

## **A Call for Amendments of ICCPR to Uphold Freedom of Expression Online (A Case Study of Iran)**

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### **Abstract**

In the digital era, internet censorship poses a significant threat to freedom of expression, particularly evident in Iran where government-imposed filtering firmly restricts online discourse. Despite scholarly attention to censorship's mechanisms, gaps in international conventions like the International Covenant on Civil and Political Rights (ICCPR) remain understudied. This research examines internet censorship in Iran to identify ICCPR deficiencies enabling online expression restrictions. Employing qualitative methods, it scrutinizes data from diverse sources, including library, electronic, interviews, and reports. The paper traces Iran's history of censorship, delineates its impact on expression, and critiques the limitations of the ICCPR. The findings advocate for revisions to the ICCPR, advocating for transparent aims, publication of restrictions, designated oversight bodies, and recognition of the right to remedy. Incorporating insights from Iran, this study urges policymakers to fortify international legal frameworks, fostering a democratic digital space globally while respecting legitimate concerns.

**Keywords:** Freedom of Expression, Human rights, ICCPR, Internet Censorship, Iranian Legal System, UDHR.

## Introduction

In the digital age, the internet is crucial for communication and information access<sup>1</sup>, but many countries are increasingly implementing internet censorship (Zittrain et al., 2017). This is a major issue in Iran, where government filtering limits online freedom of expression<sup>2</sup>. Understanding this requires defining key terms: "internet censorship" refers to government control of internet access (Agarwal & Chakravarty, 2016; M. Zhang & Yang, 2020), while "freedom of expression" is the right to share opinions and ideas<sup>3</sup>. Internet censorship clearly violates this right by restricting access to information online.

Many scholars have studied how internet censorship affects online freedom of expression, but there is limited research on how gaps in international conventions, including the International Covenant on Civil and Political Rights (ICCPR), contribute to these restrictions. This study aims to fill this gap by examining how internet censorship in Iran relates to these gaps in the ICCPR. Iran's severe internet censorship makes it a useful case study for understanding this relationship and could help in drafting future amendments to the ICCPR. Therefore, this study seeks to answer two central questions: What are the gaps in the ICCPR that can facilitate the restriction of freedom of expression through internet censorship in Iran? How can these gaps be filled using Iran's practical experiences?

This research utilizes a qualitative method to deeply examine and interpret data on internet censorship and freedom of expression issues, focusing on the ICCPR's gaps. By combining qualitative and analytical methods, the study aims to advance understanding of these issues, using data from library and electronic sources, as well as interviews and reports from experts. Despite challenges in obtaining reliable data due to government secrecy and the limited scope focusing

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<sup>1</sup>. There are over 5.3 billion people using the Internet, which means that over 65% of the world's population is connected. (Shewale, 2024)

<sup>2</sup>. The organization Reporters Without Borders divides countries that censor the Internet into two main categories: Enemies of the Internet and Surveillance States. Enemies of the Internet are countries that use Internet censorship as part of a larger effort to oppress and control their populations, for example: Bahrain, Belarus, Bangladesh, China, Cuba, Ethiopia, India, Iran, North Korea, Pakistan, Russia, Saudi Arabia, Sudan, Syria, Turkmenistan, United Arab Emirates, United Kingdom, United States, Uzbekistan, and Vietnam (Countries That Censor the Internet 2024)

<sup>3</sup>. Article 19 of The Universal Declaration of Human Rights (UDHR); Article 19 of the International Covenant on Civil and Political Rights (ICCPR)

on Iran, the research seeks to provide valuable insights into human rights and online freedom of expression, paving the way for future research and advocacy.

The paper starts by exploring the history of internet censorship in Iran to provide context for the current state of online freedom of expression in the country. It then discusses the impact of this censorship on free speech, showing how filtering limits online discussions and self-expression. The article reviews the framework for restricting online expression, particularly the ICCPR's inadequacies. It concludes with a summary of key findings and recommendations for further research and action, stressing the need for continuous efforts to protect internet freedom in Iran and worldwide.

### **Background: History of internet censorship in Iran**

In early 1993, Iran became the second Middle Eastern country to connect to the public Internet (Rahimi, 2003). By 1999, there were around 418,000 Iranian internet users, a number that has grown significantly since 2000 (Kalhor, 2022). By 2024, Iran is expected to have 84.82 million internet users, with a penetration rate of 94.45% (Statista, 2024). Iran's internet policy is influenced by the 1979 Islamic Revolution, leading conservative groups to push for a "Halal Internet," which restricts access to content based on strict Islamic law (Rhoads & Fassihi, 2011).

Iran's internet policy prioritizes development and protection against risks by censoring inappropriate content (Khamenei, 2002, 2015). In 2000, Iran introduced its first internet policies through "General Policies of Computer Information Networks." A committee established in 2001 initially provided a list of 111,000 prohibited websites, instructing ISPs to block them, while the judiciary also independently censored some sites (Kalhor, 2022). In 2006, Iran's SmartFilter allowed access to Persian-language sites but restricted popular English-language ones like the BBC (Tait, 2006). That year, an official stated Iran had blocked ten million websites, with the judiciary requesting an additional 1,000 sites be blocked monthly (Asriran, 2006). In 2008, reports indicated about 5 million more websites were banned (AFP, 2008). Currently, the exact number of banned websites is unknown due to a lack of official statistics.

In 2009, numerous websites were restricted during widespread protests following a controversial presidential election. Platforms such as Facebook and X (formerly Twitter) were subsequently blocked (Khanizadeh, 2023). Following the 2009 election protests, Iran implemented the Computer Crimes Law (CCL) to control internet content. Since 2010, the leader of the Iranian revolution has directed Iran's presidents to establish a domestic intranet, the National Information Network (Mehr News Agency, 2020). In 2012, the Iranian Ministry of Information and Communication Technology initiated trials for a nationwide "national internet" network to replace services accessed through the World Wide Web (The Guardian, 2012). During the 2017-18 Iranian protests, the government imposed restrictions on

internet access on mobile networks and blocked several websites and popular apps like Telegram to control the protests (NPR, 2018). Prior to 2017, Iran had never closed off international internet access.

In November 2019, during the fuel protests in Iran, the Iranian government implemented a widespread internet shutdown, beginning with cellular providers disconnecting on November 16 (Esfandiari, 2020). Internet access was fully restored by November 27. After the death of Mahsa Amini in September 2022, new protests led to the government restricting internet and mobile phone access, limiting platforms like WhatsApp and Instagram (Zad, 2022). NetBlocks described these limitations as the most stringent since November 2019 (Burgess, 2022).

### **Impact of Internet Censorship on Freedom of Expression**

The UDHR and the ICCPR guarantee the right to freedom of expression. Two decades ago, the internet emerged as a platform for political movements, enabling revolutions like the Arab Spring and East Timor's independence (Benedek & Kettemann, 2013; Momen, 2019). However, governments quickly implemented censoring mechanisms to restrict online content, contravening the right to freedom of expression guaranteed as a human right by the UDHR and the ICCPR, especially when targeting political criticism (Ziccardi, 2013).

The United Nations Human Rights Council adopted a resolution in 2012 to safeguard human rights online, emphasizing that the rights protected in the real world should also be protected in the virtual world (UN Human Rights Council, 2012). However, increasing government restrictions on online access have led to a global decline in internet freedom and significant infringements on freedom of expression, demanding urgent attention from international organizations and civil society (Cristiano, 2019; Shahbaz & Funk, 2020).

Internet censorship negatively affects freedom of expression by limiting access to diverse information, creating an atmosphere of fear that leads to self-censorship, and silencing the online public sphere, thereby hindering open dialogue and the ability to challenge authority. These issues are addressed in the context of Iran as follows.

### ***Restricting Free Flow of Information***

The principle of the free flow of information is widely accepted worldwide, referring to the unrestricted sharing of information (Becker, 2014). However, the principle requires the ability to access the internet in the current era (Flanagin & Metzger, 2000). The internet is seen as a freer medium compared to traditional media, which often face strict censorship (Papacharissi, 2002). Many people now rely on social media and websites as their main news sources, making unhindered internet access crucial for the free flow of information (Shearer, 2021).

Many countries have successfully implemented measures to restrict both access to the internet and the information available on it (Deibert, 2003), impeding the free flow of information by limiting access to high-quality and accurate sources (Lazer et al., 2018; Pasquetto et al., 2020). The United Nations Human Rights Council has urged all states to promote and facilitate access to the internet and international cooperation for the development of media, information, and communication equipment worldwide (UN Human Rights Council, 2012). In 2016 and 2018, this Council passed resolutions that strongly criticized governments for excessively restricting online access to information, emphasizing that such actions violate international human rights law (UN Human Rights Council, 2016, 2018).

In 2010, the Iranian parliament enacted the "Publishing and Free Access to Information Law," which grants Iranians the right to access information.<sup>4</sup> However, the law does not fully guarantee the free flow of information and introduces numerous unpublishable contents.<sup>5</sup> Additionally, although the constitution of Iran protects freedom of the press unless the content of the news violates the basic principles of Islam or the rights of the public, the Press Law 2000 has significantly increased the number of unpublishable contents. Consequently, if these contents are published online, the publisher's website or platform will be subject to filtering by relevant authorities.

According to some reports, Iran censors dissident websites and regulates news content critical of the government, particularly during periods of political unrest (Freedom House, 2019). Based on this information, some foreign news agencies' websites, both in Persian and non-Persian languages, such as BBC, Fox News, CNN, and VOA, have been filtered in Iran (IFMAT, 2020). Additionally, some news website has been subject to multiple instances of censorship, including cases when it has been blocked for criticizing government officials (Ensafnews, 2023; Tasnim, 2016; Zitoons, 2016).

In such circumstances, Internet censorship impedes it, which is crucial for a functioning democracy (Tabnak, 2023). When media outlets selectively share content to avoid censorship, it limits people's access to comprehensive information about political matters, leading to uninformed decisions (Becker, 2014). In countries with pervasive news censorship, information is often distorted (Tehrato, 2023).

### *Self-Censorship*

In a democratic system that values individual liberty, the right to freely hold and express opinions is crucial both for personal development and for the health of democratic processes (Kakungulu-Mayambala, 2008). It also shields citizens from

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<sup>4</sup>. Article 2 of Publishing and Free Access to Information Law

<sup>5</sup>. Articles 13-17 of Publishing and Free Access to Information Law

external pressures and censorship, allowing them to share their views without fear of reprisal (UN Human Rights Committee, 2000; Y. Zhang, 2010).

External interference can lead individuals to self-censor their opinions to avoid repercussions (Boronow, 2012; Day, 2021; Ong, 2019). This self-censorship can cause negative emotions like inferiority, anger, and stress, negatively affecting relationships, creativity, and productivity (Adamska, 2017). It also results in passivity in decision-making (Timming & Johnstone, 2015), undermining democratic rights to expression and participation (Festenstein, 2018).

Scholars argue that widespread internet censorship can result in self-censorship (Deibert, 2003; Lagerkvist, 2005). According to various reports (Ziapor, 2022), In Iran, internet censorship is so extensive that a parliament member has called it "filternet" (ILNA, 2024), creating a fearful atmosphere among users who worry about the potential closure of their websites or social media accounts if they inadvertently cross regulatory boundaries (Hachigian, 2002). This fear leads individuals to be cautious and selective about what they share online (Dadge, 2005; Salmasi et al., 2022).

### *Stifling Public Sphere*

The public sphere is where public opinion forms through reasoned arguments in public discourse (Habermas, 1989). With the rise of the internet, it was expected to become a modern public sphere due to its use for public communication (Zixue, 2006). Scholars have suggested various criteria for an online space to qualify as a public sphere, including autonomy from power, moral-practical exchange, reflexivity, ideal role-taking, sincerity, and equality (Dahlberg, 2001). Alternatively, other scholars argue that an online public sphere should focus on discourse space, inclusivity, political relevance, and merit-based judgment of ideas (Poor, 2005).

For the criteria to be met, internet accessibility is essential. Indeed, the realization of these criteria depends on people having unrestricted internet access (Gruičić, 2011). Censoring the internet makes it inaccessible, limiting public discourse. Many online platforms serve as public spaces where people discuss important issues. However, in Iran, major social media platforms like Instagram, Telegram, Twitter, YouTube, Facebook, and WhatsApp face filtering (Euronews, 2023; Kemp, 2023). Thus, Iran's internet fails to meet the requirement of accessibility for an online public sphere.

In the online public sphere, freedom of expression allows people to engage with diverse ideas, but internet censorship hinders this, limiting critical thinking and personal growth (Redish, 1982; Scanlon, 1977). Open debate is essential for discovering truth, and assuming that authorities of a country are infallible is a mistake (Barendt, 2005; Mill, 2003). By censoring opinions, authorities risk



suppressing the very ideas that could lead to a better understanding of an issue (Schauer, 1982).

### **Framework of Restricting Freedom of Expression Online**

All member states of United Nations must respect human rights and fundamental freedoms, including freedom of expression,<sup>6</sup> which is not absolute. That is, governments must lawfully restrict online harmful content, but their actions must be in accordance with international law. To safeguard internet censorship according to the ICCPR rulings, it must be based on legitimate aims, determined by law, implemented cautiously, and allow individuals the right to remedy freedom of expression violations (Shepherd, 2017). This section critiques Iran's approach to this framework, highlighting the ICCPR's shortcomings and the need for future amendments.

#### ***Legitimate Aim***

While the UDHR and the ICCPR guarantee numerous freedoms, they can only be restricted to uphold legitimate aims (Burdiak & Szalai, 2021). With regard to freedom of expression, these purposes include the protection of the rights and reputations of others, the safeguarding of national security and public order, the ensuring of public health and morals<sup>7</sup>, and the prohibition of the promotion of war or hatred based on nationality, race, or religion<sup>8</sup>.

The use of vague terms such as "safeguarding public order," "safeguarding national security," and "ensuring public morals" can lead to significant limitations on freedom of expression online due to their interpretability (Ayalew, 2020; Gunatilleke, 2021). Some researchers have posited that restrictions may also pursue other legitimate aims (Carrillo et al., 2023). However, the authors of the declaration and the convention intended these terms to constitute the end limits on freedom of expression. That is, it is not permitted to impose restrictions on grounds that have not been specified, even if such grounds would justify the imposition of restrictions on other rights that are protected by the Covenant (UN Commission on Human Rights, 1985; UN Human Rights Committee, 2011). Thus, expanding the limitations on freedom of speech through interpretation seems to contradict the rulings made in these international documents<sup>9</sup> (Kučs, 2006).

In 1948, Iran voted in favor of the UDHR (UN Department of Public, 1949). Subsequently, in 1975, the country ratified the ICCPR without any reservations.

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<sup>6</sup>. United Nations Charter, Chapter VI: Pacific Settlement of Disputes

<sup>7</sup>. Article 19 (3) of ICCPR.

<sup>8</sup>. Article 20 of ICCPR.

<sup>9</sup>. Articles 29 (2) and 30 of UDHR.; Article 5 (2) of ICCPR.

Then any kind of restriction on the freedom of expression, including filtering the internet, in Iran must align with the legitimate aims presented in the aforementioned documents.<sup>10</sup> In the absence of a legal obligation to disclose the objectives of internet filtering by state parties in accordance with the ICCPR, the Iranian government has frequently refrained from disclosing the rationale behind such measures. In exceptional instances, they have provided the underlying reasons for internet censorship as follows:

The primary aim is to safeguard national security, which results in the censorship of many websites and platforms (Palizban, 2015). The Islamic Republic of Iran restricts access to parts of the international internet that could be used as tools by political opponents to undermine the political system. For instance, during protests, such as those in 2017-18 (Fars News Agency, 2018), November 2019 (IRNA, 2019), and September 2022 (Burgess, 2022), the government blocked internet access and filtered apps like Instagram, Telegram, and WhatsApp to quell unrest (Eghtesadonline, 2018; ISNA, 2019). The second aim of restricting online freedom of expression is to protect cultural and religious values (IRNA, 2017). Websites offering content against morals, religion, and human dignity should be censored, with 1,000 to 1,500 websites censored monthly (Tasnim, 2013). The third aim of internet censorship is to prevent the dissemination of illicit content, including material that could facilitate criminal activity. In 2020, the Deputy Prosecutor General of Iran reported that 73,000 gambling, phishing, and fraud websites had been blocked (IRNA, 2020).

The stated aims are largely consistent with those outlined in the declaration and convention. However, internet censorship in Iran frequently pursues objectives that are not publicly disclosed. For example, over the past decade, numerous websites, including SoundCloud and Spotify have been intermittently filtered. This filtering was conducted without any public announcement of the objectives (Engoo, 2017). In order to reform the UDHR and ICCPR in the future, the experience of Iran's internet censorship can serve as an example that all state parties must clearly be committed to stating their aims before censoring freedom of expression online. This reformation will enable people to assess the legitimacy of governmental censorship.

### ***Provided by Law***

The imposition of restrictions on freedom of expression online can only be justified if they are clearly defined by law<sup>11</sup> (Burdiak & Szalai, 2021). Such

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<sup>10</sup>. Article 9 of the Civil Code of Iran stipulates that the provisions of international treaties concluded between the Iranian government and other countries in accordance with the constitution shall be considered domestic law.

<sup>11</sup>. Article 19 (3) of ICCPR



restrictions must be enacted through a legislative or legitimate rule-making process, be publicly available, and be sufficiently clear for individuals to understand the law and act accordingly (UN Human Rights Committee, 2011; Vitkauskaitė-Meurice, 2011). Furthermore, courts can clarify the ambiguities of a law that restricts freedom of expression online, but if a judicial interpretation is arbitrary, it may violate the principle of legality (Carrillo et al., 2023).

Iran has asserted its commitment to the principles of free speech online by ratifying and endorsing the UDHR and the ICCPR. However, the country's internet censorship institutions possess considerable autonomy and authority, which has the effect of diluting the centrality of the law and rules of the above documents in determining censurable content. This is because these institutions are responsible for determining which content must be censored. The latest regulations enumerate the current bodies responsible for internet censorship as follows:

1) The Supreme Council of Cyberspace, established in 2012 by the leader of the Iranian revolution, makes decisions about the country's cyberspace. In 2013, the National Cyberspace Center was created as a subset of the council to enhance domestic internet capabilities and protect against foreign platform dominance. The center is responsible for internet filtering and is directly involved in internet censorship in Iran.<sup>12</sup> 2) The Supreme National Security Council, headed by Iran's president, can issue urgent filtering orders for internet censorship,<sup>13</sup> such as banning WhatsApp and Instagram or imposing internet blackouts (Hamshahronline, 2023). These decisions are communicated after implementation. 3) The Committee for Determining Criminal Content, also known as The Filtering Committee, is responsible for issuing filtering orders under judicial oversight and must report to the heads of the three powers and the Supreme National Security Council.<sup>14</sup> Before the 2022 protests, its website was used to update censurable online content, but it is now inaccessible.<sup>15</sup> The government now distributes new lists of censurable content through media outlets.<sup>16</sup> 4) The Iranian judiciary participates in internet censorship via its courts, especially when a private plaintiff is involved.<sup>17</sup> For instance, the Telegram app was censored through a judicial order following a

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<sup>12</sup>. Article 4 (2-10) of the statutes of the National Center of Cyberspace

<sup>13</sup>. In accordance with Article 176 of the Constitution of Iran, this organization is tasked with the establishment of defense and security policies, the coordination of various activities related to defense and security measures, and the utilization of the country's resources to address both internal and external threats.

<sup>14</sup>. Article 21 of the CCL

<sup>15</sup>. Now, this domain is not available: <https://internet.ir>

<sup>16</sup>. For example, announcement of a new list of examples of criminal content related to health and public health in January 2024, Announcement of the list of criminal cases of gambling and betting in October 2023.

<sup>17</sup>. Note 2 of Article 21 of CCL.

private complaint (ISNA, 2018). Only those directly involved in the case are informed of the decision, while the general public learns of it only after it is enforced.<sup>18</sup>

The current situation is a major challenge. Before implementing restrictions on the freedom of expression, it is crucial to clearly and publicly publish and communicate them (Aswad, 2020). In fact, the authors of the ICCPR did not mention the crucial issue of transparency in censoring because they may have assumed that clear and public publication and communication are synonymous with the introduction of any law. Consequently, if the cases of internet censorship are to be collectively and precisely determined in law, there will be no problem in terms of transparency because all regulations would be made known to the public before being enforced. However, if the law gives an institution the power to determine cases of internet censorship, there may be a lack of transparency if local law does not require that institution to publicize its decisions. To date, Iran has not given sufficient weight to this issue, which could result in the blocking of individuals' websites or accounts without prior notice of the restrictions. This is because not only does the ICCPR not require state parties to publicize cases of Internet censorship before they are implemented, but also Iranian law does not require censorship institutions to publicize their decisions. Therefore, it is recommended that the ICCPR be amended in the future to require states to clearly publish and communicate any restrictions on freedom of expression before implementing them.

### *Necessary*

In accordance with the ICCPR, expression online must only be filtered when it is deemed "necessary" to meet a legitimate purpose. However, the precise nature of necessity and the manner in which it should be practically applied remains unclear in the convention (Shepherd, 2017). Postponement of restrictions to prove the necessity is a worthy action, but such a gap in its nature and how to implement it can certainly damage the freedom of expression online. Iran serves as a case study illustrating the necessity for future amendments to the ICCPR to address the aforementioned gap. In fact, the element of necessity for internet censorship in Iran has never been adequately addressed. There are numerous instances where the authorities have failed to justify the censorship measures as a necessity, including the case of blocking Instagram and WhatsApp.

During the 2022 protests in Iran, the Supreme National Security Council blocked Instagram and WhatsApp (Hamshahrionline, 2023). Prior to this action, no justification was provided for the necessity of filtering these two apps. Notwithstanding, after a day, under the pressure of public opinion, the reason for

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<sup>18</sup>. Article 300 of the Civil Procedure Law 2000; Article 380 of the Criminal Procedure Law 2014,

filtering these two apps was merely stated to be national security considerations. The government has posited that terrorist ideologies are learned through social media during times of protest (Borna News, 2002). In spite of that the belief of the state, which has a responsibility for internet censorship, is not a sufficient reason to justify the necessity of filtering. Rather, conditions for its application must be met. Moreover, it was anticipated that Instagram and WhatsApp would be unblocked following the conclusion of the protests. Nonetheless, these two platforms have remained inaccessible since the end of the wave of protests (Fardanews, 2022; Tabnak, 2022). The Iranian government has announced that the removal of filters on these social media platforms has been postponed until their companies are accountable to the Iranian government. This is to prevent similar events from occurring in the future (Astaneh, 2023). However, this decision has been met with criticism, as filtering these platforms is not necessary for the country under normal circumstances, in which national security is not under threat (Khabaronline, 2023). Given the ambiguities in the convention, any objections to the aforementioned procedure can be dismissed since these ambiguities are the root cause of this chaos.

To forestall a recurrence of similar cases in the future, it is imperative that the forthcoming amendments to the convention address a number of key points. Firstly, the concept of necessity must be defined. Generally, the necessity mentions a situation in which there must be a direct and immediate connection between the expression online and the threat to the legitimate aim (UN Human Rights Committee, 2000). Nevertheless, in order to provide a more comprehensive understanding of the concept, it is essential to consider the following points: 1) any evaluation of this relationship must be based on objective considerations, made on a case-by-case basis, and the nature of the freedom of expression<sup>19</sup> (UN Commission on Human Rights, 1985; UN Human Rights Committee, 2011).

2) The use of internet censorship should be considered a last resort (Pitaksantayothin, 2014). It is of paramount importance to prioritize the protection of freedom of expression online, even when attempting to achieve other legitimate objectives. Therefore, if these objectives can be accomplished through means that do not impinge upon freedom of expression online, those alternatives should be considered (UN Human Rights Committee, 2011). There are a number of alternative approaches to internet censorship, including collaboration with global platforms and websites, the implementation of age verification protocols, and the labeling of inappropriate content. In addition, the promotion of media literacy is a further option.

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<sup>19</sup>. Hak—Chul Shin v. Republic of Korea, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (2004)

3) The scope of internet censorship must be commensurate with the perceived threat posed by the underlying legitimate aim<sup>20</sup> (UN Commission on Human Rights, 1985). In other words, the Internet can be censored to the extent necessary to protect a legitimate aim (Shepherd, 2017). Thus, it has been proposed that the selected restriction should not be more than necessary to protect a legitimate aim, but should always be the least restrictive option among all available choices (Carrillo et al., 2023; UN Human Rights Committee, 2011).

4) Internet censorship should be proportionate in terms of time. Indeed, the rationale behind censorship is not a constant issue but rather contingent on the immediate needs of society. Consequently, censoring should be based on current needs assessments, neither past nor future (UN Commission on Human Rights, 1985). Therefore, the duration of internet filtering must be clearly determined, as the variable needs of the community make permanent internet censorship impractical.

Secondly, each country party should determine at least one authority to verify the necessity of restriction. Indeed, state authorities are better positioned than international judges to provide an informed opinion on the necessity of a restriction intended to protect legitimate aims. Consequently, it can be argued that the onus of proving the necessity of internet censorship should lie with a local authority. In other words, a state party must demonstrate a direct and immediate correlation between speech online and threats to legitimate purpose (Ayalew, 2020; UN Human Rights Committee, 2011). Otherwise, the restriction of freedom of expression through the censoring of websites, platforms, and other digital content is not permitted.

### ***Right to a Remedy***

One fundamental tenet of legal systems is that victims of any unlawful act must have the capacity to have come to assert their rights before any national or international body (Agbor, 2017). Based on that, the writers of the ICCPR were also concerned with advocating the necessary capabilities for individuals to have come to assert the rights guaranteed in the Covenant. In fact, each country that is a party to the ICCPR is responsible for ensuring that the rights and freedoms guaranteed by the Covenant are respected within its territory at first<sup>21</sup>. However, if one rights is violated, the government should provide an effective remedy to redress for the harm suffered and should be capable of addressing the violation

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<sup>20</sup>. Rafael Marques de Morais v. Angola, No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002 (2005)

<sup>21</sup>. Article 2 (1 and 2) of ICCPR.

appropriately<sup>22</sup>. The obligation of a state party to provide effective remedies is an essential component of international human rights laws (Shelton, 2015).

The right to remedy is a legal entitlement that guarantees a person who has suffered a human rights violation the right to an effective remedy for that violation (Garner, 2004). The right to an effective remedy cannot be exercised if there is no actual violation in the past or present (Agbor, 2017). Reparation may encompass restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, and changes in relevant laws and practices (UN Human Rights Committee, 2004). It may also include the prosecution of those responsible for human rights violations<sup>23</sup>. That is, individuals are able to object to actions and decisions violating the rights guaranteed in the judicial system. This entails, among other things, ensuring that a victim of a human rights violation has the right to have his or her case heard by an independent, impartial, and duly constituted court, tribunal, or forum<sup>24</sup>.

The freedom of expression is one of the most fundamental rights acknowledged within the ICCPR<sup>25</sup>. Its preservation and promotion have consistently been a focal point for the United Nations, reflecting its paramount importance in fostering democratic societies worldwide (UN Human Rights Committee, 2011). The ICCPR's rulings guarantee that individuals alleging violations of their rights, including freedom of expression online, were afforded equitable and efficient avenues to seek redress<sup>26</sup>. Consequently, a state party to the Covenant should ensure that the right to remedies is reflected in domestic laws, before the freedom of expression online is restricted by itself<sup>27</sup>.

In Iran, the remedy for violations of freedom of expression online has never been addressed as a right in local regulations. However, there is a type of these remedies through objection to some filtering decisions. Indeed, the institutions with the power to filter the internet are classified in three parts in terms of the objectionability of their decisions: 1) Objectionable: In the event that filtering is based on the decisions of the Filtering Committee, there is a possibility to object to or appeal them for anyone (Behdadi et al., 2023). 2) Limited objectionable: On the condition that a website or platform is filtered by a judicial order of a court, only the litigants may appeal this decision of the court. This implies that other individuals are unable to appeal, despite being affected by the filtering of a website

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<sup>22</sup>. Article 2 (3) (A) of ICCPR; Principle 11 of Basic Principles and Guidelines 2005 (BPGs).

<sup>23</sup>. Article 2 (3) (B) of ICCPR.

<sup>24</sup>. Principles 2 (D) and 12 of BPGs.

<sup>25</sup>. Article 19 of ICCPR.

<sup>26</sup>. Article 2 (3) (A and B) of ICCPR.

<sup>27</sup>. Principle 12 of BPGs.

or platform<sup>28</sup>. 3) Non-Objectionable: Supreme National Security Council orders cannot be objected to and remain valid until reviewed by the council itself (Moghaddasi & Akbari, 2017). Furthermore, the Iranian parliament effectively precluded individuals from filing judicial complaints against the approvals of the Supreme Council of Cyberspace by eliminating the necessity for the council's appeal in including the provisions of the Law on Organizations and the Procedures of the Court of Administrative Justice (VOA, 2022). The circumstances pertaining to the two recent categories are fraught with peril, endangering the fundamental right to freedom of expression online. In the event that the decision to filter was made in error, there is no right to a remedy, even from the perspective of access to justice, for those whose right to freedom of expression has been infringed.

To prevent similar occurrences in other nations, it is crucial to uphold the right to redress within the ICCPR concerning any constraints on freedom of speech. This right should not only be seen as a general ruling to remedy the violation of all human rights but also as an essential prerequisite for any curtailment of freedom of expression. Embedding the right to redress as a prerequisite for any limitation on freedom of speech within the ICCPR would establish a critical mechanism for addressing instances of censorship and suppression of free speech. Such a provision would establish clear standards for state parties of the ICCPR, stressing the significance of accountability and transparency in any actions aimed at restricting freedom of expression.

## Conclusion

This study explores the intricate relationship between internet censorship, freedom of expression, and the limitations found within the International Covenant on Civil and Political Rights (ICCPR). The ICCPR, while offering some protections for freedom of expression, is often inefficient when addressing the complex realities of internet censorship. This paper's conclusions suggest that there are several key amendments that could be introduced to the ICCPR to address these issues and create a more robust legal framework.

1) The current framework of the ICCPR allows states to restrict freedom of expression merely by having a legitimate aim, without the need for public disclosure of that aim. In many cases, governments may use the claim of a legitimate aim to justify severe censorship without publicly declaring the nature of the threat or providing evidence that such measures are truly necessary. The study proposes that merely possessing a legitimate aim should no longer be sufficient grounds for restricting online expression. Instead, state parties must publicly declare their aims before enforcing any kind of online censorship. This proposal stems from the understanding that unannounced aims are often used to suppress

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<sup>28</sup>. Article 380 of the Criminal Procedure Law 2014



dissenting voices, which is particularly concerning in authoritarian regimes. By requiring state parties to publicly declare their objectives before censoring online expression, this would increase accountability and discourage arbitrary or politically motivated censorship.

2) Governments should be required to either fully specify the behaviors and actions in the online space that may lead to censorship in the law itself, ensuring that censorship does not exceed these legal provisions, or, if an institution is responsible for determining censorship criteria, it must transparently and publicly announce the specific grounds for censorship prior to enforcing any restrictions. This transparency gives citizens the opportunity to understand why certain content is restricted and to take legal action if they believe the restrictions are unjustified. Moreover, transparency builds greater trust in the government's decision-making processes, as citizens can see that restrictions on freedom of expression are based on genuine concerns and not used as a tool for political repression.

3) In accordance with the ICCPR, restrictions on freedom of expression online should be permitted if it is deemed necessary for a legitimate purpose. However, the precise meaning of necessity and the manner of its implementation remain uncertain. It is recommended that future amendments to the ICCPR include a clear definition of necessity, stipulating that online expression must be directly and immediately linked to the threat for which restrictions are imposed. Secondly, the use of internet censorship should be a last resort, with alternatives such as collaboration with platforms, age verification, and media literacy being prioritized. Thirdly, the extent and duration of censorship should be proportional to the threat and based on current needs. Finally, each country should appoint a local authority to verify the necessity of restrictions, ensuring that any online censorship is justified and not excessively restrictive. The introduction of this independent oversight mechanism would help ensure that governments cannot impose restrictions on online speech arbitrarily.

4) The research advocates for the recognition of the right to a remedy as a fundamental prerequisite for any restriction on freedom of expression. That is, this right should not only be seen as a general principle for remedying the violation of all human rights but also as a critical prerequisite for any curtailment of freedom of expression. This right guarantees that individuals have the right to seek redress through independent and impartial courts, underscoring the importance of accountability and transparency when it comes to restricting free speech. Ensuring access to such a right would help to counter instances of unjust suppression of free speech through internet censorship and provide individuals with the means to protect their rights.

While much of this study is informed by the Iranian case, the proposed amendments to the ICCPR have global relevance. As governments worldwide grapple with the challenges of regulating online spaces, the need for stronger protections for freedom of expression has become increasingly apparent. The rise

of authoritarianism, coupled with advancements in digital surveillance and censorship technologies, has made it easier for governments to suppress dissent and control information. By incorporating the recommendations outlined in this research, international human rights frameworks like the ICCPR must be updated to ensure that individuals' rights are adequately protected in the digital age.

### Disclosure Statement

The author reports there are no competing interests to declare.

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