

Online Censorship: Perspectives From Content Creators and Comparative Law on Section 69A of the Information Technology Act

By Divyansha Sehgal and Gurshabad Grover

Review: Krishnesh Bapat and Torsha Sarkar

Copy Editing: Clean Copy

Acknowledgements

The paper benefited immensely from comments and suggestions from Arindrajit Basu, Krishnesh Bapat and Torsha Sarkar. This study was possible due to a research grant to the Centre for Internet and Society from Facebook, India; while Gurshabad Grover's contributions were supported by the Open Tech Fund Information Controls Fellowship. Finally, the authors extend their sincere gratitude to all the interviewees who shared their experiences with them and trusted them to tell their stories faithfully.

Abstract

The Government of India has increasingly engaged in online censorship using powers in the Information Technology Act. The law lays out a procedure for online censorship that relies solely on the discretion of the executive. Using a constitutional and comparative legal analysis, we contend that the law has little to no oversight and lacks adequate due process for targets of censorship. Through semi-structured interviews with individuals whose content has been taken down by such orders, we shed light on experiences of content owners with government-authorised online censorship. We show that legal concerns about the lack of due process are confirmed empirically, and content owners are rarely afforded an opportunity for a hearing before they are censored. The law enabling online censorship (and its implementation) may be considered unconstitutional in how it inhibits avenues of remedy for targets of censorship or for the general public. We also show that online content blocking has far-reaching, chilling effects on the freedom of expression.

Table of Contents

1. Introduction	3
2. Legal background	4
3. Methodology	10
Qualitative interviews	11
Comparative review	11
4. Interviews and discussion	12
Confusion around blocking and the opportunity for a pre-decisional hearing	13
Engaging with the media	17
Direct impact of blocking	18
Concerns about free speech	19
5. Comparative review	20
Pakistan	21
Brazil	22
South Africa	23
Russia	24
6. Limitations	25
7. Conclusion	25

1. Introduction

Through Section 69A of the Information Technology (IT) Act, the Government of India is empowered to block public access to specific online resources or to order online service providers to do so. The government's use of this power has increased in recent years. In 2020, 9,849 websites and social media accounts were blocked in India; this was an increase of almost 2,000% from the 471 URLs blocked in 2014.¹ Transparency reports by Facebook revealed that in the first half of 2021, the platform had restricted 538 pieces of content across Instagram and Facebook, following blocking orders from the Indian government. The numbers were similar for Twitter, Google, and YouTube.²

For concerned citizens who want to find out what content has been blocked and why, there is no public repository listing websites that have been blocked due to blocking orders. Prior efforts to identify content that has been blocked in India have been largely unsuccessful because the law requires that all blocking orders be kept confidential^{3,4,5}. Since these blocking orders are primarily issued to intermediaries (broadly defined as any entity providing an online service),⁶ there is no simple procedure for content owners to interact with the blocking authority and seek reversal of orders in cases of possible errors.⁷ In their transparency reports, intermediaries provide an aggregate volume of content actioned upon because of a government order, but they offer no details about the individual pieces of content blocked or what content owners can do to reverse the blocking.

¹ Ministry of Electronics and Information Technology, Government of India, 'Lok Sabha Unstarred Question No. 1788' <<http://164.100.24.220/loksabhaquestions/annex/177/AU1788.pdf>> accessed 28 September 2022

² Internet Freedom Foundation, '#SocialMediaComplianceWatch: Analysis of Social Media Compliance Reports for the Month of March 2022' <<https://internetfreedom.in/compliance-report-march-2022/>> accessed 28 September 2022

³ Lumen, 'Database' <<https://www.lumendatabase.org>> accessed 28 September 2022

⁴ Kushagra Singh, Gurshabad Grover, and Varun Bansal, 'How India Censors the Web' (2020) 20 WebSci <<https://cis-india.org/internet-governance/how-india-censors-the-web-websci>> accessed 28 September 2022

⁵ SFLC, 'Websites Blocked by MeitY in 2019' (*SLFC*, 25 October 2019) <<https://sflc.in/websites-blocked-2019>> accessed 28 September 2022

⁶ Information Technology (IT) Act 2000, s 2 (w).

⁷ Torsha Sarkar and Gurshabad Grover, 'How India is Using Its Information Technology Act to Arbitrarily Take Down Online Content' Scroll (15 February 2020) <<https://scroll.in/article/953146/how-india-is-using-its-information-technology-act-to-arbitrarily-take-down-online-content>> accessed 28 September 2022

In light of this, we set out to capture the experiences of individuals and organisations whose content has been ordered to be blocked by the Government of India. In particular, we wanted to find answers to two key questions:

- Do content owners receive a notice or hearing when their content is blocked?
 - Is there any contact from the executive or the judiciary? What happens when creators try to engage the government?
- What happens after content owners find out that something they posted online has been blocked for public access?
 - When and how do owners become aware of the blocking? What steps do they take? How does this affect their use of the intermediary going forward?

This paper takes a comprehensive look at the rights of content owners through a mixed methods study. Section 2 considers the legal basis and constitutionality of blocking online content in India. Section 3 outlines our methodology, which includes qualitative interviews and a legal comparative review. Section 4 describes the findings from our interviews with content creators. Section 5 contains a comparative legal review of countries that also have a notice and takedown regime, focusing on how they understand the rights to freedom of expression and due process in the context of online expression. Section 6 outlines the limitations, and Section 7 presents the conclusions of this study.

2. Legal background

The Constitution of India declares that each citizen has the right to freedom of expression and opinion, while also laying out the grounds under which the state can lawfully restrict the exercise of the right.⁸ The Supreme Court has clarified that this right extends across all forms of media,⁹ including the internet.¹⁰

The Government of India restricts online freedom of expression in many ways. For instance, it implements laws that criminalise acts of expression, including but not limited to legal provisions

⁸ Constitution of India, Article 19.

⁹ *The Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal* [1995] 2 SCC 161.

¹⁰ *Shreya Singhal v Union of India* [2015] 5 SCC 1. *Anuradha Bhasin v Union of India* [2019] 1725 SCC Online SC para 26.

in the Indian Penal Code that criminalise sedition and defamation.¹¹ Provisions in the IT Act specifically criminalise certain online expression, such as the publication of obscene material or non-consensual sharing of intimate imagery.¹² Additionally, the Indian government has the power to completely shut down telecommunications and internet services in specific areas.¹³

The government can also block public access (or order others to do so) to specific online resources. This paper focuses on this last kind of restriction, i.e., the direct and usually targeted censorship of specific online content. Section 69A gives the Government of India such powers.¹⁴ Note that section 79 contains a reference to the government's ability to order content to be taken down,¹⁵ but after *Shreya Singhal v. Union of India*, it is unclear whether it is a separate executive power from Section 69A or a mere reference to it. However, the discussion on constitutional and procedural rights of content creators applies regardless of the procedure used.

Section 69A was introduced through amendments to the IT Act in 2009.¹⁶ The provision allows the central government to block, or issue orders to intermediaries to block, specific online content for the public. The government can use this power if 'necessary or expedient'¹⁷ in the interest of

- national security,
- the sovereignty and integrity of India,
- friendly relations with foreign states,
- public order,
- or preventing incitement to the commission of any cognizable offence relating to the aforementioned grounds.¹⁸

¹¹ Indian Penal Code 1860, s 124A and s 499.

¹² IT Act, s 67 and 66E.

¹³ The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017, <<https://dot.gov.in/sites/default/files/Suspension%20Rules.pdf>> accessed 28 September 2022

¹⁴ IT Act, s 69A(1).

¹⁵ IT Act, s 79(3).

¹⁶ Note that the Government of India has been engaging in online censorship even prior to the passing of these amendments. See Raman Jit Singh Chima, 'The Regulation of the Internet With Relation to Speech and Expression by the Indian State' (2008) SSRN <<http://dx.doi.org/10.2139/ssrn.1237262>> accessed 28 September 2022

¹⁷ IT Act, s 69A(1).

¹⁸ These are derived from the Indian Constitution, Article 19(2). Section 69A covers all the grounds given in Article 19(2), notably except decency, morality, contempt of court, and defamation.

Intermediaries that do not comply with such an order may have to pay fines and/or face imprisonment for up to seven years.¹⁹ Non-compliance with an order may also mean that intermediaries risk becoming liable as the creator of the content in question.²⁰

The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules 2009 (“Blocking Rules”, hereinafter) lay out a procedure for the government to follow while issuing such orders.²¹ The Blocking Rules require a designated official to receive content blocking requests from various governmental departments and ministries.²² These requests must be examined by a committee consisting of secretaries from four ministries and the computer emergency response team. The committee is mandated to consider whether the request falls within the scope of section 69A.²³ Based on the recommendations of the committee, the designated official gets approval from the Ministry of Electronics and Information Technology (MeitY) to pass a blocking order to intermediaries.²⁴

There are some procedural safeguards built into the rules. First, the law requires the designated officer to ‘make all reasonable efforts to identify the person **or** intermediary who has hosted the information’.²⁵ If found and contacted, these parties are allowed to make a representation before the committee in 48 hours.²⁶ However, this opportunity of hearing can be bypassed in case of emergencies.²⁷

Second, there is an attempt to establish oversight of the government’s censorship power by employing a review committee, which consists of secretaries from three ministries.²⁸ This review committee must meet at least once every two months to examine each blocking order, and it has the authority to set orders aside if they do not meet the legal requirements.²⁹

¹⁹ IT Act, s 69A(3).

²⁰ IT Act, s 79(3)(b).

²¹ The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules 2009 (Blocking Rules).

²² Blocking Rules, Rule 6.

²³ Blocking Rules, Rules 7 and 8.

²⁴ Blocking Rules, Rules 7 and 8.

²⁵ Blocking Rules, Rule 8(1) (emphasis added).

²⁶ Blocking Rules, Rule 8(1) .

²⁷ Blocking Rules, Rule 2(i), same committee as for surveillance under the Telegraph Act.

²⁸ Blocking Rules, Rule 14.

²⁹ Blocking Rules, Rule 14.

Note how the ‘or’ (emphasised in the quote) implies that the person whose content is being censored may not be contacted at all. In fact, legal commentators have (anecdotally) noted that content creators are rarely informed or given the opportunity to be heard or to present their views.³⁰ Further, information about what is censored is not available in the public domain, and the problem is compounded by the Blocking Rules requiring confidentiality for such orders.³¹

Indeed, Right To Information (RTI) requests that ask for copies of blocking orders are sometimes rejected because of the confidentiality rule.³² As such, the procedure has been described as executive driven and opaque, with little potential for oversight from other branches of the state or the citizenry.³³ Additionally, the committee responsible for reviewing takedown orders has not reversed a single blocking order since its conception,³⁴ raising further questions about whether it is an effective safeguard.

Some of these arguments were raised before the Supreme Court of India in 2015 in *Shreya Singhal v Union of India*, wherein the petitioners challenged the constitutionality of section 69A and the Blocking Rules.³⁵ The petitioners claimed that the lack of mandatory pre-decisional

³⁰ Apar Gupta, ‘But What About Section 69A?’ Indian Express (27 March 2015) <<https://indianexpress.com/article/opinion/columns/but-what-about-section-69a/>> accessed 28 September 2022; Chinmayi Arun, ‘The Case of the Online Intermediary’ The Hindu (7 April 2015) <<https://www.thehindu.com/opinion/op-ed/shreya-singhal-case-of-the-online-intermediary/article7074431.ece>> accessed 28 September 2022 . However, these pieces do not highlight concrete evidence of this claim, so we empirically explore this question later.

³¹ Blocking Rules, Rule 16.

³² Internet Freedom Foundation, ‘Delhi HC issues notice to the government for blocking satirical Dowry Calculator website’ Internet Freedom Foundation (16 December 2019) <<https://internetfreedom.in/delhi-hc-issues-notice-to-the-government-for-blocking-satirical-dowry-calculator-website/>> accessed 29 September 2022 . Software Freedom Law Centre India, ‘RTI: MeitY provides details of Blocked Websites/URLs’ Software Freedom Law Centre India (2 December 2018) <<https://sflc.in/rTI-meity-provides-details-blocked-websitesurls>> accessed 29 September 2022. *Also see* Torsha Sarkar and Gurshabad Grover (n 7). *For an RTI that was responded to with information, see* Pranesh Prakash, ‘DIT’s Response to RTI on Website Blocking’ (*The Centre for Internet and Society*, 7 April 2011) <<https://cis-india.org/internet-governance/blog/rTI-response-dit-blocking>> accessed 28 September 2022

³³ Gurshabad Grover and Torsha Sarkar, ‘Content Takedown and Users’ Rights’ The Leaflet (12 February 2020) <<https://theleaflet.in/content-takedown-and-users-rights/>> accessed 28 September 2022 ; Gurshabad Grover, ‘To Preserve Freedoms Online, Amend the IT Act’ Hindustan Times (3 May 2019) <<https://www.hindustantimes.com/analysis/to-preserve-freedoms-online-amend-the-it-act/story-aC0jXUIId4gpydJyuoBcJdI.html>> accessed 28 September 2022

³⁴ Saurav Das, ‘Indian Govt Censored Thousands of Twitter Posts, IT Body Reviewed None’ Boom (8 August 2022) <<https://www.boomlive.in/decode/impact/twitter-india-censorship-free-speech-18768>> accessed 28 September 2022

³⁵ *Shreya Singhal*, para 108 (n 10).

hearing and the confidentiality rule were impeding the exercise of fundamental rights.³⁶ The petitioners also highlighted that the powers of online censorship did not have the safeguards found in provisions that empower state governments to censor physical publications³⁷ – sections 95 and 96 of the Code of Criminal Procedure explicitly mandate the government to publish reasoned orders, which can be directly challenged in the respective high court.³⁸ The Supreme Court, however, found the safeguards in section 69A and the Blocking Rules to be adequate.³⁹

Commentators have since pointed out that the court may have wrongly assumed that content creators – if identifiable by the government – are always provided with reasoned censorship orders, and that they could be challenged with a writ petition before a competent court.⁴⁰ An optimistic reading of the judgement would be that when content gets blocked, the content creator **and** intermediary⁴¹ are both offered a pre-decisional hearing by the government.⁴² However, such readings remain tendentious since the court did not explicitly read down the provision or the rules, and refrained from giving the Indian government any directions.

There is also no evidence to suggest that the Indian government has changed its implementation of section 69A and the Blocking Rules after the Supreme Court's order in *Shreya Singhal*. In 2021, 6096 URLs and 347 mobile applications were blocked through orders; the Committee responsible for examining and passing these orders only conducted 39 hearings in the year.⁴³ The MeitY also stated that it did not record if any individual appeared at these hearings.⁴⁴

³⁶ *Shreya Singhal*, para 108 (n 10).

³⁷ *Shreya Singhal*, para 108 (n 10).

³⁸ Code of Criminal Procedure, s 95 and 96.

³⁹ *Shreya Singhal*, para 111 (n 10).

⁴⁰ See Chinmayi Arun, 'The Case of the Online Intermediary' *The Hindu*, <<https://www.thehindu.com/opinion/op-ed/shreya-singhal-case-of-the-online-intermediary/article7074431.ece>> accessed 28 September 2022 ; Grover and Sarkar, 'Content Takedown' (n 33).

⁴¹ *Shreya Singhal*, para 109-110 (n 10).

⁴² Gautam Bhatia, 'The Supreme Court's IT Act Judgment, and Secret Blocking' (*Indian Constitutional Law and Philosophy*, 25 March 2015) <<https://indconlawphil.wordpress.com/2015/03/25/the-supreme-courts-it-act-judgment-and-secret-blocking/>> accessed 28 September 2022; Sunil Abraham, 'Shreya Singhal and 66A A Cup Half Full and Half Empty' (2015) 1(15) EPW <<https://cis-india.org/internet-governance/blog/shreya-singhal-judgment.pdf>> accessed 28 September 2022

⁴³ Internet Freedom Foundation, 'Revealed: MeitY blocked 6096 URLs and 347 applications in 2021 but held less than 40 hearings' (*Internet Freedom Foundation*, 23 April 2022) <<https://internetfreedom.in/revealed-meity-blocked-6096-urls-and-347-applications-in-2021-but-held-less-than-40-hearings/>> accessed 1 March 2023

⁴⁴ *Ibid.*

For instance, Tanul Thakur filed an RTI with the MeitY asking for details on why their website dowrycalculator.com was blocked. The MeitY refused to share a copy of the order, citing the rule mandating confidentiality of such orders.⁴⁵ Thereafter, Tanul Thakur approached the Delhi High Court. In *Tanul Thakur v Union of India*, the Delhi High Court ordered the MeitY to provide Tanul Thakur a copy of the order and a post-decisional hearing.⁴⁶ However, the case has not yet resulted in a final order or concrete judicial precedent about the Blocking Rules.

In another case in 2022, Twitter has approached the Karnataka High Court to challenge 10 blocking orders it received.⁴⁷ Twitter is arguing, among other things, that the Supreme Court's decision in *Shreya Singhal* should mean the content creator deserves an opportunity to be heard before a tweet or account is taken down.⁴⁸ Twitter is additionally arguing that the provision of the law should only be used to block existing content, and not to block entire accounts – the latter of which would amount to preventing internet users from creating more content. The matter is still being heard as of the writing of this paper.

Parallely, the DoT has started regularly publishing content takedown orders that are passed by various courts in India.⁴⁹ Note that the power of courts to issue these takedown orders stems from section 79 of the IT Act and other provisions in law. However, there is still no transparency around content blocking orders issued by the executive branch under section 69A of the IT Act.

⁴⁵ 'Online RTI Status Form' (12 September 2019)

<https://drive.google.com/file/d/0B2NvpMoZE5HGbGVCOG5TNVF6RDRGXzk5T3VNMlhTQ0E3QUlz/view?resourcekey=0-M4LWVm3KcjXl_s4qyQTA7Q> accessed 28 September 2022

⁴⁶ Internet Freedom Foundation, 'Delhi HC Orders MeitY to Give Copy of Ban Order and Hearing to Mr Tanul Thakur for Banning His Website #WhatTheBlock'

<<https://internetfreedom.in/delhi-hc-directs-meity-to-provide-a-copy-of-the-blocking-order-and-a-post-decisional-hearing-to-mr-tanul-thakur-whattheblock/>> accessed 28 September 2022

⁴⁷ Express News Service, 'Twitter: Govt cannot order blocking of accounts without notice to users', Indian Express (27 September 2022)

<<https://indianexpress.com/article/technology/tech-news-technology/govt-cannot-order-blocking-of-accounts-without-notice-to-users-twitter-to-karnataka-hc-8174693/>> accessed 30 September 2022.

⁴⁸ Express News Service (n 45)

⁴⁹ Department of Telecommunications, 'Blocking Notifications/Instructions to Internet Service Licensees under Court Orders' <<https://dot.gov.in/blocking-notificationsinstructions-internet-service-licensees-under-court-orders>> accessed 28 September 2022; Also see Internet Freedom Foundation, 'DoT starts publishing court orders for online censorship #WhatTheBlock', Internet Freedom Foundation (01 June 2022)

<<https://internetfreedom.in/dot-publish-blocking-orders/>> accessed 29 September 2022.

Further, the government continues to withhold information about specific blocking orders in response to RTIs.⁵⁰

The implementation of section 69A and the Blocking Rules not only impinges on the right to freedom of expression, but may also violate judicial precedent on the right to constitutional remedies.⁵¹ In *Ram Jethmalani & Ors v Union of India* (2011), the Supreme Court unequivocally stated that in order for the right to constitutional remedy to be effective, “it is imperative that in such proceedings the petitioners are not denied the information necessary for them to properly articulate the case and be heard, especially where such information is in the possession of the State.”⁵² A lack of access to content blocking orders – for content creators and the general public alike – impedes the ability to contest them.

More recently, in *Anuradha Bhasin v Union of India* (2020) – which concerned orders for internet shutdowns – the Supreme Court directed the Government of India to publish all network shutdown orders, recognising the importance of “transparency and accountability” in Article 19, which “necessarily mandates the production of orders.”⁵³ These judicial precedents strengthen the case that content blocking orders under section 69A should be published openly or, at the very least, made available to the content creator.

Given these precedents in Articles 19, 32, and 226 of the Constitution, the opacity of content takedown orders is not just a matter of legality and compliance with procedure, but of constitutional import.

3. Methodology

We used a mixed methods approach to study the rights of internet users facing government-ordered censorship. The first part of our methodology included empirical legal research: we explored the implementation of the law through in-depth semi-structured interviews with internet users whose content had been the target of censorship by the Indian government.

⁵⁰ Internet Freedom Foundation (n 32), Software Freedom Law Centre India (n 32), Gurshabad Grover and Torsha Sarkar (n 7)

⁵¹ See also Prakash, Pranesh, ..., CIS (forthcoming)

⁵² *Ram Jethmalani & Ors v Union of India* [2011].

⁵³ *Anuradha Bhasin v Union of India* [2019] 1725 SCC Online SC para 152 and 160, 16.

The second part of our methodology employed a comparative legal perspective, where we summarised the relevant laws in four jurisdictions: Pakistan, Brazil, South Africa, and Russia. We focused mostly on countries that have a notice and takedown regime, and included countries that also – like India – grant unilateral power to the executive to issue content blocking orders. Both parts of our methodology are described in more detail as follows.

Qualitative interviews

To discover how internet users perceive their rights with regard to their online content being blocked, we interviewed individuals and organisations whose content has been subject to censorship by the government. To gather a list of such users, we turned to the independent research database Lumen,⁵⁴ which collects content takedown notices from across the world. For India, Twitter and Google proactively contribute takedown notices they receive. We supplemented this sample with data from other affected users drawn from media reports in the public domain over the last few years. To recruit respondents therefore, we also published an open call⁵⁵ which was publicised through social media. In total, we interviewed eight stakeholders: creators of different types of content (websites, social media accounts, and posts on social media) that had been blocked by government order.

Comparative review

For the comparative review, we surveyed the laws and jurisprudence regarding content takedown in four jurisdictions:

1. Pakistan
2. Brazil
3. South Africa
4. Russia

We specifically focused on analysing whether the safeguards are present in the laws, and how courts have interpreted due process rights when it comes to online censorship.

⁵⁴ Lumen ‘Database’ (n 3).

⁵⁵ Gurshabad Grover and Divyansha Sehgal, ‘Call for Respondents: The Implementation of Government-ordered Censorship’ (The Centre for Internet and Society, 2 January 2022) <<https://cis-india.org/internet-governance/blog/call-for-respondents-the-implementation-of-government-ordered-censorship>> accessed 28 September 2022

4. Interviews and discussion

Before diving into the responses, here are our interviewees, listed in no particular order:

- Tanul Thakur, a journalist. He is the owner of satirical website dowrycalculator.com which was blocked in 2018.
- There Is No Earth B, a movement with a group of volunteers advancing decentralised climate action. Their website thereisnoearthb.com was blocked in 2020 while they were in the middle of a campaign encouraging public participation on the Draft Environmental Impact Assessment, 2020.
- Fridays for the Future, India, a volunteer-run people's movement for climate justice. Their website fridaysforfuture.in was blocked in 2020 while they were in the middle of a campaign encouraging public participation on the Draft Environmental Impact Assessment, 2020.
- Let India Breathe, an environmental collective working to combat climate change and its effects. Their website letindiabreathe.in was blocked in 2020 while they were in the middle of a campaign encouraging public participation on the Draft Environmental Impact Assessment, 2020.
- Vinod Jose, who at the time of the interview was executive editor of The Caravan magazine. The Twitter account for the magazine The Caravan was withheld in India in 2021 as part of a large-scale blocking of Twitter accounts posting about the farmer's protests taking place in New Delhi.
- Sanjukta Basu, a journalist, editor, and author. Her Twitter account was withheld in India after she posted a tweet analysing the then trending #ModiSupportsFarmerGenocide.
- Stand with Kashmir, a Kashmiri-driven independent, transnational movement advocating for self-determination of Kashmir. The website standwithkashmir.org and their social media accounts have been blocked in India since 2020⁵⁶.
- bannedthought.net, a website devoted to documenting the suppression of progressive ideas around the world. The website bannedthought.net has been blocked in India since 2018.

A summary of our results can be found in our responses table: Table 1 in the Annexure.

⁵⁶ https://standwithkashmir.org/wp-content/uploads/2021/09/Report-_Social-Media-Censorship_Sept-2021.pdf

Some interviewees were able to get their content restored while other content is still blocked in India.

Confusion around blocking and the opportunity for a pre-decisional hearing

Of the eight interviewees, only two had received a notice for a pre-decisional hearing with government representatives. The other six did not know that their content was set to be blocked. They found out that their posts, websites, or accounts were inaccessible online when their audience and users contacted them to let them know that there was an issue with their content. These six respondents were initially unsure about whether it was technical outages with the service provider or a legal issue that had made their content inaccessible to users. Those with websites that were (temporarily or permanently) blocked first reached out to their domain registrars, internet service providers, and web hosting companies to check if there had been technical outages they were unaware of. They only later considered that their websites may have been blocked on government order.

Even when these respondents established that it was a government-ordered blocking that affected their content, they were confused about which legal authority was responsible, and whom to approach for further information. Three organisations – Fridays for the Future, There Is No Earth B, and Let Earth Breathe – found that their websites were blocked (within a few days of each other) while they were campaigning to raise awareness of the Environmental Impact Assessment (EIA) Draft 2020, and to encourage public comments. Once respondents had clarity on the fact that their websites had indeed been blocked following a legal demand and were not simply unavailable due to a technical failure, they remained unclear on what the provisions for the blocking orders were, with the Unlawful Activities Prevention Act (UAPA) and IT Act both being invoked but ultimately withdrawn.⁵⁷ In 2022, two years on, while the respondents had identified the applied law, the precise reasons for their websites being censored was still unclear to the organisations. The throughline of these interviews was that content creators were uncertain

⁵⁷ Scroll Staff, 'Police Use UAPA to Block Website Campaigning Against Draft Environment Rules, Later Claim Error' Scroll (23 July 2020) <<https://scroll.in/latest/968367/police-use-uapa-to-block-greta-thunberg-linked-website-campaigning-against-draft-environment-rules>> accessed 28 September 2022

about why their content was made unavailable. In such cases, a notice from the government often goes to the intermediary, which provides creators with no opportunity to respond.

In February 2021, Twitter blocked and then restored the accounts of prominent critics of the government's handling of the farmers' protests taking place in the country's capital.⁵⁸ This included Twitter accounts of two of our interviewees: writer Sanjukta Basu and The Caravan magazine. Both respondents reported that they did not get a notice from the government or from Twitter stating any reason for their accounts being blocked. For Basu and The Caravan team, notifications from Twitter's legal team came after the blocking; the notifications included mention of the IT Act but did not go into further detail. Vinod Jose, executive editor of The Caravan said,

‘A blocking like this hasn't happened to any other news organisation. The government didn't tell anyone why this was happening. They were silent. We got to know things from other news reports’.⁵⁹

None of the notifications reviewed by the research team mention specific reasons for why the government found the content objectionable, or the potential ways for content creators to get their accounts reinstated.

At the time of blocking, all of our interviewees were available to be contacted online, through easily accessible contact pages, emails, a public WhoIs registration (for websites), or open messaging services on the intermediary's technical platform (Table 1). Given this information, the findings from our interviews point to the fact that the Government may not be adhering to the Blocking Rules that it has issued itself – either it is not making reasonable efforts to identify the content owner, or if it has been able to identify them, it is not offering them a pre- or post-decisional hearing.

⁵⁸ The Wire Staff, ‘Twitter Withholds Accounts Tweeting on Farmers' Protests, Restores Them after Several Hours’ The Wire (1 February 2021) <<https://thewire.in/rights/twitter-withheld-caravan-kisan-ekta-morcha>> accessed 28 September 2022

⁵⁹ Interview with Vinod Jose, Executive Editor, The Caravan (Online, India, 25 January 2022)

Engaging with the government

Given the lack of a straightforward procedure to get their content restored, creators have tried other ways to advance their cases and get their content restored. Some have filed RTI requests to get more information and others have worked with digital rights organisations to find ways to engage the government and the judiciary.

Journalist and film critic Tanul Thakur, who created and maintains the satirical website dowrycalculator.com, filed an RTI to learn why his website had been blocked. He received a response citing the confidentiality provision of section 69A of the IT Act which provided no actionable or explanatory information; the same provision was cited in the response that Srishti Jaswal, a freelance reporter, received when she filed an RTI about why The Caravan's Twitter account was ordered to be blocked.⁶⁰ Thakur has since filed a writ petition with the Delhi High Court, seeking to reverse the blocking and restore his right to freedom of speech, guaranteed to each citizen by Article 19 of the Constitution of India.⁶¹

Many of our interviewees said that they would have preferred a course of actions wherein the government engaged them before blocking their content so that they could defend their expression.

Writer Sanjukta Basu said she 'absolutely would have wanted a hearing, and would have responded if the government contacted [her]'. She added that the blocking 'seemed automated and arbitrary... based on keywords', and that she was 'just reporting on the trend using [a particular] hashtag, and had nothing to do with the actual content of the hashtag'.⁶²

⁶⁰ Srishti Jaswal, '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>> accessed 28 September 2022

⁶¹ 'Write Petition (Redacted)' (16 December 2019)
<<https://drive.google.com/file/d/1PsR6cWacsJZ1PA6FzKKGQBoDlk9rcW9d/view>> accessed 28 September 2022;
Internet Freedom Foundation, 'Blocking Satirical Dowry Calculator' (n 32).

⁶² Interview with Sanjukta Basu, freelance writer and editor (Online, India, 4 January 2022)

Hesitation towards government engagement

Not all content creators we interviewed wanted a chance to have a hearing or directly interface with the government. We interviewed representatives of two organisations that received a court order for a hearing under section 69A of the IT Act. Both cited an opaque legal process and a lack of financial resources as reasons not to engage with the legal system.

A member from Stand with Kashmir told us:

We have tried to work with digital rights organisations within and outside India in an effort to explore a legal challenge, but we were unsure where things would go. We felt that their hands were tied. Also, we were not financially capable of supporting a long legal case and we were unsure of the impact it would have. Given the legal system of India, we really didn't stand a chance. So it was a collective decision to not take legal action, but [to] continue our work.⁶³

In addition to financial concerns, a representative of bannedthought.net expressed worry about the safety of their representatives while interfacing with the government:

[Protesting the blocking decision at the hearing] was both impractical for us to do, and also probably quite dangerous for any representative we might send. (A number of people's lawyers had just previously been arrested in India)... We have sort of a fatalistic attitude about dealing with governments, and assume we have zero influence on them. And anyway, we couldn't afford lawyers.⁶⁴

These experiences signify that even when the government is willing to provide a hearing, affected individuals and organisations lack adequate information about the consequences of engaging with the government. While section 69A of the IT Act makes no comment on any associated legal proceeding that could lead to arrest (if the content in question violates specific

⁶³ Interview with member, Stand with Kashmir (Online, India, 15 March 2022)

⁶⁴ Email interview with representative, bannedthought.net (Online, India, 6 February 2022)

laws), these respondents expressed little faith in government institutions, and feared that participation in such hearings could pose new threats to their safety.

Engaging with the media

Some interviewees shared their situations with the general public through social media and news outlets to spread awareness about what they believed were violations of their fundamental rights. Vinod Jose told us that once The Caravan noticed that their Twitter account was no longer accessible in India, they recorded their experiences for posterity in the absence of any clear information:

We took screenshots, collected proof of the same and let our team and other people know that our account was blocked. We are an independent blue check media publication on Twitter, so this blocking/withholding is akin to independent publications in the US like The New York Times or The Washington Post being blocked. International media started to pick up the story and Twitter took notice. [While the blocking was reversed], we still have no clarity on why things were blocked in the first place.⁶⁵

Heightened attention in the national and international media, combined with legal interfacing, also seems to have played a role in restoring public access to the websites of Fridays for the Future, Let India Breathe, and There Is No Earth B. This presents a notable corollary: if a content creator does not have a big enough audience, or is otherwise unable to attract attention that warrants a news story or social media outrage, their content will likely stay blocked. Given the lack of clear mechanism for creators to challenge the blocking of their content, only those with a large following can garner and sustain the attention needed to push the government to reverse the censorship decision. Small businesses, writers, artists, and other individuals that use the internet to disseminate content are at an inherent disadvantage in such a system.

Besides, media attention, while often effective, is in no way a dependable recourse for creators since it is not easy for content creators and organisations to come into sudden heightened popularity. As such, dowrycalculator.in stayed blocked even after persistent discussions in

⁶⁵ Interview with Vinod Jose, Executive Editor, The Caravan (Online, India, 25 January 2022)

various local and mainstream media publications. Additionally, all media attention may not be directed at holding the government to account. Tanul Thakur, for instance, became a target of a barrage of online abuse and hate speech partly because of how television channels described the website's content:

In 2012, the Telugu channel TV9 slammed the website on air, [...] retrieved my name and address from the website registration which they then publicised to their audience... [In a separate incident after being quote tweeted by MP Jyotiraditya Madhavrao Scindia], I started to receive a lot of hate and abuse through Twitter DMs and on TV. It was extremely stressful and upsetting. The messaging by the mainstream media was harrowing to say the least.⁶⁶

Direct impact of blocking

The most striking findings from our interviews have been how the confidential orders from the government and the subsequent blocking of content have affected content creators. Operations of organisations that focus on awareness and advocacy through digital means were directly and severely hindered by online censorship. Let India Breathe, an organisation raising awareness about the EIA Draft 2020, had to quickly change their tactics.

At our peak, we had 2 lakh visitors a day. Over 21 days, many people would have tried to access the website. We lost the audience that only knew of the main website. We already had a day-to-day plan for campaigning, and losing our website affected that deeply.⁶⁷

The long-term effects of this blocking have also significantly curbed the appetite of volunteers and organisations for environmental work. A member of Fridays for the Future, a grassroots organisation for climate action, told us that they had to overhaul their volunteer recruitment process after their website was blocked.

⁶⁶ Interview with Tanul Thakur, journalist and owner of satirical website dowrycalculator.com (Online, India, 15 November 2021)

⁶⁷ Interview with representative, Let India Breathe (Online, India, 22 January 2022)

We are paranoid about new volunteers. We have only gotten new volunteers through our extended networks. It's been a year of that. We only opened it up once during COVID for external members'.⁶⁸

They are not alone. In the wake of the blocking order and the subsequent media attention, movements had to reorganise and even scale back their campaigns. A representative from There Is No Earth B said:

We took a step back in some instances where it concerns the safety of our volunteers. Give time to everyone to focus on themselves, take it slow... It was traumatising; people were very scared. Volunteers were afraid of engaging in environmental campaigns like never before. Mostly after [the website blocking], we started supporting work rather than leading a campaign.⁶⁹

A representative from Let Earth Breathe concurred:

Our actions were indirectly criminalised. If someone does not know the matter closely, a layperson would think that we are some sort of criminals, when we're only advocating for better environmental protections. It broke a lot of young activists. [There was] massive burnout, and some people who left then have not joined back. Some people joined because of the censorship, to be cool or part of a cult. But [overall] membership was definitely [negatively] affected.⁷⁰

Concerns about free speech

The state of conversations in the public sphere was a major concern among interviewees. Every single one of our interviewees expressed dismay at how the unexplained blocking of online artefacts restricts the freedoms of individuals and communities. Tanul Thakur said:

⁶⁸ Interview with representative, Fridays For the Future, India (Online, India, 28 January 2022)

⁶⁹ Interview with representative, There Is No Earth B (Online, India, 14 January 2022)

⁷⁰ Interview with representative, Let India Breathe (Online, India, 22 January 2022)

The blocking [of the website] reeks of feudal subject mentality. It is absolutely undemocratic to the core. At least give me an opportunity to present a counter argument! I feel bad about hogging space since it is a silly website. It is still a website though. My hope is that it can be a stand-in for websites by marginalised content creators who do not have the resources to go to court.⁷¹

Other interviewees concur. A representative from Let India Breathe said:

[The blocking] felt really murky. It was almost like gunda thinking: we did not like it, so we blocked it. I'm in my bedroom with a roof over my head. I'm not a victim. A lot of people lose their homes because of climate change. Tribal communities get jailed for fighting for their rights. That's who we're trying to advocate for. Compared to that, our [issue] is nothing. We could set up another website easily.⁷²

The online blockings, working in tandem with other offline crackdowns, have had adverse effects on free speech. A representative from Stand with Kashmir told us:

This [account blocking] has impacted many volunteers. Since the censorship started, it seems that lots of folks in India and Kashmir have shied away from working with us. They are afraid that their personal information and online activity is being tracked. NIA [National Investigation Agency] raids in Kashmir have added to the fear.⁷³

5. Comparative review

We limit the scope of our comparative legal assessment to laws and jurisprudence that discuss the powers of the government to block content or to send notices to internet intermediaries to block content or services. We highlight the safeguards for content creators present in the laws, as

⁷¹ Interview with Tanul Thakur, journalist and owner of satirical website dowrycalculator.com (Online, India, 15 November 2021)

⁷² Interview with representative, Let India Breathe (Online, India, 22 January 2022)

⁷³ Interview with member, Stand with Kashmir (Online, India, 15 March 2022)

well as if and how courts have intervened to ensure the rights to freedom of expression and due process in the implementation of these laws.

Pakistan

In Pakistan, section 37 of the Prevention of Electronic Crimes Act (PECA) 2016 allows the Pakistani Telecommunications Authority (PTA) to block or issue orders to block online content on many grounds, including national security, public order, and the glory of Islam.⁷⁴ While the law is silent on a pre-decisional hearing or notice, it does explicitly lay out an avenue for appeal.⁷⁵ The law allows “any person aggrieved from any [blocking] order” to file a review application with the PTA.⁷⁶ This implies that not just content creators, but any citizen concerned about the blocking of online content, can approach the PTA. Further, citizens can appeal against the PTA’s review by approaching a high court in Pakistan.⁷⁷

For instance, in 2018, in the lead up to the national elections, the PTA passed an order to block the Awami Workers Party’s website. The political party appealed to the Islamabad High Court, where the PTA claimed that the PECA empowered it to “block websites without notice or affording an opportunity of hearing” to persons affected by the order.⁷⁸ The high court sharply rebuked the PTA’s arguments and underscored the limits of their powers:

This interpretation of section 37 of the [PECA] is in flagrant violation of the fundamental rights guaranteed under the Constitution [...] The principles of natural justice are required to be read in every [statute]. Moreover, [the Constitution of Pakistan] makes it mandatory to observe the requirements of due process before passing an order or taking any actions whereby persons could be

⁷⁴ Prevention of Electronic Crimes Act (PECA) 2016, s 37.

<https://web.archive.org/web/20200716163758/www.na.gov.pk/uploads/documents/1472635250_246.pdf> accessed 28 September 2022

⁷⁵ PECA, s 37(4–5).

⁷⁶ PECA, s 37(4).

⁷⁷ PECA, s 37(5).

⁷⁸ *Awami Workers Party v Pakistan Telecommunication Authority & Federal Government* [2019] 634 HC 1.

<<https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2019/10/Order-in-AWP-Website-Blocking-Case.pdf>> accessed 28 September 2022

adversely affected. The [PTA] is definitely not empowered to pass an order [...] in derogation of the mandatory requirements of due process.⁷⁹

The Islamabad High Court made another intervention in response to online censorship in 2020, striking down an order by the PTA that directed internet service providers to block a popular online game PUBG (which, coincidentally, is currently blocked in India).⁸⁰ The game was later unblocked for citizens of Pakistan.

Overall then, the law in Pakistan (as in India) enables a single executive authority to send content takedown notices to intermediaries, but it includes the possibility for the public to appeal any decision made by this authority. Additionally, the courts have stepped in to ensure the due process rights of citizens.

Brazil

The Brazilian Civil Rights Framework for the Internet (also known as the Marco Civil da Internet) regulates liabilities and responsibilities relating to content on online services and platforms. Article 19 of the law clearly states that online intermediaries do not have any obligation to remove content unless they receive a court order to that effect.⁸¹ Therefore, the executive does not have the unilateral power to censor online material – it has to route all such requests through the judiciary.

This results in the judiciary – ostensibly an independent and ostensibly impartial authority – scrutinising all such content takedown requests. There has been criticism against the judiciary for disproportionately siding with politicians and powerful parties in such lawsuits,⁸² but the safeguards in the law are worth discussing.

⁷⁹ *Awami Workers Party* (n 74). para 2.

⁸⁰ Tahir Naseer, 'IHC Directs PTA to "Immediately" Remove Ban on PUBG' <<https://www.dawn.com/news/1570877>> accessed 28 September 2022

⁸¹ Marco Civil da Internet (Federal) Law No 12.965 2014, Article 19. <http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/26819/bazilian_framework_%20internet.pdf> accessed 28 September 2022. The only exception to this rule is the non-consensual sharing of intimate imagery, given in Article 21.

⁸² Freedom House, 'Brazil: Freedom on the Net 2021: Limits on Content' Freedom House (2021) <<https://freedomhouse.org/country/brazil/freedom-net/2021#B2>> accessed 28 September 2022.

Apart from having the judiciary scrutinise each request, the law through Article 20 directs the online service to contact the content creator on receiving a content takedown order under Article 19, and inform them of “the reasons and information related to the unavailability of the content”, “allowing the adversarial and full defence in court, unless there is express legal provision or express judicial determination based on the contrary.”⁸³ This in-built safeguard enables content creators to directly engage with the judicial process and challenge the censorship in court proceedings. The law also mandates that online service providers replace the affected content with the reasoning that the court provides for censoring the material,⁸⁴ thus promoting transparency of censorship among the general public.

South Africa

Online content takedown in South Africa is primarily regulated by section 77 of Electronic Communications and Transactions 2002.⁸⁵ Any party – including the government – can request internet service providers to block access to online content.⁸⁶ This is an extreme statute – one that goes much further than India’s IT Act – in so far as the law does not contain reference to any procedural or due process rights for individuals or the general public against such complaints.⁸⁷ However, it is important to note that the powers of censorship seem to rarely be exercised by the South African government.⁸⁸ Google reported that it received only four takedown requests in 2021, three in 2020, and none in 2019.⁸⁹ Thus, while the Electronic Communications and Transactions Act lacks protection against online censorship for individuals and organisations using the internet to disseminate information, censorship is rarely executed or demanded by South African authorities in practice.

⁸³ Marco Civil da Internet, Article 20 (n 79).

⁸⁴ Marco Civil da Internet, Article 20 (n 79).

⁸⁵ Electronic Communications and Transactions Act 25 of 2002, s 77.

<<https://www.gov.za/documents/electronic-communications-and-transactions-act>> accessed 28 September 2022

⁸⁶ ECTA (n 66).

⁸⁷ The Internet Service Providers’ Association (ISPA) also maintains a procedure for its members to receive complaints according to the law. This procedure similarly lacks any procedural safeguard for the content creator/owner. However, the ISPA scrutinises all such complaints, and the acceptance rate remained lower than 50% in 2019–2022. See ISPA, ‘Complaints Procedure’ <<https://ispa.org.za/code-of-conduct/procedure/>> accessed 28 September 2022; ISPA, ‘Take-down Statistics’ <<https://ispa.org.za/tdn/statistics/>> accessed 28 September 2022

⁸⁸ See Freedom House, ‘B. Limits on Content’

<<https://freedomhouse.org/country/south-africa/freedom-net/2021#B>> accessed 28 September 2022

⁸⁹ Google, ‘Government Requests to Remove Content’

<<https://transparencyreport.google.com/government-removals/overview?hl=en>> accessed 28 September 2022. For comparison, Google received 3,643 content takedown orders from Indian state authorities in 2021, 1,880 in 2022, and 1,666 in 2019.

Russia

Russia's Information Act 2006 allows the executive to issue blocking orders to the telecommunications regulator Roskomnadzor, which is tasked with coordinating online censorship and maintaining a register of blocked websites and webpages.⁹⁰ After receiving a blocking notification from Roskomnadzor, the hosting service provider (of the website) must inform the website owner and ask them to remove the information on their own. If that fails, the hosting and internet service provider are ordered to remove the content and block access to it, respectively.⁹¹

Thus, the law delegates a part of the due process – notifying the affected party – to an intermediary. The law also explicitly notes that all involved parties (website owner, hosting service provider, or internet service provider) can challenge the decision before a court.⁹²

The compliance of the implementation of the law with the European Convention on Human Rights was brought up in a set of cases before the European Court of Human Rights (ECtHR).⁹³ Pertinently, in *Vladimir Kharitonov v Russia*, the petitioner claimed that their website was blocked without notice, as a result of being hosted on the same server as another website that the Russian government had intended to block.⁹⁴ In *OOO Flavius and Others v Russia*, three media outlets found their websites blocked in Russia.⁹⁵

⁹⁰ *Vladimir Kharitonov v Russia*, para 12 <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203177%22%5D%7D>> accessed 28 September 2022

⁹¹ *Vladimir Kharitonov* (n 88), para 12.

⁹² *Vladimir Kharitonov* (n 88), para 12.

⁹³ *OOO Flavius and Others v Russia* <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203178%22%5D%7D>> accessed 28 September 2022 ; *Bulgakov v Russia* <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203181%22%5D%7D>> accessed 28 September 2022 ; *Engels v Russia* <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203180%22%5D%7D>> accessed 28 September 2022 ; *Vladimir Kharitonov* (n 88). See a summary of the judgements here: Guest Blogger, 'The Strasbourg Court Establishes Standards on Blocking Access to Websites' (*Strasbourg Observers*, 26 August 2020) <<https://strasbourgobservers.com/2020/08/26/the-strasbourg-court-establishes-standards-on-blocking-access-to-websites/>> accessed 28 September 2022; and a India–Russia comparison here: Gurshabad Grover and Anna Liz Thomas, 'Notes From a Foreign Field: The European Court of Human Rights on Russia's Website Blocking [Guest Post]' (*Indian Constitutional Law and Philosophy*, 5 February 2021) <<https://indconlawphil.wordpress.com/2021/02/05/notes-from-a-foreign-field-the-european-court-of-human-rights-on-russias-website-blocking-guest-post/>> accessed 28 September 2022

⁹⁴ *Vladimir Kharitonov*, para 22–24 (n 88).

⁹⁵ *OOO Flavius*, para 4 (n 91).

In both cases, the ECtHR was dissatisfied with the fact that the petitioners received no notice and that they were not involved or heard in an impartial and independent proceeding before the blocking.⁹⁶ The ECtHR deemed both instances violations of the right to freedom of expression and the right to effective legal remedy.⁹⁷

Like in India, the law in Russia empowers an executive authority to issue blocking orders. However, the Russian law is much clearer in stating that affected parties will be involved in a hearing before an order is carried out. However, unlike in India, the judiciary (of the ECtHR, in this case) has intervened to ensure due process rights.

6. Limitations

There are some limitations to our analysis. First, we pulled our list of potential respondents from the Lumen database which is a research database of takedown orders and/or actions hosted by the Berkman Klein Center for Internet & Society. Contributing to the database is voluntary and, for India, only Twitter and Google contribute information about content takedown. Thus, in our initial sample, Twitter accounts and posts were over-represented.

Second, given the total volume of content takedown orders sent and websites blocked (as an illustrative example, 9,849 accounts/URLs in 2020), our sample size of 8 respondents is not large enough to make conclusive statistical statements about what percentage of content owners receive a pre- or post-decisional hearing under the law. Many of our respondents were easy to contact, being public-facing figures and organisations. We should also note that we approached Stand for Kashmir and bannedthought.net for interviews because they had published the notices they had received from the government. In reality, the proportion of content creators who receive a notice or hearing might be much lower overall.

7. Conclusion

Section 69A of the IT Act and the Blocking Rules outlines the procedures for and the situations in which the Government of India is empowered to block public access to specific online

⁹⁶ *Vladimir Kharitonov*, para 44 (n 88); *OOO Flavus*, para 40 (n 91).

⁹⁷ *Vladimir Kharitonov*, para 57 (n 88); *OOO Flavus*, para 55 (n 91).

resources. Intermediaries that do not comply with blocking orders may have to pay fines and/or face imprisonment for up to seven years, in addition to potentially being liable for the affected content on their platforms. In light of such broad consequences, the judgement in *Shreya Singhal* defends the offline freedom of speech rights guaranteed by Article 19 of the Constitution of India for the digital sphere, and underscores the procedural safeguards in place to catch and reverse violations of this fundamental right.

A review of the literature and pending cases before the court argue that this is not always the case: blocking orders are confidential and often unavailable to content creators; the review committee responsible for examining and passing these orders does not meet frequently enough to seriously scrutinise the extent and volume of blocking orders passed. Further, the implementation of section 69A and the Blocking Rules may also violate judicial precedent on the right to constitutional remedies.

Through our interviews, we learned that content owners are often unaware that their content has been blocked by the government. Moreover, the process to get answers about why their online content was blocked are opaque and inaccessible even to the most motivated. Even RTI requests do not yield clarifying information due to the confidentiality requirement present in the Blocking Rules and may leave the content owners confused about how to engage with an opaque legal process.

While interviewees had mixed views on interfacing with the government after the fact of blocking, most asserted their interest in receiving a pre-decisional hearing. The inclination towards legal and media engagement also varied by context, with financial costs and personal/organisational resilience being the prominent factors in the decision-making process. Content owners also viewed online blocking as an encroachment on their right to free speech, as guaranteed by Article 19 of the Constitution. Many of our respondents expressed grave concern that the censorship regime threatens the general health of public discourse in the country.

Overall, the interviews in this report contribute evidence to the claim that online censorship by the Government of India unreasonably restricts freedom of expression in the country and impedes the constitutionally guaranteed right to remedy.

Our comparative review demonstrates that of the countries we studied, South Africa is the only one with safeguards that are comparably poor or worse off than India's. However, this is countered by the fact that the South African government rarely engages in online censorship. Brazilian law has the most procedural safeguards built in, routing all content takedown through the judiciary and immediately providing an avenue of appeal to the affected content owners, while ensuring transparency to the general public.

Of special note were jurisdictions like Pakistan and Russia, where the law is similar to India, in the sense that the executive has the unilateral power to block online resources. In these countries, however, the laws explicitly enable avenues for legal remedy. Additionally, in Pakistan and Russia, courts have stepped in when blocking decisions were made without the involvement of the content owner, and severely rebuked the executive. Such judicial intervention sets a precedent that has notably been lacking in India.

The Constitution of India guarantees freedom of expression to Indian citizens, and the judgement in *Shreya Singhal* defends these offline rights for the digital sphere. With more personal and political conversations and businesses moving online, it is important to protect against the capture of the digital public sphere by an unaccountable executive, and extend appropriate checks and balances to prohibit the unreasonable censorship of online content.

Table 1:

Theme/ Interview	Tanul Thakur	Sanjukta Basu	There is No Earth B	Vinod Jose (Caravan)	Fridays for the Future	Let India Breathe	Stand With Kashmir	Banned Thought
Blocked/ Withheld Content	Satirical website: dowrycalcultor.com	Twitter Account	Organisation Website	Caravan Twitter Account	Organisation Website	Organisation Website	Webiste blocked; Instagram, Facebook, Twitter posts and accounts have been withheld previously	Website blocked in India
Time	2018	2021	2020	2021	2020	2020	2020-2021	2018
How they found out about content blocking	A friend	Followers saw a content withheld message on the account	Users saw a content blocked notice on the website	Social media manager couldn't access the Twitter account	Members and users could not access website	Members and users could not access website	Members and users could not access website and socials at different times	Government sent a notice that the webiste was going to be blocked
Notice from the Gov?	No	No	No	No	No	No	Yes	Yes
Notice from intermediary?	No	Yes - after blocking	No	Yes - after blocking	Yes - domain registrar sent an email after blocking	No GoDaady later told them that NIXI reached out for blocking, but no details	Yes Twitter sent emails about Government orders	No
Owner accessible online	Yes	Yes	Yes Contact page on website Public WHOIS Twitter DMs were open	Yes Editorial masthead is public Contact page has emails	Yes Public WHOIS at the time Contact form on the website	Yes Website has contact information	Yes Website has contact information	Yes
Wanted a hearing?	Yes	Yes	Maybe - only if legal representatives could be sent	Yes	Yes	Yes	No - afraid for represntatives' prosecution	No - afraid for represntatives' prosecution
Gov and judicial contact initiated	RTI Writ petition in Delhi HC	None	None	None from the Caravan team A freelancer filed an RTI on the incident	Filed repsonse to Delhi Police. Were told that UAPA was a mistake and the new order was sent through the IT Act	Sent emails to MEITY and NIXI; IFF sent notes to Delhi Police and DoT; Same as FFF. Planned to go to court if the website was not restored;	No Worked with SFLC and Access Now but decided to pursue legal action	No
Status 2022	Website still blocked Case pending in the Delhi HC	Twitter account restored	Website restored and blocking reverted. No reasons mentioned	Twitter account restored	Website restored and blocking reverted. No reasons mentioned	Website restored and blocking reverted. No reasons mentioned	Website still blocked; Deactivated Twitter, FB and IG still active but low reach	Website still banned

Source: Authors' compilation