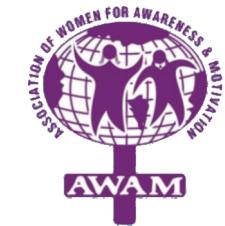


Analysis of laws and policy Dealing with hate speech

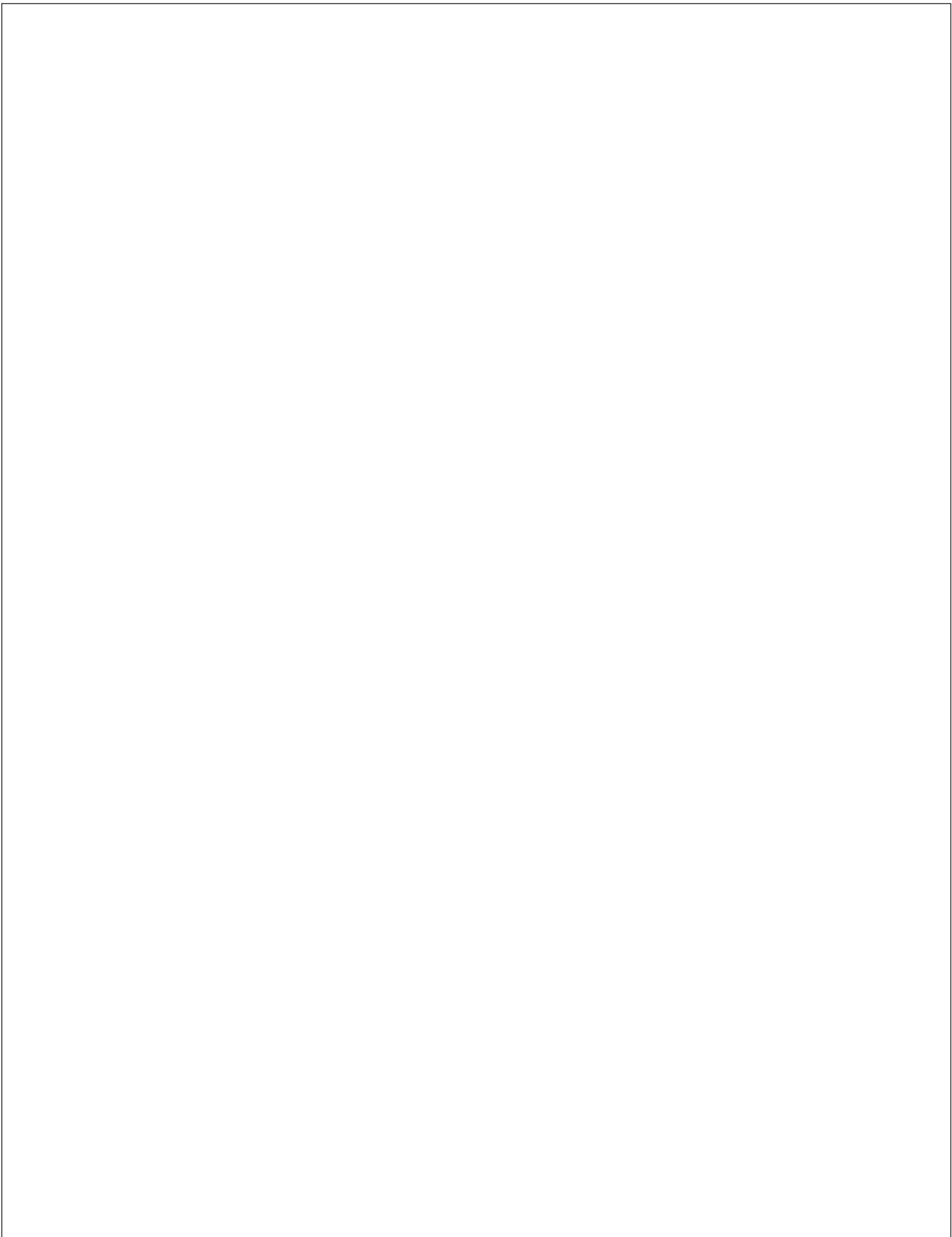
Combating hate speech beyond administrative measures

**Association of Women for Awareness and Motivation
Centre for Social Justice**



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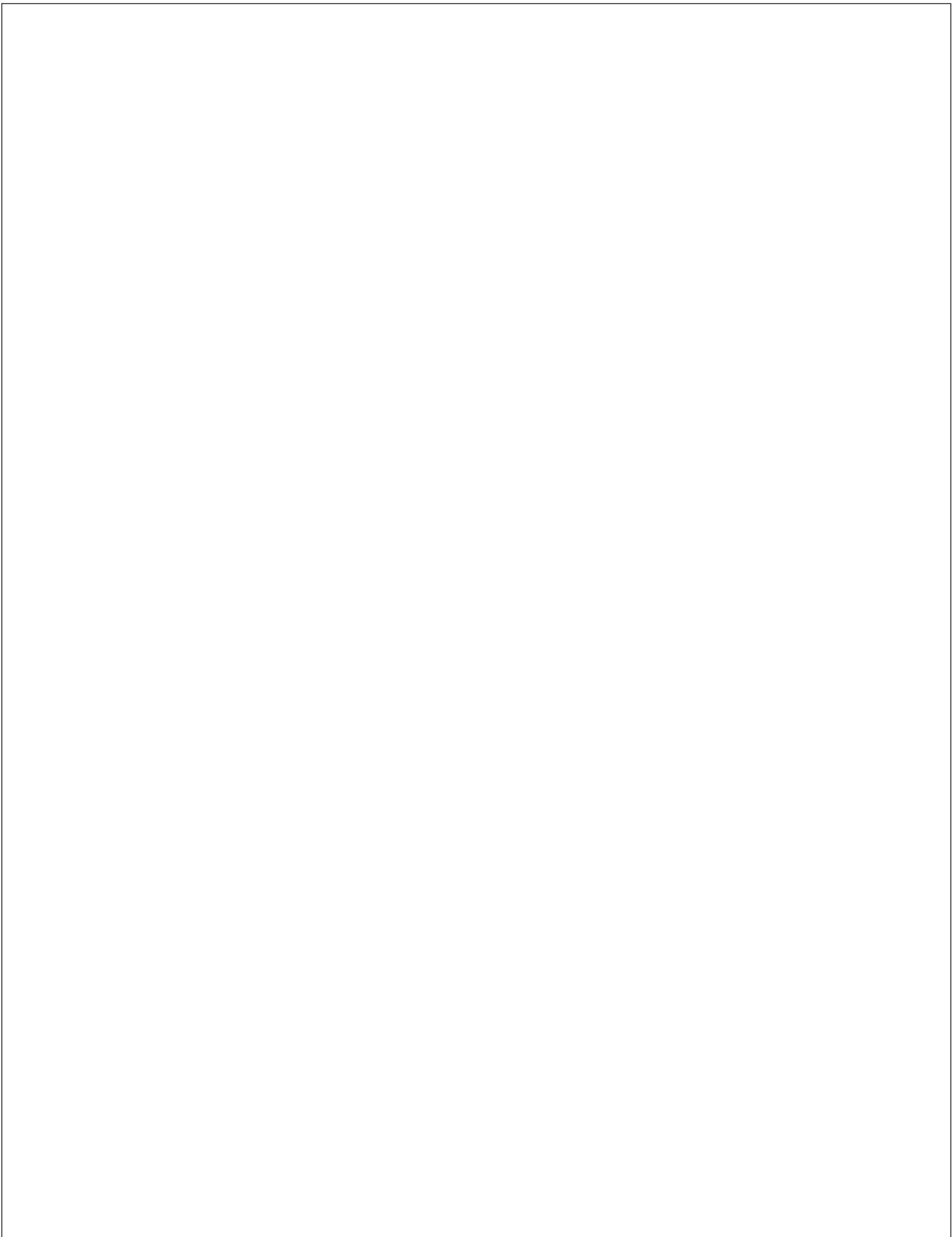
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Combating hate speech beyond administrative measures

Analysis of laws and policy dealing with hate speech¹

Introduction

Hate speech has become a hot subject during 2015 in Pakistan notwithstanding some ambiguities that make hate speech conceptually and practically a complicated issue. The civil society organizations, Association of Women for Awareness and Motivation (AWAM) and Centre for Social Justice (CSJ), are publishing this analysis for better comprehension and to raise critical awareness about the dilemmas linked to hate speech.

This monograph discusses the phenomenon, manifestations, the laws and policies dealing with hate speech as well as some policy measures taken by the government recently, concluding with recommendations about plugging fissures in the response and reviewing the approach towards hate speech so that this battle for the revitalizations of Pakistan becomes more winnable in favour of people's progress, democratic process and peace.

Defining hate speech

Following up with the counterterrorism plan of action, the police arrested thousands of publishers and booksellers in the country along with material which allegedly contained religious and sectarian hate speech. However, the government could not detain some hardcore perpetrators for more than days.² The accused secured their release on bail on the grounds that the government never notified those books and printed materials as banned.³

Similarly, some persons arrested in connection with abuse of mosque loudspeakers were released on bail and the cases against them were not maintainable as they claimed that they had merely recited Darood Sharif and holy verses.

These examples point to the issues regarding; defining hate speech, consistency in National Plan of Action and clarity about objectives besides choice of law to be applied and use of forum for achieving the stated objectives of the drive against hate speech.

As far as definition, there isn't a single universally accepted definition of hate speech because the prejudices and motives of hate speech are manifested in a range of behaviours in different social contexts. Even so, hate speech has been defined frequently in a variety of ways in different academic work, jurisprudence, domestic and international laws.

The International Covenant on Civil and Political Rights defines hate speech as "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".⁴ So importantly, hate speech may or may not result in incitement or outraging feelings spontaneously though it may have a potential of incitement to violence.

Resolution 16/18 of the UN Human rights Council shows the connection between hate speech and intolerance as it demands the states to curb "religious intolerance, discrimination and related violence, as well as of negative stereotyping of individuals on the basis of religion or belief,...any advocacy of religious hatred against individuals that constitutes incitement to discrimination, hostility or violence based on religion or belief."⁵

¹Analysis was finalized by Peter Jacob on July 17, 2015.

²[Http://www.dawn.com/news/1183713](http://www.dawn.com/news/1183713)

³Peter Jacob, "Curbing hate speech", daily The News International April 5, 2015.
[Http://tns.thenews.com.pk/curbing-hate-speech/#.VSCaYVWqqko](http://tns.thenews.com.pk/curbing-hate-speech/#.VSCaYVWqqko)

⁴Article 20, International Covenant on Civil and Political Rights.

⁵A/HRC/RES/16/18, "Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief", Para 2, 12 April 2011.

For this review we shall look at religious motivated or religiously induced hate speech (sects included) which involves criminal liability. Though we shall not discuss here the merits or demerits of blasphemy laws or the other related issues, we will keep in view the abuse of these laws where it converges with hate speech.

Hate speech in Pakistan's laws

Law	Forms of hate speech dealt with in this law
Pakistan Penal Code, a) Section 153-A	Promoting enmity between different groups' offence. Promoting or inciting, or attempting to promote or incite , on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity , hatred or ill-will between different religious, racial, language or regional groups or castes or communities; causing fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment for a term which may extend to five years and with fine .
a) Sections 295-298 (Note ⁶)	295, Injuring or defiling place of worship , with intent to insult the religion of any class: Maximum punishment; two years imprisonment or fine or both . 295 A, Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs: Maximum punishment; ten years of imprisonment or fine or both . 296, Disturbing religious assembly : Maximum punishment; one year, or with fine, or both . 297, Trespassing on burial places, etc. Maximum punishment; one year, or with fine, or both . 298, Uttering words, etc., with deliberate intent to wound religious feelings : Maximum punishment; one year, or with fine, or both .
Maintenance of Public Order Ordinance 1960	Acts prejudicial to public safety or maintenance of public order . ⁷ Maximum punishment; three years, or fine or both .
Anti-Terrorism Act, 1997	"Hate speech means hatred against a group of persons defined by reference to religion, religious sect, religious persuasion, or religious belief "; ⁸ a) Acts intended to stir hatred as " threatening, abusive or

⁶ This analysis excludes Sections 295 B, 295 C, 298 A, 298, B and 298 C, because the first three sections are about protecting the respect of Holy Books and Holy personages who cannot be party to a dispute or proceedings in today's justice system, any damage to their status or profile is unimaginable. Thus counting or making a comparison of blasphemy laws together with other laws could be misleading. The last two sections are about prohibiting one faith community from using an identity and certain religious practices. These sections have features unique in the world, including the Muslim majority countries. Though any disrespect towards Holy personage of any religion may fall in outraging religious sentiments of a faith group, which is an aspect covered by the laws discussed here.

⁷ Section 3 (2), Maintenance of Public Order Ordinance Punjab (amended and adopted in other Provincial legislations also).

⁸ Section 2 (v), **The Anti-Terrorism Act, 1997 (XXVII OF 1997)**.

	insulting words or behavior; or (b) displaying, publishing or distributing any written material which is threatening, abusive or insulting; or (c) distributes or shows or plays a recording or visual images or sounds which are threatening, abusive or insulting; or (d) possessing written material or a recording or visual images or sounds which are threatening, abusive or insulting with a view to their being displayed or published by himself or another. ⁹ Maximum punishment; Seven years rigorous imprisonment or with fine, or with both. ¹⁰
The Protection of Pakistan Act 2014	Crimes against ethnic, religious and political groups or minorities including offenses based on discrimination, hatred, creed and race. ¹¹ Maximum punishment; ten years, with fine and confiscation of property. ¹²
Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance in 2002	Licensees (media outlets), besides other things will “ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred ”. ¹³ Maximum punishment; three years imprisonment and 10 million fine for licensee; Four years imprisonment and five for person without license. ¹⁴

While a new bill on controlling cyber crimes is still under scrutiny in a standing committee in the parliament, Pakistan Telecommunication Authority (PTA) is responsible for regulating the internet use. It deals with “unauthorized transmits through a telecommunication system or service which he (licensee) knows or has reason to believe to be false, fabricated, indecent or obscene,” or “commits mischief”.

Apparently, language in some of the laws is vague and open to misinterpretation and abuse, for instance, the language *injuring or wounding feelings* leaves a lot of room for interpretation. There is also inconsistency in meaning of hate speech in different laws dealing with hate speech. For instance, though Maintenance of Public Law Ordinance 1960 carries sweeping administrative power, used frequently to impose house arrest (preventive detentions), travel ban, prevent public gathering on the pretext of hate speech and apprehension of law and order situation, the law does not define hate speech clearly. It merely relies on enormously broad characterization of acts “*prejudicial to public safety or maintenance of public order.*”¹⁵

In sum, different laws dealing with hate speech were introduced in different times in Pakistan serving specific purposes. Each new law carried heavier penalties than earlier laws and laws became more focused on religiously motivated hate material. The meaning of hate speech in different laws (offenses) ranges between *promoting enmity, issuing threats, incitement to violence and propagating religious intolerance.*

⁹Ibid, Section 8.

¹⁰Ibid, Section 9.

¹¹Section 2 (1), Scheduled Crimes, Protection of Pakistan Act 2014, (X of 2014).

¹²Section 16, Protection of Pakistan, 2014, Act No. X of 2014,

¹³Section 20 (c), Pakistan Electronic Media Regulatory Authority Ordinance 2002, Amended by the PEMRA (AMENDMENT) Act, 2007.

¹⁴Section 33, **PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY ORDINANCE, 2002 (XIII of 2002).**

¹⁵Section 3 (2), Maintenance of Public Order Ordinance Punjab (amended and adopted in other Provincial legislations also).

Therefore, apart from their compatibility with democratic rule and civil liberties, these laws embody a symptomatic treatment of the issues. Hate speech in recent legislations e.g. National Counter Terrorism Authority Act 2013 and Protection of Pakistan Act 2014 cover highest forms intolerance i.e. extremism / terrorism but do not cover simple forms like discrimination.

a) Hate speech; the pretext, extent and content

Hate speech has been found in printed material published regularly by hundreds of so called religious and sectarian outfits. Slogans, wall chalking, stickers, banner and billboards displayed without remorse or repercussion.

Print and electronic media advertise hatred on the basis of religion inadvertently. Thus over the decades the language and symbols of hatred became a norm to some extent because the narratives of organizations that specialize in hatred on the basis of religion were given coverage and space routinely.¹⁶

Hate speech against minority faith groups became socially and politically acceptable because a pretext was created by the discriminatory norms by the State unfortunately.¹⁷ Despite an agreement on equality of citizens in its chapter on fundamental rights (Articles 8 to 28) the constitution of Pakistan treated the majority faith as preferred citizens in its operational sections.¹⁸ Therefore the constitutional preference with a religion is also a factor in hate speech.

Education and other policies have condoned the two interlinked trends that provide a pretext to religion based hatred in public life. Hate speech in educational textbooks¹⁹ and seminaries, coupled with state imposed restriction against the smaller faith-groups²⁰ created a cycle of social hostility²¹ which manifested in different forms of religious intolerance and faith based violence in Pakistan.

A recent study conducted shows groups targeted for hatred on Pakistani websites in the following order: 1. Shias, 2. Muslims, 3. Ahmadis, 4. Indian/ Hindus, 5. Atheists/ non-believers, 6. State Institutions, 7. Women, 8. LGBT, 9. Jews, 10. Local Ethnicities, 11. Americans, 12. Pakistanis.²²

Significantly, the data shows religious hatred is most common among hate speech (first five) though the hate material is aimed at a range of identities including ethnicity and sex. Importantly, the Muslims and Pakistanis are target of hate speech, while the haters also include the Pakistani and Muslims.

A UNICEF study in 2013 showed the 85 % married women had experienced domestic violence. Furthermore, 53 % girls and 43 % boys between the age of 15 and 19 condoned a degree of violence against women which made Pakistan the highest in domestic violence in

¹⁶ All banned outfits, and some religio-political groups, Dr. Zakir Naik, TV channels such as QTV.

¹⁷ Broadly, the culture of majority religion has become a standard. Pakistan's raison d'etre has come to be religious than political and state is assigned to serve a religion rather than protecting rights of all citizens e.g. religion-specific insult laws in Pakistan Penal Code.

¹⁸ State religion, reservation of the office of President and Prime Minister for Muslims, government to promote Islamic way of life; Articles 2 A and B, 41, 91, and 31 of the Constitution of Pakistan, respectively.

¹⁹ Education Vs. Fanatic literacy, National Commission for Justice and Peace, 2013. <http://www.worldcat.org/title/education-vs-fanatic-literacy-a-study-on-the-hate-content-in-the-textbooks-in-punjab-and-sindh-provinces/oclc/873238400>

²⁰ The De jure restrictions are against Ahmadis alone though citizens belonging to all lose their freedom of religion and belief, except those whose activities the successive governments chose to ignore.

²¹ Grim and Finke, The Price of Freedom Denied; religious persecution and conflict in twenty first century, Cambridge University Press, 2011.

²² Hate speech, A study on Pakistan's Cyberspace, Bytes For All, June 2014, http://content.bytesforall.pk/sites/default/files/Pakistan_Hate_Speech_Report_2014.pdf

South Asia after Afghanistan.²³

Considering the increasing domestic violence,²⁴ the politically motivated violence, incitement to violence from the pulpit and public speech on media outlets, it would be fair to infer that hate speech generally, is not only endemic in Pakistan but it has a high degree of social acceptance. Hate speech has crept into public discourse, cyber space and educational institutions. Therefore the social and cultural acumen found it hard to put up a resistance against it in the political arena.

Existing policy framework

The eighth point in Prime Minister Nawaz Sharif's speech on Counterterrorism action plan stated "Hate literature and propaganda to promote sectarianism, extremism and intolerance would not be allowed and effective action would be taken against newspapers and periodicals involved in such practices."

Following Table shows policy framework that can be inferred by putting the existing measures together:

Policy area	Policy measures/response	Approach
Legislation	Recent legislation (NACTA and POPA), Sound system control, add to penalties for and institutional oversight to curb hate speech	Basically using moralist and punitive approach
Political response	a) All Parties Conference building consensus against terrorism, b) Statements backing the Military c) Attention to symbolism / Interfaith relations policy ²⁶	a) Downplaying the crises to control damage, b) Public statements encouraging citizens / law enforcement agencies c) Optics of Interfaith / sect relations
Administrative	a) Augment police force, Targeted operations to confiscate hate material, wipeout wall chalking, arrest the culprits b) Rehabilitation of victims of extreme violence ²⁷	a) Curb hate crimes by force b) Symbolism and solidarity with victims

²³[Http://tribune.com.pk/story/758602/violence-against-children-child-homicide-rate-in-pakistan-among-worlds-worst/](http://tribune.com.pk/story/758602/violence-against-children-child-homicide-rate-in-pakistan-among-worlds-worst/)

²⁴Aurat Foundation annual report on violence against women shows an overall increase in different crimes against women including, murder, kidnapping, acid throwing.

<http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/Annual%20Report%202013.pdf>

²⁵The language is different from other laws, close to PEMRA Ordinance of 2002.

²⁶Ministry of Religious affair is working on a National Interfaith Harmony policy since February 2015.

²⁷Significant to send out the message.

Development and planning	Peace and development component in Planning ²⁸	Nothing worth mentioning
Social reforms and human rights	Nothing mentionable	Nothing worth mentioning

Given the above picture of the policy response to hate speech reflects more of a patch work than a cohesive response. The policy to address hate speech and approach therein is imprecise, measures and the implementation policy is insufficient and the statecraft heavily depends on use of force and administrative measure thus a symptomatic treatment of the issue.

Regarding our security approach, we have come a full circle in realizing the threats. We played a sitting duck for two decades; tried negotiated settlement; and switched on to hot pursuit (Zarb-e-Azb) recently. There has been a talk about building a counter narrative to extremism which has yet to receive attention.

It may be a comforting thought that the government at least has sensed the crises linked to religious intolerance is due to hate speech. Therefore, the country stands better chances with meeting the challenge.

Gaps and fault lines in curbing hate speech

Looking through the lens of existing laws, counter terrorism plan of action and policy framework discussed above the following gaps in policy surface which pose a threat to efforts to curb hate speech:

- a) Bodies to be set up under The National Security Council, National Counter Terrorism Authority (NACTA) and Protection of Pakistan Act have not become operational which can be a disabling factor.
- b) The imbalance of institutional functioning and de facto power tilt towards military and executive inevitably forces the parliament and judiciary take a back seat.²⁹ This imbalance jeopardizes the human rights concerns on one hand and arrests the socio-politico-cultural growth on the other. A balance of power needs to be maintained among the pillars of the state.
- c) The incomplete devolution of power and an institutional overlap to provinces poses a danger in performance. Provinces are responsible for law enforcement so the preparedness of provinces for this responsibility respecting their autonomy will be important to ensure.
- d) The perennial issues in governance such as corruption, nepotism and rule of law can affect the performance on curbing hate speech therefore a holistic response will require plugging these cracks.
- e) Given the huge mobilization and resource base of religious, sectarian and militant organizations, in practice, the political parties and some state institutions are finding it difficult to withdraw their support to the abovementioned groups.

²⁸HThe Federal Ministry of Planning, Development and Reforms together with UNDP held a consultation in February 2015 and it has set up a Peace and development Unit to take this aspect into consideration in planning process.

²⁹For instance, 21st constitutional amendment and establishing the military courts.

- f) Because of the world view based on a narrow religio-nationalism, the public at large has been accustomed to see and respond to issues reactively. The forces on the opposite might use this reactive psyche to resist any broad based reforms. The government has not so far disclosed how this world view gap will be bridged.
- g) The civil society has rendered services and made sacrifices for democratic rule and they are victims of hate crimes and violence many a times. Their input has been ignored in policy making.
- h) Offenses related to religions and the concept of defamation of religion have a direct connection with hate speech, therefore curbing hate speech will not be possible without introducing result oriented reforms to blasphemy laws which does not appear in the policy.

Recommendations:

The moment of truth that came with realizing the magnitude of extremism on December 16, 2014, can be turned into an opportunity of reconstruction of Pakistan as a viable economy, stable polity and peaceful society. Following policy measures are recommended to bridge the abovementioned gaps and fault lines:

1. Hate speech does not exist in isolation therefore root causes of religious intolerance and religious discrimination need a social, political and psychological response, urgently.
2. Apart from administrative handling, the government should prepare for a proactive policy to build a culture of peace, in other words, an ideological, political, social and cultural response to extremism. Independent and potent statutory bodies, like Commission on Interfaith Relations, empowered to make policy recommendations at Federal and Provincial levels need to be set up and National Human Rights Commissions and other human rights bodies need to be strengthened.
3. For clarity of objectives, the laws dealing with hate speech need to be made consistent and cohesive. The Federal Ministry of Law along with provincial counterparts must find a way of reaching collective understanding of issues related to hate speech to ensure success of the administrative response and facilitate the dispensation of justice in the matter.³⁰
4. The government should create a consultative forum to receive inputs from academia, intelligentsia and civil society organizations to facilitate government in building a national narrative conducive to peace and development in the country. It is strongly recommended that such deliberations are presented before the national and provincial parliaments and discussed in the public.
5. Education sector reforms are necessary whereas taking out the hate material in textbooks and discriminations in curriculum has become an absolute urgency. Therefore Federal and provincial textbooks boards must be tasked to cleanse the textbooks, curriculum and education policy of hatred and religious discriminations.
6. Bridging the policy gaps, reconciling competing approaches and filling

³⁰For example police action against publishers, the culprits can present themselves as victims of arbitrary actions in the absence of well-defined laws and proper implementation of laws, for instance press and publication laws.

implementation gaps³¹ will require, besides others, addressing institutional lapses such as pending implementation of judicial verdicts such as recommendations of the Gojra judicial inquiry³² and Supreme Court judgment³³ of June 19, 2014, which carried specific recommendations to curb hate speech.

7. Either self-prescribed or government approved, media regulations along with law about responsible use of cyberspace, would be necessary to curb hate speech though without violating the freedom of conscience, thought and expression.
8. Religious leaders and seminary teachers need to be sensitized over the hate speech and the banned outfits, in any garb, need to be closed down.

³¹Supra 2, 3, Reference to raids in Urdu Bazar Lahore, use of loudspeakers.

³²Justice Iqbal Hameeduddin, Recommendations of Judicial Inquiry <http://www.punjab.gov.pk/home>

³³Justice Tassaduq Hussain Jilani, S.M.C., NO. 1 OF 2014 ETC.<http://www.supremecourt.gov.pk/web/page.asp?id=1857>