

PUNJAB DEFAMATION BILL 2024

A. Comparison of Defamation Ordinance 2002 (“Ordinance”) and Punjab Defamation Bill 2024 (“Bill”).

S.No	ASPECT	DEFAMATION ORDINANCE, 2002	PUNJAB DEFAMATION BILL, 2024
1.	Jurisdiction	<u>Section 13</u> District Courts have jurisdiction	<u>Section 8</u> Exclusive jurisdiction to specialized Tribunals established under the Act.
2.	Definition	<p style="text-align: center;"><u>Section 3</u></p> <ul style="list-style-type: none"> • Includes Oral, written, visual • Do not explicitly mention social media and digital content. • Covers libel and slander separately 	<p style="text-align: center;"><u>Section 2</u></p> <ul style="list-style-type: none"> • Includes oral, written, visual, electronic, and social media • Explicitly includes digital and social media platforms • Covers all components in a single definition
3.	Tribunal Procedure	<u>Section 10</u> Follows the Code of Civil Procedure 1908 and Qanoon-e-Shahadat 1984	<p style="text-align: center;"><u>Section 11, 22</u> Follows the Code of Civil Procedure.</p> <p style="text-align: center;"><u>Section 23</u> Qanoon-e-Shahadat 1984 shall not apply to the proceedings under this Act.</p>
4.	Time-bound Decisions	<u>Section 14</u> Courts to decide cases within 90 days	<u>Section 10(6)</u> Cases decided within 180 days from the defendant's first appearance
5.	Territorial Jurisdiction	<u>Section 1</u> This applies to the whole of Punjab	<u>Section 1, 10(7)</u> Jurisdiction over claims disseminated or received within Punjab, or where the claimant resides/works

6.	Pre-trial Mediation	Not specified	<u>Section 10(8)(9)</u> Pre-trial alternate dispute resolution (ADR) option available, ADR decision is final if both parties consent
7.	Claim Filing	<u>Section 12</u> Claim within six months after the publication of the defamatory matter came to the notice or knowledge of the person defamed.	<u>Section 11(2)</u> Claims must be filed within 60 days of defamation or its discovery
8.	Summons	Standard service procedures	<u>Section 11(7)</u> Multiple modes including post, email, SMS, WhatsApp, and newspaper publication
9.	Leave to Defend	General rules for defense	<u>Section 13</u> Defendants must obtain leave to defend within 30 days of the first appearance, detailing their defense
10.	Preliminary Decree	Not applicable	<u>Section 13</u> Preliminary decree for General Damages if the defendant fails to obtain leave to defend
11.	Damages	<u>Section 9</u> General damages with a minimum of Rs.50,000/-	<u>Section 2(k)</u> General damages granted by the Tribunal at the time of granting preliminary decree, amounting to Rs. 3,000,000/- if the Defendant fails to obtain leave to defend in accordance with section 13 of this Act.
12.	Ex-parte Orders	General ex-parte procedures	<u>Section 18</u> Ex-parte orders if the defendant intentionally avoids appearance, with specific conditions for setting aside
13.	Claims by Constitutional Office Holders	General filing procedures	<u>Section 10(4)</u> Special bench of Lahore High Court for claims by Constitutional Office holders

14.	Representation for Females and Minorities	Not specified	<u>Section 14</u> Attorney services are provided for females and minority community members, with in-camera proceedings possible for sensitive cases
15.	Execution of Decrees	General execution procedures	<u>Section 16</u> Specific execution procedures involving law enforcement if necessary
	Proof of Defamation	The claimant must prove damage and harm to the reputation	<u>Section 17</u> Claimant needs to prove damage beyond General Damages; reputation is presumed
16.	Penalties for Non-compliance	<u>Section 9</u> General penalties for non-compliance.	<u>Section 12</u> Specific fines for commenting on pending proceedings, increasing penalties for continued violations
17.	Penalties for False Claims	Not specifically addressed	<u>Section 20</u> Punitive Damages against claimants for false or frivolous claims
18.	Defendant's Apology	<u>Section 9</u> Court may direct apology from the defendant, published similarly to defamatory content.	<u>Section 21</u> Tribunal may direct unconditional apology from the defendant, published similarly to defamatory content and also direct the relevant regulatory authority to suspend or block the Defendant's social media account, or any other platform used for disseminating defamatory content.
19.	Appeals	<u>Section 15</u> Appeals to Lahore High Court within 30 days, decided within 60 days.	<u>Section 26</u> Appeals to Lahore High Court within 30 days, decided within 60 days by a two-judge bench. There is no right to appeal for the execution of the preliminary decree unless a deposit of the equivalent

			amount with the Registrar of the Lahore High Court.
20.	Rule-making Authority	<u>Section 16</u> The government is empowered to make rules for implementation.	<u>Section 27</u> The government is empowered to make rules for implementation
21.	Repeal	Defamation Ordinance, 2002 in effect	<u>Section 28</u> Defamation Ordinance, 2002 repealed by the new Act

B. Section by Section Legal Analysis of the Bill

Section 2 : Definitions:

Journalist: Expanding the definition of a journalist under section 2(m) of the Bill in an attempt to include vloggers within the definition, constitutes a blatant violation of the fundamental right to freedom of expression. It is evident that the primary intention of the new legislation is to suppress freedom of speech and expression, thereby creating a deterrent effect on the public, preventing them from voicing dissent against individuals in positions of authority. Furthermore, including anyone who *"creates and uploads social media news or current affairs content"* in the definition of a journalist without clear criteria is too vague and could not subject them to the same regulations/restrictions used for a professionally experienced journalist but also lead to confusion about journalist associated rights, responsibilities, and legal defense.

Newspapers: Section 2(o) of the Bill added social media platforms to the definition of a newspaper to curb the freedom of expression and speech in online spaces. The Bill unnecessarily expanded the definition of a newspaper, subjecting ordinary citizens who use social media to share regular updates to the same content regulations and censorship restrictions as established for print media. This approach within the Bill reflects seeking control and suppressing critics' voices under the guise of regulating misinformation or fake news to maintain public order.

Section 8: Issue of Jurisdiction

Under the Ordinance, jurisdiction was vested in the District Court. However, section 8 of the Bill transfers jurisdiction to tribunals established by the government. This shift in jurisdiction constitutes clear malintent and undue interference, undermining the impartiality and independence of the judicial process.

Section 12: No Comments on Pending Proceedings

As a general rule, public comments and discussion on the sub-judice matter are prohibited. However, there are certain exceptions to this rule, including discussions made in the public interest or fair comment. Unfortunately, section 12 prohibits any comment on pending proceedings under the Bill by all individuals connected to the proceedings, including parties, legal counsel and advisers, witnesses, and even members of the Tribunal and court staff, without any exception of fair comment, discussion in the public interest, an expression of opinion or fact, commend made in good faith, ignorance of the law, etc. Furthermore, the punishment for violation—an initial fine of Rs. 50,000 and an additional Rs. 10,000 per day till the violation continues with fines payable separately if there is more than one violation—are harsh and disproportionate.

This section imposes unreasonable restrictions to suppress open discussion and debate which are, fundamental aspects of the right to free speech and expression. The right to information is being infringed.

Section 13: Leave to Defend

The law under section 13 of the Bill requiring a defendant to obtain leave to defend is highly unreasonable and violates the right to a fair trial guaranteed under Article 10-A of the Constitution of Pakistan 1973. Under this section, defendants are denied the right to defend unless they get permission from the Tribunal to defend after filing an application with the Tribunal. Moreover, if the defendant fails to obtain leave to defend, the allegations are deemed admitted and will lead to a preliminary decree against the defendant.

This process not only violates the right to a fair trial but also has a chilling effect on freedom of expression and speech especially for journalists and civil society members. This law also places financial strains on the defendant by giving discretion to the Tribunal under section 13(9) to impose unfair conditions such as submitting a cash deposit as a guarantee/security in case of allowing leave. Overall, this section makes the right to defend contingent upon overcoming procedural difficulties, rather than being a basic easily accessible right.

Section 16: Execution of Decree

Under section 16 of the Bill, the law by converting a preliminary decree into execution proceedings without requiring a separate application or issuing fresh notice to the defendant, ignores the procedural safeguards available to the defendant which is a violation of the right to due process. This section leaves the defendant unprepared or defends a reasonable opportunity to comply with or against the execution order.

Additionally, the summary procedure under section 16(5)(a) for investigating claims or objections in respect of the attachment or sale of any asset or property of the judgment-debtor for the satisfaction of the decree within a thirty-day (30) period, coupled with penalties up to twenty-five percent (25%) of the sale price of the property in case objections/claims of the judgment-debtor deemed mala fide by the Tribunal, affects the ability of the defendant to challenge or reasonably delay the execution process.

Section 17: Onus to Prove

As per section 17 of the Bill, action can be initiated without proof of actual damage or loss, and the claimant is exempt from the obligation to establish their reputation. In contrast, the 2002 Ordinance requires that defamation must include harm or injury to a person's reputation.

This provision in the new Bill seems to unduly favor the claimant by relieving them of the burden of proving the harm caused to their reputation, potentially creating an imbalance in the burden of proof that unfairly allows one party to weaponize this law.

Section 18: Ex-Parte Proceedings

Section 18 of the Bill violates the fundamental principles of procedural fairness, due process, and the right to appeal, thereby restricting the right to access to justice. Section 18 grants the discretionary power to the Tribunal to pass ex-parte orders or judgments if there is willful avoidance by the defendant or if he/she does not appear, without providing clear criteria for determining such actions and leaving them for subjective interpretation by the Tribunal.

Moreover, the Bill under section 18(2) fails to grant the right to appeal against ex-parte orders or judgments. In addition, while the defendant can file an application to set aside such ex-parte orders or judgment, they are required to furnish security equivalent to the amount of the decree, which further deters the defendant from seeking redress due to unreasonable financial burden.

Section 21: Consequences of Proof of Defamation

Section 21 of the Bill states that if defamation is proven, the Tribunal can impose general damages of PKR 3 million (PKR 3,000,000/-) and special damages can be significantly higher. In addition to demanding an apology and imposing these fines, the tribunal can also direct the relevant authority to suspend or block the defendant's account or any other medium or platform through which the defamatory content was disseminated. This represents a clear example of excessive and overreaching power. These strict impositions do not align with the Bill's claim of allegedly protecting the interests of the public but instead are an attack on the integrity and basic freedoms of the public at large. Additionally, the Bill fails to specify the relevant authority, adding to its ambiguity and potential for misuse.

Section 28: Repeal, Section 11: Procedure of Tribunal, and Section 10: Powers and Jurisdiction of Tribunal

Section 28 of the Bill replaces the Ordinance with the sole objective of creating a new draconian law to silence critics of those in power. There are serious concerns about the necessity and intent behind introducing new legislation despite the existence of legal frameworks, including the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (PEMRA), the Prevention of Electronic Crimes Act 2016 (PECA), Defamation Ordinance 2002, and others. This new Bill not only raises further questions about the implementation of already existing laws in the future but may also become a source for additional jurisdictional conflicts in the country in defamation claims.

In addition to the above, it can be observed that the Bill is an attempt to centralize control as the previous defamation laws of the country do not cover public officials' reputations, but the new Bill extends protections to the reputations of those in power or authority, thereby violating the principles of free expression and democratic accountability. The mention of "authority" and protection of professional image and reputation is found in the statement of objects and reasons of the Bill and is implied throughout its text, particularly in the sections that address claims related to defamation against public officials and private citizens.

However, the explicit mention in the context of "authority figures" is not directly in the definition section (section 2 of the Bill). Instead, the broader implications are outlined in the Bill's intent and the provisions addressing who can bring a claim. For instance, section 11(3) of the Bill provides for claims to be filed by the holder of a Constitutional Office through an authorized officer, reflecting the Bill's aim to protect authority figures. Further, section 10(4) of the Bill mandates that defamation claims by holders of Constitutional Offices be filed before the Lahore High Court, with a special Single Bench nominated by the Chief Justice of Lahore High Court. This creates a dual justice system that offers preferential treatment to high-ranking officials over ordinary citizens, violating the principle of equality of citizens and equality before the law. Considering these provisions, it can be observed that the Bill is intended to safeguard the reputations of those in positions of authority.