has been defamed.

(8) The Tribunal may grant pre-trial settlement opportunity to the Parties by referring the matter for mediation to an accredited Alternate Dispute Resolution (ADR) Centre in the District, if so consented to by both Parties.

(9) If the matter is referred to mediation in terms of sub-section (8) above, the decision of the mediator shall be final.

(10) The Tribunal may award actual costs, including counsels' actual fee, legal fees and expenses incurred, expenses relating to witnesses and other costs of litigation, on the basis of sufficient and justifiable reasons.

11. Procedure of Tribunal.— (1) While deciding a case, the Tribunal shall, subject to the provisions of this Act, adopt the summary procedure provided in Order XXXVII of the Code.

(2) A Claimant may, within sixty days of the defamation or coming to his notice or knowledge of such defamation, may institute a claim before the Tribunal by presenting his claim in the form of a plaint or application, which shall be verified on oath by the Claimant.

(3) In case of a claim, if so desired to be filed by the holder of a Constitutional Office, the same may be filed through an authorized officer or attorney, without there being a need for the holder of the Constitutional Office to put up his appearance during the proceedings. Any statement made by the authorized officer or attorney shall be deemed to be a statement of the holder of Constitutional Office:

Provided that the any change of status or position of the holder of the Constitutional Office or cessation of his position as such will not affect the proceedings already initiated and the same shall continue and be concluded in the same mode and manner, on the basis of such position, as it stood on the day when the claim was filed.

(4) The claim shall comprise of a concise statement of facts and damages being sought, supported by statements in the form of affidavits of at-least two witnesses along with all the relevant documents concerning the claim, including the defamatory statement.

(5) Copies of the claim, affidavits and other relevant documents shall be filed with the Tribunal in such numbers that there is one set of copies for each Defendant and one extra copy.

(6) The claim shall specifically state the amount of General, Special and Punitive Damages along-with costs sought by the Claimant.

(7) On a claim being presented to the Tribunal, summons in Form No. 4 in Appendix 'B' to the Code or in such other form as may, from time to time, be prescribed by the rules under this Act, shall be served on the Defendant through the process-server of the Tribunal, by registered post, by email, SMS, WhatsApp, courier, by publication in one English language and one Urdu language daily newspaper of wide circulation, and to the extent practicable by the same mode, medium or platform through which the defamatory material has been disseminated. The service duly effected in any one of the aforesaid modes shall be deemed to be valid service for purposes of this Act.

(8) In the case of service of the summons through process-server, a copy of the claim shall be attached therewith and in all other cases, the Defendant shall be entitled to obtain a copy of the claim from the office of the Tribunal without making a written application but against due acknowledgement.

12. No comment on pending proceedings.— (1) Notwithstanding anything to the contrary in this Act or in any other law for the time being in force, no person (including but not limited to, the parties to the proceedings before the Tribunal, their counsel and legal advisers, witnesses, the member of the Tribunal, court staff, or any other third person) shall be permitted to comment or make any statement relating to any proceedings pending before the Tribunal under this Act. This clause shall apply automatically from the inception till the final conclusion of the proceedings, and shall not require any order to this effect being specifically passed by the Tribunal or any other authority.

(2) Any person who is found in violation of the prohibition imposed by sub-section (1) by the Tribunal, whether on the application of any person or on its own motion, shall be liable to pay an initial fine of Rs. 50,000/- (Rupees Fifty Thousand) for each violation, along with an additional Rs. 10,000/- (Rupees Ten Thousand) for each day that the said violation continues. In case of more than one violation, the fines so prescribed shall be payable each violation separately.

(3) No defense whatsoever, such as fair comment, discussion in the public interest, an expression of opinion or fact, comment made in good faith, ignorance of law, etc., shall be available to any person for violation of sub-section (1).

13. Leave to defend.— (1) In any case in which the summons have been served on the Defendant as provided for in sub-section (7) of section 11, the Defendant shall not be entitled to defend the claim unless he obtains leave to defend from the Tribunal as hereinafter provided; and, in default of his doing so, the allegations of fact in the claim shall be deemed to be admitted and the Tribunal shall forthwith pass

a preliminary decree of General Damages in favour of the Claimant on the basis thereof or such other material as the Tribunal may require in the interest of justice.

(2) The Defendant shall file the application for leave to defend within thirty days of the date of first appearance before Tribunal, either personally or through a counsel/attorney having been instructed to appear on the date of hearing mentioned on any one of the modes of service laid down in sub-section (7) of section 11.

(3) The application for leave to defend shall be in the form of a written statement and shall contain a concise statement of rebuttal of the averments of the claim and must contain substantial questions of law as well as fact in respect of which, in the opinion of the Defendant, evidence needs to be recorded.

(4) The application for leave to defend may also contain the amount of Punitive Damages, if the Defendant wishes to claim such damages on the grounds of claim being false, vexatious, baseless and *mala fide*.

(5) The application for leave to defend shall be accompanied by all the documents which, in the opinion of the Defendant, support the substantial questions of law and fact raised by him.

(6) The Claimant shall be given an opportunity of filing a reply to the application for leave to defend, in the form of a replication.

(7) On the date of filing of the leave to defend, the Tribunal shall, set down three dates of hearing to the choice of the Defendant or his counsel, affording opportunity of hearing to the Parties for deciding the application for leave to defend; provided, however, that these three dates of hearing shall remain confined so as to ensure that the application for leave to defend is decided within the stipulated period of thirty (30) days from the date of filing of the leave to defend, and this period shall not be extended under any circumstances nor shall the Tribunal grant any unnecessary adjournments during the course of the proceedings.

(8) The Tribunal shall grant the Defendant leave to defend the claim if, upon consideration of the contents of the claim, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law and fact have been raised in respect whereof evidence needs to be recorded.

(9) While granting leave under sub-section (8), the Tribunal may impose such conditions as it may deem appropriate in the circumstances of the case, including conditions as to deposit of cash or furnishing of security.

(10) Where the application for leave to defend is accepted, the Tribunal shall treat the application as a written statement.

(11) Where the application for leave to defend is rejected or where a Defendant fails to fulfill the conditions attached to the grant of leave to defend, the Tribunal shall forthwith pass a preliminary decree of General Damages against such Defendant.

(12) After the passing of the preliminary decree, the Tribunal shall fix the next date of hearing, within fourteen (14) days of the date of issuance of the preliminary decree, as a date for the settlement of further claim of damages and costs between the Parties.

(13) In case the settlement as provided in sub-section (12) fails and Claimant seeks to pursue the case over and above the preliminary decree passed in

the form of General Damages, the proposed issues along with the list of witnesses, documents and other material sought to be produced through process of the Tribunal shall be filed without fail by the Parties on next date of hearing fixed by the Tribunal, which date shall not be beyond fourteen (14) days, following the date fixed for settlement in terms of sub section (12).

(14) On the next date of hearing, following the date fixed for the proceedings in terms of sub-section (12), the Tribunal shall schedule the trial proceedings and fix a maximum of three dates of hearing, within a total period of thirty (30) days, for each of the Parties for production of their evidence.

(15) The affidavit of the witnesses filed by the respective Parties may be treated as witness's statement in chief, if the witness concerned does not wish to make an oral statement before the Tribunal.

14. Claim by or Against Female or a Member of a Minority Community.— (1) In case a female or member of a minority community is victim of defamation and seeks to lodge his claim in terms of sub sections (2) & (3) of section 11 or where the defendant of a claim under sub sections (2) & (3) of section 11 is a female or member of Minority Community, such claimant or defendant, as the case may be, request to seek the provision of services of an attorney/advocate/pleader and considering such request, such facility shall be made available by the office of the District Attorney, for the purpose of proceedings before the Tribunal and by the office of the Advocate General for the purpose of proceedings before the High Court.

(2) In case of actionable defamation pertaining gender sensitive or minority community related defamation, the request for in camera proceedings may be made, which will be decided by the Tribunal on the basis of merits of each case.

15. Preliminary Decree.— (1) In case of failure of the Defendant to obtain leave to defend, the Tribunal shall forthwith pass the preliminary decree for General Damages.

(2) The preliminary decree passed under sub-section (1) shall, for all purposes (including appeal and execution), be deemed to be a decree passed under this Act, and any amount covered thereby or recovered in execution thereof shall be adjusted at the time of the final decree:

Provided that it shall be open to the Tribunal, notwithstanding the pendency of any appeal, to modify in part or in whole or reverse the terms of the preliminary decree at the time of the final disposal of the claim, and pass such order as it may deem just and proper:

Provided further that neither the Tribunal nor the Lahore High Court shall stay execution of a preliminary decree unless the judgment-debtor deposits in cash with the Tribunal the decretal amount and the Tribunal, in lieu of such cash, shall accept no surety or guarantee.

16. Execution of Decree.— (1) Upon pronouncement of preliminary decree, the claim to that extent shall automatically stand converted into execution proceedings without the need to file a separate application for execution and no fresh notice need be issued to the Defendant/judgment-debtor in this regard.

(2) A separate file shall be construed for the purpose of the remaining claim, if so desired to be proceeded with by the Claimant, and any final judgment or decree, if so passed, shall merge in the preliminary decree:

Provided that if the record of the claim is summoned at any stage by the Lahore High Court for purposes of hearing an appeal under section 26 or otherwise, copies of the decree and other documents shall be retained by the Tribunal for the purpose of continuing the execution proceedings.

(3) The decree passed by the Tribunal shall be executed in accordance with the provisions of the Code or any other law for the time being in force or in such manner as the Tribunal may, at the request of the decree-holder, consider appropriate, including recovery as arrears of land revenue, and arrest and detention of the judgment-debtor.

(4) The Tribunal may seek the services and assistance of law enforcement agencies, including the Punjab Police, in exercise of powers conferred under this section.

(5) Notwithstanding anything contained in the Code or any other law for the time being in force:

- (a) the Tribunal shall follow the summary procedure for purposes of investigation of claims and objections in respect of the attachment or sale of any asset or property of the judgment-debtor for the purpose of satisfaction of the decree, and shall conclude such Investigation within thirty (30) days of filing of such claims or objections; and
- (b) if the claim or objection are found by the Tribunal to be *mala fide* or filed merely to delay the sale of the property or asset, it may impose a penalty up to twenty percent (20%) of the sale price of the property upon such judgment-debtor.

17. Onus to prove.— Notwithstanding anything contained in this Act, the Claimant shall not be bound to establish his reputation, but it shall be sufficient if he proves any damage, over and above the General Damages to his reputation against the Defendant.

18. Ex-parte proceeding.— (1) Notwithstanding anything contained in the Code or any other law time being in force, if the Defendant does not appear, or intentionally avoids to appear before the Tribunal, the Tribunal shall, after having been satisfied that the Defendant has willfully avoided the service of the notice or opted not to appear, may pass such *ex-parte* order or judgment as it may deem appropriate.

(2) The *ex-parte* order or judgment passed under sub-section (1) shall not be appealable, but may be set aside by the Tribunal on application by the Defendant, along with leave to defend, within thirty (30) days of the passing of such *ex-parte* order or within thirty (30) days of coming into knowledge of such order, as the case may be.

(3) For an application for setting aside an *ex-parte* order or judgment, the Defendant shall be liable to furnish sufficient security, equivalent to the amount of the decree, to the satisfaction of the Tribunal, and shall have to set up sufficient cause

that he did not have knowledge of passing of such order or judgment, or was prevented from appearing before the Tribunal:

Provided that no notice or stay on an application under sub-section (2) shall be issued, unless the sufficient security, as ordered in terms of sub-section (3), is furnished by the Defendant.

19. Admissions.— The Tribunal may, in the interest of expeditious disposal and to reduce the contested issues and costs of litigation, grant an opportunity to the Parties to recourse to Order XII of the Code.

20. Penalties for false and frivolous claims.— In case of false, frivolous and vexatious claims, the Tribunal shall order Punitive Damages against the Claimant, as provided under this Act.

21. Consequences of proof of defamation.— (1) Where defamation is proved to have occurred, the Tribunal may pass an order directing the Defendant to tender an unconditional apology, if acceptable to the Claimant, and direct the same to be published in the same manner and with the same prominence as the defamatory statement was made, and pay the damages in terms of this Act.

(2) Where defamation is proved to have occurred, the Tribunal may, in addition to the damages that are decreed and/or direction for tendering an apology, also issue a direction to the relevant regulatory authority to suspend or block the social media account of the Defendant, or any other medium or platform covered by this Act through which the defamatory content was disseminated.

22. Code of Civil Procedure to apply.— The Code of Civil Procedure, 1908 (V of 1908), apply to the proceedings under this Act, where no specific procedure of provision is supplied under this Act.

23. Qanun-e-Shahadat not to apply.— The Qanun-e-Shahadat 1984 (P.O. No.10 of 1984) shall not apply to the proceedings under the Act.

24. Act not to prejudice action for criminal defamation.— Nothing in this Act shall prejudice any action for criminal libel or slander under any law for time being in force.

25. Limitation of actions.— A claim shall be instituted under the Act within sixty (60) days after defamation came to the notice or knowledge of the person so defamed.

26. Appeal.— Any person aggrieved by the final judgment and decree of the Tribunal or by the High Court in terms of sub section 4 of section 10, may file an appeal to the Lahore High Court within thirty (30) days from passing of such judgment and decree and such an appeal shall be heard and decided by a bench of two judges the Lahore High Court within sixty (60) days:

Provided that no appeal shall lie against any interlocutory order of the Tribunal:

Provided further that no stay order shall be granted, staying the proceedings of the Tribunal and in case of an appeal against a preliminary or final decree, the

operation of the decree or execution proceedings shall only be stayed on the deposit of the equivalent amount with the Registrar of the Lahore High Court, which amount shall be placed in a profit bearing scheme till the final disposal of the appeal.

27. Power to make Rules.— The Government may, by notification in the official Gazette, make rules to carry out the purpose of this Act.

28. Repeal.— Subject to the provisions contained in this Act, the Defamation Ordinance, 2002 is hereby repealed.