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PEN International

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Introduction

This submission highlights some areas of concern regarding India's compliance with the International Covenant on Civil and Political Rights (henceforth, the 'Covenant'), with a particular focus on the right to freedom of expression (Article 19 of the Covenant). We hope that our submission will inform your preparation for the review of India's compliance with the Covenant at the 141st Session, Geneva, 1 July to 23 July 2024.

We call on the Committee to urge the Government of India to address the following key issues under Article 19 of the Covenant:

LOI 27 - Misuse of Legislation to Crack Down on Freedom of Expression (Article 19)

1. In India, the country's legal system has been increasingly weaponised to suppress peaceful expression, particularly when it relates to criticism of the government or its policies. Since the last state review by the United Nations Human Rights Committee,¹ there has been a significant increase in the number of writers, journalists, academics, activists, and others who have been subjected to legal harassment, arbitrary arrest, and detention for peacefully exercising their right to freedom of expression.² Independent media organisations have also been subjected to increasing restrictions,³ with both financial and counter-terrorism legislation being weaponised against media outlets that have published reports critical of the government.

Unlawful Activities (Prevention) Act

2. India's primary counter-terrorism law, the Unlawful Activities (Prevention) Act (UAPA),⁴ has been widely criticized for its sweepingly broad scope and vague formulation.⁵ The UAPA empowers

¹ The third periodic report of India by the United Nations Human Rights Committee took place in 1997. See: 'Concluding observations of the Human Rights Committee – India', *United Nations Human Rights Committee*, 4 August 1997 [CCPR/C/79/Add.81]. <https://www.ohchr.org/en/documents/concluding-observations/concluding-observations-human-rights-committee-68>; Concerns over India's freedom of expression environment during its fourth cycle Universal Periodic Review. See: 'Report of the Working Group on the Universal Periodic Review - India', *United Nations Human Rights Council*, 14 December 2022 [A/HRC/52/11]. <https://undocs.org/en/A/HRC/52/11>.

² 'War, Censorship, and Persecution: PEN International Case List 2023/2024', *PEN International*, 21 March 2024. <https://www.pen-international.org/research/war-censorship-persecution-case-list-2023>.

³ 'India: Alarm over mass raids targeting independent journalists and writers', *PEN International*, 5 October 2023. <https://www.pen-international.org/news/india-alarm-over-dawn-raids-targeting-independent-journalists-and-writers>.

⁴ The UAPA was first introduced in 1967, and has been subsequently amended in 2004, 2008, 2012 and 2019.

⁵ For example, in a statement issued on 1 December 2021, a spokesperson for the Office of the United Nations High Commissioner for Human Rights noted that 'The UAPA empowers the authorities to designate individuals and organizations as terrorists based on imprecise criteria, contains a vague and overly broad definition of

authorities with the ability to conduct arrests, searches, and seizures, with the burden of proof placed on those targeted under the legislation. The legislation subverts the presumption of innocence principle, with the vast majority of those detained under the UAPA subjected to prolonged periods of pre-trial detention with limited ability to secure appeal, which is often subject to onerous conditions in the event it is granted.

3. Of the 8,371 people arrested under the UAPA from 2015-2020, 97.2% of those arrested were ultimately acquitted.⁶ The low conviction rate illustrates the extent to which the legislation has been used by the authorities to pursue prosecutions without sufficient evidence to withstand judicial scrutiny. The UAPA's minimal evidentiary threshold and other due process weaknesses have resulted in a significant human cost for those targeted under the UAPA, with many forced to languish in pre-trial detention for years before they have any opportunity to establish their innocence.⁷ The resulting situation is one where the process itself has become a de facto punishment for those targeted under the UAPA, irrespective of whether they have been convicted of any wrongdoing.
4. Despite longstanding criticism of the UAPA's broad scope and concerns about its increasing use as a means to stifle peaceful expression,⁸ in 2019 the UAPA was amended to broaden its scope even further by empowering authorities with the ability to designate an individual as a 'terrorist'.⁹ The

"terrorist act", allows people to be held in lengthy pre-trial detention and makes securing bail very difficult. It raises serious concerns relating to the right of presumption of innocence along with other due process and fair trial rights. The Act is also increasingly being used to stifle the work of human rights defenders, journalists and other critics in Jammu and Kashmir and other parts of India'. See: 'Comment by UN Human Rights Office spokesperson Rupert Colville on arrest of human rights defender Khurram Parvez and recent killings in Indian Administered Kashmir', *United Nations Office of the High Commissioner*, 1 December 2021.

<https://www.ohchr.org/en/press-releases/2021/12/comment-un-human-rights-office-spokesperson-rupert-colville-arrest-human>.

⁶ This is according to an analysis by the People's Union for Civil Liberties of data published by the National Crime Record Bureau. For further info, see: 'UAPA: CRIMINALISING DISSENT AND STATE TERROR Study of UAPA Abuse in India, 2009 – 2022', *People's Union For Civil Liberties*, 28 September 2022 <https://pucl.org/wp-content/uploads/2023/05/PUCL-28.09.2022.pdf>.

⁷ This runs contrary to the Supreme Court's own observation that presumption of innocence is a human right. See: *Babu v. State of Kerala*, (2010). <https://indiankanoon.org/doc/413103/>.

⁸ For example, see: 'India: Terrorism charges are pretext to silence human rights defenders, say UN experts', *United Nations Office of the High Commissioner for Human Rights*, 5 October 2018.

<https://www.ohchr.org/en/press-releases/2018/10/india-terrorism-charges-are-pretext-silence-human-rights-defenders-say-un?LangID=E&NewsID=23686>. 'Fifty Years of Unreasonable Restrictions Under the Unlawful Activities Act', *The Wire*, 9 March 2017. <https://thewire.in/rights/uapa-anti-terrorism-laws>; 'Stifling Dissent: Criminalization of Peaceful Expression in India', *Human Rights Watch*, 25 May 2016.

<https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>.

⁹ Prior to the 2019 amendment, the UAPA's scope of terrorist designations was limited to organisations (with penalties for those taking part in activities in designated organisations) rather than individuals.

authorities' ability to designate individuals as terrorists without judicial scrutiny is inherently arbitrary and a violation of their right to freedom of expression by denying their ability to dissent.¹⁰

5. Concerns about the arbitrary nature of the UAPA have been raised by UN experts. As noted in a communication submitted to the Government of India in May 2020,¹¹ several United Nations Special Rapporteurs consider the amendment to be problematic as it provides broad discretion for authorities to label an individual as being a terrorist without clear criteria. Within the context of freedom of expression specifically, Special Rapporteurs expressed concern about the use of this amended counter-terrorism legislation as a 'way to conflate human rights and civil society activities with terrorist activities'.¹² In a communication submitted to the Government of India on 31 October 2023,¹³ several independent United Nations experts reiterated their concerns over the UAPA and its compatibility with international human rights law, noting that the Government of India had yet to respond to the concerns previously raised in May 2020.¹⁴
6. In recent years, the UAPA has been increasingly used by the Government of India to unjustly prosecute human rights defenders and those who have engaged in critical expression towards the government or its policies. Among those targeted under the UAPA are 16 prominent human rights defenders, including poets, writers and academics who were arrested between 2018-2020. The allegations against the group - referred to collectively as the BK-16 - arose from their alleged involvement in communal violence that took place in the aftermath of the Elgar Parishad, a public event held on 31 December 2017 by activists advocating for the rights of Dalits and other marginalised communities in India. Despite reports of procedural irregularities,¹⁵ evidence fabrication,¹⁶ and widespread calls for the immediate release of all BK-16 detainees from human

¹⁰ For further reading of a petition filed against the 2019 amendment, see: *Sajal Awasthi v. Union of India* (2019). https://www.livelaw.in/pdf_upload/pdf_upload-363231.pdf.

¹¹ 'Information received concerning the Unlawful Activities (Prevention) Amendment Act 2019 (the amended Act)', *United Nations Special Procedures*, 6 May 2020 [OL IND 7/2020].
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>.

¹² Ibid, p.7. See also 'Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights challenge of states of emergency in the context of countering terrorism', *United Nations Human Rights Council*, 1 March 2018 [A/HRC/37/52].
<https://undocs.org/A/HRC/37/52>.

¹³ 'Information received concerning the 2006 Foreign Contribution (Regulation) Act (FCRA) and its amendments, the 2002 Prevention of Money Laundering Act (PMLA) and its amendments, and the Unlawful Activities (Prevention) Act (UAPA) and its amendments, as well as the National Investigation Agency (NIA) and Enforcement Directorate (ED)', *United Nations Special Procedures*, 31 October 2023 [OL IND 10/2023].
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28593>.

¹⁴ [OL IND 7/2020], op. cit.

¹⁵ The Preliminary Fair Trial Report: Bhima Koregaon, The American Bar Association, October 2019.
https://www.americanbar.org/groups/human_rights/reports/preliminary-report-india-bhima-koregaon/.

¹⁶ 'The Arsenal Reports: The rise of targeted surveillance in India', *Internet Freedom Foundation*, 12 August 2021. <https://internetfreedom.in/the-arsenal-reports-bhima-koregaon-arrests/>.

rights organisations,¹⁷ members of the European Parliament and Nobel Peace Prize laureates,¹⁸ the case against the BK-16 remains ongoing. Of the 16 targeted under the UAPA, eight are currently on bail,¹⁹ while seven continue to languish in detention without ever having been found guilty of any wrongdoing. In 2021, one of the accused died in custody after his application for medical bail was denied.²⁰

7. In another case that illustrates the problematic nature of the UAPA and its negative impact on the right to freedom of expression, on 3 October 2023 mass raids were carried out targeting over 80 journalists, writers and others reportedly connected to the independent online news outlet, NewsClick.²¹ The raids, which were carried out on the basis of a First Incident Report (FIR), resulted in almost 300 device seizures,²² 46 journalists and contributors to NewsClick being subjected to questioning,²³ and the news outlet's founder and editor-in-chief, Prabir Purkayastha and another staff member being formally arrested under the UAPA. The sweepingly broad scope of the searches and criminal prosecutions signals a deepening crackdown on freedom of expression in the country, and results in a significant chilling effect on independent media in the lead-up to India's general election.²⁴ On 15 May 2024, over seven months after Prabir Purkayastha's arrest, the Supreme Court ordered that Prabir Purkayastha be released from custody, noting procedural failings by the police and stating

¹⁷ 'Act now to demand the release of the BK16!', *Amnesty International*, 12 December 2022.

<https://www.amnesty.org/en/latest/campaigns/2022/12/act-now-to-demand-the-release-of-the-bk16/>.

¹⁸ 'Prominent international figures support appeal for release of human rights defenders as India faces Covid emergency', *InSAF INDIA*, 12 June 2021.

<https://web.archive.org/web/20210613081508/https://www.academicfreedomindia.com/covid-19-urgent-appeal-for-release>.

¹⁹ 'Gautam Navlakha Released', *The Wire*, 19 May 2024. <https://thewire.in/rights/as-sc-grants-bail-to-gautam-navlakha-a-look-at-who-has-been-released-and-who-remains-behind-bars>.

²⁰ 'India: Death in custody of priest Stan Swamy is devastating – UN expert', *United Nations Office of the High Commissioner for Human Rights*, 15 July 2021. <https://www.ohchr.org/en/press-releases/2021/07/india-death-custody-priest-stan-swamy-devastating-un-expert>.

²¹ 'India: Alarm over mass raids targeting independent journalists and writers', op. cit.

²² "'Taking away our livelihood": Journalists on phone seizures and harassment by police', *The News Minute*, 1 November 2023. <https://www.thenewsminute.com/news/taking-away-our-livelihood-journalists-on-phone-seizures-and-harassment-by-police>.

"Committee formed, will issue some guidelines": Centre tells SC on seizure of digital devices', *News Laundry*, 6 December 2023. <https://www.newslaundry.com/2023/12/06/committee-formed-will-issue-some-guidelines-centre-assures-sc-on-seizure-of-digital-devices>.

²³ 'India: Arrests and raids at NewsClick signals attack on media critical of the government', *Amnesty International*, 4 October 2023. <https://www.amnesty.org/en/latest/news/2023/10/india-arrests-and-raids-at-newsclick-signals-attack-on-media-critical-of-the-government/#:~:text=According%20to%20Delhi%20Police%2C%2046,NewsClick%20Delhi%20office%20was%20sealed>.

²⁴ As noted in General Comment 34, 'The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression'. See: 'General comment No. 34', *United Nations Human Rights Committee*, 12 September 2011 [CCPR/C/GC/34]. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

that his arrest was ‘invalid in the eyes of the law’.²⁵ Despite the court’s judgement that his arrest was illegal, Prabir’s detention for 179 days without charge is illustrative of the problematic nature of the UAPA and its arbitrary use by the authorities to detain individuals without sufficient evidence or regard to due process norms.²⁶

2010 Foreign Contribution (Regulation) Act

8. The Government of India has also sought to stifle critical expression and reporting on human rights issues through the misuse of the Foreign Contribution (Regulation) Act (FCRA), which regulates international funding for NGOs and CSOs operating in India. As with the UAPA, the FCRA contains vague language and overly broad provisions that allows authorities to selectively restrict access to funds for organisations deemed to have engaged in activities deemed to be ‘detrimental to the national interest’, and places a total ban on organisations found to be of a political nature, which is broadly defined.²⁷ In recent years, authorities have repeatedly used this legislation to engage in a campaign of harassment against organisations that have been critical of the government or its policies.²⁸ Many of these organisations, including Amnesty International India and Oxfam India,²⁹ have played a key role in promoting government accountability and human rights, the restriction of which is detrimental to civil society in India and undermines the right to freedom of expression.³⁰ The FCRA has also been used to target individuals, including writer, journalist and

²⁵ ‘Arrest & Remand Illegal If Accused Not Informed Grounds of Arrest; Filing Of Chargesheet Won’t Validate Illegal Arrest: Supreme Court’, *LiveLaw.in*, 15 May 2024. <https://www.livelaw.in/supreme-court/arrest-remand-illegal-if-accused-not-informed-grounds-of-arrest-filing-of-chargesheet-wont-validate-illegal-arrest-supreme-court-258026>.

²⁶ It should also be noted that the Delhi High Court has previously had to restrain investigative agencies on multiple occasions from pursuing coercive action against NewsClick, further highlighting the arbitrary nature of the use of the UAPA against the media outlet. See: ‘Judicial interventions in ongoing cases against NewsClick: A timeline of events’, *The Hindu*, 4 October 2023. <https://www.thehindu.com/news/national/judicial-interventions-in-ongoing-cases-against-newsclick-a-timeline-of-events/article67375158.ece>.

²⁷ ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule’, *United Nations Human Rights Council*, 10 May 2022 [A/HRC/50/23]. <https://undocs.org/A/HRC/50/23>.

²⁸ Concerns have been previously raised by UN independent experts regarding the application of the FCRA to restrict access to funds for organisations that have engaged with the United Nations. See: ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’, *United Nations Human Rights Council*, 13 August 2018 [A/HRC/39/41]. <https://undocs.org/A/HRC/39/41>; ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights’, *United Nations Human Rights Council*, 9 September 2019 [A/HRC/42/30]. <https://undocs.org/A/HRC/42/30>.

²⁹ ‘Information received concerning allegations of police and judicial harassment of the NGO Amnesty International India’, *United Nations Office of the High Commissioner for Human Rights*, 21 October 2020. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25633>; ‘Oxfam India says it’s “severely” hit by ban on foreign funds’, *BBC News*, 3 January 2022. <https://www.bbc.co.uk/news/world-asia-india-59856377>.

³⁰ In a statement issued on 20 October 2020, then UN High Commissioner for Human Rights Michelle Bachelet noted her concern about how the FCRA was being used to ‘deter or punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature. Constructive criticism is the lifeblood of democracy. Even if the authorities find it uncomfortable, it should never be criminalized or outlawed in this way’. See: ‘Bachelet dismayed at restrictions on human rights NGOs and arrests of activists in India’, *United*

chair of the Board of Amnesty International India, Aakar Patel, impacting their ability to exercise their right to freedom of expression.³¹

9. In addition to the FCRA, the Government of India has also sought to use its financial agencies to undermine freedom of expression by targeting journalists, writers and others with targeted tax investigations,³² frequently after they have published reporting critical of the government.³³

India's Sedition Law and its Successor

10. In recent years, the Government of India has been widely criticised for its escalating use of the sedition law against those who criticise the government or its policies.³⁴ The law, contained within section 124a of the Indian Penal Code (IPC), was promulgated by the British government in 1870 in order to punish dissent against its colonial rule over the country. The law defined sedition as any words, either by speech or in writing, that incite hatred, contempt or “disaffection” towards India’s government, or attempts to do so. The overly vague language empowered authorities with discretionary powers to crack down on dissent by arresting students, writers and journalists and others for peacefully exercising their right to freedom of expression.³⁵ As with the UAPA, the vast majority of cases filed under the sedition law did not result in a conviction.³⁶ In light of its incompatibility with the right to freedom of expression and other fundamental rights, following

Nations Office of the High Commissioner for Human Rights, 20 October 2020. <https://www.ohchr.org/en/press-releases/2020/10/bachelet-dismayed-restrictions-human-rights-ngos-and-arrests-activists-india?LangID=E&NewsID=26398>.

³¹ ‘India: Government increases use of travel restrictions in ongoing crackdown on free expression’, *PEN International*, 8 April 2022. <https://www.pen-international.org/news/india-government-increases-use-of-travel-restrictions-in-ongoing-crackdown-on-free-expression>.

³² Other raids on media houses include The Quint, NewsLaundry, NewsClick and others. See: ‘I-T Raids Are Govt’s Way of Warning the Quint: P Chidambaram’, *The Quint*, 13 October 2018. <https://www.thequint.com/videos/news-videos/chidambaram-on-income-tax-raids-quint-raghav-bahl>; ‘Indian finance authorities raid offices of NewsLaundry and NewsClick websites’, *Committee to Protect Journalists*, 31 September 2021. <https://cpj.org/2021/09/indian-finance-authorities-raid-offices-of-newslaundry-and-newsclick-websites/>.

³³ In February 2023, The BBC’s offices in India were searched by tax authorities shortly after the BBC aired a documentary on the Prime Minister of India. See: ‘BBC India offices searched by income tax officials’, *BBC News*, 14 February 2023. <https://www.bbc.co.uk/news/world-asia-india-64634711#:~:text=BBC%20offices%20in%20India%20have,co%2Doperating%22%20with%20authorities>.

³⁴ ‘Why India needs to get rid of its sedition law’, *BBC News*, 29 August 2016. <https://www.bbc.co.uk/news/world-asia-india-37182206>

³⁵ ‘Assam court acquits student-poet of sedition charges’, *The Hindu*, 16 March 2023. <https://www.thehindu.com/news/national/other-states/assam-court-acquits-student-poet-of-sedition-charges/article66626592.ece>; ‘Reporter, Truth-Seeker, Family Man: The Siddique Kappan You Don’t Know’, *Article 14*, 2 June 2021. <https://article-14.com/post/reporter-truth-seeker-family-man-the-siddique-kappan-you-don-t-know>.

³⁶ According to Article 14, from 2010 to 2021, over 13,000 people have been charged with sedition. See: ‘A Decade of Darkness: Our New Database Reveals How A Law Discarded By Most Democracies Is Misused In India’, *Article 14*, 4 February 2022. <https://article-14.com/post/a-decade-of-darkness-our-new-database-reveals-how-a-law-discarded-by-most-democracies-is-misused-in-india-61fcb8768d15c>.

several legal challenges against the constitutionality of the provision,³⁷ in 2023 the Supreme Court ordered that the India's colonial-era sedition law be suspended while a review is carried out of the legislation.³⁸ Three months later, India's Home Minister announced the sedition law's repeal on 11 August 2023 as part of a broader plan to replace the IPC with successor legislation, which is due to come into force on 1 July 2024.³⁹

11. Despite the government's decision to repeal the sedition law, the IPC's successor legislation, referred to as the Bharatiya Nyaya Sanhita (BNS),⁴⁰ includes a provision (referred to as section 152) that threatens to reintroduce many of the most problematic aspects of the sedition law in all but name. The BNS provides authorities with broad discretionary powers to charge an individual for use of spoken or written words that excites or attempts to excite 'subversive activities' without providing a clear definition of what 'separatist activities' entails. The new provision also proscribes harsher penalties for those convicted, including a mandatory prison sentence of up to life imprisonment or a maximum fixed-term sentence of up to seven years' imprisonment, which contrasts with sedition law's penalty of a potential fine or prison sentence of up to life imprisonment or a maximum fixed-term sentence of up to three years.

Conditions of Detention and Bail

12. There have been widespread reports inadequate access to healthcare for those held in pre-trial detention, including writers, poets, academics, and journalists. One example is academic and anti-caste activist Hany Babu, who is one of 16 individuals who were targeted under the UAPA (referred to collectively as the BK-16).⁴¹ Hany Babu has been held in pre-trial detention for almost four years since his arrest under the UAPA in July 2020. Subjected to grossly inadequate detention conditions in Talaja Central Jail, in May 2021 Hany Babu was repeatedly denied adequate medical treatment after contracting a severe eye infection,⁴² eventually resulting in his temporary

³⁷ See *Kedar Nath v. State of Bihar* (1962). <https://main.sci.gov.in/judgment/judis/4007.pdf>; *S.G Vombatkere v. Union of India* (2021): https://main.sci.gov.in/supremecourt/2021/14059/14059_2021_1_9_46876_Order_12-Sep-2023.pdf.

³⁸ 'India's Top Court Suspends Colonial-Era Sedition Law', *New York Times*, 11 May 2022. <https://www.nytimes.com/2022/05/11/world/asia/india-sedition-law-suspended.html>.

³⁹ The legislation received assent from the President on 25 December 2023.

⁴⁰ "'The Bharatiya Nyaya Sanhita, 2023'" – The Gazette of India', *Ministry of Law and Justice*, 25 December 2023. https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf.

⁴¹ 'International Mother Language Day: Take Action for Hany Babu', *PEN International*, 21 February 2022, <https://www.pen-international.org/news/international-mother-language-day-2022>.

⁴² 'Bhima Koregaon accused Hany Babu denied eye treatment, family says, Talaja jail refutes claim', *The Print*, 12 May 2021. <https://theprint.in/india/bhima-koregaon-accused-hany-babu-denied-eye-treatment-family-says-talaja-jail-refutes-claim/657193/>.

hospitalisation under judicial custody before he was forced to return to prison.⁴³ On 15 December 2022, Hany Babu was belatedly permitted to undergo an operation at a private hospital at his own expense following loss of vision in his left eye. Hany Babu has applied for bail on five separate occasions, including medical bail, but has been rejected on each occasion.

13. Onerous restrictions continue to exist for those who have secured bail after being detained under the UAPA. One example is writer, poet, and activist, Varavara Rao, who is another one of the 16 individuals who were targeted under the UAPA (referred to collectively as the BK-16). Detained in abhorrent conditions for over two years following his arrest on 28 August 2018,⁴⁴ Varavara Rao fell gravely ill with COVID-19 and other health complications but was repeatedly denied adequate medical treatment in jail until he was belatedly granted interim bail on medical grounds in February 2021, releasing him from prison and allowing him to receive much needed medical treatment. On 10 August 2022, the Supreme Court granted permanent bail to Varavara Rao on medical grounds. However, he remains subject to strict bail conditions that continue to infringe upon his ability to secure adequate medical care and his rights to freedom of expression and movement. Following over a year of petitioning multiple courts, in October 2023, Varavara Rao was permitted to travel to Hyderabad for seven days on two separate occasions to receive cataract surgery on both right eyes,⁴⁵ in November and December 2023. His bail conditions also impose restrictions on his ability to speak with media, and engage with social media, as well as restrictions affecting his ability to move from Mumbai to his hometown.

⁴³ 'Elgar Parishad case: Accused Hany Babu to be back in jail from hospital on Aug 18', *The New Indian Express*, 17 August 2021. <https://www.newindianexpress.com/nation/2021/Aug/17/elgar-parishadcase-accused-hany-babu-to-be-back-in-jail-from-hospital-on-aug-18-2345992.html>.

⁴⁴ 'Varavara Rao: Court orders jailed activist, 80, to be taken to hospital', *BBC News*, 18 November 2020. <https://www.bbc.co.uk/news/world-asia-india-54985831>.

⁴⁵ 'Court allows Varavara Rao to travel to Hyderabad for cataract surgery', *The Indian Express*, 30 November 2023. <https://indianexpress.com/article/cities/mumbai/court-allows-varavara-rao-to-travel-to-hyderabad-for-cataract-surgery-9047778/>; 'Court allows Varavara Rao to visit Hyderabad for surgery', *The Hindu*, 1 December 2023. <https://www.thehindu.com/news/national/other-states/court-allows-varavara-rao-to-visit-hyderabad-for-surgery/article67593414.ece>.

14. As noted in a report submitted by the UN Special Rapporteur on the right to freedom of opinion and expression, ‘states have a positive obligation to promote or to facilitate the enjoyment of the right to freedom of expression and the means necessary to exercise this right, which includes the Internet’.⁴⁶ As such, states, including India, must avoid any measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law.⁴⁷ However, in India, government authorities have increasingly resorted to various measures to restrict access to information online that have an arbitrary and disproportionate impact on the right to freedom of expression.

Use of Internet Shutdowns to Stifle Dissent

15. One of the most widespread methods used by the Government of India is the implementation of internet blackouts over specific geographic territories, resulting in the indiscriminate and disproportionate limitation of the right to freedom of expression for those affected. According to a recent report,⁴⁸ India ranked as the worst offender for internet shutdowns for the sixth year in a row, accounting for 41% of global internet shutdowns in 2023. Many of these shutdowns take place immediately following the passing of controversial legislation and other measures undertaken by the government,⁴⁹ undermining citizens’ ability to access information or peacefully express their views online. One of the area’s most heavily impacted by internet shutdowns is the Indian-administered Jammu and Kashmir, which experienced a total digital communications blackout in August 2019 following the government’s decision to revoke the state’s constitutionally granted autonomous status.⁵⁰ The restrictions, implemented to prevent protests against the government’s decision, resulted in the effective shutdown of mobile internet access across the territory for over

⁴⁶ ‘Promotion and protection of the right to freedom of opinion and expression’, *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 10 August 2011 [A/66/290] <https://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf>.

⁴⁷ This is noted in Human Rights Council Resolution 32/13, para. 10. See: ‘Resolution adopted by the Human Rights Council on 1 July 2016 – The promotion, protection and enjoyment of human rights on the Internet’, *United Nations Human Rights Council*, 18 July 2016 [A/HRC/RES/32/13]. https://digitallibrary.un.org/record/845727/files/A_HRC_RES_32_13-EN.pdf.

⁴⁸ ‘Shrinking Democracy, Growing Violence: Internet Shutdowns in 2023’, *Access Now*, 15 May 2024. <https://www.accessnow.org/keepiton-2023-report>.

⁴⁹ For example, see: ‘India has once again shut down the internet to control protesters’, *MIT Technology Review*, 12 December 2019. <https://www.technologyreview.com/2019/12/12/94/india-internet-shutdown-assam-citizenship-amendment-bill-modi-politics/>.

⁵⁰ UN experts viewed the shutdown as part of a wider crackdown on freedom of expression in the territory. See: ‘UN rights experts urge India to end communications shutdown in Kashmir’, *United Nations Office of the High Commissioner for Human Rights*, 22 August 2019. <https://www.ohchr.org/en/press-releases/2019/08/un-rights-experts-urge-india-end-communications-shutdown-kashmir>.

500 days,⁵¹ resulting in the disproportionate and indiscriminate curtailment of citizens' right to freedom of expression and associated rights on the basis of purported national security concerns.

Other forms of Online Censorship

16. Other undue restrictions on freedom of expression online include the blocking of social media accounts and websites containing content critical of the government. The blocking of entire websites or social media accounts goes beyond the restriction of specific content to a form of pre-emptive censorship, resulting in the effective prohibition of account holder's ability to engage in public expression in the future. As noted by UN experts and human rights organisations, such extreme restrictions of freedom of expression must be taken in accordance with international standards and done by a judicial body independent of political or commercial influences.⁵²
17. In India, recent examples of the government's use of blocking as a form of censorship include the blocking of the social media account and later website of Hindutva Watch, a research project that monitors and documents hate crimes against marginalised communities in India, and India Hate Lab,⁵³ an initiative that tracks hate speech in India. Both initiatives were taken down under Section 69A of the Information Technology Act (IT Act),⁵⁴ which provides government authorities with the ability to block access to any digital information and impose fines or prison sentences of up to seven years for internet service providers that fail to comply with government takedown orders. The absence of robust due process safeguards in the legislation has resulted in takedown orders being issued without prior notice to those impacted and has left platforms with limited means to review or challenge the legal basis of the takedown orders.
18. The blocking of organisations such as Hindutva Watch and India Hate Lab, which play an important role in documenting hate speech and human rights violations against some of the country's most marginalised communities, represents a concerning example of how the authorities have used the

⁵¹ While the Government of India eventually lifted restrictions to wired internet access, this provided little relief for the majority of the state's population at time when under 4% of India's population had access to wired internet. See: 'Internet user base rises 3.4% to 743 million at March-end; Jio commands over 52% of market: Trai data', *Times of India*, 20 September 2020. <https://timesofindia.indiatimes.com/business/india-business/internet-user-base-rises-3-4-to-743-million-at-march-end-jio-commands-over-52-market-trai-data/articleshow/78215392.cms>

⁵² For further analysis, see: 'Joint Declaration on Freedom of Expression and The Internet', 2011. <https://www.osce.org/representative-on-freedom-of-media/78309>. 'Freedom of Expression Unfiltered: How blocking and filtering affect free speech', *Article 19*, December 2016. https://www.article19.org/data/files/medialibrary/38586/Blocking_and_filtering_final.pdf.

⁵³ 'This Website Tracked Hate Crimes in India. Then the Government Took It Offline', *Wired*, 12 February 2024. <https://www.wired.com/story/india-elections-right-wing-website-ban/>.

⁵⁴ The Information Technology Act, 2000. (No. 21 OF 2000). <https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdlcswfjdelrquehwuxcfmijmuixngudufgububgubfugbububjxcgfvsbdihbfgfGhdfgFHtyhRtMjk4NzY=>.

IT Act to arbitrarily and disproportionately restrict publicly accessible information that is critical of the Government of India and its policies. Similar measures have also been used to block the social media accounts of news outlets,⁵⁵ journalists,⁵⁶ and poets.⁵⁷

Recommendations

19. The Human Rights Committee should recommend that the Government of India:

- Immediately drop all pending charges and ongoing investigations against those facing prosecution for peacefully exercising their right to freedom of expression;
- Immediately release all those currently detained or imprisoned for peacefully exercising their right to freedom of expression;
- Amend legislation, including the UAPA and FCRA, to conform to international standards, including the right to freedom of expression;
- End the use of internet blackouts and all other forms of online censorship that arbitrarily and indiscriminately infringe on the right to freedom of expression. Amend relevant legislation to ensure compliance with international standards.

⁵⁵ “‘It won’t stop at Kashmir,’” says a senior editor about a key news site being blocked’, Reuters Institute at the University of Oxford, 25 August 2023. <https://reutersinstitute.politics.ox.ac.uk/news/it-wont-stop-kashmir-says-senior-editor-about-key-news-site-being-blocked>; ‘Twitter temporarily blocks BBC’s Punjabi handle as Amritpal manhunt continues’, *Mint*, 28 March 2023. <https://www.livemint.com/news/india/twitter-temporarily-blocks-bbc-s-punjabi-handle-as-amritpal-manhunt-continues-11679994041171.html>; ‘Centre rejects RTI about blocking Caravan’s Twitter account citing national security’, *The Caravan*, 7 July 2021. <https://caravanmagazine.in/media/centre-rejects-rti-about-blocking-caravan-twitter-account-citing-national-security>.

⁵⁶ In X’s (formerly, Twitter) most recent transparency report (covering the period July – December 2021), the highest number of legal content removal requests involving verified journalists and news outlets came from India. See: <https://transparency.x.com/en/reports/removal-requests.html#2021-jul-dec>; ‘Twitter blocked 122 accounts in India at the government’s request’, *Rest of World*, 24 March 2023. <https://restofworld.org/2023/twitter-blocked-access-punjab-amritpal-singh-sandhu/>.

⁵⁷ ‘Twitter blocks access to accounts of prominent Canadians at request of India’s government, Sikh group alleges’, *CBC News*, 22 March 2023. <https://www.cbc.ca/news/canada/british-columbia/twitter-canada-india-rupi-kaur-jagmeet-singh-1.6787760>.