

In the Honourable Lahore High Court, Lahore

W.P. No. ____ of 2012

Bytes for all, a registered non-profit organization in Pakistan

... **Petitioners**

Versus

1. Federation of Pakistan, through the Ministry of Interior, Islamabad
2. Pakistan Telecommunications Authority, having its office at F-5 Jinnah Avenue, Islamabad

... **Respondents**

**Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan,
1973**

RESPECTFULLY SUBMITTED:

1. That the Petitioner is a non-profit organization committed to upholding human rights and maintaining equal access to internet for all in Pakistan without harassment, infringement or unconstitutional surveillance and is filing the instant petition through Shahzad Ahmad who is sufficiently empowered in this regard. (Trust deed and resolution to this effect is attached herewith as **Annex-A** and A more detailed description of Petitioner's work is attached herewith as **Annex B.**)
2. That Pakistan is a democratic state whereby every citizen of Pakistan is guaranteed certain

inalienable fundamental rights by the Constitution, which include amongst others the rights to life, to freedom of expression, to freedom of association, to free exercise of religion and last but not the least the right to privacy which is derived from the penumbra of these constitutional freedoms and rights.

3. That the aforementioned inalienable fundamental rights cannot be abridged in way through arbitrary actions of the various organs and bodies of the executive and this fundamental principle of our jurisprudence is the basis of the Petitioner's case.
4. That the aforesaid inalienable fundamental rights have been put in jeopardy by the callous, unthinking and arbitrary abuse of power by the Respondents here to. A detailed report in this behalf is attached as **Annex C**. It is submitted that overtime the Respondents have collaborated, colluded and conspired to deprive the people of Pakistan their fundamental rights through the following actions:
 - a. Through arbitrary exercise of executive power in form of censorship in the cyberspace by banning without listing any reasons hundreds of thousands of websites used by students, writers, journalists, doctors, lawyers, religious scholars, philosophers, scientists, educationists, social activists, political activists, human rights activists, political parties, social sector organizations, small business owners, farmers, corporations, judges, entertainers, marketing professionals, bloggers, historians, economists, fashion designers, film makers, people associated with the arts and so on and so forth. No section of society has been spared the infringement by a small cabal of civil servants hell bent on destroying Pakistan's future by these actions which are neither reasoned nor defensible.
 - b. That on several occasions over the past one year the Respondents have arbitrarily switched off – using a kill switch- mobile and short messaging services in the name of national security. In doing so the Respondents have not only heavily damaged the national exchequer but have fundamentally paralyzed communications all over Pakistan. The existence of this kill switch that the Respondents have been empowered with is a cause of grave concern for every citizen of this republic as it violates no less than half a dozen different fundamental rights promised to the citizens of Pakistan.
 - c. That the Respondents have empowered and equipped lower level functionaries of their

organizations with technology and latest spy software to keep tabs on the people of Pakistan including the power to hack on to and fish into personal email accounts, computers, smart phone devices, hand held devices of various kinds and every conceivable and possible private data that is held by a user. By doing this Respondents have not just violated the privacy rights of the people of Pakistan but have also abused this power to manipulate and blackmail people, creating dossiers and using sensitive information about these people by threatening them. It is submitted that these operatives have now been armed with the latest and most sophisticated in surveillance technology which they utilize to keep tabs on thought.

- d. Additionally the people of Pakistan now face a new danger to their freedoms and privacy with the coming of the “Fair Trial Act” which sanctions – for all practical purposes – the use of personal information and data for evidentiary support in courts of law. This will amount to nothing less than a censure on every Pakistani making them insecure. It is submitted that privacy has been declared inviolable by both the constitution and under Islam by the Supreme Court of Pakistan in the Hasba Bill case.
5. That this arbitrary exercise has another incidental effect i.e. the widespread use of spy software and other illegal intrusions in cyber-space by the Respondents has slowed down the internet in Pakistan considerably. All technology experts agree that this kind of “big brother” monitoring- which harks back to George Orwell’s classic 1984- will eventually bring the information high way in Pakistan to a complete standstill.
6. That even otherwise the blanket bans on online internet tools such as Youtube have a disastrous impact on the ability of Pakistani students, teachers, business persons and other professionals using such tools i.e. Youtube for educational, religious, commercial or entertainment purposes. It may be submitted that since 2007 the Respondents have had the ability to ban specific URLs instead of placing blanket bans but the Respondents have chosen instead to ban the entire tool i.e. Youtube in response to the blasphemous and shameless film recently put on Youtube. It is submitted that while many countries – Muslim and Non-Muslim- including Bangladesh, Saudi Arabia, India, Maldives etc have banned the URLs to the objectionable film, only Pakistan persists with a blanket ban on Youtube to the detriment of its citizens.
7. That this arbitrary blanket ban on Youtube has deprived Pakistani students and professionals

access to knowledge, educational materials, scientific advancement, philosophical debates and political participation. It is submitted that many students who are enrolled with online or open universities or are enrolled in courses by correspondence have faced immense difficulty in accessing and obtaining the requisite online videos and materials containing lectures and coursework. It is submitted that there is no way for a Physicist in Pakistan to keep updated on the rapid progress at the Large Hadron Collider in CERN or new discoveries at Trieste or Fermilab.

8. That by depriving Pakistani citizens and people residing in Pakistan of the use of Youtube, the Respondents have deprived millions of Muslims in Pakistan access to religious videos, lectures and exchanges, Quranic recitation, Manazaras, Dars, Majalis, Zikr, Naatia Mushairas etc in addition to the ability to counter-act and respond to materials which are deemed anti-Islamic, un-Islamic or are aimed at denigrating our great faith. Similarly it has deprived Pakistanis of other faiths similar access to their religious programming. It is submitted that in modern age, such a ban is tantamount and analogous to taking away a writer's pen with which a writer such as Sir Syed Ahmed Khan in the 19th century famously countered Sir William Muir's untruths about our Holy Prophet (PBUH).
9. That one other consequence, which seems quite deliberate on the part of the Respondents, is that by imposing blanket bans and kill switches on the hapless cyber-space Pakistani population, the Respondents have ensured that the political activity- such as campaigning and canvassing through the internet- is kept at a minimum to ensure status quo for the incumbent government. Consequently on the receiving end of these bans are urban political parties seeking to mobilize the urban youth which has for all practical purposes been disenfranchised by the policies of the Respondents.
10. That it is the firm belief of the Petitioners that genuinely free and fair elections are impossible without comparative and egalitarian information dissemination through the cyber space, be it through internet or cellular mobile technology and that the existence of these kill switches and blanket bans is primarily aimed cutting down new emerging parties to size. It is submitted that the actions of the Respondents resemble those of a monopolist closing doors to new entrants in the market, which is a short sighted policy as it hinders genuine political progress and change in Pakistan. It is submitted that the entire scheme is being concocted to favour the incumbents.

11. That without prejudice to the above contentions and not to detract from their individual merit, it is further stated the Petitioners find the state's willingness to play the "nanny" in terms of what materials an individual can or cannot watch is in of itself a violation of the fundamental principles of human liberty. It is submitted that this point is made with particular reference banning of certain websites deemed to be of a lewd or socially unacceptable nature. Given the conservative nature of Pakistani society, such bans can lead to frustration, violence and chaos amongst the youth of the country which now forms the majority of its citizens. The state has no business deciding moral questions for its citizens. No state, modern or ancient, secular or religious, has successfully managed to exercise such thought control on its citizens and any such attempt at moral policing has, without exception, been an exercise in futility. To state it more bluntly, it is submitted, that what a person views on his or her computer is none of the state's business and the state should not demean itself by attempting to control personal choices of individuals. It is submitted that it is a cause of great concern and embarrassment to Pakistanis world over that their state engages in such trivial pursuits when problems of a more fundamental nature pose an existential threat to Pakistan.

12. That the petitioner submits that both Respondents No.1 and No. 2 have acted illegally and denied the citizens of Pakistan their fundamental rights including the right to life, the right to freedom of association, the right to freedom of expression and thought and the right to freedom of religion.

13. That the petitioner therefore is entitled to the issue of appropriate writ orders and directions under Article 199 of the Constitution of Pakistan as prayed for hereunder, inter alia for enforcement of his fundamental rights – especially access to information- and for quashing of illegalities resulting from the substantial departure from justice and fairplay contained in the actions of the respondents on the touch stone of Article 8 of the Constitution following grounds:

Grounds:

- I. The actions of the Respondents with regards to arbitrary blocking of websites violate the right to life of the citizens of Pakistan under Article 9 of the Constitution. These further violate **Articles 10 and 10-A** given that the Respondents act as judge, jury and executioner.
- II. By arbitrarily introducing kill switches and spy software, the Respondents have deprived

citizens of Pakistan their fundamental right to dignity and privacy guaranteed under **Article 14** of the Constitution.

- III. The decision to ban certain sites such as Youtube in wake of General Elections is a blatant attempt to deprive Pakistanis of their fundamental right of assembly, as promised under Article 16 of the Constitution, and their fundamental right of association, given under **Article 17** of the Constitution.
- IV. By deploying kill switches on cellular phones and banning websites on the internet, the Respondents have dealt a deathblow to commerce and trade and have consequently deprived Pakistani citizens of their right to freedom of trade under **Article 18** of the Constitution. It is submitted that the arbitrary banning of cellular phones on certain select occasions such as Eid have no logic or merit which is why the Respondents have not offered any explanation for these bans, kill-switches and other obstacles placed by them in cyber-space and super information highway. All of the above actions are indicative of a controlling closed society that is contrary to the republic's self avowed commitment to democracy and freedom.
- V. The actions of the Respondents, in collusion with each other, vitiate **Article 19** of the Constitution of the Islamic Republic of Pakistan by infringing on the citizens' right to freedom of expression and speech. Access to communication over the internet and through cyberspace is a fundamental right and it should not abridged arbitrarily on account of the whims of civil servants.
- VI. The arbitrary power to inhibit freedom of speech and expression of individual citizens and persons in the hands of administration/executive is in derogation to the parliamentary prerogative in the matter and is in contravention to separation of powers as envisaged by our constitutional scheme, which merits interference by this Hon'able Court in its constitutional jurisdiction to ensure that fundamental rights of Petitioners and others in this country are not trampled upon in the name of vague notions of national security and personal likes and dislikes.
- VII. **Article 19-A** of the Constitution gives the every citizen the right to access of information of public importance. Respondents' actions violate this article in two ways. By banning websites on the internet and deploying kill switches on cellular telephony, the Respondents have deprived citizens of Pakistan of this access. Furthermore by keeping the process, procedure and the reasons for such bans and kill switches, the

Respondents have denied citizens of Pakistan a valuable piece of information that they have a constitutional right to.

- VIII. The fact that many Pakistanis, Muslims and Non-Muslims alike, are deprived of their right to view religious programming and /or use the internet and other tools available to them to profess and propagate their religion is a direct hit on the right to freedom to profess and propagate one's religion under **Article 20** of the Constitution.
- IX. Minority communities in Pakistan, especially Christian and Hindu communities, are deprived of their right provide religious instruction to their children as a consequence of the ban on certain websites etc on the internet, as a great body of their co-religionists are based outside Pakistan and cyber space is the only way for these communities to keep abreast of religious education of their denominations. This violates **Article 22(3)a** of the Constitution which provides this as a fundamental right to all communities and sects.
- X. The invasion of privacy in cyberspace by the Respondents is not just a violation of **Article 14** but also contravenes **Articles 23** and **24** which guarantee property rights to the citizens of Pakistan including holding and enjoying such property. It is submitted that laptops, ipads, tablets, smart phones and other such devices are the personal property of individuals which is inviolable under **Articles 23** and **24** of the Constitution.
- XI. By depriving the educationists the tools of virtual learning and modern technology, the Respondents are creating unnecessary hurdles in the realization of the fundamental right to education of citizens of Pakistan as guaranteed under **Article 25-A** of the Constitution of Pakistan.
- XII. Cyber-space is another form of public space and any infringement upon it is ab initio discriminatory between those restricting it and of those whose freedom is being restricted. This vitiates the spirit of **Article 26** of the Constitution.
14. The petitioner submits that the petition involves substantial questions of law as to the interpretation and effect of the Constitution of Pakistan:
15. The respondents work for gain in Lahore and the whole of cause of action has arisen within the jurisdiction of the Hon'able High Court. The High Court therefore has jurisdiction to hear and dispose of this petition.
16. The petitioner has no other remedy for the redress of injuries complained hereto-before under

any other law for the time being in force.

17. The petitioner has not submitted any other writ or petition to this Hon'able Court or the Supreme Court of Pakistan, in respect of the subject matter of this petition.

The Petitioners therefore pray:

- That this Hon'able Court may be pleased to direct the Respondents to provide the Petitioners, pursuant to Article 19-A, the following
 - A comma separated value list of all the banned/blocked websites along with reasons for each such site.
 - The law and/or regulations that empower the Respondents to carry out such bans infringing the freedom of speech, expression etc of individual citizens.
 - Cogent and clear reasons and legal justification for the kill-switches for cellular telephony.
 - Clear and concise criteria under which individual websites are to be blocked or banned in Pakistan.
- That this Hon'able Court may be pleased to direct the Respondents to immediately lift all bans detrimental to the fundamental rights of the citizens of Pakistan as aforesaid.
- That this Hon'able Court may be pleased to direct the Respondents to stop using kill switches in terms of cellular mobile telephony.
- That this Hon'able Court may be pleased to direct the Respondents to stop using any and all spyware and malware that their officials are using to keep tabs on individual citizens of this country.

Any other relief that this Hon'able Court may deem fit may also kindly be granted.

Petitioners