



# PAKISTAN'S ONLINE CENSORSHIP REGIME

Surf Safely



**Section 37 of the Prevention of Electronic  
Crimes Act, 2016  
and  
Citizens Protection (Against Online Harm)  
Rules, 2020**

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## INTRODUCTION

The [Citizens Protection \(Against Online Harm\) Rules, 2020](#) (CP Rules 2020) surfaced suddenly in February 2020, and became the subject of much debate and criticism. After opposition to them locally and internationally, an announcement was made by the Prime Minister “suspending” the Rules. He also [set up a committee tasked with holding consultations](#) on the Rules.

The Rules were issued under the scheme of Section 37 of [Prevention of Electronic Crimes Act, 2016](#). Section 37 uses language directly from Article 19 of the [Constitution of Pakistan](#) and, in an overbroad manner, awards discretionary powers to the Pakistan Telecommunication Authority (PTA) to interpret and apply the exceptions – which is a parliamentary and judicial function – to block and restrict access to information online. For over three years after PECA 2016 was enacted, no Rules were formulated under Section 37 even though it is a statutory requirement. Then came the CP Rules 2020, which go above and beyond what PECA and Section 37 allows.

The process through which the Rules surfaced and their content, were both objected to by civil society groups in Pakistan. In February, a [statement](#) signed by over 100 organisations and individuals, called for the Rules to be withdrawn by the Federal Cabinet. The [Asia Internet Coalition \(AIC\)](#) released a [statement](#) asking the government to “reconsider” the Rules. The [Global Network Initiative \(GNI\)](#) expressed “serious concern” through a [statement](#). Digital rights groups and civil society organisations boycotted the consultation held by the PTA and the committee in June 2020, demanding that the Rules be withdrawn and denotified first. The AIC in [comments](#) submitted to the PTA on the Rules also echoed local groups and individuals in calling for the Rules to be withdrawn and denotified, asking the PTA to initiate a broad based consultation on proposed thematic aspects, outlined in the comments.

Documented abuse of Section 37 of PECA, under which the CP Rules 2020 were promulgated, raise strong concerns regarding censorship, suppression of dissenting views, and curtailment of freedom of expression guaranteed by Article 19 of the Constitution.

This brief explains the history of censorship and blocking in Pakistan and illustrates why the Citizens Rules 2020 must immediately be withdrawn and denotified by the Federal Cabinet, and Section 37 of PECA be repealed by Parliament. It discusses ways in which harm to citizens under the scope of already existing offences under PECA, platform policies, user self-help tools and services, and public-private partnerships to facilitate citizens’ grievances, is the more important discussion to have, and can actually ensure protection of citizens given these are encouraged by state and society alike.

## PART 1 – THE ROAD TO SECTION 37: INTERNET CENSORSHIP IN PAKISTAN

Prior to the introduction of Section 37 in the Prevention of Electronic Crimes Act (PECA), 2016<sup>1</sup> – which gives the Pakistan Telecommunication Authority (PTA)<sup>2</sup> powers to block and restrict access to information online – there existed an Inter-Ministerial Committee for the Evaluation of Websites (IMCEW), set up through an executive notification by the Prime Minister in 2006. The composition of this committee, record of its meetings, and decision-making procedure were not on record or public knowledge<sup>3</sup>. Instructions were simply issued to the PTA, and subsequently by the PTA to Internet Service Providers (ISPs), to block content. The blocking of a website was then instituted at the ISP's end.

All website blocking was ad hoc, arbitrary, and non-transparent. A blocked website was typically discovered when a user tried to gain access, found it inaccessible, and raised the issue through social media. The exercise to determine whether it was an ISP-level issue or the result of state censorship, was this: users across cities through different Internet connections and browsers would try to access the website that was inaccessible. If the website was blocked for most or all but accessible through a proxy or VPN, it was assumed this was the result of state censorship. Rarely was there an official acknowledgement by the PTA or the government. Even ISPs, when contacted through their customer service helplines, only sometimes disclosed the blocking. In some instances a “Surf Safely” sign by the PTA appeared when trying to gain access to a website, warning that the content was prohibited for viewing in Pakistan, which established it was officially blocked.

While “blasphemous” and “pornographic” content was usually presented as the justification for such bans and to accrue content restriction powers and tools, political speech was targeted. Over the years, several websites have been restricted such as Blogspot, WordPress, Flickr, Wikipedia, IMDB, Twitter, Facebook and YouTube. Content filtering and restriction attempts have also impacted the availability of academic, medical, and cultural content including, in one instance, the then newly set up website of a local start-up selling Pakistani leather shoes online to support local craftspersons.<sup>4</sup>

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<sup>1</sup> [http://www.na.gov.pk/uploads/documents/1472635250\\_246.pdf](http://www.na.gov.pk/uploads/documents/1472635250_246.pdf)

<sup>2</sup> <https://www.pta.gov.pk/en>

<sup>3</sup> <https://vimeo.com/86328193>

<sup>4</sup> <https://bolobhi.org/pakistans-internet-banwagon-a-documentary-by-bolo-bhi/>

## 1a. YouTube ban, localisation and intermediary liability protection

In September 2012, YouTube was blocked in Pakistan by the then Pakistan Peoples Party (PPP) government on account of a video that inflamed religious sentiments<sup>5</sup>. In 2013, the ban was challenged before the Lahore High Court (LHC) through W.P. 958/2013. The YouTube ban and debate around it started the conversation on intermediary liability protection and localisation in Pakistan.

When in 2010, Facebook was banned upon the instructions of the Lahore High Court (LHC) in response to a petition asking the court to issue instructions to the government to act against the availability of a blasphemous caricatures page on the social networking website<sup>6</sup>, the ban was reversed only after Facebook "restricted access to the page in certain countries, including Pakistan<sup>7</sup>." Two years later, when the Innocence of Muslims video on YouTube surfaced, the expectation from Google was the same: remove the offending video to be unblocked. If Facebook could restrict content, why couldn't Google and YouTube, especially since they were headquartered in the same country, was the question asked repeatedly. This propelled a conversation around company policies, country-level restrictions, the manner in which they were instituted and the applicability of local laws. But it also elicited threats from the newly appointed minister for state for Information Technology and Telecom from the Pakistan Muslims League - Nawaz (PML-N), to ban Google if the company did not comply.

The court became the venue for these debates as it sought input on the policy, legal and technology aspects of the ban by appointing various experts (amicus curiae) to assist with the proceedings<sup>8</sup>. Through an amicus brief filed before the court<sup>9</sup> and arguments made in person, Bolo Bhi informed the court that the video had only been restricted where there existed country-level domains of YouTube. For Pakistan to get a .pk domain would mean Google would have to localise. Without intermediary liability protection as a primer, no company would be willing to have local laws apply; however, that is not reason enough for a company to localise. The court, through the Ministry of Information Technology & Telecom (MOITT), inquired from Google, whether the company would localise if intermediary liability protection was extended by the court in the interim, until legislation was enacted. In response to this query, Google, through a letter in response to MOITT, which was later submitted to court, said the following:

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[https://www.washingtonpost.com/business/economy/youtube-blocked-in-pakistan/2012/09/17/30081fa2-00ea-11e2-b257-e1c2b3548a4a\\_story.html](https://www.washingtonpost.com/business/economy/youtube-blocked-in-pakistan/2012/09/17/30081fa2-00ea-11e2-b257-e1c2b3548a4a_story.html)

<sup>6</sup> <https://bolobhi.org/its-not-about-facebook-its-about-facing-the-world/>

<sup>7</sup> <https://www.theguardian.com/world/2010/may/31/pakistan-lifts-facebook-ban>

<sup>8</sup> <https://bolobhi.org/archive-youtube-ban/>

<sup>9</sup> <http://bolobhi.org/bolo-bhis-submissions-to-court-in-youtube-case/>

*“The decision as to whether to offer this service is a business, legal and commercial decision, and takes into consideration, for example, whether there is adequate legal certainty and protections for the provision of such online services in the country. We have been discussing this in the context of the need for intermediary liability protection for online platforms and a clear notice and takedown mechanism in Pakistan to bring these provisions into line with international best practice (such as the OECD guidelines).”<sup>10</sup> ”*

With respect to the video, the letter stated: *“In this case, we add a warning interstitial page that users see before they accept to continue through to the video itself. The warning states: ‘The following content has been identified by the YouTube community as being potentially offensive or inappropriate. Viewer discretion is advised.’ It was on the basis of this interstitial page that the Government of Bangladesh, for example, lifted its earlier ban on YouTube.*

In light of this response and submissions made to court advocating self-regulation rather than ad-hoc blocking or invasive filtering technology,<sup>11</sup> an interim order passed in July 2013 by the LHC noted:

*“The Court has been made to understand by the submissions made by the parties that the ‘complaint driven’ strategy adopted by the MOIT needs to be seriously revisited. The public needs to be candidly informed that answer to the problem does not lie in generating false hope that controversial websites can be blocked but in taking up the issue head on and by evolving a code of self-regulation for ourselves based on our cultural and religious sensitivities. It appears from the submissions made before the Court that we as a nation need to regulate ourselves rather than take up a defenceless battle against the digital age and the global information available on the world wide web. In the end, the responsibility and the choice is of the individual to watch or not to watch a controversial websites as the same cannot be effectively blocked according to the level of technology present in our country today.”<sup>12</sup>*

The interim order was instrumental in informing public debate and advocacy with Parliament at the time.<sup>13</sup> Questions were posed to the government by members of the National Assembly and Senate.<sup>14</sup> A resolution was passed first by the Senate’s Functional Committee on Human Rights<sup>15</sup> and then unanimously by the National Assembly,<sup>16</sup> calling for the ban on YouTube to be lifted

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<sup>10</sup> <http://bolobhi.org/wp-content/uploads/2013/08/Googles-Submission.pdf>

<sup>11</sup> <http://bolobhi.org/submission-to-court-in-youtube-case-may-13-2014/>

<sup>12</sup> <http://bolobhi.org/wp-content/uploads/2015/03/LHC-Interim-Order.pdf>

<sup>13</sup> <http://bolobhi.org/wp-content/uploads/2014/09/Fact-Sheet-on-YouTube.pdf>

<sup>14</sup> <http://bolobhi.org/beatng-around-the-bush-on-youtube-again/>

<sup>15</sup> <https://bolobhi.org/press-statement-senate-human-rights-committee-passes-resolution-to-lift-ban-on-youtube/>

<sup>16</sup> <https://bolobhi.org/national-assembly-unanimously-passes-resolution-to-lift-ban-on-youtube/>

However, the government tried to prevent debate on the ban by telling Parliament that the ban was sub judice and should not be discussed. MOITT also misled public narrative by deflecting responsibility and alleging that YouTube was banned upon the directions of the Supreme Court.<sup>17</sup> The ban was eventually lifted in 2016, after YouTube launched a .pk domain.<sup>18</sup> Digital rights groups raised their concerns, voiced earlier too, about localisation becoming a one-stop shop for censorship.<sup>19</sup>

## 1b. The IMCEW challenge

While the YouTube ban was in place and court proceedings continued, Bolo Bhi filed Freedom of Information Requests in 2014.<sup>20</sup> After an arduous process which spanned several months and involved hearings before the Federal Ombudsperson, the constituting documents of the IMCEW were obtained.<sup>21</sup>

Constituted through an executive order in 2006, it was housed under MOITT, with Secretary IT as its convener. The workings of the committee were non-transparent. There existed no public record of its members, meetings or directives. Through a legal assessment<sup>22</sup> it was established that the IMCEW had no legal standing as it had no statutory backing and was constituted through an executive order issued by the Prime Minister, arbitrarily conferring powers upon itself. While its mandate was limited to blasphemous and pornographic content as per its constituting documents, the committee's directives extended well beyond these categories.

PTA routed such directives to Twitter and Facebook, asking them to restrict content in Pakistan and the platforms complied with these requests. The compliance indicated that the IMCEW was considered to be the 'competent' authority by these platforms whose directives were viewed as legal and enforceable. In 2014, in response to such a request, Twitter instituted its country with-held content<sup>23</sup> tool and restricted content, which was reported to the Lumen database.<sup>24</sup> Facebook's Jan-June 2014 transparency report revealed 1773 pieces of content were restricted by the company in compliance with Pakistan government requests. The category of content did not include just blasphemy but also "criticism of the state". No law in Pakistan held that criticism of the state was illegal and interpreting what constituted criticism of the state did not fall within the ambit of the IMCEW or PTA's mandate.<sup>25</sup>

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<sup>17</sup> <https://tribune.com.pk/story/1029290/reincarnation-announced-but-resurrection-pending>

<sup>18</sup> <http://bolobhi.org/youtube-localizes/>

<sup>19</sup> <http://bolobhi.org/do-not-make-localization-one-stop-shop-for-censorship/>

<sup>20</sup> <https://bolobhi.org/freedom-information-requests-bolo-bhi/>

<sup>21</sup> <http://www.bolobhi.org/wp-content/uploads/2014/12/2006-notification-.pdf>

<sup>22</sup> <https://bolobhi.org/blocking-of-youtube-whats-legal-whats-not/>

<sup>23</sup> <https://www.dawn.com/news/1108341/analysis-censoring-tweets-in-pakistan>

<sup>24</sup> <https://bolobhi.org/pakistan-the-chilling-effects-twitter-country-withheld-pakistan/>

<sup>25</sup> <https://bolobhi.org/the-pakistan-penal-code-and-online-content/>

The IMCEW became a prime example of arbitrary, ad-hoc executive action and abuse of power. In December 2014, Bolo Bhi filed a petition before the Islamabad High Court (IHC) challenging the legality and constitutionality of the IMCEW and the powers exercised by the federation of Pakistan through the MOITT and the PTA, to block websites and content online. The petition asked that the IMCEW be declared unconstitutional.<sup>26</sup>

During the course of hearings in W.P. 4994/2014, the following questions arose: where did the IMCEW and the PTA derive authority to issue directions and block content online? The IMCEW's authority was traced back to not a law but rather an executive notification issued by the Prime Minister in 2006. The PTA Act contained no provision that authorised it to block content. Bolo Bhi obtained a stay order restraining the IMCEW and the PTA from issuing directions without the approval of the court.<sup>27</sup> They were also directed to place on record details of websites blocked over the last three years, as well as the minutes/record of meetings at the next date of hearing. In a bid to vacate the stay, MOITT's representatives argued there was "terrorist content" online and given the urgency to take down such content, the government could not approach the court each time to seek approval prior to acting against it.<sup>28</sup> The court modified the stay order to the extent that any complaint regarding a website was to be made directly to the PTA, and the court was to be informed of any action taken by the PTA, by filing a report explaining the reason for regulating the particular site, during the pendency of this case.

Over the course of hearings, the federation admitted that the IMCEW was a recommendatory body. In March 2015, they submitted a notification to the court signed by the Prime Minister, de-notifying the IMCEW. This was accompanied by the announcement that the PTA was being given content management powers.<sup>29</sup> In December 2015, the Telecommunications Policy 2015 was issued in which content management powers were given to the PTA. In February 2016, Bolo Bhi amended its plaint to challenge Section 9.8 of the Telecommunications Policy titled 'Content Management'.<sup>30</sup> The principle was the same as before: MOITT and the federation of Pakistan lacked the legal authority to block content and assume the role of regulator for content on the Internet. The court was then informed that a cybercrime bill was being introduced. In August 2016, PECA was enacted. Content management powers were given to the PTA under Section 37. MOITT called for the petition to be dismissed saying it had become infructuous after the passage of PECA 2016.

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<sup>26</sup> <https://bolobhi.org/archive-the-imcew/>

<sup>27</sup> <http://bolobhi.org/hearing-1-bolo-bhis-petition-challenging-imcew/>

<sup>28</sup> <http://bolobhi.org/hearing-2-bolo-bhis-petition-challenging-imcew/>

<sup>29</sup> <https://www.thenews.com.pk/print/30534-pta-given-powers-for-content-management-on-internet>

<sup>30</sup> <http://bolobhi.org/wp-content/uploads/2016/03/Bolo-Bhi-Application-to-Amend-Plaint.pdf>



## 1c. From Section 34 in the bill to Section 37 in the law

From the time the Prevention of Electronic Crimes Bill (PECB) 2015 first surfaced,<sup>31</sup> when a leaked copy was made available to the press and later a similar version was approved by the National Assembly's Standing Committee on Information Technology and Telecom, without even laying the draft before the committee or sharing it with members of opposition,<sup>32</sup> there was resistance to content restriction powers being awarded to the PTA.<sup>33</sup> Then Section 34, Article 19 of the Constitution of Pakistan<sup>34</sup> was copied into the proposed law, giving PTA the power to interpret and apply the restrictions listed. Rights groups maintained that the framing of Section 34 was overbroad and discretionary powers were being awarded to the PTA.<sup>35</sup> It was not just the blatantly unconstitutional framing of Section 34 but also the illegal exercise of powers over the years for censorship that elicited the pushback. It was contended that Section 34 would only go on to serve as a censorship enabling provision.<sup>36</sup>

Early amendments submitted on PECB recommended that Section 34 be omitted.<sup>37</sup> When various rights groups, industry associations and journalist unions jointly under the banner of the Joint Action Committee submitted a consensus legal redraft, the view of digital rights and human rights groups was to omit Section 34 completely, while industry groups contended prescribing a process may limit discretion and subject PTA and the content regulation process to some accountability<sup>38</sup>. Repeatedly, during advocacy against PECB 2015, rights groups maintained Section 34 which today we know as Section 37, should be removed.<sup>39</sup> In July 2016, in addition to amendments submitted to the Senate on PECB 2015.<sup>40</sup> Bolo Bhi also submitted a public petition to the Chairman Senate, urging the Senate of Pakistan to:

*“...reject the imprudent proposal to arm the federal government with overbroad means of Internet censorship contained within Section 34 of the draft [Prevention of Electronic Crimes Bill, 2016] and replace it with an obligation requiring Pakistan Telecommunication Authority to make available to all users of Internet data services free-of-cost software that enables the user to regulate his/her access to the Internet at the device level as well as household level, enabling such user to exercise choice and control over what information to access and what to avoid and affording him/her the means to protect children in the household from gaining access to undesirable or offensive content.”<sup>41</sup>*

<sup>31</sup> <http://bolobhi.org/whats-brewing-pakistans-proposed-cybercrime-law/>

<sup>32</sup> <http://bolobhi.org/pecb2015-the-story-so-far/>

<sup>33</sup> <https://bolobhi.org/archive-prevention-electronic-crimes-bill-2015/>

<sup>34</sup> [http://www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf)

<sup>35</sup> <https://www.dawn.com/news/1223239/big-brother-awaits>

<sup>36</sup> <http://bolobhi.org/wp-content/uploads/2016/05/Initial-Analysis-PECB-April-2016.pdf>

<sup>37</sup> <http://bolobhi.org/wp-content/uploads/2015/12/2.-July-13-BoloBhis-Proposed-Amendments-to-PECB15.pdf>

<sup>38</sup> <http://bolobhi.org/wp-content/uploads/2015/12/3.1-Aug-11-JAC-Legal-Redraft-of-PECB15.pdf>

<sup>39</sup> <https://bolobhi.org/archive-prevention-electronic-crimes-bill-2015/>

<sup>40</sup> <http://bolobhi.org/wp-content/uploads/2016/08/PECBAmendmentsSubmittedtoSenators.pdf>

<sup>41</sup> <http://publicpetition.senate.gov.pk/uploads/Petitions/PP-1405.pdf>

Despite it all, Section 37<sup>42</sup> was passed into law with the exception that “friendly relations with foreign states” was omitted from the final language of the section after much uproar at the time over the issue of Pakistani armed forces to Saudi Arabia to participate in the invasion of Yemen, as members of opposition and the then PML-N government stood at odds over it.<sup>43</sup>

## 1d. IHC Judgments on Section 37 of PECA

From the time the draft of PECA 2016 first surfaced in 2015, the venue for debate on content restriction was public discourse through media and social media, but especially parliamentary committees and the upper and lower houses of Parliament. Though MOITT had asked for Bolo Bhi’s petition to be declared infructuous and be dismissed by the IHC, the court did not dismiss it. In 2017, the court instructed Bolo Bhi to file a written submission, which was submitted in November 2017.<sup>44</sup>

Although after the passage of Section 37 of PECA, PTA was now authorised to block content, the question raised through the petition about the executive arbitrarily and unlawfully exercising content regulation powers on the Internet by issuing directions to block content, still needed to be settled. The other issue that was brought to the court’s attention was the Ministry of Interior instructing the Federal Investigation Agency (FIA) to monitor and act against content on social media. While Section 37 authorises the PTA to issue directions, this authorisation did not extend to MOITT or

any branch of the federation of Pakistan. Exercise of such powers was both assumptive and unlawful, much like the IMCEW, federation and PTA’s exercise of powers prior to PECA 2016.

The discussion in court then was in this context: though PECA is now law and Section 37 gives PTA certain powers, however there are still certain limits on how the law can be applied, and powers under it exercised. Section 37 specifically ascribes the function to “remove or block or issue directions for removal or blocking of access” to the “Authority,” which in the definitions section of PECA 2016 is the PTA. Through the November 2017 submission to court, the following issues were raised:

*“Respondent No.1 (Federation of Pakistan) does not have any inherent power to regulate content on the Internet either vide the introduction of the Impugned Telecommunications Policy or vide issuing directions to any executive authority to do the same. Federal Government even after promulgation*

*of PECA is continuing to illegally assume the power of content management and blocking on the Internet by issuing directions to various agencies like FIA, having no competence or jurisdiction to do the same...”*

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<sup>42</sup> [http://www.na.gov.pk/uploads/documents/1472635250\\_246.pdf](http://www.na.gov.pk/uploads/documents/1472635250_246.pdf)

<sup>43</sup> <https://www.dawn.com/news/1174281>

<sup>44</sup> <http://bolobhi.org/bolo-bhis-written-submission-in-ihc-case/>

*“...It is submitted that without prejudice to the constitutionality of the aforesaid provision, pursuant to sub-section 3 a power to issue directions has been granted to Respondent No.1 however use of the words: “until such rules are prescribed...”, clearly envisage that the said power is transitory and cannot be abused for unlimited period. Exercise of such unregulated power by Respondent No.1 would tantamount to fraud on the statute.”*

*“...Respondent No.1 has no legal authority to regulate Internet content under the Telecom Act and/or PECA...the transitory and unregulated power granted to Respondent No.1 vide section 37 of PECA cannot be abused to regulate content on the Internet for indefinite period.”*

The court issued its final order in the case in May 2019.<sup>45</sup> Important observations were made in the judgment with regards to the independence of the PTA and how directives by the Federal Government are not binding upon it:

4. *“...The Federal Government like any other person can lay an information before the Pakistan Telecommunication Authority but the same cannot be treated as binding in the context of subsection (1) of Section 37. The Authority is exclusively empowered under subsection (a) of the Act of 2016 to consider any information laid before it and then to decide whether or not to take action in the manner prescribed therein. In matters which fall within the exclusive domain of the Pakistan Telecommunication Authority under subsection (1) of Section 37 of the Act of 2016, the powers and discretion is required to be exercised independently and without being influenced by any direction or information laid before it by the Federal Government.*
6. *The august Supreme Court observed and held in the case of M.A. Supra that a discretion must be exercised only by the authority to which it is committed, and that in exercising the same the authority must genuinely address itself of the matter before it and must act in good faith and have regard to all relevant considerations. It was further held that in exercising discretion, the authority must not be swayed by irrelevant considerations, nor must it seek to promote purposes alien to the letter and or spirit of the legislation that gives it the power to act and, therefore, must not act arbitrarily or capriciously.”*

Another important judgement by the same court was issued in W.P. 634/2019, when the Awami Workers Party (AWP) challenged the blocking of its website just before the 2018 elections.<sup>46</sup> The petition records just how non-transparent and arbitrary the process remains even after the introduction of Section 37.

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<sup>45</sup> <http://bolobhi.org/wp-content/uploads/2018/12/Order-25.05.2018.pdf>

<sup>46</sup> <https://www.pakistantoday.com.pk/2019/02/16/awp-takes-pta-to-court-over-censorship-of-website/>

AWP's website was suddenly found blocked a month before the General Elections of 2018. A "Surf Safely" sign was displayed on the landing page with the warning "The site you are trying to access contains content prohibited for viewership within Pakistan." The "Surf Safely" sign indicated that the website was blocked upon the instructions of the PTA. However, no notice or reasons were communicated by the PTA prior to the blocking of the website. The petitioner undertook a series of steps to establish that it was blocked officially, which included getting IT experts to run diagnostics that confirmed the website was available for viewing outside Pakistan and so the inaccessibility was not due to a technical fault. A detailed study by Netblocks and Digital Rights Foundation (DRF)<sup>47</sup> verified this. Following this, a complaint was filed with the PTA and the petitioner also wrote to ISPs about the blocking. It was not until the petitioner approached court and the court instructed the PTA to respond, did they receive an official acknowledgement from the PTA that the website was blocked by the Authority. The entire exercise is no different from what users were subjected to prior to the introduction of Section 37, when the content censorship regime was unlawfully driven by the IMCEW and PTA.

The petitioner filed a written reply to court in September 2019, stating: "*by failing to pass a reasoned order in relation to the blocking of the Petitioner's website, the PTA has essentially deprived the Petitioner of its right to seek the remedies of review and appeal available to it under sub-sections (4) and (5) of Section 37.*" Further, it stated that the "PTA was exercising its powers in an unbridled, unstructured and unregulated manner" since it had "failed to prescribe rules under subsection (2) of Section 37 despite the passage of three years since the enactment of PECA 2016".

In an order issued by the court in September 2019,<sup>48</sup> PTA's response to court was noted and view taken corrected:

*"Section 37 of Peca empowers the competent authority to block websites without notice or affording an opportunity of hearing to the person who could be adversely affected by an order or action of the authority...This interpretation of Section 37 is in flagrant violation of fundamental rights guaranteed under the Constitution as well as the settled law enunciated by the superior courts. It is noted that the principles of natural justice are required to be read in every statute. Moreover, Article 10-A makes it mandatory to observe the requirements of due process before passing an order or taking any action whereby persons could be adversely affected."*<sup>49</sup>

The order also held that it was PTA's statutory duty to "prescribe and notify rules in order to structure and regulate its powers under Section 37 of PECA and to ensure transparency. The

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<sup>47</sup>

<https://netblocks.org/reports/study-reveals-extent-of-awami-workers-political-party-website-block-in-pakistan-zgBLrk84>

<sup>48</sup> <https://twitter.com/mhaiderimtiaaz/status/1102961155570614273/photo/1>

<sup>49</sup> <https://www.dawn.com/news/1507604/above-the-law>

court directed PTA to prescribe and notify rules under Section 37(2) at the earliest, and preferably within 90 days from the date of receiving a certified copy of the order.<sup>50</sup>

Rules were framed, but not as required under Section 37 of PECA 2016 or as instructed by the court requiring mandatory due process requirements to be met. They came in the form of the Citizens Protection (Against Online Harm) Rules, 2020, going well beyond what Section 37 permits and awarding even more discretionary powers, rather than regulating PTA's functions.

## 1e. The Rules in this context

During advocacy against PECA 2016, it was pointed out that the purpose of Section 37 was to establish “the state’s hegemony over information and speech”.<sup>51</sup> But the government recognised this could not be done without compelling social media companies based outside Pakistan to comply with local laws. When questioned how the government intended to have its decisions enforced by platforms since they were not incorporated in Pakistan and therefore not bound by local law, the response was Intermediary Liability Protection (ILP). By extending ILP – which in a limited manner was done through Section 38 of PECA 2016 – the government contended companies would establish offices in Pakistan, which would mean local laws – such as Section 37 – would be applicable to them. Four years on since PECA 2016 was enacted, no company has established an office in Pakistan despite Section 38.

While the government, through PTA, routinely makes requests to companies to restrict content and acquire user data, each company has a different approach based on its policy and business interest. Some comply, some do not.<sup>52</sup> It is those who do not comply remain the problem for the state and from compliance is sought.<sup>53</sup> Twitter stands out in contrast to other platforms. Since 2014, when it restricted content and later reversed the restriction, it has not complied with Pakistan government requests in “violation of local law”.<sup>54</sup>

The CP Rules 2020, approved by the Pakistan Tehreek-e-Insaaf (PTI) led government, go well beyond the scope of its parent legislation. The Rules create powers that are not authorised under the Pakistan Telecommunication (Reorganisation) Act, 1996 nor PECA 2016, specifically Section 37(2) of PECA. Section 37 of PECA confers powers to “remove or block or issue directions for removal or blocking of access to information through any information system” on the PTA; however, the Rules delegate excessive powers in the hands of the “National Coordinator,” an office not sanctioned by PECA 2016 but created through the Rules. The National Coordinator has powers to impose fines if companies do not abide by the directives issued, contravening Section 38 (limitation of liability of service providers) of PECA 2016. The

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<sup>50</sup> <https://twitter.com/mhaiderimtiaaz/status/1097114218652930049>

<sup>51</sup> <https://www.dawn.com/news/1223239/big-brother-awaits>

<sup>52</sup> <https://www.dawn.com/news/1225967/digital-rights>

<sup>53</sup> <https://bolobhi.org/our-official-correspondence-problem-section-37/>

<sup>54</sup> <https://www.dawn.com/news/1563388/online-censorship>

Rules expand the powers of Section 37 beyond the scope that was delineated by Parliament and thus stand in contravention of its parent law and democratic and constitutional principle.

The Rules are also a blatant violation of Articles 19 and 19-A (Freedom of Speech and Information) of the Constitution of Pakistan. They exceed the boundaries of permissible restrictions within the meaning of Article 19 and lack the necessary attributes of reasonableness. While Article 19 permits “reasonable restrictions” on freedom of speech, the Rules require all social media companies to remove or block online content if it is, among other things, in “contravention of instructions of the National Coordinator” (Section 4). As is clear from a plain reading of Article 19, “contravention of instructions of the National Coordinator” is not a purpose for which a restriction on freedom of speech may be placed and cannot be used as a benchmark to undermine fundamental rights. This is excessive and arbitrary, which the law and Constitution do not allow.

The Rules also undermine the right to online privacy and data protection in contravention of Article 14 of the Constitution that guarantees privacy. Section 6 of the Rules provide a wide berth to require social media companies to provide any information, data, content or sub-content requested by the Federal Investigation Agency. Given the wide-ranging nature of the powers proposed and the complete absence of any data protection law in the country, the Rules open up the data of Pakistani citizens to unfettered access by the government. Section 34 of PECA 2016 subjects disclosure of content data to warrants issued by a court.

The current status of the Rules is also unclear. The Prime Minister claims to have “suspended” these Rules, however as per Supreme Court rulings, the Prime Minister cannot legally undo actions of the Cabinet. Several officials stated on record and this has been recorded in news reports, that the Rules were approved by the Cabinet. No process has been initiated since to withdraw this approval, failing which these come into effect and remain so. Issues raised through the public statement signed by over 100 individuals and organisations and released on February 29, 2020, have yet to be resolved.<sup>55</sup>

The only reason consultations were held on the Rules was due to a public backlash. Consultation on the Rules with the most important stakeholders, i.e. Pakistani Internet users and experts in the field, should have been held prior to sending them for approval to the Cabinet instead of calling a consultation belatedly, with only a few days notice and, in some cases, less than 24 hours, before the meeting. Even if there exists no legal obligation to vet Rules or hold a consultation before seeking Cabinet approval, it certainly is more democratic and something that should be adopted as a best practice.

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<https://bolobhi.org/no-consultation-without-withdrawal-of-cabinet-approval-of-online-protection-against-online-harm-rules-2020/>

The Rules lay bare the intent and purpose, which is to control the ability of citizens to exercise freedom of speech online as guaranteed by Article 19, and access information as guaranteed by Article 19-A. Moreover, the survey uploaded on PTA's website reveals a similar intent. Leading questions in a yes or no format without due consideration for the nuances of how the Internet and social media operate seem aimed at extrapolating a response in favour of the Rules.<sup>56</sup> Several petitions are pending before various High Courts across the country challenging the legality and constitutionality of these CP Rules 2020. The fundamental issues with the Rules were publicly raised by rights groups and experts in the field, which should be considered by the government for future course of action. How they contravene local and the Constitution and global best practices has also been extensively documented in academic publications from a local<sup>57</sup> and international perspective.<sup>58</sup>

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<sup>56</sup> <https://www.dawn.com/news/1559110/away-with-the-rules>

<sup>57</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3597721](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3597721)

<sup>58</sup> <https://law.yale.edu/isp/initiatives/wikimedia-initiative-intermediaries-and-information/wiii-blog/newly-published-citizens-protection-against-online-harm-rules-are-disaster-freedom-expression>

## PART 2 – THE UTILITY OF SECTION 37: POLITICAL CENSORSHIP

Since the passage of PECA 2016, abuse under Section 37 has been rampant.<sup>59</sup> Parliament has also been called upon to hold PTA to account for these excesses and repeal Section 37.<sup>60</sup>

### 2a. Website blocking

- I. **Satirical Website Blocked:** PTA blocked a satirical website, Khabaristan Times, on January 25, 2017 under Section 37 of PECA without notice or reasons due to the availability of “objectionable content”<sup>61</sup>
- II. **Blocking of Awami Workers Party (AWP) website:** On June 3, 2018, just weeks before the general election, Awami Workers Party (AWP) reported that access to their website was blocked by PTA for Pakistanis<sup>62</sup>
- III. **Proxy Servers:** On July 17, 2019 PTA in its briefing to the Senate Standing Committee on Information Technology and Telecom disclosed that PTA restricted access to at least 11,000 proxy servers, and further intended to regulate the use of Virtual Private Network (VPN) in Pakistan<sup>63</sup>
- IV. **Politico:** On July 18, 2019 Storm Fiber, a private Internet service provider, tweeted that the website Politico<sup>64</sup> was blocked as per PTA directives<sup>65</sup>
- V. **Dawn’s Facebook post:** On May 11, 2018 Facebook blocked Dawn.com’s Facebook post for allegedly “violating local laws”. The post, linked to PML-N’s Javed Hashmi’s statement about judiciary was restored the next day with Facebook apologising for the content being “incorrectly restricted”<sup>66</sup>
- VI. **VOA websites:** In December 2018, the Urdu and Pashto websites of Voice of America (VOA) were reported blocked in Pakistan. VOA said the Pashto website had been blocked a few months ago, *“however, the Urdu website became inaccessible last week after the coverage of a press conference held by the leader of Pashtun Tahafuz Movement (PTM), Mohsin Dawar. Initially, we received complaints that the website was not accessible at some places, but later it was completely blocked”*<sup>67</sup>
- VII. In October 2018, PTA said that it blocked access to 800,000 websites and pages for blasphemous, anti-state and other “objectionable” content.<sup>68</sup> which was quoted by

<sup>59</sup> <https://bolobhi.org/content-blocking-restriction-and-takedown-requests-2017-2019/>

<sup>60</sup> <http://bolobhi.org/note-on-the-implementation-of-prevention-of-electronic-crimes-act-2016/>

<sup>61</sup> <https://aurora.dawn.com/news/1141736>

<sup>62</sup> <https://dailytimes.com.pk/249521/awp-appeals-to-ecp-to-help-unblock-its-official-website/>

<sup>63</sup>

<http://digitalrightsmonitor.pk/pta-restricts-access-to-11000-proxy-servers-aims-to-regulate-vpn-use-in-pakistan-through-a-new-model/>

<sup>64</sup> <https://www.politico.com/>

<sup>65</sup> <https://twitter.com/StormFiber/status/1151793630128103424>

<sup>66</sup> <https://www.dawn.com/news/1407047>

<sup>67</sup> <https://www.dawn.com/news/1451133>

<sup>68</sup>

<https://www.samaa.tv/news/2018/10/pta-blocks-800000-websites-and-pages-for-blasphemous-anti-state-and-other-objectionable-content/>



the Freedom On The Net 2019 report, saying that over 800,000 websites related to political, religious, and social content among others were blocked in Pakistan<sup>69</sup>

## 2b. Requests to social media companies

Facebook's transparency report on content restrictions released biannually,<sup>70</sup> records content restriction requests from the PTA. In 2014, Facebook restricted content reported by the PTA and MOITT for violating laws prohibiting "criticism of the state." In the first half of 2019, the Pakistan government sent the highest number of requests to Facebook by any government: 2,027.<sup>71</sup> This accounted for 31% of the total requests received by Facebook from governments. In the report for July to December 2019, Facebook stated that it restricted access to items "allegedly violating local laws." Over the years, various content categories have been mentioned in Facebook's transparency reports. Categories mentioned in the reports to date include anti-judiciary, defamatory, blasphemous, hate speech, harassment, advocacy against polio vaccine, separatism, as well as "against the country's independence" and "criticism of the state".

According to Google's transparency report<sup>72</sup> released biannually, Pakistan reported 11,775 items for removal since 2009 in response to which 996 items were removed up until December 2019. Categories reported to Google in 2019 included content pertaining to religious offense, national security, defamation, hate speech and government criticism, among others. For the period of Jan-June 2018, Google flagged a request made by the PTA for the removal of an open letter by faculty members belonging to various universities across Pakistan. The letter pertained to "academic freedom and increased repression on university campuses". PTA cited Sections 11 "Hate speech" and 37 "Unlawful online content" of PECA 2016, as the "legal basis" for this removal. Google did not remove the file. For the period of Jan-June 2019, PTA asked Google to remove 6 apps on Google Play containing content related to the Pashtun Tahafuz Movement (PTM). PTA cited "hate speech" and "unlawful online content" as the basis for this request. Google did not remove these apps.

Twitter's transparency report<sup>73</sup> for January to June 2019 shows that Pakistan made 23 account information requests specifying 70 accounts to Twitter. Additionally, 273 requests to remove content were made, specifying 1,798 accounts. Twitter did not comply with any of these requests, but notified users via email about government requests relating to their accounts.

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<sup>69</sup>

<https://www.brecorder.com/2019/11/05/541714/pakistan-among-countries-with-restrictions-on-internet-freedom-report/>

<sup>70</sup> <https://transparency.facebook.com/content-restrictions/country/PK/jan-jun-2019>

<sup>71</sup> <https://www.dawn.com/news/1556715>

<sup>72</sup> <https://transparencyreport.google.com/government-removals/by-country/PK?hl=en>

<sup>73</sup> <https://transparency.twitter.com/en/countries/pk.html>

Not all the requests made by the PTA fall within the exceptions listed under Section 37. Under the law, PTA can only act with respect to content categories specified in Section 37 or route requests under Sections 20, 21, 22, and 24 of PECA when the “aggrieved person” makes a request. The reports also record requests by the PTA which reference other Sections of PECA 2016, such as Section 11 (hate speech), jurisdiction for which requires a complaint to be made to the FIA and for the FIA to seek the court’s permission before proceeding with an investigation for this offence. Unlike four sections specified above, there is no provision in the law which enables a content removal request under Section 11 to be made to the PTA, even by an aggrieved person. Undermining of fundamental rights and misuse of the law is quite evident.

Other tweets and accounts reported against “violation of local law” through government requests<sup>74</sup> include:

- I. On April 24, 2018 Twitter account of activist Manzoor Pashteen appeared to be suspended for less than 24 hours in relation to his online activity for the Pashtun Tahafuz Movement<sup>75</sup>
- II. Journalist Taha Siddiqui reported in November 2018 that Twitter emailed him a notice that one of his tweets was reported by the Pakistan Government for being in violation of Pakistani law<sup>76</sup>
- III. Few days later, journalist Gul Bukhari also received a Twitter notice<sup>77</sup> via email which said that one of her tweets<sup>78</sup> was reported by the Pakistani government for being violative of Pakistani laws. The tweet criticised the government for its lack of action against Tehreek-i-Labbaik Pakistan (TLP) Chief Khadim Hussain Rizvi
- IV. In January 2019, a senior journalist Mubashir Zaidi received a similar notice by Twitter against one of his tweets<sup>79</sup> regarding the murders of Khyber Pakhtunkhwa SP Tahir Dawar and Muttahida Qaumi Movement’s (MQM) former MNA, Ali Raza Abidi
- V. On January 21, 2019 Twitter sent a notice to lawyer Reema Omer for her tweets<sup>80</sup> questioning the procedures of military courts stating that they were reported by the Pakistani government as being in violation of Pakistani law
- VI. On the same day, academic Nida Kirmani reported receiving a similar twitter notice<sup>81</sup> against her tweets regarding a photo of her with PTM leader Manzoor

<sup>74</sup> <https://bolobhi.org/government-announcements-to-crackdown-and-regulate-social-media/>

<sup>75</sup> <https://www.samaa.tv/news/2018/04/did-twitter-suspend-manzoor-pashteens-account/>

<sup>76</sup> <https://thedi diplomat.com/2019/01/pakistans-twitter-crackdown/>

<sup>77</sup> <https://thedi diplomat.com/2019/01/pakistans-twitter-crackdown/>

<sup>78</sup> <https://twitter.com/GulBukhari/status/1062194707810394112>

<sup>79</sup> <https://twitter.com/Xadeejournalist/status/1080771968167804928>

<sup>80</sup> [https://twitter.com/reema\\_omer/status/1087408662707126273](https://twitter.com/reema_omer/status/1087408662707126273)

<sup>81</sup> <https://twitter.com/nidkirm/status/1087407255824318464>

Pashteen, “a critique of the creation of an ultra-nationalist death squad”, and defence of PTM

- VII. In July 2019, journalist Hasan Zaidi shared that he received a Twitter notice<sup>82</sup> against one of his tweets<sup>83</sup> that the Pakistan government said violated the laws of Pakistan
- VIII. On January 20, 2020 Mariana Baabar received a similar Twitter notice<sup>84</sup> against one of her tweets<sup>85</sup>

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<sup>82</sup> <https://twitter.com/hyzaidi/status/1148226227326636033>

<sup>83</sup> <https://twitter.com/hyzaidi/status/1138526950409015296>

<sup>84</sup> <https://twitter.com/MarianaBaabar/status/1223094898301104129>

<sup>85</sup> <https://twitter.com/MarianaBaabar/status/1218869911121989633>

These are only some of the better known examples based on disclosures made by the individuals who received the notices and as reported in the media. There may be yet others which there is no knowledge of or individuals have chosen not to disclose. Another concerning trend is on the rise whereby accounts are silenced by manipulating platform Rules to get accounts locked or suspended<sup>86</sup> where the victims have mostly been accounts critical to state policies, though this is not directly attributable to government requests.

As per the Freedom On The Net 2019 report, the Internet in Pakistan is “not free” as Pakistan scored 26 on a scale of 100.<sup>87</sup> The report explained that Internet freedom declined in Pakistan due to the increased blocking of political, social, and cultural websites. It said that over 800,000 websites related to political, religious, and social content among others were blocked in Pakistan. Concerns were also expressed over the government's surveillance, social media monitoring, and absence of data protection laws.

A long-standing demand by digital rights groups and civil society organisations has been expanded transparency reports by companies. In a joint statement issued by nearly 50 rights groups at the 2015 RightsCon<sup>88</sup> while commending over 43 companies for producing transparency reports, they stated:

*“without greater qualification of the data published and clarity on the process companies follow to determine whether a request is legal or is made by a legitimate legal entity, and how the determination to ultimately restrict content or hand over user data is made, the report's usefulness to users, researchers, journalists, and advocates is limited, especially in the context of regimes that don't adhere to due process and where it's difficult to get this information any other way.”*

They recommended the following:

1. *Categorise types of requests, such as national security, cyber security, human trafficking, or restricted speech*
2. *Cite the legal justification provided, including references to laws and articles cited as grounds. If a company claims to adhere to local laws, users should know which local laws are being invoked, both with regards to legal authority and grounds for the request*
3. *State whether content removal was a result of copyright infringement or a matter of restricted speech, and if the latter, the grounds cited*
4. *Name the government or law-enforcement agencies submitting the requests or restricting/validating them*
5. *Disaggregate emergency and nonemergency requests and clarify the distinction between emergency and nonemergency requests*

<sup>86</sup> <https://www.dawn.com/news/1532982/the-furious-case-of-twitter-violations>

<sup>87</sup> <https://www.brecorder.com/2019/11/05/541714/pakistan-among-countries-with-restrictions-on-internet-freedom-report/>

<sup>88</sup> <https://bolobhi.org/joint-statement-from-civil-society-to-technology-companies-for-expanded-transparency-reports/>

6. *Report on whether users are contacted when their account data is requested or content is restricted and what, if any, user input factors into the outcome*
7. *Increase collaboration and note sharing between companies on how they deal and comply with requests from the same countries*
8. *Act uniformly with different countries and attempt to standardise the manner in which government requests are entertained, in line with best practices and global principles*

## PART 3 – BEYOND SECTION 37 AND THE RULES: THE ALTERNATIVE

### 3a. Understanding the nature of the Internet

It is important to understanding the salient features of the Internet that differentiate it from other mediums of information, which should inform policy interventions:

1. **Voluntary access to information:** Unlike broadcast and print media, all access to information on the Internet is voluntary. It is the user that seeks content, consciously searching and clicking to access information. None of the information accessed on the Internet is unavoidable.
2. **Global repository of information:** By the same measure, what makes the Internet revolutionary is its global nature, where one can access entire libraries, encyclopedias, government websites, educational material from anywhere in the world. What makes it distinct is the user-centric nature of this access.
3. **User has control:** Internet platforms also offer a strong element of control to the user by virtue of the ability to follow pages based on interests, join groups; and also unfollow accounts, block users and other accounts if desired. Users can also report content they find inappropriate, which usually matches the community standards of the platform and action is taken if the offence is of serious nature, such as account suspension, or removal of content. In short, social media accounts are personally curated information dashboards by the user.
4. **Always evolving:** Information Technology and the Internet is one of the most rapidly evolving fields, which means that security of online systems, ways of bypassing them, and attempts of controlling them are also ever-evolving. Hence, logic dictates that any solutions and policies are based on this understanding, otherwise they risk being short-term stopgaps.

### 3b. Existing offences under PECA

As far as addressing harm against citizens is concerned, when PECA 2016 was enacted, it created several new offences. These include Cyber terrorism (Section 10), Hate Speech (Section 11), Recruitment, funding, or planning of terrorism (Section 12), Unauthorised use of identity information

(Section 16), Offences against dignity of a natural person (Sections 20), Offences against modesty of natural person or minor (Section 21), Child pornography (Section 22), and Cyber stalking (Section 24). Subsections under Sections 20, 21, 22 and 24 enable aggrieved parties to apply to the PTA for

the “removal, destruction” or “blocking” of such information.” The remedy to report to PTA under these sections remains, even if Section 37 is repealed.<sup>89</sup>

In a note submitted to parliamentary committees on oversight and implementation of PECA, it was recommended that public facilitation centers and an online case management be introduced to facilitate citizen complaints.<sup>90</sup>

### 3c. Platform guidelines and reporting mechanisms

Community guidelines and rules of social networking websites cover wide categories of content. They also have reporting mechanisms in place to act on these complaints. The size of teams carrying out content moderation functions vary company to company, depending on the company’s own size and priorities. However, there has been a tendency to expand these teams and also hire local language moderators. Civil society organisations locally also play an active role in escalating user complaints which are processed under community standards by platforms - especially if they violate privacy or are threatening. Government requests which meet community standards are complied with and categorised under compliance with community standards.

Facebook’s community standards<sup>91</sup> can be used for reporting by both individual users for their safety as well as governments. These include rules related to violence and criminal behavior, safety, objectionable content, integrity and authenticity, respecting intellectual property, and content relate-related requests such as individual requests for removal of own accounts, and additional protection of minors such as requests for removal of an underage account, government requests for removal of child abuse imagery depicting, for example, beating by an adult or strangling or suffocating by an adult, and legal guardian requests for removal of attacks in unintentionally famous minors.

Twitter’s rules<sup>92</sup> cover safety, privacy, and authenticity. Under safety, the Twitter rules have detailed clauses related to violence, threats, terrorism and violent extremism, glorification of violence and terrorism, child sexual exploitation, abuse and harassment, hateful conduct, self harm and suicide, sensitive media including graphic violence and adult content, and illegal or regulated goods and services. Under privacy, Twitter rules cover private information and non/consensual nudity. Under authenticity, they cover platform manipulation and spam, civic integrity including respecting elections, impersonation, synthetic and manipulated media, and copyright and trademark violations.

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<sup>89</sup> <https://www.dawn.com/news/1563388/online-censorship>

<sup>90</sup> <http://bolobhi.org/wp-content/uploads/2017/04/PECA-recommendations.pdf>

<sup>91</sup> <https://www.facebook.com/communitystandards/>

<sup>92</sup> <https://help.twitter.com/en/rules-and-policies/twitter-rules>

YouTube’s community guidelines<sup>93</sup> cover in detail content that is not allowed including sex and nudity, hate, spam, firearms, harmful and dangerous content, child safety, violent criminal organisations, violence, sale of illegal or regulated goods and services, and harassment.

Tiktok’s community guidelines<sup>94</sup> similarly cover dangerous individuals and organisations, Illegal activities and regulated goods, Violent and graphic content, Suicide, self-harm, and dangerous acts, Hate speech, Harassment and bullying, Adult nudity and sexual activities, Minor safety, Integrity and authenticity, and Threats to platform security.

The effectiveness of these mechanisms is certainly questioned repeatedly, and is an on-going debate globally. Users often complain about the amount of time it takes to have their complaints resolved, and sometimes not at all when what they report is found not to be volatile of community standards. Sometimes they find themselves on the other side of complaints, with their accounts suspended or posts removed for what to them was innocuous. How these platforms can remain safe and user’s rights protected – including expression – is what requires debate and refinement. Rather than vesting powers in state-controlled mechanisms, these processes should be improved to make them more user-driven, effective yet transparent so platforms too are held accountable too.

### 3d. Self-regulation and user help tools

Whereas access to content on the Internet is essentially voluntary through conscious clicks and taps, there are in-built mechanisms on websites, applications, and social media platforms where a user can choose to employ a range of actions such as unfriending, blocking, deleting, muting, unsubscribing, to allow them to navigate these spaces based on their preferences. Additionally, there exist several methods of exercising parental control for safe use of the Internet by minors and children.

**Parental Control Mechanisms (PCMs)** overlay filters on web browsers at the PC level (e.g. in the home), which allow children to access some web content, but block other more problematic content. Parental Control Mechanisms (PCMs) do more than simply filter the web. They allow parents to monitor how much time a child is spending online, or playing computer games, and some even offer parents the option of limiting the time spent online. Finally some PCMs offer parents the option of monitoring their child’s use of social networking sites, without being overly invasive in “friending” their children. The advantages of using PCMs as opposed to ISP-level filtering are:

a) **Cost effective:** Most computers/laptops and browsers come with their own blocking system, which enable users to block material that they personally find offensive or problematic. There is, thus, no involvement of the government and is based on personal choices.

b) **Personalised:** If opting to use a software, companies such as OPENDNS12, provide software which enables Internet blocking; these softwares are flexible to fit the needs of the family. It will also block video-sharing sites, such as YouTube, social networking sites and websites containing

<sup>93</sup> <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>

<sup>94</sup> <https://www.tiktok.com/community-guidelines?lang=en>



adult content. In this way, families can choose what websites they would like to view, without the government's involvement and breaches of privacy. Some are free to access online.

c) **Management as per need:** The families that have set up this software can personally manage and update it as per requirement. This, then, upholds the rights and choices of the users as opposed to the "subjective" nature of governmental blocking.

There exist several free parental control mechanisms on many levels. These can also be locally designed and offered as value-added services by local ISPs.<sup>95</sup> Various social networking sites also have age limits and functions such as safe searches to cater to children.

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<sup>95</sup> <http://techies.pk/articles/lifting-the-youtube-ban-in-pakistan-a-possible-solution/>

## PART 4 – MOVING ON FROM SECTION 37 AND THE RULES: WHAT NEXT

There is a clear pattern as far as content restriction in Pakistan goes. Over the years, governments have assumed and exercised powers that they did not have under law. Company due diligence processes have failed to recognise the lack of lawful authority by accepting the various requesting bodies as competent and complying with content requests. The path from unlawful to 'lawful' authority has been mired in controversy, been non-transparent and undemocratic. The outcome of this is Section 37, an overbroad and arguably unconstitutional provision sitting in the middle of a criminal law. Despite certain limits Section 37 places, even the letter of that law has been violated. In flagrant violation of due process requirements as they exist in the law and Constitution, the PTA continues to act arbitrarily and without any transparency. There has been no effective oversight and accountability of this process.

While the objective of the Rules under Section 37 is to outline what would essentially be a notice-and-takedown mechanism that lays out a process and limits discretion, the Citizens' Protection (Against Online Harm) Rules 2020 illustrate that the intent is not to remain within the confines of the law but go beyond what it permits. More insidious are the forays from content restriction to acquisition of data by trying to establish jurisdiction over social networking websites. The objective being not only to restrict content but also to gain access to the contents of communication, and those preparing and circulating it. Aspirations to compel companies to establish local offices, especially set up data servers so data can be accessed freely, go back years and are in line with several attempts over the years, to gain filtering capabilities which circumvent encryption. More insidious are attempts to acquire content filtering technology. Sometimes such intent has been announced publicly, as was witnessed through a public advertisement for a National URL Filtering System in which was "shelved" after public uproar.<sup>96</sup> However, attempts to acquire filtering equipment continued more quietly, only becoming public knowledge after disclosures were made through Citizen Lab report<sup>97</sup> pointing to the presence of Netsweeper<sup>98</sup> and FinFisher<sup>99</sup> in Pakistan.

A similar secretive method was employed to set up an \$18.5 million Web Monitoring System (WMS)<sup>100</sup> that uses Deep Packet Inspection (DPI) technology and was purchased from Sandvine under the Monitoring and Reconciliation Telephony Traffic Regulations, 2010, Regulation 4 which is originally intended for grey traffic interception and paid for by telecom companies in Pakistan under license requirements. However, national security has been cited as a reason for the WMS, under which citizens' internet traffic will also be under surveillance. There has been little transparency as to the process the WMS employs, and there is no mention of due process and

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<sup>96</sup> <https://bolobhi.org/national-url-filtering-blocking-system/>

<sup>97</sup> <https://citizenlab.ca/2013/06/o-pakistan/>

<sup>98</sup> <https://bolobhi.org/netsweeper-in-use-in-pakistan/>

<sup>99</sup> <https://bolobhi.org/faq-what-is-finfisher-what-is-it-doing-in-pakistan/>

<sup>100</sup> <https://www.dawn.com/news/1495507>

judicial oversight when surveillance is carried out through the WMS. The PTA is on record in stating the WMS is being

deployed “to assist blocking of content on unsecured sites” and “by using this system, processing time will be shortened and blocking will be done by PTA from a single point” in a submission to the

Islamabad High Court (IHC) in writ petition No. 2037/2019 & 2041/2019 - cases related to speech of activists on social media.

It is not possible to chart a way forward without reviewing the stated aims of content regulation and reviewing them against how such powers have been exercised. Barely have these been in the interest of citizens or to protect them but rather furnish the state with even more overarching powers to control dissent.<sup>101</sup> If protecting citizens is of any importance, the conversation needs to start with protections and safeguards available to citizens under the Constitution of Pakistan, accountability when these are violated, drawing from global best practices, availing remedies that exist such as platform reporting mechanisms and really addressing harm to citizens by way of conversation, introducing mechanisms to facilitate and address their grievances, and introduce user self-help tools which enable them to navigate online platforms safely.

#### 1. **Constitution of Pakistan**

It is imperative to give due consideration to Articles 19 (Freedom of speech, etc) and 19-A (Right to information) of the Constitution of Pakistan when discussing content regulation. The censorship carried out under Section 37 of PECA undermines these fundamental rights. How laws and rules under them are to be framed must also be reviewed against Articles 8 (Laws inconsistent with or in derogation of fundamental rights to be void), 10-A (Right to fair trial) and 14 (Inviolability of dignity of man, etc) of the Constitution.

#### 2. **ICCPR**

Pakistan ratified the International Covenant for Civil and Political Rights (ICCPR) in 2010 and is bound to uphold Article 19, which protects freedom of expression.<sup>102</sup>

#### 3. **GNI Principles**

Global Network Initiative (GNI) requires its member companies such as Facebook and Google, to uphold principles of freedom of expression and privacy when faced with government requests, as outlined in the GNI Principles.<sup>103</sup>

#### 4. **PTA Transparency**

In light of these rights and principles, it is important that the PTA acts transparently about its actions related to content regulation. PTA should disclose the number of requests made to Internet-based companies, the nature of these requests, and provide reasons as

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<sup>101</sup>

<https://bolobhi.org/collaborations/collaboration-between-bolo-bhi-and-global-internet-freedom-project-at-george-washington-university-gw-law-school-2/>

<sup>102</sup> <https://www.dawn.com/news/550673/iccpr-ratified>

<sup>103</sup> <https://globalnetworkinitiative.org/gni-principles/>

to why restriction is required or necessary and how such content falls within the categories listed in Section 37. Reporting should also include data on requests made for the protection of minors, cases of harassment, incitement to violence against minorities – matters that pertain to protection of citizens – with requisite sections of laws referenced, as well as case numbers where these requests are backed by court orders.

## 5. **Reports to Parliament**

Section 53 of PECA 2016 places a mandatory obligation upon the FIA to present bi-annual reports to Parliament. However, except for one report presented in-camera, FIA has not presented any other report in nearly four years since the enactment of PECA 2016. The PTA, too, should be accountable to the Parliament and present regular progress reports to the relevant standing committees, including transparency reports on requests sent to platforms and action taken to protect citizens. This way excesses can be scrutinised and those responsible, held accountable.

## Part 5 - Annex

### Conversations with Bolo Bhi

#### Episode 1:

**Topic:** Bolo Bhi's analysis on the Personal Data Protection Bill, 2020 and Citizen Protection (Against Online Harm) Rules, 2020

**Participants:** Bolo Bhi Team – Farieha Aziz, Usama Khilji, Shumaila Shahani, and Kashaf Rehman

In this discussion, the Personal Data Protection Bill 2020 and Citizens Protection (Against Online Harm) Rules, 2020, were reviewed:

1. Importance of data protection laws and strengths and weaknesses of the Personal Data Protection Bill, 2020
2. Comparative analysis of the Personal Data Protection Bill, 2020 with data protection laws in the European Union, United Kingdom, India, and Malaysia
3. Surveillance and contact tracing during COVID-19, how data collection and protection has changed
4. Proposed way forward on the Personal Data Protection Bill 2020 (as discussed in Usama Khilji's OpEd)<sup>104</sup>
5. Detailed analysis of CP Rules
6. Review of the survey on the CP Rules uploaded on the PTA website

To read Bolo Bhi's analysis on the Personal Data Protection Bill 2020, [click here](#).

To read Bolo Bhi's joint statement with other civil society members on why the CP Rules, 2020, should be withdrawn, [click here](#).

To read Usama Khilji's analysis of the Personal Data Protection Bill, [click here](#).

To watch the complete video of this episode [click here](#).

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<sup>104</sup> <https://www.dawn.com/news/1555944>

## Conversations with Bolo Bhi

### Episode 2:

**Topic:** Citizens Protection (Against Online Harm) Rules, 2020, content moderation by platforms, and the Executive Order on Preventing Online Censorship.

**Guest:** **Michael Karanicolas**, Wikimedia Fellow at Yale Law School, where he leads the Initiative on Intermediaries and Information. His research encompasses a number of thematic areas, including freedom of expression and content regulation, privacy and surveillance, digital contracts, Internet governance, the right to information, human rights and international development, intellectual property law and the regulation of political speech. Prior to joining the ISP, Michael worked at the Centre for Law and Democracy.

### **Summary:**

The discussion compared the CP Rules 2020 to international precedents and best practices. The areas covered by the discussion were:

- How the CP Rules restrict citizens' ability to use the Internet and their chilling effect free speech in online spaces
- Powers given to the national coordinator and the concerns it raises about political interference in online speech and content on platforms
- Content moderation in the U.S. and the executive order, its purpose, impact on free speech, safe harbour and liability of platforms
- Transparency reports by platforms and what they indicate with respect to compliance with government restriction and content takedown requests, and its impact on user behaviour and speech in on online and offline spaces
- Platform policies and regulation of dangerous content, child pornography and abuse

Discussion on Michael Karanicolas' paper on content moderation prescribing human rights standards and a three-part test for social media platforms when making decisions

To read Michael Karanicolas' paper [click here](#)

To read Yale ISP's publication on the CP Rules 2020 [click here](#)

To watch the complete video [click here](#)

## Conversations with Bolo Bhi

### Episode 3:

**Topic:** Collaboration with the Global Internet Freedom Project at George Washington University (GW) Law School, data protection with reference to the Personal Data Protection Bill, 2020 (Pakistan) and data localisation

**Guest: Arturo J. Carrillo**, 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.

### **Summary:**

The discussion revolved around the following points:

- Collaboration between Bolo Bhi and students at the law clinic
- Global trends in data protection laws especially Latin America
- Impact of the General Data Protection Regulation (GDPR) on data protection laws across the world
- Pakistan's proposed data protection law, specifically and problems with it
- No clear accountability state authorities and data held by them Lack of distinction between the liabilities placed on small organisations and large organisations, and individuals and governments according to the data they hold and are accountable for
- Oversight should be by an independent commission set up as statutory body under the law
- Data localisation and its impact on speech and privacy
- Contact tracing and best practices based on the EU's recommendations on what to ensure with contact tracing apps so they abide by data protection laws

To view articles published under the collaboration [click here.](#)

To read Director Bolo Bhi Usama Khilji's OpEd on the Personal Data Protection Bill, [click here.](#)

To watch the complete video [click here.](#)

## Conversations with Bolo Bhi

### **Episode 4:**

**Topic:** Navigating legal instruments and platform policies, while protecting user rights from a regional perspective

**Guest: Chinmayi Arun**, resident fellow of the Information Society Project at the Yale Law School and an affiliate of the Berkman Klein Center of Internet & Society at Harvard University. She has served on the faculties of two of the most highly regarded law schools in India from 2010 onwards and is founder/director of the Centre for Communication Governance at National Law University Delhi. She was a fellow of the Berkman Klein Center of Internet & Society at Harvard University from 2017-2019 and a faculty associate of the Center prior to that. She is an alternative board member of the Global Network Initiative, an expert affiliated with the Columbia Global Freedom of Expression project and a member of the Executive Committee of the Global Network of Centers of Internet and Society.

### **Summary:**

The discussion compared trends over the years with content moderation and intermediary liability protection in India and Pakistan. The following points were covered:

- Threats to free speech caused by the platform's compliance to government's requests for content takedown
- Importance of multi-stakeholder conversations about policy making
- Pakistan's history of Internet censorship, the practice of banning websites and Internet services, and illegality of such processes
- Internet shutdowns and website blocking in India and Pakistan with reference to Kashmir

To watch the complete video [click here](#).



## Conversations with Bolo Bhi

### Episode 5:

**Topic:** Pakistan's censorship regime under Section 37 of the Prevention of Electronic Crimes Act, 2016 and the Citizens Protection (Against Online Harm) Rules 2020, reviewed against fundamental rights under the Constitution

**Guest: Faisal Daudpota**, a lawyer with experience of more than 22 years and has appeared in cases before the High Courts in Pakistan and the DIFC Courts in Dubai. He is one of the co-authors of Pakistan's Electronic Transactions Ordinance, 2002. He is a member of multiple law associations, including the International Association of Privacy Professionals (IAPP). He has authored many articles covering various legal disciplines, and is a regular speaker at international conferences and seminars. Within the ambit of his multidisciplinary legal practice, he advises clients in various areas of laws such as data protection, intellectual property, information technology, licensing, dispute resolution and competition.

### **Summary:**

The Bolo Bhi team spoke to Faisal Daupota about his paper on Citizens Protection (Against Online Harm) Rules, 2020, which covered:

- Constitutional scheme of Article 19 and how it conflicts with Section 37 of PECA 2016 and CP Rules 2020
- Substance of Section 37 of PECA
- Problems with the CP Rules and why they need to be withdrawn
- Contradiction of the CP Rules with the LHC case *Leo Communication (Pvt.) Ltd. & Others v Federation of Pakistan & Others*<sup>105</sup> which declared that freedom of speech is the lifeblood of democracy
- The CP Rules as enacted are ultra vires of Article 19 of the Constitution, because they impose an unconstitutional prior restraint censorship on freedom of speech and press rights of Pakistani citizens
- PTA's recent VPN registration requirement notice and its effects on online behaviour and self censorship
- Importance of due consultative process before issuing any laws or rules

To watch the complete video [click here](#).

To read Faisal Daudpota's paper on the Citizens Protection (Against Online Harm) Rules, 2020 [click here](#).

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<sup>105</sup> <https://sys.lhc.gov.pk/appjudgments/2017LHC2716.pdf>

## Conversations with Bolo Bhi

### **Episode 6:**

**Topic:** Discourse in online spaces and the laws that challenge it

### **Participants:**

Haider Imtiaz, digital rights lawyer; and  
Tooba Syed, women's rights activist and political worker

### **Summary:**

This discussion revolves around the following issues:

- Activists in Pakistan use social media as a tool for organising, mobilising, and dissent and how restricting access to these media (e.g. ban on AWP website, CP Rules, etc.) affect their activities (e.g. political campaigning, mobilising)
- Legality of the AWP website blocking case in the Islamabad High Court (lack of motive to block the website, etc.) and Haider's petitions regarding the Mobile Network blockade (restrictions on Internet access)
- Islamabad High Court's contempt notice to PTA for not formulating rules under Section 37 of PECA to ensure transparency
- What the future of social media and the Internet will look like if CP Rules or a similar regulation is implemented, and the possible way forward

To watch the complete video [click here](#).

# Conversations with Bolo Bhi

## Episode 7:

**Topic:** Pakistan's Content Restriction Conundrum

### **Participants:**

Farieha Aziz, Karachi-based journalist and cofounder of Bolo Bh);

Fizza Abid, Program Officer at the Centre for Excellence in Journalism (CEJ) at IBA;

Ramsha Jahangir, (award winning journalist, covers human rights and technology; and

Salahuddin Ahmed, Karachi-based barrister and an Advocate of the Supreme Court of Pakistan

### **Summary:**

The discussion covers Facebook's transparency report, Section 37 of PECA, CP Rules 2020, their legality and status, and powers given to the authorities. Specifically, the discussion elaborates on

- Facebook's most recent transparency report, the number of posts removed for violation of local law and its impact on free speech in Pakistan, as well as the need for transparency of the decision making process behind content removal. Section 37 of PECA and how it strengthens censorship
- Laws other than PECA that restrict speech
- The legal process of reporting unlawful content, process of determining whether certain content is unlawful, and the extent to which the procedures are followed. Content blocking by local authorities, e.g blocking of websites, etc., and how the aggrieved parties (companies) can challenge such actions in court
- The CP Rules and the two new categories of content restriction introduced under the new rules, lack of clarity, and the potential problems this can pose
- Legal status of the CP Rules and whether the Prime Minister has the legal mandate to "suspend" them
- The consultation process of the CP Rules, the questionnaire posted on PTA's website, what effect this consultation will have on the Rules and any future regulations to be made. Company community standards vs the local law

To watch the complete video [click here](#).