



**Joint written statement submitted by the
Association for Progressive Communications
to the 32nd session of the Human Rights
Council: State of Internet Rights in India,
Malaysia and Pakistan**

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With the increasing use of the internet for the exercise of freedom of expression and exchange of opinion globally, governments must fulfil their obligation to promote and protect human rights online.¹ However, in India, Malaysia and Pakistan many of the restrictions imposed on freedom of expression, assembly and association and on the right to privacy are being extended and sometimes heightened in online spaces.

Access

In India, Malaysia and Pakistan significant gaps in access to the internet and related technology persist, especially for marginalised communities and other disadvantaged groups. The internet is rapidly evolving into a necessity and access to the internet is essential for the exercise of a wide range of human rights. The imbalance between rural and urban users as well as the gender gap in these countries requires urgent attention to ensure that all sections of society are able to fully exercise their rights online. In India, only 9% per cent of the rural population has access to mobile internet.² In Pakistan, internet penetration is around 14% and limited, although mobile internet access is increasing with the recent launch of faster 3G and 4G services in the country, with the majority of users in urban areas.³ In Malaysia, penetration in rural area remains low, with rural inhabitants accounting for only 32.8% of internet users reported in the year 2014.⁴ It is imperative for states to improve the affordability and coverage of both fixed and mobile services, along with technical and human capacity. Further, marginalised groups including women and religious minorities and the economically disadvantaged continue to face challenges online which are similar to those they face in offline spaces. To ensure progress, justice and equality, states must take urgent and proactive steps for meaningful inclusion of these groups in online spaces.

Criminalisation of expression online

Challenges to freedom of expression offline extend to online spaces in India, Malaysia and Pakistan. There are numerous instances of arrests and threats of legal consequences against individuals who use the internet to express their opinion.

In Malaysia,⁵ political activist Khalid Ismath was charged with 11 counts under the Communications and Multimedia Act 1998 and three counts under the Sedition Act for allegedly "offensive" statements towards the authorities made on social media in October 2015.⁶ Three editors and two executives from an online

¹See HRC/RES/20/8, The promotion, protection and enjoyment of human rights on the Internet, and HRC/RES/26/13, The promotion, protection and enjoyment of human rights on the Internet.

²Aroral, K. (2016, 3 February). Only 9% of rural India has access to mobile internet: Report. *The Times of India*. timesofindia.indiatimes.com/tech/tech-news/Only-9-of-rural-India-has-access-to-mobile-internet-Report/articleshow/50840296.cms

³Freedom House. (2015). *Freedom on the Net: Pakistan*. freedomhouse.org/report/freedom-net/2015/pakistan

⁴Malaysian Communications and Multimedia Commission. (2015). *Internet Users Survey 2014*. www.skmm.gov.my/skmmgovmy/media/General/pdf/Internet-Users-Survey-2014.pdf

⁵Research conducted by EMPOWER Malaysia recorded a total of 44 cases of violation of freedom of expression from January 2014 to March 2015. See EMPOWER. (2015). *Status of Freedom of Expression Online – Country Report: Malaysia*. empowermalaysia.org/isi/uploads/sites/3/EMPOWER-FOE-Malaysia-Country-Report-2015.pdf

⁶Azhar, A. (2015, 20 October). PSM shocked over bail denial for activist Khalid Ismath. *Malaysiakini*. www.malaysiakini.com/news/316341

news portal, The Malaysian Insider, were arrested in March 2015 for an article published online.⁷ Similarly, cartoonist Zunar was charged with nine counts under the Sedition Act for a series of social media postings on the judiciary in April 2015.⁸

In India, there have been numerous arrests for the exercise of free speech. A 19-year-old boy was charged with damaging and inflammatory content for creating a post on social media that was critical of a minister in a provincial government.⁹ The central government has taken aggressive actions against many persons who create social media content that is critical of the government. Recently five students were arrested¹⁰ and a young professional who was critical of the prime minister was threatened with jail time.¹¹ Kovan, a popular folk singer, was arrested for videos that were uploaded criticising a state government and for portraying the chief minister in a supposedly defamatory manner.¹²

In Pakistan, blasphemy-related provisions in legislation¹³ remain the greatest threat to free expression in online spaces despite repeated calls by the international community to repeal these provisions. Recently, Usman Liaqat, a Christian, was arrested for allegedly posting content on Facebook that was regarded as “blasphemous” by state authorities.¹⁴ The Federal Investigation Agency, through its Cyber Crime Wing, arrested a young member of the social media team of Pakistan Tehreek-i-Insaf, an opposition political party, for his post on Twitter.¹⁵ Hate speech provisions are also used to crack down on expression by minorities, as was the case with the arrest of a Shia Muslim in Lahore under the state’s notorious anti-terrorism law.¹⁶

Blocking and removing content on the internet

Information and content in these countries remain heavily regulated by the state. Legislative and executive actions are often used to block and remove content, and judicial recourse is seldom available. Online communication and content that are deemed to be obscene, indecent, false, menacing or offensive, especially on religious, political or social issues, are often blocked or removed. For instance, in

⁷Ramzy, A. (2015, 31 March). Editors and Executives of News Website Malaysian Insider Are Arrested. *The New York Times*. www.nytimes.com/2015/04/01/world/asia/malaysian-insider-arrests.html

⁸Associated Press. (2015, 3 April). Malaysian Cartoonist Zunar Charged With Nine Counts of Sedition. *Wall Street Journal*. www.wsj.com/articles/malaysian-cartoonist-zunar-charged-with-nine-counts-of-sedition-1428040017

⁹Masih, N. (2015, 19 March). Outrage Over Arrest of Class 11 Student for Facebook Post Attributed to UP Minister Azam Khan. *NDTV*. www.ndtv.com/india-news/outrage-over-arrest-of-class-11-student-for-facebook-post-attributed-to-up-minister-azam-khan-747755?pfrom=video-read

¹⁰Tech2 News. (2014, 26 May). After Facebook, youth arrested for anti-Modi message on WhatsApp. *Tech2*. tech.firstpost.com/news-analysis/facebook-youth-arrested-anti-modi-message-whatsapp-224422.html

¹¹Tech2 News. (2014, 23 May). In Goa, a Facebook user faces jail threat for anti-Modi ‘holocaust’ post. *Tech2*. tech.firstpost.com/news-analysis/in-go-a-a-facebook-user-faces-jail-threat-for-anti-modi-holocaust-post-224327.html

¹²DNA. (2015, 16 November). Tamil Nadu: Court grants bail to Kovan who is facing sedition charge. *DNA*. www.dnaindia.com/india/report-court-grants-bail-to-kovan-who-is-facing-sedition-charge-2145869

¹³Baig, A., & Khan, S. (2015). *Expression Restricted: An Account of Online Expression in Pakistan*. Bytes for All, Pakistan. content.bytesforall.pk/sites/default/files/ExpressionRestricted.pdf

¹⁴Christian News. (2016, 28 May). Pakistani Police Arrest Christian Beaten, Accused of Blasphemy. *Christian News*. christiannews.net/2016/05/28/pakistani-police-arrest-christian-beaten-accused-of-blasphemy

¹⁵Khan, J. A. (2015, 29 October). FIA arrests PTI’s social media member over cyber laws’ violation. *The News*. www.thenews.com.pk/print/70153-fia-arrests-ptis-social-media-member-over-cyber-laws-violation

¹⁶Gabol, I. (2015, 24 November). Pakistani Shia man jailed for 13 years for Facebook ‘hate speech’. *Dawn*. www.dawn.com/news/1221725

Malaysia, the website of electoral reform group Bersih,¹⁷ The Malaysian Insider,¹⁸ Sarawak Report¹⁹ and the entire blogging platform Medium²⁰ (for carrying Sarawak Report's content) were blocked by the regulatory body, the Malaysian Communications and Multimedia Commission (MCMC) on unjustifiable grounds.

Many websites of religious and ethnic minorities such as the Shia, Hazara and Ahmadiyya have been banned by the government in Pakistan. A recent example is the banning of a watchdog website that was monitoring the killing of Shia Muslims.²¹ Similarly, the state is also clamping down on free expression of sexual minorities; a website discussing LGBT and SOGI issues has been blocked on the grounds of it being "un-Islamic".²² In early 2016 the government ordered the blocking of over 400,000 sites supposedly carrying pornographic content which resulted in sites that did not host such content also being blocked.²³ Although the block on YouTube has been lifted, the content currently available is heavily regulated and the processes for such regulation are unclear.²⁴

In India, the government has blocked access to websites in sweeping content blocks in the name of obscenity and inflammatory content control. The most recent case involved the blocking of over 800 websites for hosting "pornographic content".²⁵ In 2014, 32 websites that supposedly contained information for recruitment into the ISIL were blocked.²⁶ Inadvertently, major resource websites like GitHub and PasteBin were also blocked.²⁷ At least 40 web pages with supposed inflammatory content were blocked in 2015.²⁸

¹⁷BBC. (2015, 28 August). Malaysia blocks anti-government rally organiser website. *BBC*. www.bbc.com/news/world-asia-34070655

¹⁸Malaysiakini. (2016, 25 February). Gov't blocks The Malaysian Insider. *Malaysiakini*. www.malaysiakini.com/news/331711

¹⁹Yi, B. L. (2015, 20 July). Sarawak Report whistleblowing website blocked by Malaysia after PM allegations. *The Guardian*. www.theguardian.com/world/2015/jul/20/sarawak-report-whistleblowing-website-blocked-by-malaysia-over-pm-allegations

²⁰Asohan, A. (2016, 27 January). Spurned by Medium, MCMC strikes back, users suffer. *Digital News Asia*. www.digitalnewsasia.com/spurned-medium-mcmc-strikes-back-users-suffer

²¹Express Tribune. (2012, 14 July). Shia killing watchdog site apparently banned. *Express Tribune*. tribune.com.pk/story/408359/shia-killing-watchdog-site-apparently-banned

²²Human Rights Campaign. (2013, 1 October). Government of Pakistan Shuts Down Country's Only LGBT Website. www.hrc.org/blog/government-of-pakistan-shuts-down-countrys-only-lgbt-website; Haque, J. (2016, 29 May). On Pakistan's absurd list of over 4,00,000 'porn sites' to ban – Disney cartoons and Spice Girls. *Scroll.in*. scroll.in/article/808769/on-pakistans-absurd-list-of-over-400000-porn-sites-to-ban-disney-cartoons-and-spice-girls

²³AFP. (2016, 26 January). Govt orders 400,000 porn sites blocked. *Dawn*. www.dawn.com/news/1235554

²⁴Bytes for All, Pakistan. (2016, 26 January). Call for clarity on terms of lifting of YouTube ban in Pakistan. content.bytesforall.pk/node/188

²⁵India Today.in. (2015, 3 August). It's official. Government has banned these 857 porn sites. *India Today.in*. indiatoday.intoday.in/story/its-official-government-has-banned-these-857-porn-%20sites/1/455899.html

²⁶Moody, G. (2014, 31 December). Indian Government Orders 32 Web Sites Blocked, Including GitHub, Archive.Org, Pastebin, DailyMotion And Vimeo. *Techdirt*. www.techdirt.com/articles/20141231/02075529554/indian-government-or-%20ders-32-web-sites-blocked-including-github-archiveorg-pastebin-dailymotion-vimeo.shtml

²⁷Ghosal, A. (2014, 31 December). GitHub, Vimeo and 30 more sites blocked in India over content from ISIS. *The Next Web*. thenextweb.com/in/2014/12/31/vimeo-github-30-sites-blocked-india-content-isis

²⁸PTI. (2015, 26 July). Government orders ISPs to block websites with inflammatory content. *The Times of India*. timesofindia.indiatimes.com/tech/tech-news/Government-orders-ISPs-to-block-websites-with-inflammatory-content/articleshow/48223714.cms

Freedoms of assembly and association on the internet

Civil society is increasingly using information and communications technologies for social and political causes. As a result of this, governments have also taken keen interest in regulating the internet to impose restrictions.

In India and Pakistan, mobile network shutdowns are an alarmingly common occurrence. Since 2013, network shutdowns in India have increased drastically, affecting not only freedom of association and freedom of assembly but also freedom of expression. Recently, a state government blocked all internet and mobile data services in the state for 48 hours to block the circulation of a video of the lynching of an individual accused of rape.²⁹ Most of these orders for shutdown are given under Section 144 of the Code of Criminal Procedure, which authorises the state government to take action to prohibit unlawful assemblies or to prevent apprehended danger. Since 2015 there have been internet and mobile shutdowns in Jharkhand,³⁰ Gujarat,³¹ Jammu and Kashmir,³² Nagaland,³³ Manipur³⁴ and Rajasthan.³⁵ Common reasons cited for shutdowns are usually related to national security and public order. However, the states are now citing preventing cheating in an examination, apprehension of violence, etc., as reasons too.

Mobile network shutdowns in Pakistan are also frequent and increasing. In the capital city of Islamabad and neighbouring city of Rawalpindi these shutdowns are more frequent in the name of national security. In recent months, networks remained blocked in these cities for several hours during military parades and rehearsals to observe Independence Day.³⁶

In Malaysia, internet service providers are directed to take down content and receive blocking orders issued by the MCMC. The electoral reform group Bersih had its website blocked days ahead of a major rally in 2015. Further, participants in Malaysia's Bersih 4 rally have encountered false or misleading information spread by fake accounts, causing confusion to the public, with most of it attributed to state-supported "cybertroopers".³⁷

²⁹Kalita, P. (2015, 9 March). Nagaland blocks internet services, imposes curfew in tense Dimapur. *The Times of India*. timesofindia.indiatimes.com/india/Nagaland-blocks-internet-services-imposes-curfew-in-tense-Dimapur/articleshow/46497164.cms

³⁰Shashidhar, K. J. (2016, 18 April). Mobile Internet services cut off in Gujarat districts & Bokaro, Jharkhand. *MediaNama*. www.medianama.com/2016/04/223-mobile-internet-ban-gujarat-bokaro

³¹Ibid.

³²Hussain, A. (2016, 15 April). Kashmir shut down for 3rd day, mobile internet services suspended. *Hindustan Times*. www.hindustantimes.com/india/handwara-firing-mobile-internet-services-suspended-in-kashmir/story-iPQHs3vdmWx7w0uCGK8NJ.html; Shashidhar, K. J. (2015, 25 September). Jammu and Kashmir suspends Internet services in state for two days over beef controversy. *MediaNama*. www.medianama.com/2015/09/223-jammu-and-kashmir-internet-ban

³³Reuters/PTI. (2015, 9 March). Internet Blackout In Nagaland As Gruesome Video Of Lynching Surfaces; 22 Arrested. *Huffington Post*. www.huffingtonpost.in/2015/03/09/nagaland-lynching_n_6828442.html

³⁴Fowler, T. (2015, 4 September). Why a blanket ban on the internet in troubled Manipur is not a good idea. *Scroll.in*. scroll.in/article/753108/why-a-blanket-ban-on-the-internet-in-troubled-manipur-is-not-a-good-idea

³⁵Shashidhar, K. J. (2015, 21 December). Rajasthan blocks Internet services in some districts indefinitely. *MediaNama*. www.medianama.com/2015/12/223-rajasthan-internet-block

³⁶Bytes for All, Pakistan. (2012, 23 August). Pakistan: Government must stop 'kill switch' tactics. content.bytesforall.pk/node/67

³⁷Venkiteswaran, G. (2016). *Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations*. APC. www.apc.org/en/system/files/FOAA_online_IndiaMalaysiaPakistan.pdf

Mass surveillance

Citizens in India and Pakistan continue to face an environment where surveillance by the state, especially through digital platforms, is a norm. Recently the government of Pakistan implemented the Safe City Project in Islamabad, under which over 1,800 high resolution cameras³⁸ have been installed throughout the city. Movements of citizens are being recorded which allows the state to track them with or without reason. The data collected through these means are not stored through secure means and thus are at risk of being accessed by any party. In India, several new intelligence gathering bodies have been formed during the last four years and their powers are exercised without judicial or legislative oversight.³⁹ This has led to the increasing collection of data about citizens in the name of eliminating threats to national security, without concomitant privacy protections.

In India, the Central Monitoring System is a telecommunications interception system that enables government agencies to intercept communications without requiring them to liaise with telecom service providers.⁴⁰ The NATGRID⁴¹ provides for centralising 21 databases to give a full profile of suspects to security agencies who seek it. No information about the checks and balances are available. Such unchecked intelligence sharing is in conflict with the principles of necessity and proportionality. The state has also announced the creation of the National Media Analytics Centre for continuous monitoring of television stations, blogs and social media platforms for negative content.⁴² The agency would use software to generate relevant tags to highlight “belligerent” comments or social media chats and thus profile users.⁴³

In Malaysia, social media users are constantly reminded that the content that they post or share is monitored by the police and the MCMC, and that social media abuse will not be tolerated.⁴⁴ In January 2016, Inspector-General of Police Khalid Abu Bakar stated to the media that the police would monitor messaging applications like WhatsApp.⁴⁵ Following that announcement, the Police Cyber Investigation Response Centre (PCIRC) was formed with the Twitter handle @OfficialPCIRC. The unit tags Twitter users who have posted something deemed sensitive, and warns them that they are being watched or that the police are coming after them. The most well-known warning was against the Twitter handler @Kuasiswa, managed by activist Fahmi Reza, who was subsequently investigated under the CMA and the penal code.⁴⁶

³⁸Asad, M. (2016, 29 March). Safe City Project operational, awaits formal inauguration. *Dawn*. www.dawn.com/news/1248566

³⁹Internet Democracy Project. Watchtower: Mapping the Indian Government’s Cyber Security Institutions. internetdemocracy.in/watchtower

⁴⁰Bhargava, Y. (2015, 3 December). Government’s call intercept system to be ready by end of fiscal year. *The Hindu*. www.thehindu.com/business/central-monitoring-system-to-be-ready-by-end-of-fiscal-year/article7941946.ece

⁴¹Singh, D. (2015, 10 December). India’s intelligence hub NatGrid gets nod from green body, hurdles remain. *India Today.in*. indiatoday.intoday.in/story/natgrid-gets-green-nod-but-hurdles-remain/1/543087.html

⁴²Ranjan, A. (2016, 23 February). Now, govt cyber cell to counter ‘negative’ news. *Indian Express*. indianexpress.com/article/india/india-news-india/now-govt-cyber-cell-to-counter-negative-news

⁴³Ibid.

⁴⁴Bernama. (2016, 19 February). No compromise for cyber criminals, says Salleh. *Malaysiakini*. www.malaysiakini.com/news/331059; Bernama. (2016, 17 February). Practice self-censorship, netizens urged. *New Straits Times*. www.nst.com.my/news/2016/02/127907/practice-self-censorship-netizens-urged

⁴⁵Firdaws, N. (2016, 12 January). Police to crackdown on ‘immature’ social media users. *Free Malaysia Today*. www.freemalaysiatoday.com/category/nation/2016/01/12/police-to-crackdown-on-immature-social-media-users

⁴⁶Malaysiakini. (2016, 31 January). Activist artist gets warning from cops over 'Najib clown' sketch. *Malaysiakini*. www.malaysiakini.com/news/328868; FMT. (2016, 23 February). Fahmi Reza under police investigation. *Free*

Emerging policies and legislation restricting freedoms

Penal and broadcasting legislations are used in tandem to regulate, penalise and prevent content on the internet in India, Malaysia and Pakistan. Worryingly, new legislations and amendments are being proposed in all three countries which will most likely have a chilling effect on freedoms on the internet.

In Pakistan, the National Assembly recently passed the draft Prevention of Electronic Crimes Bill 2016⁴⁷ which contains several vague provisions vesting the state with blanket authority to block, restrict and criminalise expression online. This Bill also legitimises surveillance and permits the state to collect, store and share data about users which violates the right to privacy.

Amendments to the Communication and Multimedia Act in Malaysia also contain provisions that authorise censorship and require bloggers to register, which impedes their freedom of expression.⁴⁸ These changes in legislation are currently being discussed by the legislative bodies in both countries and have been severely criticised by numerous sectors of society.

Similarly, the government in India developed a draft encryption policy⁴⁹ which required all application service providers to deposit with the government a key which would help law enforcement and other authorised parties to circumvent encryption. This policy was withdrawn following public outcry. Although these provisions have been rolled back, the state is currently drafting new policies and provisions to replace these which are feared to be violative of rights as well.

Another piece of legislation in India which is a cause for concern is the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016, which was enacted without proper dialogue in the legislature.⁵⁰ While this Act purports to aid delivering welfare measures more efficiently, the Unique Identity Authority of India is authorised to collect, store and share information about citizens with state agencies. This is likely to violate the right to privacy of individuals, especially since there are no redress mechanisms and it may result in the surveillance of individuals and their information.

Malaysia Today. www.freemalaysiatoday.com/category/nation/2016/02/23/fahmi-reza-under-police-investigation

⁴⁷www.na.gov.pk/uploads/documents/1421399434_340.pdf

⁴⁸APC. (2016, 17 May). Malaysian parliament should heed civil society calls to reject flawed Communications and Multimedia Act amendments. www.apc.org/en/pubs/malaysian-parliament-should-heed-civil-society-cal

⁴⁹Mathur, N. (2015, 22 September). What was the draft encryption policy and why it was withdrawn? *Mint*. www.livemint.com/Politics/RZtAGhM6IjDBWujik6ysEP/What-was-the-encryption-policy-and-why-it-was-withdrawn.html

⁵⁰Sinha, A. (2016, 24 April). The Aadhaar Act is Not a Money Bill. *The Wire*. thewire.in/2016/04/24/the-aadhaar-act-is-not-a-money-bill-31297