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Country:

[India](#)

Year:

2016

Status:

Partly Free

Total Score:

41

(0 = Best, 100 = Worst)

Obstacles to Access:

12

(0 = Best, 25 = Worst)

Limits on Content:

9

(0 = Best, 35 = Worst)

Violations of User Rights:

20

(0 = Best, 40 = Worst)

Population:

1.311 billion

Internet Penetration:

26 percent

Social Media/ICT Apps Blocked:

No

Political/Social Content Blocked:

Yes

Bloggers/ICT Users Arrested:

Yes

Press Freedom Status:

Partly Free

Key Developments:

June 2015—May 2016

- Authorities ordered service providers to temporarily shut down local mobile internet service in at least 23 separate reported cases, purportedly to prevent unrest or even cheating in an exam (see **Restrictions on Connectivity**).
- Regulators passed strong net neutrality regulations following sustained digital advocacy, prohibiting service providers from charging more for some data services (see **Digital Activism**).
- The Supreme Court upheld the constitutional validity of laws criminalizing defamation (see **Legal Environment**).
- At least 17 people were arrested for information circulated on WhatsApp, including group administrators based on content shared by other group members (see **Prosecutions and Detentions for Online Activities**).
- In May 2016, the Central Monitoring System was reported to be operational in New Delhi and Mumbai, allowing direct government surveillance of online traffic (see **Surveillance, Privacy and Anonymity**).
- In June 2015, journalist Joginder Singh died in Uttar Pradesh when assailants set him on fire after he posted allegations about a local official's wrongdoing on Facebook (see **Intimidation and Violence**).

Introduction:

Internet freedom declined slightly in 2016, offsetting gains made in 2014 and 2015. The number of network shutdowns ordered by local authorities increased dramatically.

Internet penetration increased during the reporting period, as India overtook the United States to become the world's second largest internet consumer base behind China. Both government and nongovernmental entities made efforts to bridge the digital divide. After effective digital campaigning, the Telecom Regulatory Authority of India (TRAI) introduced strong net neutrality protections in 2016, prohibiting differential pricing by service providers for different content or applications.

However, other developments undermined internet freedom. Local authorities ordered service providers to temporarily shut down internet access in at least 23 reported incidents in various states. In 2016, the Supreme Court dismissed a petition challenging the use of broad powers provided to state governments under the criminal procedure code to shut down internet services.

The Supreme Court also upheld laws criminalizing defamation which apply to both online and offline speech. Arrests for online activities declined in mid-2015. Many were based on Section 66A of the IT Act, which the Supreme Court declared was unconstitutional in March. But arrests increased again during the coverage period of this report under other sections of the IT Act and provisions of the penal code. At least seventeen people were detained for content circulated on WhatsApp, including group administrators who were not responsible for the content.

India continues to lack a codified law to effectively protect privacy. A Constitution Bench of the Supreme Court is considering whether privacy is a fundamental right at all. Although there were no reported instances of unlawful surveillance during the reporting period of coverage, this may be due to the extreme opacity of the regulatory framework governing surveillance. In May 2016, officials said the government's Central Monitoring System—an ambitious nationwide mass surveillance program—became operational through regional monitoring centers in New Delhi and Mumbai.

Obstacles to Access:

Internet penetration in India continued to increase in 2016 with mobile penetration playing a significant role. Inadequate infrastructure remains a significant obstacle to access, especially in rural areas; however, various governmental and nongovernmental efforts to improve access nationwide are underway. There was a sharp increase in both the frequency and duration of ICT shutdowns ordered by local authorities. The top ten internet service providers (ISPs) still hold almost the entire market share, but strong competition among them continues.

Availability and Ease of Access

India had the second largest number of internet subscribers in the world after China in 2016, having recently overtaken the United States.¹ Official statistics recorded 331 million subscribers in December 2015,² though only 20 million had fixed-line connections.³

However, internet penetration remains low, reaching 26 percent in December 2015,⁴ up from 21 percent in December 2014.⁵ Mobile penetration was much higher, reaching 82 percent by December 2015.⁶ India was ranked 155 out of 189 countries in terms of mobile broadband penetration by the Broadband Commission.⁷

India's average connection speed was 3.5 Mbps, one of the lowest in Asia,⁸ and far below the global average, which Akamai documented at 6.3 Mbps in the first quarter of 2016.⁹ Fifty-nine percent of all internet users had narrowband subscriptions in 2015,¹⁰ down from sixty-eight percent in 2014.¹¹ Despite overall growth, India still has one of the world's lowest adoption rates for high speed broadband (faster than 10 Mbps), at just 4.8

percent,¹² though that rate grew by 180 percent during the course of 2015.¹³ The minimum speed required to qualify as broadband in India has been 512 Kbps since 2012,¹⁴ though the Telecom Regulatory Authority of India (TRAI) has recommended raising the threshold to 2 Mbps.¹⁵

The Global Information Technology Report by the World Economic Forum and INSEAD ranked India in eighth place out of 139 countries for affordable internet access in 2016.¹⁶ It was previously in first place,¹⁷ and per minute cellular and fixed broadband tariffs are still among the lowest in the world.¹⁸ Fixed broadband internet service cost an average INR 1676 (US\$ 25) per month.¹⁹

India ranked 81 out of 140 countries for infrastructure in 2016, according to the World Economic Forum's Global Competitiveness Index.²⁰ Though up from 87 the previous year, the results suggest poor infrastructure is still an obstacle to access. India ranked a low 98 for electricity supply,²¹ and 120 for technological readiness, the capacity of a country to fully leverage ICTs in daily activities.²² Only 26 percent of all Indian schools had a computer in 2015.²³ That figure was higher in secondary schools and above (66 percent),²⁴ though of those, only 37 percent were connected to the internet.²⁵

Public and private sector initiatives to improve access are underway. News reports announced government plans to provide free public Wi-Fi zones in mid-2015,²⁶ targeting 25 top cities by population.²⁷ Some public Wi-Fi zones have already been established in places like Delhi, Ahmedabad, Bangalore and Patna.²⁸ During the coverage period of this report, Google partnered with public sector company RailTel to provide free Wi-Fi at over 400 railway stations,²⁹ starting with 100 by the end of 2016.³⁰ At least 15 stations were already connected in May.³¹

The Digital India Programme launched in 2014³² by the Department of Telecom (DoT) and the Department of Electronics and Information Technology (DeitY) is expected to be implemented by 2018.³³ It aims to connect India's Gram Panchayats, institutions of self-government for rural areas,³⁴ via fiber-optic cables,³⁵ ensuring universal broadband access with accompanying e-literacy programs. Internet-connected Common Service Centers (CSCs) aim to cover all 250,000 Gram Panchayats;³⁶ as of March 2016, 157,000 had been established, with 20,000 operated by women.³⁷ The program proposes to use satellites, balloons, or drones to push faster digital connections to remote parts of the country,³⁸ as well as Multiple System Operators (MSOs) such as cable TV services, which already have last-mile connectivity.³⁹ As a result of the Digital India Programme, electronic transactions related to e-governance projects almost doubled in 2015;⁴⁰ citizen and public records are being digitized through crowd-sourcing efforts;⁴¹ and Digi Locker, a service which provides secure online storage of essential documents such as birth certificates, has more than 2 million registered users.⁴² Digital India also provides capital to develop new technologies.⁴³

Language remains a barrier to access. With 22 official languages, only about 12 percent of the population of India speaks English,⁴⁴ yet more than half the content available online is in English,⁴⁵ and over 100 languages were unrepresented online in 2013.⁴⁶ Projects to encourage local language usage are underway, and there were nearly 127 million local language users on the internet by 2014.⁴⁷ Hindi-language web content grew by 94 percent in 2015, compared to 19 percent growth in English content.⁴⁸ Google's Indian Language Internet Alliance (ILIA) seeks to link all local language content available to a single platform,⁴⁹ making the content more visible and easier for consumers to navigate.⁵⁰ Critics fear this could divert traffic from the original pages, resulting in loss of revenue and readership,⁵¹ but so far ILIA has partnered with 30 organizations.⁵² In 2014, the National Internet Exchange of India (NIXI), which operates and manages Indian domain names, launched the Dot Bharat domain for local language URLs.⁵³ Indian start-ups, such as online marketplace Snapdeal, Quikr, which offers online classified advertising, and Hike messenger, have also introduced services in local languages.⁵⁴

Studies have shown that economic and social conditions result in barriers to internet access for women. In 2015, only 29 percent of Indian internet users were women,⁵⁵ falling to 12 percent in rural areas.⁵⁶ Growth in the number of female internet users is higher than for men in urban areas, though not overall.⁵⁷ Google has partnered with Tata Trusts to launch the Internet Saathi scheme for promoting digital literacy among rural women.⁵⁸ The initiative initially aimed to reach 45,000 villages.⁵⁹ In December 2015, Google CEO, Sundar Pichai said the project would expand to 300,000.⁶⁰

Restrictions on Connectivity

The Indian government does not routinely block the protocols or tools that allow for instant, person-to-person communication, although local authorities can restrict ICT connectivity and usage during times of perceived unrest. The number of these shutdowns has increased significantly in the past two years.⁶¹

During the coverage period of this report, local authorities issued orders to providers to shut off specific services in 23 reported cases, including local mobile phone service, SMS, wireless, and occasionally fixed-line internet access, for periods ranging from a few hours to several days.⁶² In one instance, the state government in northeastern Manipur blocked wireless internet and SMS services for seven days following violent protests.⁶³ Although the majority of shutdown orders cited security or public order threats as reasons, mobile internet was blocked for four hours across Gujarat in February 2016 to prevent cheating in a state entrance exam.⁶⁴

Local authorities increasingly used Section 144 of the Code of Criminal Procedure (1973) to justify these orders, which permits broad state action to curb any violation of law and order;⁶⁵ it does not specify telecommunications.⁶⁶ The use of this general law to order shutdowns was upheld by the Gujarat High Court in September 2015,⁶⁷ and the Supreme Court rejected a petition challenging it in early 2016.⁶⁸

Other laws used to justify shutdowns also lack specificity. Section 69A of the Information Technology (IT) Act, which permits the central government to order website blocks (see Limits on Content) has been considered to apply to blocking of service. Section 5 of the Indian Telegraph Act, which allows state and central authorities to order that any message not be transmitted in public emergencies, has also been cited in support of service disruptions.⁶⁹

As in past years, Jammu and Kashmir had the highest number of documented incidents, including a shutdown that affected both mobile and fixed-line connections, in some cases for weeks at a time, in summer 2016 (outside the coverage period of this report).⁷⁰ During the coverage period:

- On June 5, 2015, mobile and fixed-line internet services were suspended in the Jammu region in the wake of protests by Sikhs over the removal of posters of Sikh separatist leader Jarnail Bhindrawale before the anniversary of his death.⁷¹
- In August 2015, mobile phone and internet services were suspended for a few hours during a state government function to celebrate independence day.⁷²
- In September 2015, police ordered the suspension of mobile internet services for 82 hours during the Muslim festival of Eid.⁷³ The Jammu and Kashmir High Court had banned beef based on a petition from hardline Hindus, a decision some Muslim groups said they would protest.⁷⁴ One news report said the decision to suspend the internet was made after ISPs clarified that it was not possible to slow down internet speeds.⁷⁵
- In October 2015, mobile internet services were suspended for two days in Jammu and Udhampur amid tensions surrounding the recovery of cow carcasses in Udhampur district.⁷⁶
- In April 2016, mobile internet was blocked for almost six days in five districts in Kashmir, following violent protests against the alleged molestation of a girl in Handwara on April 12.⁷⁷

After Jammu and Kashmir, the highest numbers of shutdowns were recorded in the state of Gujarat⁷⁸:

- In September 2015, district commissioners banned mobile internet for almost seven days in the cities of Ahmedabad, Vadodara, Surat and Rajkot after protests by the Patel community;⁷⁹ the ban was repeated for 24 hours in April 2016 when the protests resumed.⁸⁰ Some news reports said the shutdowns targeted specific applications like WhatsApp,⁸¹ but the only orders documented related to the internet as a whole.
- In September 2015, mobile internet was suspended for 24 hours in Godhra, Gujarat to prevent circulation of a derogatory message about Islam on social media.⁸²
- In February 2016, mobile internet was blocked for four hours across Gujarat to prevent cheating in a state entrance exam.⁸³

While shutdowns remained local to states, they were implemented in more of them than ever before. In December 2015, police blocked mobile internet to quell unrest after caste and communal clashes in at least four districts in Rajasthan;⁸⁴ in October, internet had been separately suspended for 24 hours in one of those districts, Bhilwara, following communal clashes.⁸⁵ Shutdowns were also documented in Haryana in response to violent protests by the Jat community in February and March 2016;⁸⁶ and for one day in Bokaro, Jharkhand during the Hindu festival of Ram Navami.⁸⁷ In Azamgarh, Uttar Pradesh, both mobile and fixed-line internet services were shut down on May 17 and 18, 2016, due to communal tensions.⁸⁸

Submarine cables connect India to the global internet. Ten are consortium owned; the rest are private.⁸⁹ These undersea cables are mainstays of mobile and internet communications and any damage to them leads to service disruptions.

In January 2016, Agartala in Tripura became operational as a gateway to the international internet via an optical fiber cable linking to Cox's Bazar in southern Bangladesh, facilitating connectivity in north-eastern states.⁹⁰ Mumbai and Chennai already serve as international internet gateways.⁹¹ There are four cable landing stations in Mumbai, and three in Chennai; Digha, Kochi and Tuticorin also have one cable landing station each.⁹² BSNL, the state-owned telecom operator, owns two cable landing stations; the rest are privately owned. Tata Communications, the world's largest owner and operator of fiber network,⁹³ and Bharti Airtel, both of which are also major telecom operators, own three stations each.⁹⁴ These cable landing stations, where submarine cables meet the mainland, have imposed hefty fees on ISPs; however, lower charges came into effect in 2013.⁹⁵

Over 80 percent of telecommunications towers are privately owned.⁹⁶ Market share is split between Indus Towers, a joint venture between Bharti Infratel, Vodafone, and Idea Cellular (31 percent); BSNL (18 percent); and Reliance Infratel (12 percent), according to May 2015 figures.⁹⁷ Bharti Infratel, a subsidiary of Bharti Airtel, is one of the largest tower infrastructure providers, having a 42 percent equity interest in Indus Towers and owning 10 percent of towers independently.⁹⁸

ICT Market

There are 133 operational ISPs in India.⁹⁹ While there is no monopoly, the top 10 ISPs control over 98 percent of the market.¹⁰⁰ Bharti Airtel holds the highest market share, worth 25 percent, followed by Vodafone with 20 percent. BSNL, Idea and Reliance have slightly over 10 percent market share each.¹⁰¹ There are 14 mobile operators,¹⁰² with Bharti Airtel controlling almost 24 percent of the market,¹⁰³ followed by Vodafone (19 percent), Idea (17 percent) and Reliance (10 percent).¹⁰⁴

The universal license framework, for which guidelines were published in November 2014,¹⁰⁵ reduced the legal and regulatory obstacles for companies by combining mobile phone and ISP licenses, instead of requiring separate licenses for each sector. Licensees must now pay a high one-time entry fee, a performance bank guarantee,¹⁰⁶ and annual license fees adjusted for revenue.¹⁰⁷

In 2011, the Indian government introduced rules under Section 79 of the IT Act requiring cybercafes to obtain a government-issued ID number in addition to a license, as well as to register and monitor customers.¹⁰⁸ Critics said the rules were "poorly framed,"¹⁰⁹ but penalties for noncompliance are unclear, and enforcement has reportedly been patchy (Common Service Centers are exempt, and operate under separate guidelines).¹¹⁰

Regulatory Bodies

India's principal ICT institution is the Ministry of Communications and Information Technology.¹¹¹ It consists of two departments – the Department of Electronics and Information Technology (DeitY) and the Department of Telecommunications (DoT). DoT manages the overall development of the telecommunications sector, licenses internet and mobile service providers, and manages spectrum allocation;¹¹² DeitY formulates policy relating to information technology, electronics, and the internet.¹¹³ In July 2016, the Ministry was divided in two. DeitY became the Ministry of Electronics and Information Technology (MeitY), while the DoT and Department of Posts were placed under the Ministry of Communications.¹¹⁴

Internet protocol (IP) addresses are regulated by the Indian Registry for Internet Names and Numbers (IRINN).¹¹⁵ Since 2005, the registry has functioned as an autonomous body within the nonprofit National Internet Exchange of India.¹¹⁶

The Telecom Regulatory Authority of India (TRAI), an independent regulator, was created in 1997 to regulate the telecom, broadcasting, and cable TV sectors.¹¹⁷ The Telecom Regulatory Authority of India Act mandates transparency in the exercise of its operations, which include monitoring licensing terms, compliance, and service quality.¹¹⁸ Its reports are published online, usually preceded by a multi-stakeholder consultation.¹¹⁹ An amendment to the Act in 2000 established a three-member Telecommunications Dispute Settlement and Appellate Tribunal chaired by a former senior judge.¹²⁰ Yet appointment and salary decisions for members remain in the hands of the central government. Further, while the TRAI Act initially barred members who had previously held central or state government office, amendments in 2014 diluted that prohibition, allowing them to join the regulator two years after resigning that position, or earlier with permission from the central government. Members may undertake commercial employment, except with telecom service providers.¹²¹

TRAI opinions, however, are generally perceived as independent and largely free of official influence.¹²² During the coverage period, it framed regulations prohibiting discriminatory tariffs for data services (see Digital Activism).¹²³

Limits on Content:

Content blocking of pornographic and terrorism related material and copyright restrictions continued to take place during the coverage period. There was a significant rise in digital mobilization, especially over net neutrality, resulting in strong regulations against differential pricing for data.

Blocking and Filtering

Blocking of websites takes place under Section 69A of the IT Act and a 2009 subordinate legislation called the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules ("Blocking Rules"). The Blocking Rules empower the central government to direct any agency or intermediary to block access to information when satisfied that it is "necessary or expedient" in the interest of the "sovereignty and integrity of India, defense of India, security of the state, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above."¹²⁴ Intermediaries failing to comply are punishable with fines and prison terms of up to seven years.¹²⁵

The Blocking Rules apply to orders issued by government agencies, who must appoint a "nodal officer" to send in requests and demonstrate that they are necessary or expedient under Section 69A.¹²⁶ These requests are reviewed by a committee which includes senior representatives of the law, home affairs, and information ministries, and the nodal agency for cybersecurity, the Indian Computer Emergency Response Team (CERT-IN).¹²⁷ The "designated officer," who chairs the committee, issues approved orders to service providers; the committee must also notify the source or intermediary hosting the content, who may respond to defend it within 48 hours.¹²⁸

In emergencies and upon written recommendations from the designated officer, the secretary of DEITY may issue blocking orders directly, but the content must be unblocked if the designated officer does not obtain the review committee's approval within 48 hours.¹²⁹

Indian courts can order content blocks without government approval. The designated officer is required to implement the court order after submitting it to the secretary of DEITY. Court orders can be challenged in a higher court, but internet users are not consistently notified of their implementation.¹³⁰ ISPs are not legally required to inform the public of blocks and the Blocking Rules mandate that executive blocking orders be kept confidential.¹³¹ A 2014 transparency report issued by Verizon stated that the Indian government required the company to block access to websites, but that it was precluded by law from identifying how many blocking requests were received.¹³²

The 2011 cybercafe rules stated that cybercafes "may" install commercial filtering software "to avoid access to the websites relating to pornography, obscenity, terrorism and other objectionable materials."¹³³ It is not clear how many complied.

In the landmark Shreya Singhal case decided by the Supreme Court in 2015, the petitioners challenged the constitutionality of Section 69A citing opaque procedures among other issues.¹³⁴ In March 2015, the Supreme Court upheld Section 69A and the Blocking Rules,¹³⁵ saying safeguards within the section were adequate, narrowly constructed, and not in contravention of the provisions of the Constitution of India.¹³⁶ At the same time, the court read the Blocking Rules to include both the right to be heard and the right to appeal, changing the way Section 69A has been interpreted. It is now clear that blocking orders must provide a written explanation, allowing them to be challenged by writ petition, and that reasonable efforts must be made to contact the originator of the content for a pre-decisional hearing before the blocking order is issued.¹³⁷ However, given the requirement in the Blocking Rules that the orders and actions based on them be kept confidential,¹³⁸ it remains to be seen how and whether the judgment will be effectively implemented.¹³⁹

According to a statement made in Parliament by the Minister of Communication and Information Technology, the government blocked 844 social media pages between January and November 2015. Among these, 492 URLs were blocked under Section 69A, and 352 were blocked in compliance with court orders.¹⁴⁰

In most cases, there is no information about the content targeted through these orders. However, there were some reports of overbroad content blocking affecting legitimate online activity. In February 2016, the DOT ordered ISPs to block jihadology.net, an online academic repository curating primary source material on the Arab Spring,¹⁴¹ even though news reports said ISIS recruitment videos remained easily accessible through Google search after a campaign by the anti-terrorism squad resulted in 94 websites being reportedly blocked.¹⁴² In

another case in May 2016, the domain names marketplace BuyDomains.com was blocked by some ISPs and mobile internet providers. Visitors were informed that the URL was “blocked under instructions of the Competent Government Authority or in compliance to the orders of Hon’ble Court,” with no further details given.¹⁴³

Since 2011, courts have blocked content relating to copyright violations through broad John Doe orders, which can be issued preemptively and do not name a defendant.¹⁴⁴ ISPs have occasionally implemented such orders by blocking entire websites instead of individual URLs, irrespective of whether the websites were hosting pirated material.¹⁴⁵ In 2012, the Madras High Court ruled that John Doe orders should not be used to block entire websites.¹⁴⁶

These potentially overbroad orders continue to be issued.¹⁴⁷ In July 2015, Phantom Films were granted a John Doe order by the Bombay High Court for blocking websites that may be used to pirate its movie ‘Masaan’. In October 2015, the Delhi High Court granted a John Doe order to Fox Star Studios for the movie ‘Prem Ratan Dhan Payo.’ Similar orders were issued throughout the year by various High Courts.¹⁴⁸ Separately, in October 2015, the IT minister for the State of Telangana met with police officials, ISPs and representatives of the Telugu film industry to address movie piracy, citing loss in industry revenue. Following this, ISPs were directed to block around 200 unspecified websites to prevent piracy.¹⁴⁹

The IT Act and the Indian Penal Code prohibit the production and transmission of “obscene material,”¹⁵⁰ but there is no specific law against viewing pornography in India, except child pornography, which is prohibited under the IT Act.¹⁵¹ In the case of *Kamlesh Vaswani v. Union of India*, the petitioner asked the Supreme Court to direct the government to block all online pornography in India.¹⁵² In the past, the government has informed the Supreme Court that it is not technically feasible to block pornographic sites and that doing so would violate the constitution.¹⁵³

On July 31, 2015, however, the DoT ordered ISPs to block access to 857 URLs for allegedly pornographic content.¹⁵⁴ The notification said that the websites were found to be violating morality and decency under Article 19(2) of the Constitution of India, read with Section 79(3)(b) of the IT Act.¹⁵⁵ There was widespread outrage over the ban on social media, and a few days later the government reversed it.¹⁵⁶ Subsequently, the government informed the Supreme Court in the Kamlesh Vaswani matter that it would only block child pornography,¹⁵⁷ on grounds that the government did not want to indulge in “moral policing” or become a totalitarian state.¹⁵⁸

While the ban was withdrawn, officials told ISPs that they were “free not to” disable any of the 857 URLs, as long as the URLs did not host child pornography,¹⁵⁹ effectively putting the onus on the ISPs to decide on the legality of the content on a case-by-case basis. Most ISPs continued to block the full list,¹⁶⁰ calling the instruction “vague and un-implementable.”¹⁶¹ In January 2016, news reports said telecom companies and ISPs were considering an agreement with New Zealand-based technology company Bypass Network Services to introduce parental controls over pornographic content.¹⁶²

Content Removal

A 2008 IT Act amendment protected technology companies from legal liability for content posted to their platforms by others, with reasonable exceptions to prevent criminal acts or privacy violations.¹⁶³ Intermediaries Guidelines issued in 2011 under Section 79 of the IT Act required intermediaries to remove access to certain content within 36 hours of a user complaint.¹⁶⁴ In the 2015 judgment of *Shreya Singhal v. Union of India*, the Supreme Court read down Section 79 and the intermediary guidelines,¹⁶⁵ and companies are no longer required to act on user complaints.¹⁶⁶ Court and government takedown orders, furthermore, are only legitimate if they fall within the reasonable restrictions provided for under Article 19(2) of the constitution. Unlawful content beyond the ambit of Article 19(2) cannot be restricted. Thus, the court restricted the earlier broad grounds for takedown notices.¹⁶⁷

Intermediaries can separately be held liable for infringing the Copyright Act 1957,¹⁶⁸ under the law and licensing agreements.¹⁶⁹ The Shreya Singhal decision has had no impact on the legal framework on intermediary liability for copyright infringement. A 2012 amendment limited liability for intermediaries such as search engines that link to material copied illegally, but mandated that they disable public access for 21 days within 36 hours of receiving written notice from the copyright holder, pending a court order to remove the link.¹⁷⁰ Rules clarifying the amendment in 2013 gave intermediaries power to assess the legitimacy of the notice from the copyright holder and refuse to comply.¹⁷¹ However, critics said the language was vague.¹⁷²

Separately, private companies disabled content from being viewed within India during the coverage period. Users disputed some of those interventions. In May 2015, the nonprofit organization Sikhs for Justice said Facebook had blocked its Indian page;¹⁷³ the page was accessible again in 2016. Administrators for the Facebook pages “Indian Atheists,” and “Indian Atheists Debate corner” said their pages had been temporarily

blocked by the platform in June.¹⁷⁴ The reason for these interruptions is not clear. In November 2015, Facebook users were temporarily unable to share news articles from Facebook pages operated by websites *The Wire*,¹⁷⁵ and *Faking News*,¹⁷⁶ but the content was later reinstated. A Facebook spokesperson said that the content was mistakenly identified as spam.¹⁷⁷

Several international companies reported receiving a high number of requests to remove content from Indian courts or government representatives. Facebook reported removing over 30,000 pieces of content based on these requests in 2015, up from 11,000 in 2014,¹⁷⁸ but said it would require more formal notification to do so in 2016 based on the Supreme Court's ruling in *Shreya Singhal v. Union of India*.¹⁷⁹

Google reported receiving 259 content removal requests affecting 1,606 items between July and December 2015, and said it complied with 38 percent of requests based on court orders and 10 percent from government agencies and law enforcement. The reason most commonly cited for the request was defamation.¹⁸⁰

Twitter received 40 requests for content removal from July to December 2015, of which 1 was court ordered and 39 were from police or government agencies, but said it did not comply.¹⁸¹

Media, Diversity, and Content Manipulation

Online media content is diverse and lively. The internet has given a voice to people in remote areas, helping them become a part of the public discourse. During the coverage period, the Dalit Camera Action YouTube channel was established to address the lack of Dalit voices in the mainstream media.¹⁸² It provides original content and reposts media related to Dalits, a traditionally marginalized group in the Hindu caste system. The mobile news service CGNetSwara allows people in rural areas of central India to submit and listen to audio news reports, averaging 200 calls per day and driving the emergence of online reports on local issues that do not reach the mainstream media.¹⁸³ The Delhi-based company Gram Vaani operates a Mobile Vaani initiative using an interactive voice response system to disseminate reports by mobile phone users to different audiences and stakeholders. It enables over 80,000 households across 12 states to create their own media.¹⁸⁴

In general, self-censorship is not widespread. Internet users in conflict regions may avoid addressing sensitive political or religious issues which other journalists and activists report freely. Some institutions and individual writers self-censor due to fear of reprisal from political organizations.¹⁸⁵ No noteworthy examples of self-censorship were documented during the coverage period, though the issue was discussed. In July 2015, the *Economic Times* took down a news report published in the June 30, 2015 edition of the paper from its website, titled, "Sec 377 maybe scrapped says Gowda."¹⁸⁶ Section 377 of the penal code criminalizes homosexuality. Law Minister Sadananda Gowda said on Twitter that the *Times* had misquoted him in the article,¹⁸⁷ but observers commented on the unusual nature of the retraction, suggesting it indicated self-censorship amid a "drought of progressivism."¹⁸⁸ Writers and other public figures separately reported being subject to abuse on social media for criticizing what they described as religious intolerance.¹⁸⁹ However, there were no reports of paid commentators manipulating political content.

Social media and communication apps drew some increased scrutiny. In February 2016, news reports said the government was setting up a special media cell, the National Media Analytics Centre (NMAC), to monitor online narratives perceived to be against the government, and counter them with positive press releases and other campaigns.¹⁹⁰

In an unprecedented move, the District Magistrate of Kupwara, a district in Jammu and Kashmir, issued a notice in April 2016 requiring administrators of WhatsApp groups sharing news to register with the local District Social Media Centre.¹⁹¹ The administrators would be liable for "any irresponsible remarks/deals [sic] leading to untoward incidents" posted by group members, according to the notice,¹⁹² which followed a week of violence after the alleged rape of an underage girl by army personnel.¹⁹³ Local media and student organizations objected,¹⁹⁴ and how the notice will be enforced remains unclear.

Digital Activism

Throughout 2015, civil society groups used digital tools to mobilize public opinion on net neutrality, the principle that providers should not discriminate against certain content or data.

In December 2014, Bharti Airtel considered preventing customers with regular mobile data packages from accessing Voice over Internet Protocol (VoIP) applications, angering consumers.¹⁹⁵ Separately in February 2015, Facebook launched Internet.org—later renamed Free Basics—in collaboration with Reliance Communications and other corporations. The service offered limited offline access to certain websites at no cost for Reliance customers without full internet access.¹⁹⁶ Facebook described the program as a means to provide some experience of the internet to communities who would otherwise go without,¹⁹⁷ but consumers feared it would

erode net neutrality by establishing companies as the arbiters of which content and services would be available for free.¹⁹⁸ Others criticized the program as interest philanthropy, resulting in profits for participating companies under the guise of improving access,¹⁹⁹ and questioned the security implications of routing users' personal data and web traffic through servers operated by a single company, making them more vulnerable to cyberattack or surveillance.²⁰⁰ Facebook addressed some of these concerns, opening Free Basics to a wider range of content providers, among other measures, but Free Basics remained widely identified with the net neutrality controversy unfolding in parallel over differential pricing.²⁰¹

The TRAI initially supported service providers, and outlined a regulatory framework for consumers to pay for communications applications such as Viber, Skype, and WhatsApp in a March 2015 consultation paper.²⁰² More than a million people submitted comments opposing the measure, arguing that it violated net neutrality principles.²⁰³ On December 9, 2015, the TRAI conducted a public consultation on the subject,²⁰⁴ and produced a second consultation paper.²⁰⁵ This second consultation involved more than half a million people,²⁰⁶ including academic institutions²⁰⁷, civil society groups²⁰⁸, digital activists, and the public,²⁰⁹ as well as telecommunications companies and a robust counter campaign by Facebook.²¹⁰ Following this, the TRAI issued a tariff order on February 8, 2016 explicitly prohibiting differential pricing for data services.²¹¹ This order meant that proposals to charge consumers different prices for select content or applications, including Free Basics, were "effectively declared illegal."²¹²

Violations of User Rights:

There was a sharp increase in the number of arrests for online speech during the coverage period. Seventeen people were arrested for content distributed on WhatsApp; other cases involved Facebook content. The Supreme Court upheld laws criminalizing defamation, which will impact online speech. The Central Monitoring System was reported to have become operational through regional monitoring centers in New Delhi and Mumbai from May 2016.

Legal Environment

The Constitution of India grants citizens the fundamental right to freedom of speech and expression,²¹³ including the right to gather information and exchange thoughts with others within and outside of India.²¹⁴ Press freedom has been read into the freedom of speech and expression.²¹⁵ These freedoms are subject to certain restrictions in the interests of state security, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement to an offense, and the sovereignty and integrity of India. However, these restrictions may only be imposed by a duly enacted law and not by executive action.²¹⁶ The right to privacy has been read into the right to life guaranteed by Article 21 of the constitution.²¹⁷

The Indian Penal Code (IPC) criminalizes several kinds of speech, and applies to online content. Individuals could be punished with a jail term ranging from two to seven years for speech that is found to be seditious,²¹⁸ obscene,²¹⁹ defamatory,²²⁰ "promoting enmity between different groups on ground of religion, race, place of birth, residence, language,"²²¹ committing acts "prejudicial to maintenance of harmony,"²²² or consisting of statements, rumors, or reports that may cause fear, alarm, disturb public tranquility, or promote enmity or ill will.²²³ Internet users are also subject to criminal punishment under the Official Secrets Act for wrongful communication of information that may have an adverse effect on the sovereignty and integrity of India.²²⁴

The IT Act criminalizes certain online activity in particular. The act bans the publication or transmission of obscene or sexually explicit content in electronic form, and the creation, transmission or browsing of child pornography.²²⁵

Section 66A of the IT Act, which criminalized information causing "annoyance," "inconvenience," or "danger," among other ill-defined categories, led to several arrests for social media posts from 2012 through early 2015 before it was struck down by the Supreme Court on March 24, 2015.²²⁶ The court affirmed that freedom of speech online is equal to freedom of speech offline, and held that Section 66A was an arbitrary and disproportionate invasion of the right to free speech outside the reasonable restrictions specified in Article 19(2) of the constitution.²²⁷

A more recent Supreme Court judgment upheld laws criminalizing defamation (Sections 499 and 500 of the IPC and Section 119 of the Code of Criminal Procedure) as consistent with the Indian Constitution.²²⁸ This judgment has a significant impact on internet freedom, as the sections are often invoked against online speech and dissent.²²⁹

Prosecutions and Detentions for Online Activities

In a new and worrying trend, multiple people were arrested across India for online speech, including seventeen for content distributed on WhatsApp.²³⁰ This includes three WhatsApp group administrators who were arrested for material posted by third parties in their groups.²³¹

Arrests based on social media content have been documented in India in the past under Section 66A of the IT Act, but outstanding prosecutions were dropped after the Supreme Court declared it unconstitutional in March 2015.²³² During the coverage period, charges were filed instead under the penal code or other sections of the IT Act, such as Section 67, which prohibits the transmission of obscene content via electronic media, or Section 66D, which prohibits use of computer resources to impersonate someone else to commit fraud.

The following prosecutions involving posts shared on WhatsApp occurred during this coverage period:

- In June 2015, a WhatsApp group administrator was arrested in Nagpur, Maharashtra for posting content that “hurt the religious sentiments” of another member of the group. He was remanded to magisterial custody and later released on bail.²³³
- In July 2015 police in Moradabad, Uttar Pradesh, arrested a school student for objectionable images and text on WhatsApp which triggered communal tension; news reports said a court sent the student to a remand home.²³⁴ In the same month, in Hadrha, Madhya Pradesh, police arrested four men for allegedly posting derogatory remarks against the Chief Minister on WhatsApp.²³⁵ They were charged with ‘promoting disharmony’ and released on bail a day later.²³⁶
- In November 2015, the Maharashtra police ordered the arrest of a 17-year-old from another state for circulating a message on WhatsApp which they said had sparked a riot in the town of Amravati. The boy was arrested in his home in Uttar Pradesh and brought to Maharashtra, where he was charged with hurting religious sentiment under Section 295A of the IPC and denied bail because his family could not prove his age.²³⁷
- In December 2015, a textile shop owner in Tamil Nadu was arrested for sharing a satirical image depicting the Chief Minister in an undergarment on WhatsApp. He was charged with Section 346 of Indecent Representation of Women (Prevention) Act and Section 3 of Harassment of Women Act.²³⁸
- In March 2016, a journalist was arrested in Chhattisgarh for allegedly posting an obscene message about a senior police officer on a WhatsApp group. He was charged with publishing obscene material under Section 67 of the IT Act and Section 292 of the IPC. The journalist accused the police of abuse in custody.²³⁹ The journalist was released on bail in June.²⁴⁰
- In May 2016, a person was arrested in Jharkhand for allegedly posting religiously inflammatory content in a WhatsApp group. Charges were filed under Section 295A of the IPC and Section 66D of the IT Act. A case was also registered against the group administrator.²⁴¹

A handful of Facebook users were also charged based on posts:

- Eight charges based on Facebook content were reported in Uttar Pradesh in July 2015; news reports did not specify the ages of those charged but described all eight as youths. One individual in Sambhal was arrested under Sections 153A, 505, and 504 of the IPC for allegedly sharing an “objectionable” post about a politician on Facebook.²⁴² Separately, charges were filed against seven people in Bahraich, Uttar Pradesh for hurting religious sentiment on Facebook. At least one who posted the comment was detained; police were also investigating the other six who had liked or commented on the content. Charges were filed under Sections 153B, 295A, and 504 of the IPC, and the IT Act.²⁴³
- In February 2016, a Facebook user reported that he had been arrested two hours after posting about a local leader. Though the post did not name the leader, a politician from the Trinamool Congress, the ruling party in the state of West Bengal, said he planned to prosecute the man for defamation.²⁴⁴ Police said the man had been arrested to maintain peace.²⁴⁵

All these cases are currently pending. Various prosecutions initiated in the previous reporting period were dropped for lack of evidence.²⁴⁶

Surveillance, Privacy, and Anonymity

There is limited opportunity for anonymity on the internet in India. Prepaid and postpaid mobile customers have their identification verified before connections are activated.²⁴⁷ There is a legal requirement to submit identification at cybercafes²⁴⁸ and when subscribing to internet connections.

The effective implementation of privacy rights remains a significant issue. Communications surveillance may be conducted under the Telegraph Act,²⁴⁹ as well as the IT Act,²⁵⁰ to protect defense, national security, sovereignty, friendly relations with foreign states, public order, and to prevent incitement to a cognizable offense. Section 69 of the IT Act appears to add another broad category, allowing surveillance for “the investigation of any offence.”²⁵¹

The home secretary at the central or state level issues interception orders based on procedural safeguards established by the Supreme Court and rules under the Telegraph Act.²⁵² These are reviewed by a committee of government officials of a certain rank, and carried out by intermediaries.²⁵³ A similar framework applies to the IT Act.²⁵⁴ Interception orders are not reviewed by a court and are limited to 60 days, renewable for a maximum of 180 days.²⁵⁵ In emergencies, phone tapping may take place for up to 72 hours without this clearance, but records must be destroyed if the home secretary subsequently denies permission.²⁵⁶ Eight separate intelligence bodies are authorized to issue surveillance orders to service providers under these circumstances.²⁵⁷ Around 7,500 to 9,000 telephone interception orders are issued by the central government alone each month, according to a 2014 report citing information revealed in a right to information request.²⁵⁸

Online intermediaries are required by law to “intercept, monitor, or decrypt” or otherwise provide user information to officials.²⁵⁹ Where the Telegraph Act levied civil penalties for non-compliance with an interception order,²⁶⁰ while also creating the possibility of loss of license, the IT Act carries a possible seven year jail term.²⁶¹ Unlawful interception is punishable by just three years’ imprisonment.²⁶²

Some improvements to the framework have been made. On January 2, 2014, the government issued “Standard Operating Procedures (SOP) for Lawful Interception and Monitoring of Telecom Service Providers,” which were viewed by journalists but not publicly available.²⁶³ The procedures restricted interception to a service provider’s “chief nodal officer,” and mandated that interception orders be in writing.²⁶⁴ Rules issued in 2011 under the IT Act increased protection of personal data handled by companies.²⁶⁵ However, they do not apply to the government; critics say they create a burden on multinational companies, particularly in the context of the outsourcing industry.²⁶⁶

These improvements failed to address the framework’s inconsistencies. In 2012, a government-appointed group of experts said the Telegraph and the IT Acts are inconsistent with regard to “permitted grounds,” “type of interception,” “granularity of information that can be intercepted,” the degree of assistance from service providers, and the “destruction and retention” of intercepted material.” These differences, it concluded, “have created an unclear regulatory regime that is not transparent, prone to misuse, and that does not provide remedy for aggrieved individuals.”²⁶⁷

In 2015, the government was finalizing the draft of the Privacy Bill to be tabled in the Parliament.²⁶⁸ This may be delayed pending another deliberation, however. In August 2015, a three-judge bench of the Indian Supreme Court requested the Chief Justice to formulate a larger bench to decide whether privacy is a fundamental right in India.²⁶⁹

License agreements require service providers to guarantee the designated security agency or licensor remote access to information for monitoring;²⁷⁰ ensure that their equipment contains necessary software and hardware for centralized interception and monitoring; and provide the geographical location, such as the nearest Base Transceiver Station, of any subscriber at a given point in time.²⁷¹ Under a 2011 Equipment Security Agreement that did not appear on the DoT website, telecom operators were separately told to develop the capacity to pinpoint any customer’s physical location within 50 meters.²⁷² “Customers specified by security agencies” were prioritized for location monitoring, with “all customers, irrespective of whether they are the subject of legal intercept or not,” to be monitored by June 2014.²⁷³ The agreement remains effective, though various GSM operators lobbied for the clause to be removed from the license agreement because of compliance issues.²⁷⁴ In 2014, an amendment to licensing conditions mandated government testing for all telecom equipment prior to use, effective in 2015.²⁷⁵

Cybercafe owners are required to photograph their customers, arrange computer screens in plain sight, keep copies of client IDs and their browsing histories for one year, and forward this data to the government each month.²⁷⁶

ISPs setting up cable landing stations are required to install infrastructure for surveillance and keyword scanning of all traffic passing through each gateway.²⁷⁷ The ISP license bars internet providers from deploying bulk encryption; restricts the level of encryption for individuals, groups or organizations to a key length of 40 bits;²⁷⁸ and mandates prior approval from the DoT or a designated officer to install encryption equipment.²⁷⁹

Since 2011, officials have sought to prevent international providers from encrypting user communications,²⁸⁰ and required some, such as Nokia and BlackBerry, to establish local servers subject to Indian law under threat of blocking their services.²⁸¹ In 2013, BlackBerry confirmed their “lawful access capability” met “the standard required by the Government of India,” though business customers would not be affected.²⁸²

The Indian government also seeks user information from international web-based platforms. Google reported that the government made 3,081 user data requests and 4,820 requests to access accounts between January and June 2015, the highest number of requests from any single government.²⁸³ Google made disclosures in 44 percent of the cases.²⁸⁴ The government requested access to 5,115 Facebook accounts between January and June 2015 and data was produced by Facebook in 45 percent of cases.²⁸⁵ The government made 141 account information requests to Twitter between June and December 2015, the highest by any government so far; Twitter said it produced data in 4 percent of cases.²⁸⁶

Besides retrieving data from intermediaries, the government’s own surveillance equipment is becoming more sophisticated. The Central Monitoring System (CMS) allows government agencies to intercept any online activities, including phone calls, text messages, and VoIP communication directly using Lawful Intercept and Monitoring (LIM) systems on intermediary premises.²⁸⁷ In May 2016, the Minister for Communications and IT stated that the monitoring centers in Delhi and Mumbai are now operational, and that centers across the country are being put into operation in a phased manner.²⁸⁸

In 2015, news reports said a lab under the Defence Research and Development Organisation (DRDO) was preparing to launch “NETRA,” short for Network Traffic Analysis, a system to sweep online content for keywords like “bomb.”²⁸⁹ The timing for the release is unknown.

Intimidation and Violence

While there was no systematic violence against internet users in the coverage period, some users have been periodically targeted in reprisal for online activities. In June 2015, a murder related to online content was reported in Uttar Pradesh. Joginder Singh, a freelance journalist who managed two Facebook pages was set alight during a raid on his home by local police officers shortly after he posted details of an investigative report accusing a state minister of involvement in illegal mining and land seizure online. He died of burn injuries after giving a statement about the attack, saying the officers questioned him about the posts, beat him, and poured petrol over him before setting him on fire.²⁹⁰

On December 27, 2015, photographer Rafeeqe Taliparamba’s studio in Kerala was burnt down after he questioned certain Islamic practices in a WhatsApp group.²⁹¹

Technical Attacks

According to one report, cybercrime affects nearly half of India’s net users.²⁹² India had a conviction rate of just 0.7 percent for cybercrime in 2014.²⁹³ However, most cybercriminals appear to act for economic motives, rather than to suppress online speech.

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