

Note on the Collaboration

By Farieha Aziz, Co-Founder Bolo Bhi

In January 2020, an exchange of ideas on shared areas of interest led to a collaboration between Bolo Bhi and Professor Arturo J. Carrillo and a team of students with the Global Internet Freedom Project at George Washington University (GW) Law School. We started this as a co-learning opportunity – for the students to get a sense of policy issues and advocacy on them in Pakistan, and for us to be able to learn about what is happening in other jurisdictions on these issues, through their work. Central to this was the [Prevention of Electronic Crimes Act \(PECA\) 2016](#), specifically the freedom of expression and privacy issues related to the law and its application. Content regulation and the use of the criminal defamation clause, Section 20 – both, by the state to stifle dissent and individuals to silence those accusing them of sexual harassment and violence online – formed a significant part of the discussion.

Over a period of four months, discussions turned into research projects which then resulted in memos on these topics. The students, guided by Professor Carrillo, responded to time-bound queries and requests for assistance with research in short time frames due to the sudden nature of announcements on the policy front here, such as the [Citizens Protection \(Against Online Harms\) Rules 2020](#). The Rules appeared suddenly and secretly, until an uproar led to their implementation being put on hold – but without any clarity on their legal status after Federal Cabinet approval. Soon after, a draft of the [Personal Data Protection Bill 2020](#) appeared on the Ministry of IT and Telecom's website, this time more transparently, with an announcement and a call for input, but with a month's deadline to submit comments, mid-pandemic.

While the Personal Data Protection Bill 2020 was announced much too late for the team to review in any detail as their semester draws to an end, the Rules and discussion on them resulted in research articles on content regulation and data localization, which are now being published for the benefit of a wider audience. In addition to two research articles by GW Law School students Ariel Overton and Sarah Kerrigan, we are also re-publishing an op-ed written by Usama Khilji (director of Bolo Bhi), on the Personal Data Protection Bill 2020 that appeared in *Dawn*, as well as a comparative research prepared in-house by Shumaila Hussain Shahani of Bolo Bhi on the bill, comparing it to laws and bills in other jurisdictions. An [analysis on the Personal Data Protection Bill 2020](#) was published last week.

I'm grateful to Professor Carrillo and his team of students for going along with us on the rollercoaster ride that is the Pakistani policy environment, where one day defamation is the burgeoning issue and then suddenly the appearance of the Rules requires a shift in what to prioritize. They made themselves available and graciously accommodated requests for revising timelines and scope of work.

Below is a note by Professor Carrillo on the collaboration and articles.

Digital Rights in Pakistan – A View From the Outside

By Professor Arturo J. Carrillo, George Washington University Law School

To any astute observer of digital rights around the world, Pakistan stands out. Recent initiatives by the Executive to adopt rules regulating “online harm” and protecting citizens’ personal data have gripped the attention not just of Pakistani civil society activists, but that of international commentators as well. The Global Network Initiative, for example, a multi-stakeholder consortium that includes several well-known Internet companies, issued a statement on behalf of its members raising concerns about the Citizens Protection (Against Online Harm) Rules put forth by the government.¹ And foreign media, the New York Times in particular, have covered the story in compelling terms.²

Most reactions from outside Pakistan to the legislative initiatives described have been brief descriptions or summaries of key concerns.³ I believe, however, that a more in-depth exploration of the issues raised by the Online Harm Rules and the Data Protection Bill, particularly from an “outside” perspective, is warranted. As co-director of the Global Internet Freedom Project at George Washington University (GW) Law School, in Washington D.C., I have initiated such an exploration by engaging with my students in the study and analysis of these new norms viewed in light of Pakistan’s international law obligations. We have also examined the experience of other countries grappling with the same challenges of regulating harmful content and ensuring citizens’ privacy in line with fundamental rights, which gives us a baseline for informed comparison.

Together with Bolo Bhi, our partner in Pakistan, we are committed to producing and publishing a series of online articles that unpack the various issues raised by the Online Harm Rules and the Data Protection Bill, one-by-one. As observers based at a U.S. law school who specialize in international and comparative law, our goal is to examine each topic – content regulation and data localization, to begin with – from a more global perspective. How do the controversial provisions of those new laws compare to similar norms in other countries? What has the practice of implementing those norms in other countries taught us about the prospects of Pakistan’s proposed new legislation?

The overarching inquiry developed in this series is this: how can Pakistan advance the protection of digital rights through legislation that is in line with democratic values and the rule of law? Although the articles will take clear positions in response to this touchstone question, they do so only after a balanced review of the given issue in light of international law and practice. Our goal is to contribute from a different perspective – external, academic, international – to the ongoing debates within Pakistan on these critical issues. It is our hope that, in this way, we can bring new elements to those discussions and fuel the flames of democratic discourse around them.

¹ Global Network Initiative, *GNI Expresses Serious Concern Regarding Pakistan’s Rules Against Online Harm*, 28 February 2020, Press Release and Statement published at <https://globalnetworkinitiative.org/gni-expresses-serious-concern-regarding-pakistans-rules-against-online-harm/>.

² Vindu Goel & Salman Masood, *Facebook, Google and Twitter Rebel Against Pakistan’s Censorship Rules*, NEW YORK TIMES, 27 February 2020, at <https://www.nytimes.com/2020/02/27/technology/pakistan-internet-censorship.html>

³ One exception is Michael Karanicolas’ online article, *Newly Published Citizens Protection (Against Online Harm) Rules are a Disaster for Freedom of Expression in Pakistan*, published on the Wikimedia/Yale Law School Initiative on Intermediaries and Information Blog, 29 February 2020, at <https://law.yale.edu/newly-published-citizens-protection-against-online-harm-rules-are-disaster-freedom-expression>.

Allow me now to introduce the first two articles in this series. The first is entitled *The Perils of PECA: Democratic New Rules for Online Content Regulation in Pakistan?* Written by Ariel Overton, a student in the International Human Rights (IHR) Clinic I direct at GW Law School, this article first takes the provisions of the Online Harm Rules dealing with content regulation and places them into context under the Prevention of Electronic Crimes Act of 2016 (PECA). It then surveys similar regimes either in place or proposed for the United States, the United Kingdom, the European Union, and India. In so doing, it sheds light on the central question of whether “Pakistan’s new proposed Rules under PECA [are] more similar to content regulations in democratic countries such as the UK and those in the EU, or [...] to the regulations in more authoritarian regimes like China.”

The second article by Sarah Kerrigan, another student in the IHR Clinic, is titled *Other Democracies Don’t Have Data Localization Laws, So Pakistan Shouldn’t Either*. It addresses not just the data localization provisions of the Online Harm Rules but also those contained in the Personal Data Protection Bill, which would codify them. The article explains why the abuse of such norms is frowned upon by international law as offensive to both freedom of expression and privacy rights. In this regard, it delves into data localization laws and their predominantly negative impact on democratic values in most countries that have them, especially Russia and China. The proposed data localization regime for India is similarly a cause for concern. Equally telling are the countries *not* discussed because they have no such laws: the United States, the United Kingdom, the states that comprise the European Union, and so on, hence the title.⁴

***Arturo J. Carrillo is Clinical Professor of Law and founding Director of the International Human Rights Clinic at The George Washington University Law School, where he also co-directs the Global Internet Freedom Project. His research focuses on the intersection of Information and Communication Technologies (ICTs) and international law, especially human rights, with an emphasis on the promotion of Internet freedom principles worldwide.*