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FREEDOM OF INFORMATION VS RIGHT TO PRIVACY: CYBER STALKING-A LEGAL PERSPECTIVE

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Abstract

Cyber Stalking is the intimidation or menace to cause distress by blackmailing through the internet and it is a threat to the right of privacy while abusing freedom of information. Cyberstalking is an offense that is exclusively considered a violation of the right to freedom of information. The legislative history ranging from the mandate provided in the Constitution of Pakistan 1973 and by the time-to-time enactment helps to investigate and prove that the concept of limitation on freedom of information is not new. Article 19 of the Constitution of Pakistan gives the grounds on which the state can impose restrictions such as in the interest of the glory or integrity of Islam, security of Pakistan, public order, decency, morality, or incitement to an offense. Moreover, cyberstalking given under section 24 of the Pakistan Electronic Crimes Act 2016 (PECA) provides penalties including detainment and fines. The research is descriptive, as the theoretical framework used to study the concept of cyber stalking law adoption, with special reference to the case laws, is studied with the legislative history. An analytical and critical approach is taken when issues concerning the restriction on freedom of information are discussed providing Pakistan's legal perspective on cyberstalking. Historically, in Pakistan, freedom of information has never been absolute. Thus, criticism drawn over recently promulgated social media rules found no legal ground in the existing legal framework, and it is high time that more emphasis is laid on critically evaluating historical legal aspects before censoring newly promulgated laws.

Keywords: Cyber, Stalking, Internet, Information, Legislative, History, Laws

Introduction

The state is the absolute authority in law-making, and the state can make laws on certain grounds. The grounds for making laws by state may restrict freedom of speech, information, and other relevant laws. The duty to regulate cyberspace is conferred as per the notification of the Federal Government. The Pakistan Telecommunication Authority (PTA) is the regulating body, and the Federal Investigation Authority (FIA) is the investigating agency. Both organizations frequently work together in a cooperative operation to track down cyber offenders who conduct crimes like cyber harassment, cyber-blackmail, or even cyber fraud. PTA is the regulatory authority to control or remove a variety of content that is against the honor of Islam, the integrity of the state, illegitimate, defamatory, or even slanderous.

Problem Statement

The restriction imposed by the legislative authority on freedom of information has been obtained by Art. 19A and 19 of the Constitution of Pakistan of 1973. These provisions provide the specific grounds on which the state has the authority to restrict freedom of information. Therefore, restriction is an obvious aim of limitation applied in cases of violations of freedom of information and cyberstalking. There is a growing belief, based on the analysis of the relevant case laws that freedom of information is not absolute and should be restricted to the extent of a violation of Art. 19 and 19A. It is essential to ascertain whether Pakistan's freedom of information regimes and cyberstalking laws are sufficient to achieve the desired result or if there is a need to adopt a different law in the future.

Significance of the study

This study will highlight the fact that laws are evolving daily, which is a sign of Pakistan's legal progress. Along with criticism of government policy, it is commendable that the government is trying to control the

turmoil by protecting cyberspace from illicit and illegal content that would violate the restrictions outlined in Art. 19 of the Constitution. It exhibits a basic understanding of limitations on freedom of information while discussing legislative history and case laws. This will elaborate on the fact that the extent of a person's integrity and reputation is limited by freedom of information. The state of cyberstalking in Pakistan has been supported by specific provisions to justify the promulgation of new social media rules.

Research Questions

1. Does the state have the authority to limit freedom of information or fundamental rights?
2. What are the grounds on which a state could regulate freedom of information?
3. What is the state of freedom of information in the Telegraph Act 1885, the Pakistan Telecommunication Authority 1996, and the Press Council Ordinance 2002?
4. Which case laws provide limitations on freedom of information on social media within the legal framework of Pakistan?
5. What is the state of legislation in Pakistan on cyberstalking while limiting freedom of information on social media?

Research objectives

To review the existing laws adopted by Pakistan's freedom of information regime and cyberstalking legislation.

To discuss the possibility of adopting a different model in the future and the challenges of criminalizing cyberstalking while restricting freedom of information.

To analyze the social media laws in Pakistan would help to highlight the state of cyberstalking law-making in Pakistan. Recent social Media laws promulgation under

Methodology

The methodology used in this study is primarily analytical, and a critical approach is adopted when issues regarding restrictions on freedom of information arise. The research is

descriptive and qualitative at first, as the theoretical framework on the restriction on freedom of information and the concept of cyber stalking law adoption by the Pakistani Law, with special reference to the case laws, are studied with the hypothesis of legislative history that an analytical and critical approach is taken when issues concerning the restriction on freedom of information are discussed. Statutes and regulations are used as the primary sources. Secondary sources are also used in the research, such as legal publications, journals, essays, and general remarks.

Literature review

In recent years, any crime committed using a computer as a target, tool, or other method has been referred to as a cybercrime. The majority of cybercrime focuses on the data of a person, business, organization, community, or government (Shambhavee, 2019: 350–355). Cyberstalking is one of them; therefore, a continuous sequence of persistently unwelcome actions carried out through digital communication technologies is known as cyberstalking (Thelwall, 2002: 413–420). Cyberstalking is when a person repeatedly tries to get in touch with another person to affect their life or frighten them (Sadotra, 2015:14–30). The development of information technology has also made it possible for stalkers to conceal their identity, allowing them to commit crimes comfortably while remaining unknown (Drebing, 2014: 61–67). One of the main benefits of cyber-stalkers is that they do not have to leave their house to find or bother their targets; in other words, they don't fear physical harm because they think they are untouchable in cyberspace (Thapa, 2011: 340–354). The Internet, email, electronic communications, and social networking sites like Facebook, Instagram, etc. are the main channels by which cyberstalking occurs, and the severity of cyberstalking has gotten worse with time (Citron, 2014: 42).

Discussion

Cyberstalking is a violation of freedom of information. The right to access data (freedom of information) is guaranteed by the Constitution and cannot be denied. To elaborate on the discussion, the study has four main parts. Firstly, the relevant articles of the 1973 Constitution of Pakistan are being reviewed, and the Article 19A restrictions would be justified based on case law. Secondly, this study will discuss different legislations that provide the concept and grounds for limiting freedom of information, followed by the relevant case laws that would help us analyze the limitation on freedom of information. Thirdly, the author would provide cyberstalking laws and explain how cyberstalking constitutes a violation of freedom. Lastly, social media rules and state authority will be discussed, followed by a precise and coherent conclusion.

Pakistan's Constitutional Authority to make Laws while limiting Freedom of Information

Freedom of expression and the press are expressly protected by the Constitution of Pakistan, 1973. Article 19 of the Constitution refers to the parameters of free speech and media freedom as well as restrictions on these freedoms. It states that:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security, or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency, or morality, or about contempt of court, [commission of] or incitement to an offense (The Constitution of the Islamic Republic of Pakistan, 1973).

According to this article, every Pakistani citizen has the right to freedom of thought, assembly, and the press (The Constitution of the Islamic Republic of Pakistan, 1973). However, this article also stated that the state must make any laws for the defense of the dignity of Islam, integrity, security, or protection of Pakistan, diplomatic relations

with any other state, public peace, decency, or morality, correspondence to contempt of court, commission or provocation of any offense, or protection of any such interest. As a result, freedom of speech may be subject to some limitations as determined appropriate by state authority ([The Constitution of the Islamic Republic of Pakistan, 1973](#)).

Although the right to freedom of the press is explicitly mentioned in the article, neither the right to information nor freedom of information is included. However, it was acknowledged that the right to freedom of information is given in conjunction with the right to freedom of speech and expression ([Alam, 2015: 3](#)).

Because Article 19 expressly omits any mention of the "right to information" (RTI), another Article, known as Article 19A, was added to the Constitution by the Eighteenth Amendment in 2010. Pakistan thereby joined the group of countries that considered RTI to be a constitutional right. According to Article 19-A, the right to information is elucidated as "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law" ([The Constitution of the Islamic Republic of Pakistan, 1973](#)).

Since it gathers and disseminates information in the public interest and ensures the accountability of individuals in or seeking public office, the media is referred to as the fourth pillar of the state. In any case, citizens ought to likewise have the option to practice the right to information and access guaranteed, reliable information with the goal that they can frame and communicate informed opinions about individuals holding or trying to hold public offices. This, fundamentally, implies that freedom of expression and the right to access data (freedom of information) are firmly connected ([Alam, 2015: 6](#)).

Since the turn of the century, web infiltration in Pakistan has expanded

manifold. In 2000, just 0.7% of the total populace had access to the web; by 2007, it had expanded to 6.8%, and by 2016, it had reached 17.8% ([Munir & Shabir, 2018: 86](#)). While this has opened new roads for proactive disclosure of information by public bodies, new moves, for example, dangers to protection, online harassment, fraud, and observation, and hate speech and prompting violence, have likewise sprung up in computerized spaces. By this, a free progression of information should be guaranteed without compromising freedom of expression or the prosperity of people, in both online and offline cyberspaces ([Munir & Shabir, 2018: 88](#)).

Case Laws on Art. 19 of the Constitution

Information and expression freedom are the rights granted by the Constitution; however, these are subject to some restrictions. The case laws given below provide the concept of limitation, which is not new to the system. The restrictions have been in effect since the right was granted.

1. Integrity and security

In *Pakistan Medical and Dental Council v. The State, Islamabad*, the court states that "freedom of expression does not give license to damage the integrity and reputation of a person or the nation and the land" ([The State v. Pakistan Medical and Dental Council, 1990](#)).

In this case, it has been decided that freedoms do have the ability to be constrained. Constitutional authority hence decided to limit freedom of expression, and it does not allow any kind of infringement on the state's or citizen's security. The right to freedom of information does not give you absolute control over the integrity of another person. The constitution does limit freedoms to the extent of another person's privacy and reputation.

2. Public harmony and serenity

In *Akbar Shah v. Municipal Commissioner, K.M.C.* the court states that "An act which distresses just an individual and does not add up to an act prejudicial to public harmony and

serenity is not inclined to public order" ([Municipal Commissioner, K. M.C. v. Akbar Shah, 1998](#)).

Hence, it stands to reason that any conduct or statement that hurts societal sentiment will fall under the umbrella of restrictions placed on the right to free expression.

2. Morality and decency

The court rules in *Administration of Sindh v. Ghulam Sarwar Awan* that "each citizen is normal, and it is legally necessary not to offer any expression or convey through any media which may have the effect of making or expanding disrespect and hostility between various ethnic gatherings" ([Ghulam Sarwar Awan v. Government of Sindh, 1988](#)).

The goal of this restriction is to make sure that no one's right to free speech or expression damages Pakistan's social fabric. The privacy rights of others cannot be violated in the name of freedom of expression. Morality and decency are important rights that shouldn't be compromised. The social fabric of Pakistani society cannot be compromised through the exercise of freedom of expression.

3. Legislative History of Limitations on Freedom of Information

Nevertheless, regulations about the media have been introduced before in Pakistan. Additionally, it has a legislative background shaped by case laws and a significant decision on limiting the freedom of information, which will be covered in later parts. Both the elected governments and the dictatorial regimes introduced numerous laws about the media and journalists. Among the most significant pieces of legislation are the Newspaper Employees (Conditions of Services) Act of 1973 and the West Pakistan Press and Publications Ordinance, both from 1963. In Parliament, none of the laws relating to the media were discussed.

The laws, which somehow cover stalking, have provided the following explanation of

Pakistan's media laws and freedom of information:

The Press Council Ordinance, 2002

The Press Council Ordinance, 2002, essentially accepts the Press Council of Pakistan's founding. "To execute the Ethical Code of Practice, as set out in the Schedule to the Ordinance," is the Press Council's stated purpose. By the Press Council Ordinance of 2002, the Press Council is also mandated to "maintain the most significant professional and moral recommendations of newspapers and news offices with the end goal of making them more accessible to the issues and concerns of the general public in Pakistan" ([The Press Council Ordinance, 2002](#)). The terms "public awareness" and "free stream of information" are included in the preamble of the ordinance.

The Telegraph Act of 1885

The Telegraph Act of 1885 is arguably the country's first statute defining correspondence and information transfer. The messaging service in the country was meant to be established, operated, and maintained under the Act. According to the Act, "telegraph" refers to any apparatus, equipment, or thing used for transmitting, generating, creating, or receiving signals, signs, writing, voice, sounds, or information of any kind by radio, wire, visuals, or electro-attractive systems.

According to Sections 20 and 21, "setting up, looking after, working on, or utilizing a message in Pakistan against the provisions of this Act is an offense culpable with detainment and fine" ([The Telegraph Act, 1885](#)). By Section 24 of the Act, it is forbidden to learn the contents of any messages, and doing so is punishable by detention. Additionally, sending false, fabricated, or offensive messages is illegal and punishable by detention and a fine.

The Pakistan Telecommunication (Re-Organization) Act, 1996

The Pakistan Telecommunication (Re-Organization) Act, 1996, often known as the

Telecom Act, attempts to reorganize Pakistan's telecommunications system. The Pakistan Telecommunication Authority (PTA), Frequency Allocation Board (FAB), and National Telecommunication Corporation (NTC) are just a few of the entities linked to telecoms that can be established under the Act. The Act also makes provisions for the oversight of the telecom sector and the outsourcing of mobile phone services to the private sector.

Defamation, slandering, harassment, and stalking are all types of offenses that now happen on social media, which is why the current law needs to be updated to regulate the mode of socializing on social media. In the past, the concept of controlling expression or information freedom was limited to the distinction between print media (newspapers) and electronic media. However, with time, the mode of publishing content changes, and social media usage increases. It was the Pakistan Telecommunication (Re-Organization) Act, of 1996 that served as the model for future legislation governing social media or criminal offenses using computers, the internet, or online communication. Both the Pakistan Electronic Crimes Act 2016 ([Pakistan Electronic Crimes Act, 2016](#)) and the Pakistan Electronic Crimes Ordinance, 2007 ([Prevention of Electronic Crimes Ordinance, 2007](#)) are extensions or improvements to the law. There was a need for appropriate social media laws to control it because the existing laws are inadequate, ambiguous, and unable to adequately define cyberspace.

Case laws

These case laws will demonstrate that the rights guaranteed by the Constitution of 1973 could not be curtailed in any period to safeguard the freedom to speak without restraint and access information, and the sacredness of the state has been more significant than any other person's violations of the freedom to interact freely, to express oneself, and to gather information. Due to social media's status as a type of cyber media

and the fact that people have begun relying on it for people's reputations and defamation, the opportunity provided to the press and mainstream media can be transferred to it ([The Defamation Ordinance, 2002](#)). While they misuse the information, they have access to know whether a news story is true or not, to protect the rights of users on social media, law enforcement must intervene to control cyberspace. The practice of restricting information freedom has a long history, which serves as support for restricting freedoms on social media.

1. Begum Zeb-un-Nisa v. Pakistan

It cannot be secured that the right to free access includes the right to slander or the right of the press to undermine national security, according to the court, which asserts that the Constitution straightforwardly calls for the freedom of information to rely on practical limitations imposed by law. Section 12 for this situation of the Security of Pakistan Act to the extent that it allows the government to disallow the distribution of a paper under any circumstances has, after the Constitution, become unenforceable ([PLD 1958 SC 35](#)).

This case law makes it quite evident that there are some constraints on the freedom of information when it comes to state security. The sanctity of the state and the security of any person concerned should not be compromised by the right to information access. It is observed that the restriction can be applied to the access of information for the sake of the security of a state or a person.

2. Abdullah Ismail v. Unichem Corporation (Pvt.) Ltd.

In Abdullah Ismail and Others v. Unichem Corporation (Pvt.) Ltd., 1992, the court rules that even though an article is slanderous, the court would not prohibit its publication if the respondent claims that he intends to defend it or make reasonable comments on a long-standing issue of public interest. The justification occasionally stated is that the jury, which serves as the unconstitutional

tribunal, and not the judge, are the guardians of legitimacy and reasonable remarks (1992 MLD 2375).

3. Ardeshir Cowasjee v. Masroor Ahsan

According to the court, media freedom is not absolute, unbounded, or unfettered. The shield of media freedom should not be removed to allow for misbehavior. The media is likely to distinguish between its responsibilities and accountabilities towards the public. Public order, decency, and ethics should not be compromised by the media in the pursuit of their goals or obligations. They run the risk of being charged with contempt if they go beyond the reasonable limits or the scope of an impartial censure (PLD 1998 SC 823).

Arguments: In the above-mentioned case laws, it has been mentioned that the freedom of information can be exercised to the extent necessary to secure public or private interests but cannot be exercised by disturbing public order and morality. It is well established that freedoms can be exercised until or unless they surpass the limits provided in the Constitution for the state's or person's reputation. It is explicitly stated in case law that the media providing information must not be biased. By replacing media with social media, the limits are giving access to information are not absolute, and derogatory remarks are also not allowed which results in damaging the public order and reputation of a concerned person. Each person must take care of their remarks and access to others' information (Miss Sadia Sumble Butt v. Rafiq Afghan).

History has shown that any revolution, whether political or industrial, has led to the passage of numerous new laws, as we covered in great depth above. In other words, no system could be introduced without new laws. As time goes on, the cyber revolution arrives in Pakistan, and, like any other system, cyberspace needs rules to manage it. This is required under the constitution.

3. Cyberstalking laws in Pakistan

Pakistan is a developing nation, and several laws about cyberstalking can be regarded as limiting the freedom of information. Pakistan is one of the nations with appropriate cyberstalking protections. To provide a comprehensive legal framework to define various types of electronic violations and mechanisms for investigation, prosecution, and adjudication of electronic offenses, the National Assembly passed the Prevention of Electronic Crimes Act (PECA) in 2016. This was done to develop cybercrime issues. Cyberstalking is described in Section 24 as follows:

Section 24 of PECA 2016—Cyber Stalking

A person commits the crime of "cyberstalking" when they use an information network, an information network organization, a website, email, or other comparable communication channels to pressure, threaten, or harass another person (Pakistan Electronic Crimes Act, 2016), follow an individual or contact or endeavor to contact such an individual to encourage individual cooperation consistently, even if that person shows a lack of engagement. If you screen a person's use of the internet, email, instant messaging, or any other kind of electronic communication; observe or snoop on a person in a way that causes fear of savagery or real caution or discomfort in that person's head; or snap a picture or make a video of any individual and show or disseminate it without his assent in a way that hurts an individual, such a person has committed the offense of cyberstalking (Pakistan Electronic Crimes Act, 2016). Anyone found guilty of the crime faces a sentence of up to three years in prison, a fine of up to one million rupees, or a combination of the two. Additionally, it is stated that if the victim of cyberstalking is a minor, the punishment may go up to five years in prison, a fine of up to ten million rupees, or a combination of the two (Pakistan Electronic Crimes Act, 2016).

Findings

By examining this provision, the author comes to some findings. This provision must include the provision for psychiatric help or the rehabilitation of the victim. In some cases, psychological counseling is more appropriate than monetary or physical penalties for online stalkers. The government should set up rehabilitation facilities where people can receive the psychological care and changes they need. However, complaints, the background of the cyberstalker, the process for determining the relationship between the cyberstalker and victim, and the treatment of any psychological trait may assist in stopping online stalking. Complaints and punishment alone cannot stop cyberstalking (Lapshin & Klimakov, 2019).

Instead of punishing them for their offense, it is necessary to help them understand their shortcomings (Jameson, 2008). Any type of cyber stalker should receive some sort of treatment. After arrest, a medical team should conduct the necessary psychiatric testing by speaking with the cyberstalkers to determine the cause. If no psychological justifications are discovered, the person is subject to punishment and should be judged responsible for what he has done (Jameson, 2008).

The penal system has existed since day one of humanity's billion-year history. If a person has not realized their crime, even a single instance of punishment will not prevent them from committing the same crime in the future. The penal system is only for those who are judged guilty of their crime. The law-and-order system seems inadequate as a punishment given to those who commit crimes but are unaware of the seriousness and impacts of them on victims. If only penalties could deter crime, it would already have been eradicated at this point. Punishments themselves are harmful to crime; irrespective, if the offender receives punishment for one crime, he or she may conduct another; but if the offender receives

favorable treatment after a minor infraction, he or she may refrain from executing a serious offense.

4. Social media rules in Pakistan

The Federal Government issued guidelines on October 12, 2021, titled Removal and Blocking of Illegal Online Content (Process, Oversight, and Safeguards) Rules, 2021, for the prevention and removal of illegal content from the internet under section 37 of PECA 2016.

The blocking and filtering of online information is the collective responsibility of the PTA. The removal and blocking of illegal online content (process, oversight, and safeguards) laws from 2021 have given PTA the authority and framework to regulate cyberspace to preserve citizens' interests and their access to information online. As time goes on, barriers are needed for cyberspace protection to safeguard citizens' interests. Pakistan is making every effort to provide secure social media platforms, but the criticism does nothing to support government policies positively. We may all agree that there needs to be some clarification in the Citizens Protection (Against Online Harm) Rules 2020 (CPAOHR) regarding social media users. Due to their strict provisions, the other laws for censoring internet content are also drawing criticism. However, the rules can only be developed by certain PECA provisions if they explicitly indicate their intended outcome to reduce uncertainty. The problem that stems from PECA is still undetected and untreated. PECA must be changed. We may see the pattern of information freedom in our nation from an analysis of case law and legislative history, and we can understand the application of Article 19A of the Constitution by comparing it to case law.

Conclusion

Article 19A of the Constitution of Pakistan of 1973 has elaborated that the state has the authority to limit freedom of information to the extent of certain restrictions. Article 19A has demonstrated the grounds on which

states can restrict the freedom of information, which have been supported by relevant case laws pleading on certain grounds. The state has the authority under Section 37 of the Pakistan Electronic Crimes Act (PECA) 2016 to promulgate social media laws.

By discussing different laws under the discussion of legislative history, it is established that the state has constitutional authority and a long history of limiting freedom to uphold judgments based on certain restrictive grounds of Article 19A of the Constitution of 1973 and to practice the same in the promulgation of other laws in the future. Case laws on freedom limitations have supported the implementation of laws designed to limit freedom of information. Furthermore, cyberstalking laws in Pakistan are a breakthrough in protecting cyberspace from blackmailers and cyberstalkers. Section 24 of the Pakistan Electronic Crimes Act (PECA) 2016 demonstrates that cyberstalking is an offense and subject to punishment. In other words, this section prohibits the illicit use of available information.

The concept of regulating cyberstalking and limiting freedom of information in Pakistani law is not new, but the difference does depend on the form of offense. In the early 1990s, the limitation on freedom of information was exercised by restricting information in newspaper and telegraph publications. Freedom of information in Pakistan has never been absolute. Hence, in the 21st century, a bulge of information is available online on social media, so for this reason, the state is utilizing its authority to limit freedom of information by promulgating social media rules, and the legality of such rules cannot be challenged because they are established on the foundations laid down by vast legislative history and case law.

Recommendations

The government needs to pass new regulations because existing ones have ambiguous and vague language, and Pakistan's cyber literacy rate is not as high as

it should be given how little people know about social media usage restrictions. The state is in charge of setting priorities and limitations in this area to instruct social media businesses on regulation while taking into account behavior that is legal in the Islamic Republic of Pakistan. Perhaps there would be less censorship in these guidelines if they clarified how to protect citizens and their human right to privacy. There is no doubt about Pakistan's effort to advance in the modern cyber era, but before new laws or rules are made public, policymakers must consult a team of scholars who can weigh the benefits and drawbacks of proposed legislation as well as study case laws from other industrialized nations. For this reason, the following are the recommendations in pursuance of this study:

Awareness of threats

Pakistan is attempting to maintain a proper legislative process but is unable to identify the fundamental reasons for the criticism of each new social media law. People's ignorance of the threats that the government may have anticipated is the main source of censoring. However, it would aid the government in passing legislation with less criticism and better understanding if they first conducted an analysis of the intimidation and shared it with the public.

Amalgamation of research and policy-making

Because academics are examining the most recent issues in the law and cyberspace, there should be a link between research departments and the development of new policies. Each research department should support the government so that it can make laws and policies. Every profession's study can be used to benefit.

For instance, the IT research division contributes to the availability of a secure mode of data security in a very practical and effective manner. The government could benefit from characteristics provided by the legal research department that are lacking in

current legal standards. A study of legislation enables legislators to pinpoint the flaws in the legislation and its processes. The correct framework for legislative and governance system improvements could also be given to the legislature. The government ought to establish a specific division tasked with integrating contemporary research into formulating public policies. Therefore, regardless of the subject, current research should be submitted for incorporation into new policies and the blending of modern and technological research with new policymaking.

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