



Republic of India

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Report on Freedom of Expression and Opinion in India

Submitted by: Asian Forum for Human Rights and Development (FORUM-ASIA) and Human Rights Defenders' Alert-India (HRDA) with co-sponsorship of additional 2697 organisations and 1457 individuals (full list available in annex 1).

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Asian Forum for Human Rights and Development (FORUM-ASIA) Human Rights Defenders' Alert – India (HRDA)

Ahmed Adam
Email: adam@forum-asia.org

Henri Tiphagne
Email: henri@pwtm.org

Web: <https://www.forum-asia.org>

Web: <https://www.hrdaindia.org>

About the submitting organisations:

- A.** The Asian Forum for Human Rights and Development (FORUM-ASIA) is a network of 85 member organisations across 23 countries, mainly in Asia. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has consultative status with the United Nations Economic and Social Council and the ASEAN Intergovernmental Commission on Human Rights.
- B.** Human Rights Defenders Alert (HRDA) – India is a national platform of human rights defenders for human rights defenders in India. Founded in 2010, it has more than 3000 individuals and organisations as members. HRDA initiates urgent action for the protection of human rights defenders under threat and attack.
- C.** This report is submitted by FORUM-ASIA, HRDA and FORUM-ASIA’s member organisations in India.
- D.** This joint submission is endorsed by additional 2697 organisations and 1457 individuals, including 2219 organisations and 1032 individuals that have opted to stay anonymous for fear of reprisals (full list available in annex 1).

Report on Freedom of Expression and Opinion

1. Introduction

- 1.1. This joint submission was prepared by FORUM-ASIA and HRDA based on research from credible sources of information, including the government, international organisations, media reports, academic publications drawn from the public domain. In addition, inputs from experts and human rights defenders from all over India were sought through a national consultation that was jointly conducted by FORUM – ASIA and HRDA on October 13, 2021, held for the purpose of this submission. Around 100 participants, all experts working substantially on the freedom of expression and opinion, took part in the consultation and many inputs and remarks were consolidated during this process for drafting this report.
- 1.2. During the previous Universal Periodic Review (UPR), India received recommendations to guarantee freedom of expression, promote meaningful dialogue that allows freely organised advocacy of diverging views by civil society, protect minorities from hate speech, carry out independent investigation into attack on journalists and ensure that limiting freedom of expression on the Internet is based on clearly defined criteria which is in accordance with international human rights law.¹ India noted these recommendations.² During the second UPR, India had accepted a recommendation to ensure a safe working environment for journalists.³
- 1.3. This report emphasizes the status of freedom of expression and opinion in India since the previous UPR in 2017. This report highlights the legal framework of the right to freedom of speech and expression in India, political context and threats to exercising the right. In particular, the prevalence of hate speech, violation of press freedoms and threats to journalists, restrictions on digital freedom and internet access, persecution of critical voices using criminal laws is looked at, using illustrative cases.

2. Legal Framework on the Right to Freedom of Expression and Opinion

2.1. Article 19(1)(a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. Reasonable restrictions through law are permissible in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.⁴ India is also bound by international law covenants which guarantee the freedom of expression and opinion.⁵

3. Political context and the overall status of the right to freedom of expression and opinion

3.1. In its latest report, V-Dem Institute has downgraded India to ‘electoral autocracy’.⁶ Freedom House in its annual report downgraded India from ‘free democracy’ to ‘partly free democracy’.⁷ Democracy Index published by the Economist Intelligence Unit of the United Kingdom has classified India as a ‘flawed democracy’.⁸ Reporters Sans Frontiers places India at 142nd rank (out of 180 countries) in its 2021 World Press Freedom Index among 180 countries.⁹ It is considered one of the most dangerous places for journalists to carry out their work. There is a marked, consistent decline in rankings: from 2016 when India was ranked 133, and 2017 when it was ranked 136 out of 180 countries.¹⁰

3.2. Committee to Protect Journalists (CPJ) reported that India has the highest number of journalists killed in retribution for their work. According to CPJ, four journalists in India were murdered in 2021 in “retaliation” for their work, whereas one more journalist died on a “dangerous assignment”.¹¹

- 3.3. India Press Freedom Report 2020, published by the think tank, Rights and Risks Analysis Group (RRAG) reported that 228 journalists were targeted in the year 2020 out of which the State actors targeted 114.¹²
- 3.4. Access to the internet, recognized as a fundamental right, by the Supreme Court¹³ is frequently and arbitrarily restricted/barred in light of shutdowns and to curb peaceful protests in various parts of the country.
- 3.5. Journalists, human rights defenders, students and laypersons alike face the threat of criminal action under anti-terror and national security legislations and severe provisions of the Indian Penal Code (IPC) for any speech and expression that the government deems ‘anti-national’.¹⁴ The object of such criminal action is seldom to punish the speaker but instead to chill and stifle free speech.

4. Hate Speech

- 4.1. Hate speech against minorities, particularly Muslims, is on the rise in India. It is well known that, apart from causing hurt to the members of the group, hate speech causes other harms, including marginalizing a community and rendering them targets of violence.¹⁵ HRDA has identified 86 reported instances of hate speech against minorities since 2017.
- 4.2. The Supreme Court has recognized the direct relationship between hate speeches against minorities and hate crimes such as mob lynching¹⁶ and directed that the state governments should take preventive steps by procuring intelligence reports about persons involved in hate and provocative speeches.¹⁷
- 4.3. Hate speech is employed as a strategy and propaganda tool during elections.¹⁸ Recent trends suggest that right-wing political parties deliberately use hate speech to polarize people and gain support of the Hindu majority. A 2018 report released by the Association for Democratic

Reforms found that 58 elected representatives (of the Parliament and State Assemblies) declared hate speech cases against them.¹⁹ During the lead-up to the 2019 Parliamentary elections, the Election Commission of India was criticized by the Supreme Court for being ‘toothless’ and failing to act against political leaders who made polarizing speeches. In an election speech, Amit Shah, President of the Bharatiya Janata Party (BJP) called illegal immigrants from Bangladesh as “termites” and that the BJP government will “throw them into the Bay of Bengal”.²⁰ The Chief Minister of the State of Uttar Pradesh, Yogi Adityanath, admitted to using the words ‘Green Virus’ to refer to Muslims.²¹ The Election Commission of India banned him from further campaigning for 72 hours and the tweet was taken down.²²

- 4.4. In December 2021, a large group of Hindu religious leaders and right-wing organisations gathered for the ‘Dharma Sansad’ or ‘Religious Parliament’ event. During this event, several persons made speeches conveying anti-Muslim sentiment. Persons with connections to the ruling Bharatiya Janata Party made calls for ethnic cleansing and incitement to violence against Muslims and other minorities to protect Hinduism.²³ These hate speeches were not acted upon swiftly.²⁴ Civil society actors have widely criticized the government's silence in condemning these speeches or initiating criminal action. A former Judge of the Supreme Court remarked that leaders of the ruling party have been silent on/or endorsing hate speech.²⁵
- 4.5. BJP leader Vikram Randhawa made a public speech exhorting his supporters to beat up Kashmiri Muslims and “skin them alive” after reports that there were some celebrations in Kashmir after Pakistan’s victory against India in a cricket match.²⁶ A criminal case has been registered against him for ‘hurting religious sentiments’ and ‘promoting enmity between religious groups’, but no further action has been taken against him.²⁷

- 4.6. In August 2021, inflammatory, communal slogans were raised at a protest event organised by Ashwini Upadhyay, an advocate and a leader of the BJP. He was arrested and released on bail within a day.²⁸ Suresh Tiwari, a Member of Legislative Assembly belonging to the BJP, admitted to have made a public speech asking people not to buy vegetables from Muslim vendors. He claimed to respond to complaints that Muslim vendors were spitting on vegetables and causing COVID to spread.²⁹
- 4.7. Prominent political leaders have been using violent hateful speech during mass meetings and rallies. For example, Anurag Thakur, then Minister of State, was seen leading a slogan and encouraging attendees to chant ‘Shoot the traitors of the country’ during the anti-CAA protests.³⁰ He has enjoyed complete impunity after this incident. He has been given significant roles in the Cabinet, currently serving as the Minister of Information and Broadcasting and Sports and Youth Affairs. The same slogan is now being used in other rallies and meetings led by Hindutva groups, mainly against Muslims.³¹
- 4.8. A Hindu priest made a call to demolish a historic mosque in Srirangapatna town, Karnataka along the lines of Babri Masjid, a historical mosque, which was demolished in 1992 by Hindu right-wing mob. The police arrested him for making such a statement.³²

5. Attack on Journalists and Press Freedom in India

5.1. Prosecution of journalists

- 5.1.1. An independent study confirmed that 67 journalists were arrested, detained or interrogated in 2020 alone.³³ Journalists are routinely arrested or subjected to harassment for doing their work. Laws such as the Unlawful Activities (Prevention) Act, 1967³⁴, provisions under the Indian Penal Code (IPC): Section 124A (sedition)³⁵, Section 500 (criminal

defamation)³⁶, Section 120B (criminal conspiracy) are used to silence journalists.³⁷

- 5.1.2. The Supreme Court of India is hearing petitions challenging the constitutionality of Section 124A of IPC which criminalises ‘sedition’.³⁸ The Supreme Court noted the potential for abuse of this law and that it is a colonial legislation. It is settled law that criticising the government is not “sedition” and the law can be used only where there is an attempt to overthrow the State violently.³⁹ However, this provision is misused to target journalists, activists and even students and laypersons for expressing their dissent, criticism of the government⁴⁰ , or simply chanting pro-Pakistan slogans.⁴¹
- 5.1.3. Siddique Kappan, a journalist, was arrested and booked under the UAPA for charges of sedition, conspiracy to incite violence, terrorism etc., when he was on his way to report on an alleged gang rape and murder of a Dalit girl in Hathras, Uttar Pradesh. He has been detained for more than a year.⁴² There are allegations that he has been denied humane treatment during detention.⁴³
- 5.1.4. Sajad Ahmad Dar, a Kashmiri journalist, was arrested and harassed by the police in retaliation for his work. After being released on bail, he was detained under the Public Safety Act, a preventive detention law.⁴⁴ In September 2021, four journalists Hilal Mir, Shah Abbas, Azhar Qadri, and Showkat Motta, were raided and later detained in relation to the UAPA case filed by the Jammu and Kashmir police in 2020.⁴⁵
- 5.1.5. On January 28, 2021, six senior journalists Mrinal Pande, Rajdeep Sardesai, Vinod Jose, Zafar Agha, Paresh Nath and Anant Nath were charged with sedition for reporting an alleged shooting by police officers during a tractor rally coinciding with India’s celebration of its 72nd Republic Day that led to the death of a farmer.⁴⁶
- 5.1.6. A report by Committee Against Assault on Journalists has found that in the State of Uttar Pradesh, since 2017 when Chief Minister Yogi

Adityanath assumed office, a total of 138 cases of persecution of journalists have been registered. As a result, 12 journalists were killed, 48 journalists were physically assaulted and 66 have been booked or arrested for alleged criminal offences.⁴⁷

5.1.7. Journalist Prashant Kanojia was arrested in 2019 for social media posts alleging that it defamed Yogi Adityanath. He was released on bail by the Supreme Court. However, he was arrested again in August 2020 for re-tweeting a tweet and detained for two months.⁴⁸ He was tortured by the police, administered electric shock, abused using casteist slurs and subjected to humiliating treatment.⁴⁹

5.1.8. Criminal case was registered against journalists Rana Ayyub, Saba Naqvi and Mohammed Zubair for sharing a video showing an elderly Muslim man being beaten up by a group.⁵⁰

5.1.9. A criminal case was registered against journalists Siddharth Varadarajan and journalist Ismat Ara over a tweet reporting about the death of a protester during the farmer's protests.⁵¹

5.1.10. Mandeep Punia, a journalist was arrested on January 30, 2021, shortly after a social media live session that reported the attacks on those who protested against farm laws. He was detained for 14 days without being allowed to consult a lawyer.⁵²

5.1.11. Nine senior Indian journalists are facing criminal charges for reporting allegations that Delhi police fatally shot a farmer in the head during protests last week, despite the authorities claiming no shots were fired.⁵³

5.1.12. Kamran Yousuf, a journalist, was arrested by the National Investigation Agency (NIA)⁵⁴ in September 2017 for alleged involvement in stone-pelting and mobilising support against security forces.

5.1.13. In 2018, Kashmiri journalist Aasif Sultan was arrested under stringent UAPA provisions for allegedly "harbouring known militants".⁵⁵ However, this allegation is denied, and it is claimed that he is targeted for

writing a story on the killing of a terrorist by the Indian security forces in 2016.

5.1.14. Masrat Zahra, a photo-journalist was booked under UAPA by the Kashmir police in February 2020 for allegedly uploading posts on social media that according to the police glorifies “anti-national activities”⁵⁶. In a statement, police accused Zahra of “uploading anti-national posts with criminal intention, uploading posts that glorify anti-national activities and dent the image of law enforcing agencies besides causing disaffection against the country”.

5.1.15. FIR was filed against Kashmiri author and journalist Gowhar Geelani by the Jammu & Kashmir cyber police in April 2020 for “misuse” of social media by “glorifying terrorism in Kashmir” through his posts⁵⁷. The police statement said Geelani was “indulging in unlawful activities through his posts and writings on social media platforms that [were] prejudicial to India's national integrity, sovereignty and security.”

5.1.16. Fahad Shah, a journalist and editor of media outlet *The Kashmir Walla* was summoned⁵⁸ by Srinagar Police in May 2020, for covering the news of a gunfight between militants and security forces in Srinagar. Two journalists in Srinagar, Naseer Ganai and Haroon Nabi, were summoned on February 8, 2020 to the police facility and were questioned⁵⁹ for their reporting a press release from the Jammu Kashmir Liberation Front (JKLF).

5.2. *Physical attacks, intimidation and killings of journalists*

5.2.1. CPJ reported that 16 journalists were killed in India between 2017 and 2022.⁶⁰ Of these, 13 journalists were murdered; 2 were killed during dangerous assignments and one was killed in a crossfire. UNESCO reports that 22 journalists were killed in India between 2017 and 2022.⁶¹ According to a study, since 2014, there has been no conviction in cases

of attacks against journalists targeted for their investigative work.⁶² These include:

- 5.2.1.1. *Shubham Mani Tripathi, a journalist for a Hindi language daily Kampu Mail, was shot six times⁶³ by two gunmen while on his way home in Uttar Pradesh in June 2020. His investigative reports into connections between illegal sand mining and corruption allegations is assumed to be the reason behind the brutal killing.*
- 5.2.1.2. *Gauri Lankesh, a well-known critic of right-wing Hindutva extremism, was assassinated outside her residence in September 2017. However, the prosecution has not been swift and the murder trial is still pending.⁶⁴*
- 5.2.1.3. *Shujaat Bukhari, founding editor of a news daily, Rising Kashmir, on June 14, 2018 was assassinated outside his office⁶⁵. He had survived earlier attempts on his life. After his assassination, former BJP minister Chowdhry Lal Singh warned Kashmiri journalists to “mend their ways” and that if journalists do not draw a line in reporting facts and supporting terrorists, they will meet with the fate of Bukhari.⁶⁶*
- 5.2.2. Tamil Nadu police in April 2020 arrested journalist Andrew Sam Raja Pandian for reporting on alleged government corruption.⁶⁷ A complaint was filed by a local government official who claimed the website was spreading false reports against the state government.
- 5.2.3. M. Karthi, a journalist was brutally assaulted by two persons in retaliation to his report on a dispute between two ruling party politicians⁶⁸ and the possibility of splitting the political party. He sustained serious injuries.
- 5.2.4. Three journalists from ‘The Caravan’ news magazine- Shahid Tantray, Prabhjit Singh, and a third unidentified female- were attacked by a mob while reporting in North East Delhi during the riots in February 2020.⁶⁹ They were beaten, abused with communal slurs, threatened with murder and the female journalist was sexually harassed. According to Tantray,

after identifying him as a Muslim, “the mob beat [him], punched on [his] neck and back, and tried to strangle [him] with the camera strap.” Police did not file a case or make arrests over the attack.

5.2.5. Online harassment is another major threat faced by journalists, especially women journalists who voice their opinions and express the truth without fearing government backlash. Journalists are often threatened online with violence and, threats of rape in the case of female journalists by paid ‘troll armies’. For example, in July 2020, journalist Rana Ayyub received murder and rape threats on social media⁷⁰ after her posts on the killing of Bashir Ahmad Khan, a 65-year-old resident in Srinagar, who was caught in the cross-firing between militants and security forces in Kashmir. In one of such screenshots that the journalist shared, she was threatened by a social media user to recall the incident of Gauri Lankesh, a journalist who was shot and killed in the year 2017.

5.3. *Criminal prosecution for reportage of COVID mismanagement*

5.3.1. International Press Institute has recorded over 84 COVID-19 related press freedom violations in India.⁷¹ 56 journalists were arrested or charged under various laws, and 23 journalists came under verbal and physical attack.⁷²

5.3.2. According to a report released by the think-tank, Rights and Risks Analysis Group (RRAG), at least 55 journalists and editors were arrested or booked⁷³ for reporting on the COVID-19 lockdown between March 25, 2020, and May 31, 2020 in India. The highest number of attacks was reported in the BJP-ruled Uttar Pradesh where 11 journalists were targeted⁷⁴ for exercising their freedom of expression and reporting the ground reality on the COVID-19 crisis in the state.

5.3.3. Anirban Chattopadhyay, the editor of the leading Bengali newspaper Anandabazar Patrika, was summoned by the Kolkata police in

May 2020 for interrogation⁷⁵ subsequent to the newspaper reporting about inadequate supply of personal protective equipment for the staff of a hospital handling COVID-19 cases.

5.3.4. In May 2020, the State of West Bengal government temporarily stopped the broadcast of Bengali news channel Calcutta News for criticizing Chief Minister Mamata Banerjee⁷⁶ and questioning the government's mishandling of the pandemic, including allegations of underreporting coronavirus infection rates and death numbers and severe mismanagement of hospitals.

5.3.5. A complaint was filed against journalist Siddharth Varadarajan in April 2020 for a tweet reporting that the Chief Minister of the State of Uttar Pradesh Yogi Adityanath had insisted on organising⁷⁷ and attending a religious event drawing large numbers of pilgrims in Ayodhya during the nationwide COVID-19 lockdown. A criminal case was registered against him stating that he had made a "disreputable" comment against the Chief Minister.⁷⁸

5.3.6. Journalist and Executive Editor of online news portal 'Scroll.in', Uttar Pradesh authorities charged Supriya Sharma in June 2020 under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as well as other offences of the IPC, including printing defamatory matter and negligent acts likely to spread infection of disease dangerous to life, for a news report critical of the COVID-19 lockdown particularly on the adverse effects of the lockdown in Varanasi, the parliamentary constituency of Prime Minister Narendra Modi.⁷⁹

5.3.7. Parashar Biswas, a journalist from the daily newspaper Syandan Patrika in Tripura, for his criticism of the Chief Minister Biplab Deb's comments against media outlets for publishing stories of the poor management of the COVID-19 crisis in the state, was attacked by unidentified individuals.⁸⁰

5.3.8. Widespread arrest and detention of political and human rights activists who criticized the policies of Manipur's state government on its handling of the COVID-19 pandemic have been reported. One example is the arrest of a social activist, Robin Rongmei under the National Disaster Management Act, 2005, for posting a video on Facebook that showed shortages of essential items for children in a shelter home during the lockdown.⁸¹

5.4. *Status of Media in Jammu and Kashmir*

5.4.1. The Jammu and Kashmir administration approved a new media policy titled 'Media Policy 2020' in order to "ensure a synchronized and effective use of all forms of media to build public trust, foster a genuinely positive image of the Government based on performance and strengthen the relationship with key stakeholders."⁸² As per the new policy, the Directorate of Information and Publication Relations is authorized to "examine" the content of print, electronic, and other forms of media for "fake news, plagiarism, and unethical or anti-national activities" in the name of law and order. From legal proceedings for "indulging in fake news, unethical or anti-national activities, or plagiarism" to withholding advertisements that "incite or tends to incite violence, question sovereignty and the integrity of India, or violate the accepted norms of public decency and behaviour"⁸³, the new policy allows government to take harsh actions that could chill free speech and freedom of the press in the region.

5.4.2. The Kashmir Press Club (KPC) was forcibly taken over by a small group of journalists with alleged links to the BJP.⁸⁴ The government has responded by closing the club and cancelling the allotment of its office premises.⁸⁵

5.4.3. The internet shutdown in Kashmir and prohibitory orders restricting the movement of persons after the abrogation of Article 370 resulted in an

‘information blackout’. This had a “debilitating and crippling effect on newsgathering, reporting, publication, circulation and information dissemination” resulting in suspension of publication of newspapers and freezing of web portals and news websites.⁸⁶

6. Digital freedom

6.1. Internet Shutdowns and restriction on internet freedom

6.1.1. India is estimated to have around 825 million internet users which could reach 900 million by the year 2025.⁸⁷ Access to digital media and internet is recognized as an important part of the fundamental right of freedom of expression.⁸⁸

6.1.2. According to a digital rights organisation, Software Freedom Law Center, there were 106 and 129 internet shutdowns in the year 2019 and 2020 respectively across the country imposed by the central and state governments.⁸⁹ As per a report released by Access Now, India tops the list globally⁹⁰ with the highest number of internet shutdowns in 2020.

6.1.3. During the anti-CAA protests, Uttar Pradesh reported the highest number of shutdowns: on 11 occasions and the longest one was for 175 hours. In total, for 6315 hours, internet services were banned all across India.⁹¹ Local government officials often use the Criminal Procedure Code provisions relating to riots and civil disturbances as the legal basis for these frequent shutdowns.⁹²

6.1.4. Frequent internet shutdowns are employed in the Kashmir Valley. It is reported that the shutdown of internet and landline services in Kashmir from August 4, 2019, and March 4, 2020, is the longest ever in a democratic country.⁹³ In total there were 55 and 49 internet shutdowns in Jammu and Kashmir in 2019 and 2020 respectively.⁹⁴ This shutdown affected all aspects of life: traders were unable to continue their business,

professionals from the education and medical fields reported problems to online education and COVID-19 mitigation measures.⁹⁵

6.1.5. Government requests for user data from internet companies and social media corporations are increasing dramatically in each passing year. As per Google Transparency Report, there were 19,438 data requests from the government in 2019 and 24,799 data requests in 2020.⁹⁶ According to Facebook's transparency report, the Indian government made 49,382 data requests in 2019 (a 32% increase from 2018) and 75,860 data requests in 2020⁹⁷. Twitter reported 1,263 account information requests from the government in 2019, a 63 per cent increase from 2018 and 6228 information requests in 2020.⁹⁸

6.1.6. In 2020, the Ministry of Electronics and Information Technology invoking its power under Section 69A of the Information Technology (IT) Act banned 118 mobile apps owned by China-based companies or otherwise linked to China, including TikTok, WeChat, and Helo for allegedly being “prejudicial to sovereignty and integrity of India, defence of India, security of state and public order”.⁹⁹

6.1.7. Under Section 69A of the IT Act, the Central government between 2018-2020 blocked 16,283 “websites/webpages/accounts”¹⁰⁰ according to data released by the Electronics and IT Minister in the Parliament.

6.2. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (“IT Rules 2021”)

6.2.1. The IT Rules 2021 undermine internet freedom, privacy and establishes government control over intermediaries, news platforms and OTT video content providers.¹⁰¹ The Rules permit the Central government to block, delete or modify published news content without judicial oversight. Intermediaries are required to set in place grievance mechanisms and enforce private censorship. In addition, the Rules weaken the right to

privacy by requiring intermediaries to trace the first originator.¹⁰² The IT Rules 2021 have been challenged before various High Courts; operation of some of the Rules have stayed.¹⁰³

6.2.2. Under the IT Rules 2021, the State has ‘emergency powers’ to pass interim orders blocking any content without even giving an opportunity of hearing.¹⁰⁴ The Ministry of Information and Broadcasting has exercised these emergency powers on two occasions: in December 2021 to ban 20 YouTube channels and two websites and in January 2022 to block 35 YouTube channels alleging that they spread anti-national news.¹⁰⁵

6.2.3. After the enactment of the IT Rules 2021, Twitter was asked to block tweets and take down accounts that the Indian government deemed objectionable. These were tweets and accounts that were primarily critical of the government’s handling of the farmers’ protests.¹⁰⁶ Twitter succumbed to pressure by the Indian government after being denied ‘safe harbour’ protection for non-compliance with the IT Rules.¹⁰⁷ It complied with the Rules by appointing regulatory personnel and further blocked over 500 accounts and an unspecified number of tweets.¹⁰⁸

6.3. Prosecution for social media posts

6.3.1. Disha Ravi, a climate change activist, was arrested in February 2021 for sharing a ‘toolkit’ on Twitter for mobilisation over farmers’ protests.¹⁰⁹ When the protests against the Farm Bills were gaining momentum and international attention, the arrest of Disha Ravi was seen as a crackdown on dissent and an attempt to change the public discourse narrative that these protests were anti-national.¹¹⁰

6.3.2. Andhra Pradesh police, in May 2020, arrested 66-year-old Ranganayaki Poonthota,¹¹¹ following her Facebook post in which she questioned the

government's handling and the police investigation of a styrene gas leak that killed at least 11 persons.

6.3.3. In July 2017, comedian Tanmay Bhat was charged for criminal defamation and obscenity offences after tweeting a meme of Prime Minister Narendra Modi with a dog filter on Snapchat.¹¹²

6.4. Misinformation and fake news

6.4.1. India has reasonably high internet penetration where people have access to the internet but relatively less digital literacy.¹¹³ Targeted misinformation or 'fake news' circulating on social media is widespread in India, particularly political¹¹⁴ and communal claims.¹¹⁵ Fake news and misinformation are used widely for electoral gains.¹¹⁶ Misinformation, particularly pertaining to minorities, has resulted in mob violence due to images or videos that misrepresent facts, thereby creating or fanning communal tensions between religious groups.¹¹⁷

7. Contempt of Court

7.1. A three-judge bench convicted prominent Supreme Court lawyer Prashant Bhushan for criminal contempt of court¹¹⁸ for two tweets critical of the then Chief Justice of India Sharad Arvind Bobde and the role played by the Supreme Court in the past six years. He was required to pay a symbolic fine of one rupee and express contrition before the court.

7.2. Comedian Kunal Kamra made jokes on social media criticizing the Supreme Court over differential treatment of an anticipatory bail application filed by a prominent journalist Arnab Goswami known to be partial to the ruling party. Kunal Kamra was charged for criminal contempt of court that his tweets "scandalizes or lowers the authority" of the court.¹¹⁹ However, Kunal Kamra refused to apologise to the court.¹²⁰ The proceedings are pending before the Court.

8. Freedom of Opinion and Expression

- 8.1. Rationalists have been under attack in India.¹²¹ Prominent rationalist and journalist Gauri Lankesh was murdered in September 2017. None of these murder trials have been concluded despite the passing of several years.
- 8.2. Several States in India have enforced a ban on selling beef. These bans directly affect freedom of expression.¹²² Further, there have been several instances of mob lynching in the name of cow vigilantism: attacking persons (mostly belonging to Muslim or Dalit communities) over rumours that they illegally smuggled cows or sold or bought or killed cows for meat.¹²³ A report of the Human Rights Watch notes that members of the ruling BJP used communal rhetoric to incite violent campaigns against beef consumption and defended the violence and its perpetrators.¹²⁴ The police stalled investigation into these crimes and was sometimes complicit in covering them up and filed complaints against the victims' family members.¹²⁵ Few cases have ended in conviction of the accused.¹²⁶
- 8.3. In Udupi, Karnataka, Muslim students wearing hijab were denied entry into a pre-university college classroom. Hindu students started wearing saffron shawls to protest against wearing hijab in classrooms, which is alleged to be orchestrated with the support of right-wing Hindu outfits.¹²⁷ This led to a state-wide agitation; schools and colleges were closed for three days. The Karnataka High Court passed an order banning religious dressing in classrooms in colleges where uniform is prescribed and said that hijab is not an essential religious practice of Islam. The court order is seen as a clear violation of the right to follow religion.¹²⁸
- 8.4. Right-wing outfit Hindu Janajagruti Samiti protested against using a resting room in a railway station in Bengaluru for prayer by Muslim porters. They threatened to stage "severe" protests if the authorities did not stop Muslims from using the room for offering prayers.¹²⁹

- 8.5. It was reported that Hindu vigilante groups disrupted over seven Christmas events all across the country in 2021, raised anti-Christian slogans and shouted ‘Jai Shri Ram’ slogans.¹³⁰
- 8.6. Munawar Faruqui, a political satirist and stand-up comedian, was arrested by the police alleging that he made derogatory remarks about Hindu deities as well as the Union Home Minister Amit Shah during a performance. He was detained for one month before he was released on bail.¹³¹ After this incident as many as 12 scheduled shows have been cancelled by event organisers due to threats from right-wing groups.¹³²

9. Academic Freedom

- 9.1. Appointments to key posts in academia, such as vice-chancellors, directors of universities or research institutions, are awarded to persons with right-wing Hindutva leanings. Examples include the appointment of Braj Bihari Kumar as the Chair of the Indian Council for Social Science Research (ICSSR)¹³³; Yogesh Singh as the Vice-Chancellor of Delhi University¹³⁴; Santishree Dhulipudi Pandit as the Vice-Chancellor of Jawaharlal Nehru University (JNU)¹³⁵. Gradual takeover of academia by the right-wing groups is evident from the fact that in 2017, over 700 academicians including vice-chancellors of 51 central and state universities, attended a workshop conducted by the Rashtriya Swayamsevak Sangh¹³⁶ (RSS), which is the ideological associate of the BJP.¹³⁷
- 9.2. Right-wing groups such as Akhila Bharatiya Vidyarthi Parishad (ABVP), the student wing of the BJP, restrict uninhibited academic discourse in campuses by attacking seminars and film screenings, assaulting participants, lodging criminal cases against the organisers and speakers for hurting their sentiments or alleging anti-national activities. For example, Gilbert Sebastian, an assistant professor at the Central

University of Kerala, was suspended by the University¹³⁸ after ABVP launched a complaint against one of his class lectures on fascism.

- 9.3. Academic readings and curricula are censored and removed to suit the Hindutva agenda.¹³⁹ For example, Delhi University arbitrarily dropped the writings of two feminist Dalit writers - Bama and Sukirtharani- and Mahashweta Devi's short story *Draupadi* from its curriculum.¹⁴⁰ Strong objections were raised by ABVP and the teachers affiliated with RSS when chapters written by eminent scholars Nandini Sundar and Archana Prasad were included in the history reading list of the Delhi University.¹⁴¹
- 9.4. The Ministry of External Affairs (MEA) and Ministry of Human Resource Development (MHRD) issued revised guidelines that require universities and administrators to get prior approval of the MEA before holding any online seminars or international conferences on issues concerning India's 'internal matters'. In addition, the names of all participants in such seminars and events need to be approved by the government in advance.¹⁴² The revised guidelines extend the rules that were previously applicable only to physical events.¹⁴³
- 9.5. The Anthropology Department of Madhya Pradesh Central University was forced to withdraw a webinar on 'Culture and Linguistic hurdles in the Achievement of Scientific Temper' organised jointly with the Montclair State University in the USA.¹⁴⁴ The department wrote to the Ministry seeking permission but was constrained to cancel the event since they did not receive any response from the authorities.
- 9.6. Deliberate targeting and attacks on universities and campuses that are ideologically opposed to RSS have become common. Students from educational institutions like Jamia Milia Islamia University, Jawaharlal Nehru University and Aligarh Muslim University were targeted especially during the anti-CAA protests.¹⁴⁵ These renowned public universities have been dubbed as hubs of terrorists and "anti-nationals".¹⁴⁶

10. Recommendations:

- 10.1. Undertake review of repressive laws including UAPA, NSA that create a chilling effect on freedom of opinion and expression, and ensure its compliance with international standards
- 10.2. Repeal the offence of sedition in Section 124 A and defamation in Section 499 of the IPC
- 10.3. Revise Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, to be in line with international standards
- 10.4. Enact law to prevent misinformation, fake news and hate speech
- 10.5. Enact a law to ensure safe working environment of journalists, in keeping with the recommendation accepted during the second UPR.
- 10.6. Review provisions in criminal laws and ensure that restrictions the restrictions on freedom of opinion and expression are in line with international standards
- 10.7. Review laws and regulations regarding internet shutdowns and ensure that the right to access the internet and information is not hampered and are in compliance to international standards
- 10.8. Guarantee freedom of expression in academic institutions to ensure free and uninhibited academic research, discussion and publication.

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⁵ Article 19, Universal Declaration of Human Rights (UDHR); Article 19, International Covenant on Civil and Political Rights (ICCPR); Article 5, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Article 7, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

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- ¹⁶ The Supreme Court also observed: “Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra judicial elements and non-State actors cannot be allowed to take the place of law or the law enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings. Such an atmosphere is one in which rational debate, logical discussion and sound administration of law eludes thereby manifesting clear danger to various freedoms including freedom of speech and expression. One man’s freedom of thought, action, speech, expression, belief, conscience and personal choices is not being tolerated by the other and this is due to lack of objective rationalisation of acts and situations.” Tehseen Poonawalla v. Union of India, Order of the Supreme Court of India dated July 17, 2018, Available at: https://main.sci.gov.in/supremecourt/2017/40744/40744_2017_Judgement_19-Apr-2018.pdf
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⁷⁶ Shubhadeep Choudhury, “Cable operators forced to block news channel critical of Mamata”, Tribune India, May 21, 2020, Available at: <https://www.tribuneindia.com/news/nation/cable-operators-forced-to-block-news-channel-critical-of-mamata-87897>.

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⁷⁸ The initial tweet had misattributed a quote to the Chief Minister. Though a correction was issued by the journalist through another tweet, the complaint was filed under Sections 66D and 67 of Information Technology Act 2000, Sections 188 and 505(2) of the Indian Penal Code, Section 54 of Disaster Management Act 2005 and Section 3 of Epidemic Diseases Act 1897. See, *ibid*.

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⁸⁶ Journalist Anuradha Bhasin filed a petition before the Supreme Court of India challenging the internet shutdown on the ground that it affected the freedom of press, among others. Her newspaper could not be published between August 6, 2019 till October 11, 2019. The Supreme Court did not pass any specific directions noting that there was no evidence on record that other newspapers were similarly restricted from functioning, and also that the newspaper has admittedly resumed functioning. *Anuradha Bhasin vs Union of India*, Order of the Supreme Court of India dated January 10, 2020, Available at: https://main.sci.gov.in/supremecourt/2019/28817/28817_2019_2_1501_19350_Judgement_10-Jan-2020.pdf

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