



To:
Dr Shireen Mazari
Federal Minister for Human Rights
Islamabad, Pakistan

April 8, 2021

Sub: Consultation Meeting Re Compliance of Order on 15.01.2021 in WP. 3028/2020 by Hon'ble Islamabad High Court

Dear Madam,

This is with reference to meeting notice No. 3-18/2016-Legal dated 6.04.2021, with subject "Consultation Meeting Regarding Compliance of Order Passed on 15.01.2021 in the W.P. No. 3028/2020 titled Muhammad Ashfaq Jutt vs Federation of Pakistan and Others, by the Hon'ble Islamabad High Court, Islamabad," issued by section officer Akram Shafique on behalf of the Ministry of Information Technology and Telecommunication.

This was sent via email on April 7, 2021, at 11:36 AM. The email stated:

"A consultative meeting to be chaired by the Federal Minister for Human Rights, to be held at the committee room of the Ministry of Human Rights, 9th Floor, Kohsar Block, Pak Secretariat, Islamabad, on 8th April, 2021 (Thursday) at 1700 hours, for consultation on rules of "Removal and Blocking of Unlawful Online Content (Procedure, Oversight and safeguards) Rules, 2020". You are requested to attend the meeting in person on the above mentioned date and time.

It is pertinent to mention that your written objections specifically mentioning the vires of the Articles of the Constitution of Islamic Republic of Pakistan, 1973, the provisions related to Prevention of Electronic Crimes Act, 2016 and any other law be provided well before one working day before the meeting regarding above said Rules in the office of the Chairperson."

The email was read and responded to by Director Bolo Bhi, Usama Khilji, at 1:40 PM. His response was as follows:

"Thank you for the invite.

This is too short a notice to submit material on the same day as the notification - and have the meeting next day. However, we will submit our detailed analysis of the Rules by the end of the day today.



Moreover, it is not safe to have an in person meeting indoors in a committee room when the positivity rate in Islamabad is well over 9%. We have elders at home and we do not want to expose them to a life threatening virus.

Therefore it is requested to kindly share an online meeting link via Zoom or application of choice to enable remote participation in the consultation tomorrow.

Will be grateful if this is made possible.”

We appreciate that a zoom link was shared for participation. However, one day’s notice for a meeting with a direction to provide objections to the Rules the same day is an unreasonable time frame and expectation, which once again calls into question the intent with which these consultations are being held. Is it merely to check a box in order to furnish a report before the Hon’ble court to say consultations were held with a number of stakeholders? What meaningful input and conversation can take place at a day’s notice. It also appears that different groups have been allotted different times, with just half an hour before the next meeting. What then can be achieved through this? Moreover, we find it pertinent to ask:

1. Why has it taken multiple petitions challenging the vires of the Rules before the court, a second time, for a meeting/consultation to be held?
2. Why hasn’t the government, through the Federal Cabinet, withdrawn and denotified the Rules yet, and then offered to hold a broad based consultation for it to actually be considered a good faith measure versus a conciliatory move in the aftermath of a legal challenge which could potentially declare the Rules illegal and unconstitutional?

We also want to put on record our reasoning for the previous boycott of consultations, and reason for participating in this round of consultation, at the outset:

- 1. The only reason we are participating in this consultation is because the court has agreed consultations may be held and we expect all input given during this process will be compiled into a report and submitted to court as provided. Our position on the consultations while the Rules remain in effect, on the Rules and Section 37 remains unchanged: The Rules must be withdrawn and denotified, and Section 37 must be repealed from the Prevention of Electronic Crimes Act, (PECA) 2016. The reasons for this are enclosed in our analysis of the Rules and a policy brief examining Section 37 of PECA, which are referenced below and are being submitted with this letter. Additional analyses and public conversations with constitutional, legal and technical experts are available for viewing on our social media accounts¹ and website².**

¹ <https://www.facebook.com/pg/BoloBhi/videos/>

² <https://bolobhi.org/bolo-bhi-in-media/>



2. **We are not participating in this consultation to furnish alternate legal formulations for the Rules and Section 37 to “improve” them as we believe this regime to be illegal and unconstitutional, and have stated so since 2015, when PECA was introduced as a bill and once it was enacted as law in 2016. We reserve the right to file challenges before court and continue to raise this with Parliament through its standing committees, which is and will always be the prerogative of groups and citizens, as they are the appropriate constitutional forums to check the excesses of the executive when there is a breach of fundamental rights. Our participation in this consultation does not in any way bar us from objecting to the vires of the Rules and Section 37 publicly and via other constitutional forums. We remain at liberty to do so. In making this submission before the committee we reiterate we do not in any way endorse consultations while the Rules remain in effect, nor do we believe that the Rules and Section 37 can be improved or exist to protect citizens. On the contrary, they need to be denotified and repealed respectively, not revised. Their removal will not prevent recourse to legal remedies for citizens, which are codified under other sections of the law, including PECA, and are explained in our policy brief, but will certainly do away with a tool used to suppress and censor the voices of citizens and violate their rights.**

For a consultation to be meaningful, first the Rules need to be withdrawn and de-notified to establish the government’s bona fide, due to the trust deficit created by the undemocratic and non-transparent manner in which these Rules were approved and gazetted by the Federal Cabinet twice in the past year. An open and transparent process, which seeks input from a broad section of society, including but not limited to digital and human rights groups and industry associations, must follow, not just to discuss the vires of the Rules but also the vires of Section 37 of PECA, and to assess the excesses committed by the Pakistan Telecommunication Authority (PTA) in exercising powers under Section 37. Prior to this, we raised our reservations regarding the earlier consultations conducted by the Attorney General of Pakistan in a letter to him³. We feel the same bears repetition:

“Historically, there has been very little transparency around government-led legislative and policy-making processes, least of all with PECA. All debate and consultations, whether on PECA, right from the time it was tabled as a bill in Parliament to more recently on the Rules ever since the first version surfaced in February 2021, have been forced, token, and opaque. Since the honourable court has entrusted your office to hold a consultation, both of whom we hold in high esteem, we are therefore writing to communicate our concerns about the February 19, 2021 meeting. We also wish to illustrate why a trust deficit exists when it comes to consultations, and are also placing on record our substantive objections to not only the Removal and Blocking of

³ <https://bolobhi.org/wp-content/uploads/2021/02/Bolo-Bhi-letter-to-AG-re-Rules-Feb-12-2021.pdf>



Unlawful Online Content (Procedure, Oversight and Safeguards), Rules 2020, but what we believe to be the root cause of the problem that enables this regime: Section 37 of PECA.

1. Lack of transparency and clarity on the Rules and consultation process

The first version of the Rules, then titled the Citizens Protection (Against Online Harm) Rules 2020, were never shared by the government but rather discovered in circulation online in February 2020. After much criticism, the Prime Minister constituted a consultation committee and announced that the Rules had been “suspended.” There was absolutely no clarity with respect to the status of the Rules. If approved by the Cabinet, how could the PM “suspend” them by overruling the Cabinet? Did the Cabinet withdraw approval? These questions were posed many times, but no response was received. As a result, it was decided collectively by civil society and industry groups, to boycott any consultation held without this clarity, as it would be a mere smokescreen to add legitimacy to a questionable process. The February 28, 2020 statement signed by over 100 professionals and organisations raised several reservations and made the following demands⁴:

- The Rules must be withdrawn by the Federal Cabinet and the decision, as documented through the process, be made public before any consultation is held

- Civil society has been categorical that Section 37 of PECA must be repealed. The consultation must begin by addressing the overbroad and arbitrary nature of Section 37 under which these Rules have been issued and review the abuse of power by the PTA and government in carrying out its functions since the enactment of PECA.

- The consultation must follow an open and transparent process. The committee must make public the agenda, process it intends to follow and clear timelines. All input provided should be minuted and put together in a report form to be disseminated for public feedback with a specified timeline which is reasonable, before which no Rules should be approved or enforced.

To date, the government has provided no clarity on this. The “consultation” proceeded, facilitated by the PTA. In June 2020, we at Bolo Bhi were contacted and invited to participate in the consultation. This invitation was extended the evening before it was scheduled to take place the next day. Through email correspondence, this invitation was declined and reasons explained (copy of email is attached):

“Thank you for the invitation. I regret neither I nor my colleagues will join this consultation. We stand by our earlier position that any consultation must take place once the Rules are withdrawn and denotified by the Cabinet, without which any consultation is disingenuous. Both the content of the Rules and process through which they were introduced is undemocratic. The PM, committee set up by him and PTA lack legal authority to make changes to the Rules as they stand

⁴ https://drive.google.com/file/d/1pvTqMRF3_fWaH5gQg6DNa9G2ldpAdY_3/view



therefore we do not believe joining the process and legitimizing it is something any rights organization should do. If the government, the committee and PTA are genuinely concerned about stakeholder input, they should consider the position of over 100 local organizations and individuals, ensure Cabinet withdraws and denotifies the Rules and makes the notification public.”

A link to the statement was provided in the email⁵.

2. Input and Analyses

In July 2020, the Global Network Initiative,⁶ a multistakeholder organization composed of leading information and communication technology (ICT) companies, investors, academics, and digital rights and media freedom organization, held a virtual multi stakeholder roundtable on content regulation in Pakistan⁷ attended by local and global stakeholders. Though an invitation was extended to government representatives and the PTA, they did not attend. Earlier, in February 2020, the GNI had also issued a statement on the repercussions of the Rules⁸. At no point has the aim been opposition or criticism for the sake of it but to engage in genuine dialogue with transparency and clarity.

Bolo Bhi published a detailed policy brief in July 2020 tracing content regulation in Pakistan over the years⁹. The brief discusses the Rules, documents PTA’s ad hoc and arbitrary actions over the years (before and after PECA), IHC judgments in cases the Federation and PTA’s actions were challenged, lists remedies for citizens to protect them against various online harms while making an argument for why an overbroad Section 37 should be repealed as Section 37 and Rules under it serve merely as a censorship-enabling regime, not a provision for the protection of citizens. In May 2020, we published a blogpost in collaboration with the Global Internet Freedom Project at George Washington University (GW) Law School examining the data localisation provisions in the Rules from a global best practice perspective.¹⁰ Similarly, in October 2020, we published another blogpost as part of our collaboration, this time on content regulation and best practices globally.¹¹ In December 2020, we published a comparative study on social media regulation, reviewing six different jurisdictions.¹² These are all publicly available on our website, shared through our social media accounts.

⁵ <https://twitter.com/FariehaAziz/status/1268192601615851522?s=20>

⁶ <https://globalnetworkinitiative.org/>

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<https://globalnetworkinitiative.org/wp-content/uploads/2020/08/Pakistan-Content-Regulation-Roundtable.pdf>

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<https://globalnetworkinitiative.org/gni-expresses-serious-concern-regarding-pakistans-rules-against-online-harm/>

⁹ <https://bolobhi.org/wp-content/uploads/2020/07/Pakistan%E2%80%99s-Online-Censorship-Regime.pdf>

¹⁰ <https://bolobhi.org/other-democracies-dont-have-data-localization-laws-so-pakistan-shouldnt-either/>

¹¹ <https://bolobhi.org/the-perils-of-peca-democratic-new-rules-for-online-content-regulation-in-pakistan/>

¹²

<https://bolobhi.org/wp-content/uploads/2020/12/SOCIAL-MEDIA-REGULATION-AND-PRIVACY-A-comprative-study-of-six-jurisdictions-by-Bolo-Bhi.pdf>



During this time, in April 2020, the Ministry of Information Technology and Telecom (MOITT) shared a draft of the Personal Data Protection Bill on its website, soliciting input. We submitted our analysis¹³ of the bill and also published comparative research looking at the General Data Protection Regulation (GDPR) (from which the draft Bill draws extensively), the Malaysian Personal Data Protection Act 2010, the UK's Data Protection Act (DPA), 2018, and India's Personal Data Protection Bill 2019. Since the time we submitted our input to the ministry in May 2020, we have not heard back. The aim has always been to inform discourse by putting out research, policy input and legal opinions, and provide input whenever solicited, just as we did with PECA 2016 before various parliamentary committees¹⁴. Unfortunately, the government and PTA choose to disregard it all.

In October 2020, news reports suggested the Rules had been revised and approved yet again. However, it was not until November 18, 2020 that a gazetted copy of the Rules dated October 18, 2020, was uploaded to the Ministry of Information Technology and Telecom's website. On November 29, 2020, Bolo Bhi published a detailed analysis of the Rules revised Removal and Blocking of Unlawful Online Content (Protection, Oversight and Safeguards) Rules, 2020.¹⁵ In addition to the analysis of the Rules, we held several online, public discussions, especially with legal experts, on the legality and constitutionality of the October 2020 Rules.¹⁶ Despite the fact that the Rules had already been gazetted, on December 1, 2020, Minister for MOITT Syed Aminul Haque remarked on a television programme that the Rules published in the Extraordinary Gazette on Oct 20, 2020, were changed on Nov 27, 2020¹⁷. A corrigendum was published and later a copy of the Rules were uploaded to the PTA's website. Minor changes were made to Rule 3 and 4. The substantive issues with them however, remained as they were.

Shortly after, on December 3, 2020, a statement signed by over 130 professionals and organisations was released, demanding that the rules be denotified and Section 37 repealed.¹⁸ It emphasised:

- 1. The undemocratic, illegal, and unconstitutional Removal and Blocking of Unlawful Content Online Rules (Procedure, Oversight and Safeguards) Rules, 2020, must be denotified by the Federal Cabinet.*
- 2. Section 37 is an overbroad and unreasonable restriction on freedom of expression and right to information as enshrined under Articles 19 and 19-A of the Constitution of Pakistan, which the PTA has weaponised to arbitrarily censor political and cultural*

¹³ <https://bolobhi.org/bolo-bhis-analysis-of-the-personal-data-protection-bill-2020-3/>

¹⁴ <https://bolobhi.org/archive-prevention-electronic-crimes-bill-2015/>

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https://bolobhi.org/wp-content/uploads/2020/11/Analysis_-_Removal-and-Blocking-of-Unlawful-Online-Content-Protection-Oversight-and-Safeguards-Rules-2020-.pdf

¹⁶ <https://www.facebook.com/pg/BoloBhi/videos/>

¹⁷ <https://www.dawn.com/news/1593740/no-transparency>

¹⁸ <https://docs.google.com/document/d/1HzalGiZoMuZ8rBT3EemJjDWpM5b3moeGyNYO9ySGW>



speech. Parliament must repeal Section 37 of the Prevention of Electronic Crimes Act, 2016.

In a letter to the Prime Minister in December 2020, the AIC stated that the consultation promised to stakeholders in February 2020, was never held.¹⁹ The letter says:

“PTA had committed during bilateral meetings with AIC and its member companies to share a draft copy of the Rules. Furthermore, the Ministry of Information Technology and Telecommunication recently updated the Rules on their website without explanation or due process. Industry stakeholders have therefore lost trust in the consultation process because it is neither credible nor transparent...the Rules, as currently notified and gazetted, would make it extremely difficult for AIC Members to make their platforms and services available to Pakistani users and businesses.”

3. Way Forward

Consultations in other jurisdictions span months, even years. They involve public announcements, white papers, and revised drafts which are shared for further input. Can one meeting restricted to a few individuals and organisations possibly be a substitute for such a process? Can any discussion on the Rules be meaningful without first assessing the abuse of power by the PTA under Section 37 of PECA? Why has there been no scrutiny of how the PTA continues to exercise powers in an overboard and ad hoc manner? Why is there no accountability to prevent such acts from being repeated? Why must litigants and courts undertake to remind the PTA of the existence of Section 24-A of the General Clauses Act or Article 10-A of the Constitution of Pakistan? How is it that PTA flagrantly violates Articles 19 and 19-A of the Constitution without any consequences? Does the Constitution permit overboard, arbitrary and discretionary powers delegating parliamentary and judicial functions to a regulator, as Section 37 does? Do the exercise of powers under Section 37 meet the test of reasonability under the law? Do the Rules?

For your reference, we urge that you review the following two in-depth analyses, (1) on the Rules, and (2) on Section 37 of PECA which necessitates these Rules :

1. [Analysis: Removal and Blocking of Unlawful Online Content \(Protection, Oversight and Safeguards\) Rules, 2020](#)
2. [Pakistan’s Online Censorship Regime Section 37 of the Prevention of Electronic Crimes Act, 2016 and Citizens Protection \(Against Online Harm\) Rules, 2020](#)

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<https://aicasia.org/2020/12/10/pakistan-aic-submits-a-letter-to-the-pm-on-removal-and-blocking-of-unlawful-content-procedure-oversight-and-safeguards-rules-2020-dec-2020/>



Any meaningful discussion cannot be limited to the vires of the Rules but will have to be broader. As a confidence-building measure, we urge that:

- The Rules be withdrawn and denotified by the Federal Cabinet
- A thorough review of PTA's actions under Section 37 of PECA be conducted followed by how they are to be held accountable for excesses and violations
- Section 37 be reviewed against how laws may not be framed and how fundamental rights must be protected under the Constitution of Pakistan”

Thank you.

Farieha Aziz

Co-Founder, Bolo Bhi

Usama Khiji

Director, Bolo Bhi

Bolo Bhi

Established in 2012, Bolo Bhi²⁰ is a civil society organisation geared towards advocacy, policy, and research in the areas of digital rights and civic responsibility. This encompasses the right to information, free speech, and privacy online, so that the internet can be realised as a free and representative space for civic and political engagement for all segments of society, including marginalized communities and genders. Bolo Bhi believes that an informed citizenry with the knowledge, skills, tools and disposition towards civic engagement is integral for effective government transparency and accountability. Bolo Bhi engages with parliamentary committees on policy and legislative measures regarding the internet and technology. Since the enactment of the Prevention of Electronic Crimes Act (PECA), 2016, Bolo Bhi has monitored the implementation of the law and raised issues pertaining to its misuse and violation of rights with parliamentary committees. Bolo Bhi has also engaged with the Federal, Punjab and Sindh Judicial Academies on PECA 2016, and presented at sessions arranged by them. Bolo Bhi regularly conducts public awareness sessions on Internet policy, PECA 2016, data protection and privacy, digital safety, and gender justice.

²⁰ www.bolobhi.org



Farieha Aziz, Co-Founder Bolo Bhi

Farieha Aziz²¹ is a Karachi-based journalist and was previously an Assistant Editor at Newsline. She is a co-founder of Bolo Bhi, a digital rights and civil liberties group formed in 2012. In 2013, she was appointed as an amicus curiae by the Lahore High Court to assist in a case challenging the ban on YouTube. In 2014, she petitioned Islamabad High Court on behalf of Bolo Bhi, challenging censorship on the Internet by the government and Pakistan Telecommunications Authority (PTA). In 2015, she made submissions before the National Assembly and Senate's Standing Committees on IT on the PECA 2016, highlighting the detrimental impact it would have on civil liberties – particularly speech and privacy. She is a petitioner in a case filed in June 2017 before the Sindh High Court against the Ministry of Interior and the Federal Investigation Agency's (FIA) crackdown on dissent on social media. She monitors the implementation of cases under PECA 2016 and has appeared before the Human Rights committees of the National Assembly and Senate to highlight the law's misuse by the FIA and PTA. She regularly conducts public digital safety trainings on how to stay safe online as well as training on PECA 2016 for journalists and judicial academies. She also provides assistance to women seeking legal recourse against online harassment and gender-based violence.

Usama Khilji, Director Bolo Bhi

Usama Khilji²² is a founding member of Bolo Bhi and its Director since 2017. He led the right to information campaign in 2013 that uncovered the Inter Ministerial Committee for evaluation of Websites, which Bolo bhi went on to challenge before the Islamabad High Court. He is a columnist on digital rights issues in the Dawn newspaper. Usama is a board member of the Global Network Initiative, a multi stakeholder initiative that brings together technology companies, civil society, academia, and investors from across the globe. He is also a Member of the World Economic Forum's Global Future Council on Systemic Inequalities and Social Cohesion where he is focusing on the global digital divide. Usama has presented before judges at the Punjab Judicial Academy on PECA and cybercrime issues. He regularly conducts digital security trainings for human rights defenders, journalists, students, and judges. He has spoken at the UN's Internet Governance Forum at UNESCO in Paris, and before the IT and Human Rights committees in the National Assembly and Senate of Pakistan on the need to review PECA and impact of the law on fundamental constitutional rights.

²¹ <https://www.dawn.com/authors/2974/farieha-aziz>

²² <https://www.dawn.com/authors/7248/usama-khilji>