



To:  
Senator Mian Raza Rabbani  
Chairman Senate  
Senate of Pakistan

July 18, 2016

Dear Sir,

On behalf of Bolo Bhi – a research, policy and advocacy organization that works on digital rights, freedom of expression, right to information and digital safety - we thank you for referring the government’s proposed Prevention of Electronic Crimes Bill 2016 to the Senate’s Standing Committee on IT & Telecom for further review in consultation with members of the Senate’s Functional Committee on Human Rights.

We also thank the Chairperson of the Senate’s Standing Committee on Information Technology for constituting a subcommittee to review the bill by engaging with public and private stakeholders.

We commend the Chairperson of the subcommittee for holding substantive discourse on the bill and seeking alternate language to various sections of the bill in public interest to bring it in line with fundamental rights and due process.

We urge that the committee hold more consultations until all sections of the bill have been thoroughly discussed and reviewed, and also hold a public hearing where technical and legal experts, as well as other concerned citizens, can present their point of view, so that the final version of the bill is one that is effective in curbing crime and also protects existing rights as guaranteed under the Constitution of Pakistan.

We request the honorable Senators to, in reviewing the bill, also consider the omission of certain sections.

We request that the attached petition, which pertains to upholding the fundamental rights of citizens to freedom of expression and right to information as guaranteed to them under the Constitution of Pakistan, and specifically addresses Section 34 of the proposed bill, be admitted and considered.

Thank you.

Farieha Aziz  
Director, Bolo Bhi

CC:  
Senator Aitzaz Ahsan, Leader of Opposition Senate  
Senator Shahi Syed, Chairperson Senate Standing Committee on IT & Telecom  
Senator Nasreen Jalil, Chairperson Senate Functional Committee on Human Rights  
Senator Osman Saifullah Khan, Chairperson Senate Standing Committee on IT’s subcommittee on the cybercrime bill



**Petition to the Senate of Pakistan to empower citizens to self-regulate and block-out undesirable content instead of enabling the state to censor the Internet**

WHEREAS fundamental rights, including the freedom of information, speech and expression, have come to be recognized within all rule-of-law based systems as those inalienable rights of human being that they cannot and ought not be denied and subjecting such rights to broad restrictions that readily allow the state to infringe individual rights amounts to moving away from the global consensus of civilized people that fundamental rights are inalienable;

WHEREAS the need for inscribing fundamental rights within the Constitution and providing that no laws must be promulgated that infringe upon fundamental rights either directly or by subjecting them to overbroad restrictions at the discretion of the executive is to protect these rights from the tyranny of the majority on the one hand and abuse of executive discretion on the other;

WHEREAS the object of ensuring that illegal and undesirable material – obscene, pornographic, violence inciting etc. – does not accidentally or inadvertently reach children or adults who do not wish to be confronted by such material, is a legitimate state interest, but the state granting the executive police powers to be exercised on the insistence of one segment of the public to control what other adult members of the society are able to access, as a means to protect their morals, is offensively paternalistic and offends the values of human agency, free choice and the ability of an adult to distinguish between right and wrong that form the basis of a civilized, pluralistic, democratic society;

WHEREAS preventing an imminent threat to public order is a legitimate state interest, but neither infringing fundamental rights of all citizens to guard moral sensibilities of a segment of the society from being offended can be a legitimate state interest nor cowering to the threat of violence by such segment of the society if the state does not act in a certain way that is deemed by such segment as a satisfactory response to placate its easily provoked outrage can be legitimate response of the state;

WHEREAS neither preventing the creation of undesirable content or ideas in other states and societies can be a legitimate state interest nor the state seeking to regulate content produced by individuals across the world and outside its territorial jurisdiction by imposing sanction on intermediaries, even where neither the individuals nor the intermediaries in question need any license from the state to produce content or host it;

WHEREAS it might be possible or desirable in case of broadcast (due to the ‘surprise’ or ‘assault’ elements that attach to broadcast content) to regulate content that might be undesirable for children, it is technologically impossible to effectively censor the Internet or block Internet sites with the aim of shielding adult citizens of the country from content or ideas produced by individuals from various nooks and corners of the world;

WHEREAS Pakistan’s free speech jurisprudence ought to recognize that the restrictions that might be reasonable in relation to the newspaper or broadcast, by virtue of absence of barriers to such information and ready access of children etc., are unreasonable in relation to the Internet and that there are natural barriers to inadvertent access to undesirable material on the Internet as the probability of accidental access to such material is almost



non-existent and that a user accessing the Internet to deliberately search and access undesirable material does not fall within the vulnerable segment of the society that needs state protection or patronage;

WHEREAS it is evident from a perusal of laws restricting and regulating the right to free speech and information that the legislature has exercised its right to impose restrictions on limited-protection categories of speech identified in Article 19 of the Constitution by incorporating provisions within statutes related to defamation, criminal intimidation and contempt of court etc. and to the extent that speech declared to be illegal is generated or published by an individual in Pakistan, the penal consequences of the law would apply, even if such publication uses the Internet as a medium;

WHEREAS Article 19 of the Constitution identifies limited-protection speech categories, Article 19-A does not entitle the state to prevent access to content or information falling within such categories, that the Internet has created a marketplace of information that allows individuals to speak as well as receive information simultaneously, and in order for the state to block access to the Internet as a content censorship measure, the state would have to establish that it has a right to declare access to limited-protection speech an offense as well or that blocking access to limited-protection speech is a reasonable and effective measure aimed at preventing the creation and sharing of illegal and undesirable speech around the world;

WHEREAS the state has the jurisdiction to declare what conduct would be deemed a crime within its territorial boundaries and can consequently declare that creating speech within the limited-protection categories mentioned in Article 19 or sharing it is illegal and punishable by law if done in Pakistan, the state has no legitimate basis to determine what speech is illegal or undesirable when created in other states and societies and not specifically meant for publication in Pakistan;

WHEREAS there exists no central control over the Internet and there is no one state or regulatory agency that can regulate the Internet, that the Internet also does not respect territorial boundaries, and that in an international legal order rooted in the nation-state system wherein municipal legal system exercise jurisdiction within the sovereign territory of the state and cooperate with international agencies or municipal systems of other states to the extent that there is need to exercise jurisdiction beyond borders, the Internet creates a unique global “common” that cannot be controlled by Pakistan through misconceived legislation;

WHEREAS the autonomy of the Internet and free and instant flow of information that it enables have created a moral panic for the world and states and societies in the West have also wrestled with the issue of how Internet is making it harder for the state to control speech and the information available to the citizens on the one hand, and for parents to limit access of children to unwanted information or protect their own privacy on the other, and that there are progressive models of societies empowering their citizens to assume greater control over individual access to undesirable information available through the Internet that Pakistan can learn from;



WHEREAS the Internet has emerged as the most potent forum of speech as well as repository of information, the nature of the medium is such that unless you block the link to a particular piece of information or speech that is deemed illegal denying access to the website as a whole blocks more legal speech and information than illegal, and that even where it seems possible to block a particular website or a piece of information there are countless ways for a motivated user to access such information making the use of censorship tools to block-out content available through the Internet a resource heavy futile exercise;

WHEREAS while the state might be unable to effectively censor undesirable content on the Internet, there are innumerable technological solutions that afford individual citizens the ability to regulate their Internet access and prevent deliberate or accidental access to such materials;

WHEREAS it is such deregulated private measures, whether in the form of software downloaded on personal computers that can be used to obstruct access to undesirable material or industry-wide rating systems that enable consumers to help determine the desirability of content based on agreed community standards, that are proving to be effective tools for citizens and households in preventing access to undesirable content while also preserving the freedom and autonomy of the individual adult citizen;

WHEREAS the Pakistan Telecommunication (Reorganization) Act, 1996, imposes an obligation on the Pakistan Telecommunication Authority to promote and protect the interests of the users of telecommunication services in Pakistan and it is through the use of such services that citizens are able to access the Internet, and empowering citizens of Pakistan with tools to self-regulate access to the Internet and block access to content that is undesirable or offensive is such interest of users of telecommunication services;

NOW THEREFORE, members of Pakistan's civil society committed to protecting and defending fundamental rights of the citizens, including the right to freedom of information, speech and expression, and promoting interests of citizens rooted in acquiring effective means to self-regulate access to information, hereby petition 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.