

# India

	2014	2015		
<b>Internet Freedom Status</b>	Partly Free	Partly Free	<b>Population:</b>	1.29 billion
Obstacles to Access (0-25)	13	12	<b>Internet Penetration 2014:</b>	18 percent
Limits on Content (0-35)	10	10	<b>Social Media/ICT Apps Blocked:</b>	Yes
Violations of User Rights (0-40)	19	18	<b>Political/Social Content Blocked:</b>	Yes
<b>TOTAL* (0-100)</b>	<b>42</b>	<b>40</b>	<b>Bloggers/ICT Users Arrested:</b>	Yes
			<b>Press Freedom 2015 Status:</b>	Partly Free

\* 0=most free, 100=least free

## Key Developments: June 2014 – May 2015

- The Supreme Court struck down Section 66A of the IT Act in 2015, which had been the cause of several arrests for online speech, particularly on social media (see **Legal Environment**).
- Though the Supreme Court also upheld the IT Act's Section 69A, which authorizes government blocking of online content, it did make the blocking process more transparent, and strengthened intermediary liability protection (see **Blocking and Filtering and Content Removal**).
- Website blocks ordered by the government or the courts temporarily affected entire platforms, such as Vimeo or Google Docs (see **Blocking and Filtering**).
- In April 2015, over 1 million people rallied to protect net neutrality and prevent regulation allowing telecommunications providers to charge extra for select services (see **Digital Activism**).

## Introduction

The Bharatiya Janta Party (BJP) swept to electoral victory in 2014 under its leadership candidate Narendra Modi, and the new government completed its first year in May 2015.<sup>1</sup> In the reporting period, India maintained its position as the third largest internet consumer base after the United States and China, and saw positive developments in terms of the regulatory framework, declining detentions for online speech, and burgeoning digital access. However, increased website blocking and intimidation of internet users threatened to hamper India's steadily improving internet freedom.

A 2015 Supreme Court ruling dramatically impacted the regulatory framework governing the internet. The Supreme Court struck down Section 66A of the Information Technology Act 2000 (IT Act), which was amended in 2008, and which provides a legal framework for internet use. The Section had resulted in several arrests of individuals for political or social content published on social media between 2012 and early 2015. The Supreme Court also clarified intermediary liability protections for technology companies. Although it upheld Section 69A of the IT Act, authorizing government blocking of online content, it did make the blocking process more transparent through its interpretation of the law.

In the meantime, Indian law remains inadequate for the effective protection of privacy. Although a privacy bill is being drafted, reports indicate the law enforcement agencies are seeking to be exempt from the law, leaving its scope and effectiveness under question. There were no reported instances of unlawful surveillance in the present reporting period, although this may be due to the extreme opacity of the regulatory framework governing surveillance. News reports indicate that the government is continuing to develop the Central Monitoring System, its ambitious nationwide mass surveillance program directed at monitoring individuals' digital communications.

## Obstacles to Access

*Internet penetration in India continued to increase in 2015, with mobile penetration once again playing a critical role in improving access. Infrastructure continues to remain a significant barrier; however, various governmental and nongovernmental initiatives such as the Digital India Initiative have been introduced in 2015 to address the inadequacies. Only one significant ICT shutdown was observed on account of a riot, but was lifted after three days. The top 10 internet service providers (ISPs) continue to hold almost the entire market share, but strong competition among them continues.*

## Availability and Ease of Access

With more than 302 million subscribers,<sup>2</sup> India has the third largest number of internet subscrib-

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1 "Narendra Modi takes oath as India's 15th Prime Minister," *Indian Express*, May 26, 2014, <http://indianexpress.com/article/india/politics/live-narendra-modi-swearing-in-ceremony-today-may-26/>.

2 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. ii, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator-Reports-Mar12082015.pdf>.

## India

ers in the world after China and the United States.<sup>3</sup> However, internet penetration remains low, reaching 24 percent in March 2015, up from 20 percent in June 2014.<sup>4</sup>

Mobile penetration was much higher, reaching 77 percent by March 2015,<sup>5</sup> with more than 969 million subscribers.<sup>6</sup> Nearly 283 million of India's total 302 million internet users were accessing the web through their mobile devices by March 2015.<sup>7</sup> Wireless telephone access (through mobile) in India represents almost 98 percent of all telephone services,<sup>8</sup> and accounts for nearly 94 percent of total internet access.<sup>9</sup> India was ranked 113 out of 138 countries in terms of mobile broadband penetration by the Broadband Commission.<sup>10</sup>

As of March 2015, there were nearly 16 million broadband subscribers, compared to just under 4 million narrowband subscribers, both excluding mobile access.<sup>11</sup> Narrowband internet users declined from 76 percent of the total internet users, in March 2014, to about 67 percent by March 2015.<sup>12</sup> Despite overall growth, India still has one of the world's lowest high speed broadband (faster than 10 Mbps) adoption rate, at less than 2 percent.<sup>13</sup>

The minimum speed required to qualify as broadband in India was raised to 512 kbps in 2012.<sup>14</sup> However, this is one of the lowest average broadband speeds in Asia and remains below the global average speed of 5 Mbps.<sup>15</sup> Akamai's State of Internet report ranked India 115 out of 135 countries, measuring average speed at 2.3 Mbps.<sup>16</sup>

The Global Information Technology Report 2015 ranked India first out of 143 countries for affordable internet access,<sup>17</sup> with per minute cellular and fixed broadband tariffs among the lowest

3 Michael Froman, "2015 Special 301 Report", United States Trade Representative, April 2015, p. 47, <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf> [Discuss].

4 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. ii.

5 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. i.

6 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. i.

7 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. i.

8 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. i.

9 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. ii.

10 Broadband Commission, *The State of Broadband 2014: Broadband for All*, September 2014, p. 99, <http://www.broadbandcommission.org/documents/reports/bb-annualreport2014.pdf> (2013 figure).

11 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 28.

12 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 28.

13 Akamai, *The State of the Internet, Q1, 2015 Report*, Vol. 8 No. 1, May 2015, p. 31, <https://www.stateoftheinternet.com/downloads/pdfs/2015-q1-state-of-the-internet-report.pdf>.

14 Telecom Regulatory Authority of India, "TRAI's Recommendations on the National Broadband Plan", May 4, 2011, [http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Reply\\_DOT\\_Broadband\\_modified\[1\].pdf](http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Reply_DOT_Broadband_modified[1].pdf).

15 Akamai, *The State of the Internet, Q1, 2015 Report*, Vol. 8 No. 1, May 2015, p. 12.

16 Akamai, *The State of the Internet, Q1, 2015 Report*, Vol. 8 No. 1, May 2015, p. 30.

17 Beñat Bilbao-Osorio, Soumitra Dutta, and Bruno Lanvin (Eds.), Global Information Technology Report 2015, World Economic Forum and INSEAD, p. 172, [http://www3.weforum.org/docs/WEF\\_Global\\_IT\\_Report\\_2015.pdf](http://www3.weforum.org/docs/WEF_Global_IT_Report_2015.pdf).

## India

in the world.<sup>18</sup> The average monthly subscription is Rs. 864.50 (US\$13).<sup>19</sup> However, inadequate infrastructure remains an obstacle to access. The Global Competitiveness Index 2014-15 ranked India 87 out of 147 countries for infrastructure, displaying a steady downward move from 85 out of 148 in the previous year.<sup>20</sup> India ranked a low 103 for electricity supply;<sup>21</sup> and 115 for technological readiness, the capacity of a country to fully leverage ICTs in daily activities.<sup>22</sup>

In 2014, less than 20 percent of Indian schools had a computer; of those, less than a third were connected to the internet, and children were actually using them in only 7 percent of schools.<sup>23</sup> Roughly 17 percent of villages in India have internet cafes.<sup>24</sup> Kerala, historically an educationally advanced state, has internet cafes in 97 percent of villages. Yet, even in Kerala, more than half the households do not have a family member who knows how to operate a computer.<sup>25</sup> Other geographically remote states such as Meghalaya, Arunachal Pradesh, Nagaland and Mizoram in India's north-east, have internet cafes in less than 10 percent of villages, far below the national average.<sup>26</sup> However, a 2013 industry-authored report indicated that Community Service Centres (CSCs) and Cyber Cafes provided internet access to 40 percent of the population.<sup>27</sup> CSCs aim to bring e-services to every part of the country and thereby allow all citizens to access a variety of e-content. There has been a substantial 40 percent increase in their number since they were rolled out in May 2012.<sup>28</sup> The government had established over 130,000 CSCs by 2014,<sup>29</sup> with a goal of reaching 250,000 villages by 2017.<sup>30</sup> In December 2014, news reports announced government plans to provide free public Wi-Fi zones,<sup>31</sup> targeting 25 top cities by population.<sup>32</sup> Some public Wi-Fi zones have already been established in places like Delhi, Ahmedabad, Bangalore and Patna.<sup>33</sup>

The government launched the Digital India campaign in August 2014,<sup>34</sup> co-ordinated by the Department of Telecom (DoT) and the Department of Electronics and Information Technology

18 Beñat Bilbao-Osorio, Soumitra Dutta, and Bruno Lanvin (Eds.), *Global Information Technology Report 2015*, World Economic Forum and INSEAD, p. 172.

19 Beñat Bilbao-Osorio, Soumitra Dutta, and Bruno Lanvin (Eds.), *Global Information Technology Report 2015*, World Economic Forum and INSEAD, p. 172.

20 Klaus Schwab, *The Global Competitiveness Report 2014–2015: Full Data Edition*, World Economic Forum, p. 29, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf).

21 Klaus Schwab, *The Global Competitiveness Report 2014–2015: Full Data Edition*, World Economic Forum, p. 213.

22 Klaus Schwab, *The Global Competitiveness Report 2014–2015: Full Data Edition*, World Economic Forum, p. 8.

23 Annual Status of Education Report, *Annual Status of Education Report (Rural) 2014 Provisional*, January 2015, p. 83, [http://img.assercentre.org/docs/Publications/ASER%20Reports/ASER%202014/fullaser2014mainreport\\_1.pdf](http://img.assercentre.org/docs/Publications/ASER%20Reports/ASER%202014/fullaser2014mainreport_1.pdf). [Data collected from over 560 districts after surveying 650,000 children]

24 Annual Status of Education Report, *Annual Status of Education Report (Rural) 2014 Provisional*, January 2015, p. 307.

25 Annual Status of Education Report, *Annual Status of Education Report (Rural) 2014 Provisional*, January 2015, p. 307.

26 Annual Status of Education Report, *Annual Status of Education Report (Rural) 2014 Provisional*, January 2015, p. 307.

27 IMRB-INT, *IAMAI Internet in India 2013*, June 2013, p. 13, [http://www.imrbint.com/downloads/Report-BB55685%20IAMAI%20CUBE\\_2013-Urban+Rural-C1.pdf](http://www.imrbint.com/downloads/Report-BB55685%20IAMAI%20CUBE_2013-Urban+Rural-C1.pdf).

28 IMRB-INT, *IAMAI Internet in India 2013*, June 2013, p. 14.

29 Common Services Centres Scheme (CSC), Department of Electronics and Information Technology (DeitY), <http://csc.gov.in>.

30 Saritha Rai, "India Wants to Build Massive Digital Infrastructure to Cover 800 Million Rural Citizens by 2019", *Forbes Asia*, September 18, 2014, <http://www.forbes.com/sites/saritharai/2014/09/18/india-wants-to-build-massive-digital-infrastructure-to-cover-800-million-rural-citizens-by-2019/>; Digital India, DeitY, [http://deity.gov.in/sites/upload\\_files/dit/files/Digital%20India.pdf](http://deity.gov.in/sites/upload_files/dit/files/Digital%20India.pdf).

31 Digital India, DeitY, [http://deity.gov.in/sites/upload\\_files/dit/files/Digital%20India.pdf](http://deity.gov.in/sites/upload_files/dit/files/Digital%20India.pdf).

32 Anirudh Vohra, "Free Wi-Fi: Digital Dilemma", *The Financial Express*, February 21, 2015, <http://www.financialexpress.com/article/economy/free-wi-fi-digital-dilemma/45804/>.

33 "25 Indian cities to get free public Wi-Fi by June 2015", *India Today*, December 17, 2014, <http://indiatoday.intoday.in/technology/story/25-indian-cities-to-get-free-public-wi-fi-by-june-2015/1407214.html>.

34 "Digital India – A programme to transform India into digital empowered society and knowledge economy", August 20, 2014, <http://pib.nic.in/newsite/erelease.aspx?relid=108926>.

## India

(DeitY), and to be implemented by 2018.<sup>35</sup> It aims to connect India's Gram Panchayats, institutions of self-government for rural areas,<sup>36</sup> via fibre-optic cables,<sup>37</sup> ensuring universal broadband access with accompanying e-literacy programs. These infrastructure projects will also ameliorate the rural-urban divide. As part of its Digital India programme, the government has proposed to use satellites, balloons, or drones to push faster digital connections to remote parts of the country by March 2017.<sup>38</sup> The government is planning to increase broadband penetration in smaller towns and rural areas through Multiple System Operators (MSOs), which include cable TV services, since such platforms already have last-mile connectivity in such areas.<sup>39</sup>

Other non-governmental efforts at improving accessibility include Facebook's Internet.org, in collaboration with Reliance Communications, to bring free access to a number of websites for subscribers,<sup>40</sup> especially those who cannot afford data plans.<sup>41</sup> However, the project came under extensive public criticism and several collaborators withdrew from the project (see Limits on Content).

Language continues to remain a barrier. Only about 12 percent of the population speaks English,<sup>42</sup> yet more than half the content available is in English, according to one study,<sup>43</sup> and more than 100 languages remain unrepresented online.<sup>44</sup> At the same time, the number of local language users is growing at 47 percent year-on-year rate, with nearly 127 million local language users on the internet by 2014.<sup>45</sup> Unsurprisingly, 42 percent of India's internet users prefer to access content in their local language.<sup>46</sup> Google's Indian language Internet Alliance seeks to link all local language content available to a single platform,<sup>47</sup> making it easier for consumers to navigate and making the content more visible.<sup>48</sup> Critics fear this will divert traffic away from the

35 Digital India, DeitY,

36 [http://deity.gov.in/sites/upload\\_files/dit/files/Digital%20India.pdf](http://deity.gov.in/sites/upload_files/dit/files/Digital%20India.pdf). Constitution of India, Article 243(d).

37 National Optic Fibre Network (NOFN), Bharat Broadband Network Limited, <http://www.bbnl.nic.in/content/page/national-optical-fibre-networknofn.php>.

38 "Centre ready to use satellites, drones to connect to rural India: Ravi Shankar Prasad", *Economic Times*, February 4, 2015, [http://articles.economictimes.indiatimes.com/2015-02-04/news/58795885\\_1\\_digital-india-ravi-shankar-prasad-pilot-project](http://articles.economictimes.indiatimes.com/2015-02-04/news/58795885_1_digital-india-ravi-shankar-prasad-pilot-project)

39 "DoT to provide internet via MSOs, cable operators", *Times of India*, February 16, 2015, <http://timesofindia.indiatimes.com/tech/tech-news/DoT-to-provide-internet-via-MSOs-cable-operators/articleshow/46261597.cms>.

40 About, Internet.org by Facebook, <http://www.internet.org/about>.

41 Rishi Alwani, "Facebook's Internet.org comes to India: Everything you need to know", February 11, 2015, <http://gadgets.ndtv.com/internet/features/facebooks-internetorg-comes-to-india-everything-you-need-to-know-659505>; Aman Shah, "Facebook launches free mobile Internet service in India", *Reuters*, February 10, 2015, <http://in.reuters.com/article/2015/02/10/facebook-india-internet-idINKBN0LE0JE20150210>.

42 IMRB-INT, IMAI Internet in India 2014, October 2014, p. 14; "Local language content to boost India's internet penetration: IMAI", August 4, 2015, <http://timesofindia.indiatimes.com/tech/tech-news/Local-language-content-to-boost-Indias-internet-penetration-IMAI/articleshow/48346892.cms>.

43 Usage of Content Languages for Websites, W3Techs, <http://w3techs.com/technologies>; [http://w3techs.com/technologies/overview/content\\_language/all](http://w3techs.com/technologies/overview/content_language/all).

44 "Speakers' strength of languages and mother tongues", 2001 Census of India, [http://www.censusindia.gov.in/Census\\_Data\\_2001/Census\\_Data\\_Online/Language/Statement1.aspx](http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Language/Statement1.aspx); IMRB-INT, *IMAI Internet in India 2013*, June 2013, pp. 15-16.

45 IMRB-INT, IMAI Internet in India 2014, October 2014, p. 14; "Local language content to boost India's internet penetration: IMAI", *Times of India*, August 4, 2015, <http://timesofindia.indiatimes.com/tech/tech-news/Local-language-content-to-boost-Indias-internet-penetration-IMAI/articleshow/48346892.cms>

46 IMRB-INT, *IMAI Internet in India 2013*, June 2013, p. 14, [http://www.imrbint.com/downloads/Report-BB55685%20IMAI%20ICUBE\\_2013-Urban+Rural-C1.pdf](http://www.imrbint.com/downloads/Report-BB55685%20IMAI%20ICUBE_2013-Urban+Rural-C1.pdf).

47 "Google will Destroy Local Newspapers with Indian language Internet Alliance", *Firstpost*, November 3, 2014, <http://www.firstpost.com/business/corporate-business/google-will-destroy-local-newspapers-with-indian-language-internet-alliance-1995349.html>; Nandagopal Rajan, "Big Boost for Hindi as Google Ropes in partners for Indian Language Internet Alliance", *Indian Express*, November 4, 2014, <http://indianexpress.com/article/technology/technology-others/google-kickstarts-indian-language-internet-alliance-focus-first-on-hindi/>.

48 "Google will Destroy Local Newspapers with Indian language Internet Alliance", *Firstpost*, November 3, 2014, <http://>

## India

original pages, resulting in loss of revenue and readership.<sup>49</sup> Locally, the IAMAI has sought government incentives to boost local language content development.<sup>50</sup> On December 25, 2014, the National Internet Exchange of India (NIXI), which operates and manages Indian domain names, launched the Dot Bharat domain under which URLs will now be available in local languages.<sup>51</sup>

Studies have shown that economic and social conditions result in barriers to internet access for women. While there are almost 37 million active male internet users in India, there are only 21 million active female users.<sup>52</sup> According to a study conducted by Google, women form only a third of India's online population and almost half the country's women do not see any benefit to access.<sup>53</sup>

## Restrictions on Connectivity

The Indian government does not routinely block the protocols or tools that allow for instant, person-to-person communication, though it sometimes limits ICT connectivity and usage during times of unrest. In September 2014 in Vadodara, an image widely circulated on Facebook was considered offensive to Islam by a number of Muslims, and as a result, led to clashes between Hindus and Muslims. When two persons were stabbed, the city police ordered mobile service providers to block 2G, 3G, SMS and MMS services for 3 days. Although wireline Internet access was not affected,<sup>54</sup> pre-paid mobile SIM card sales were also temporarily halted.<sup>55</sup> Service was restored after three days.<sup>56</sup>

Submarine cables connect India to the global internet. Ten are consortium owned; the rest are private.<sup>57</sup> These undersea cables are mainstays of mobile and internet communications and any damage to them leads to service disruptions. In February 2015, when two such cables – TGN and IMEWE

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[www.firstpost.com/business/corporate-business/google-will-destroy-local-newspapers-with-indian-language-internet-alliance-1995349.html](http://www.firstpost.com/business/corporate-business/google-will-destroy-local-newspapers-with-indian-language-internet-alliance-1995349.html); Nandagopal Rajan, "Big Boost for Hindi as Google Ropes in partners for Indian Language Internet Alliance", *Indian Express*, November 4, 2014, <http://indianexpress.com/article/technology/technology-others/google-kickstarts-indian-language-internet-alliance-focus-first-on-hindi/>.

49 "Google will Destroy Local Newspapers with Indian language Internet Alliance", *Firstpost*, November 3, 2014, <http://www.firstpost.com/business/corporate-business/google-will-destroy-local-newspapers-with-indian-language-internet-alliance-1995349.html>; NandagopalRajan, "Big Boost for Hindi as Google Ropes in partners for Indian Language Internet Alliance", *Indian Express*, November 4, 2014, <http://indianexpress.com/article/technology/technology-others/google-kickstarts-indian-language-internet-alliance-focus-first-on-hindi/>.

50 "Union Budget should promote entrepreneurship: IAMAI", February 3, 2015, [http://iamai.in/PRelease\\_detail.aspx?nid=3535&NMonth=2&NYear=2015](http://iamai.in/PRelease_detail.aspx?nid=3535&NMonth=2&NYear=2015).

51 Anoop Verma, "Internet domain names in Indian languages", *Financial Express*, February 2, 2015, <http://computer.financialexpress.com/magazine/internet-domain-names-in-indian-languages/8613/>.

52 IMRB-INT, IAMAI Internet in India 2014, October 2014, p. 8.

53 IANS, "49 percent Indian women see no reason to use internet: Survey", *Times of India*, May 21, 2015, <http://timesofindia.indiatimes.com/tech/tech-news/49-Indian-women-see-no-reason-to-use-internet-Survey/articleshow/47371439.cms>.

54 Mahesh Raja & M Rajendra, "Vadodara tense, mobile data services suspended", *Hindustan Times*, September 28, 2014, <http://www.hindustantimes.com/india-news/communal-unrest-in-vadodara-internet-banned/article1-1269051.aspx>; "Internet services blocked in Vadodara after riots", *Times of India*, September 28, 2014, <http://timesofindia.indiatimes.com/city/vadodara/Internet-services-blocked-in-Vadodara-after-riots/articleshow/43674499.cms>.

55 Mahesh Raja & M Rajendra, "Vadodara tense, mobile data services suspended", *Hindustan Times*, September 28, 2014, <http://www.hindustantimes.com/india-news/communal-unrest-in-vadodara-internet-banned/article1-1269051.aspx>.

56 Mahesh Raja & M Rajendra, "Vadodara tense, mobile data services suspended", *Hindustan Times*, September 28, 2014, <http://www.hindustantimes.com/india-news/communal-unrest-in-vadodara-internet-banned/article1-1269051.aspx>; "Internet services blocked in Vadodara after riots", *Times of India*, September 28, 2014, <http://timesofindia.indiatimes.com/city/vadodara/Internet-services-blocked-in-Vadodara-after-riots/articleshow/43674499.cms>.

57 The ten are: SeameWe-3; SeaMeWe-4; SeaMeWe-5; Asia-Africa Europe-1; Bay of Bengal Gateway; SAFE; Bharat Lanka Cable System; SEACOM/Tata TGN-Eurasia; IMEWE; and Europe India Gateway. See Submarine Cable Map, TeleGeography, <http://www.submarinecablemap.com/#/country/india>.



## India

–experienced faults, users reported being unable to access overseas platforms such as Twitter or Hot-mail accounts via mobile, but the services were fully restored in the following two weeks.<sup>58</sup>

There are 10 cable landing stations in India – four in Mumbai, three in Chennai, and one each in Digha, Kochi and Tuticorin.<sup>59</sup> While BSNL, the government-owned telecom operator, owns two of these stations, the rest are all privately owned. Tata Communications, which is the world's largest owner and operator of fiber network,<sup>60</sup> and Bharti Airtel, both of which are also major telecom operators, own three stations each.<sup>61</sup> These cable-landing stations, where submarine cables meet the mainland, often impose hefty fees on ISPs; however, lower charges came into effect in 2013.<sup>62</sup>

Over 80 percent of telecommunications towers are privately owned.<sup>63</sup> Market share was split between Indus Towers, a joint venture between Bharti Airtel, Vodafone, and Idea Cellular (32 percent); BSNL (15 percent); and Reliance Infratel (15 percent), according to 2011 figures.<sup>64</sup> Bharti Infratel, a subsidiary of Bharti, is one of the largest tower infrastructure providers.<sup>65</sup>

## ICT Market

There are 129 operational ISPs in India.<sup>66</sup> While there is no monopoly, the top 10 ISPs control almost 98 percent of the market.<sup>67</sup> Bharti holds the highest market share, worth 25 percent, followed by Vodafone (21 percent). BSNL, Idea and Reliance have around 10 percent market share each. There are 13 mobile operators, with Bharti controlling 23 percent of the market,<sup>68</sup> followed closely by Vodafone (19 percent), Idea (16 percent) and Reliance (11 percent).<sup>69</sup>

The universal license framework, for which guidelines were published in November 2014,<sup>70</sup> 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 high one-

58 NandagopalRajan, "Cable Trouble hits Twitter, other mobile services", *The Indian Express*, February 19, 2015, <http://indianexpress.com/article/technology/technology-others/cable-trouble-hits-twitter-other-mobile-services/>.

59 India, Submarine Cable Networks, <http://www.submarinenetworks.com/stations/asia/india>.

60 "Tata Communications Invests in Seaborn Networks' Undersea Cable", *NDTV Gadgets*, January 19, 2015, <http://gadgets.ndtv.com/internet/news/tata-communications-invests-in-seaborn-networks-undersea-cable-650955>.

61 India, Submarine Cable Networks, <http://www.submarinenetworks.com/stations/asia/india>.

62 Ministry of Communication and Information Technology, "TRAI Specifies Access Facilitation Charges for Submarine Cable Landing Stations", December 21, 2012, <http://pib.nic.in/newsite/erelease.aspx?relid=91106>.

63 "Indian Telecom Tower Industry: Consolidation Round the Corner", ICRA, February 2011, available at: [http://www.icra.in/Files/ticker/Telecom%20\\_notel.pdf](http://www.icra.in/Files/ticker/Telecom%20_notel.pdf).

64 "Indian Telecom Tower Industry: Consolidation Round the Corner", ICRA, February 2011, available at: [http://www.icra.in/Files/ticker/Telecom%20\\_notel.pdf](http://www.icra.in/Files/ticker/Telecom%20_notel.pdf).

65 "Bharti and Reliance Jio announce comprehensive telecom infrastructure sharing arrangement", December 10, 2013, <http://www.airtel.in/about-bharti/media-centre/bharti-airtel-news/corporate/bharti-and-reliance-jio-announce-comprehensive-telecom-infrastructure-sharing-arrangement>.

66 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 99, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator-Reports-Mar12082015.pdf>.

67 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 30, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator-Reports-Mar12082015.pdf>.

68 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 12, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator-Reports-Mar12082015.pdf>.

69 Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January – March 2015, August 12, 2015, p. 12, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator-Reports-Mar12082015.pdf>.

70 Guidelines for Grant of Unified License, Department of Telecommunications, November 13, 2014, <http://www.dot.gov.in/sites/default/files/Amended%20UL%20Guidelines%2013112014.PDF>. Guidelines and General Information for grant of licence for operating internet services, 24 August 2007, available at: <http://www.dot.gov.in/data-services/internet-services>.

## India

time entry fees, a performance bank guarantee, and annual license fees adjusted for revenue.<sup>71</sup> The performance bank guarantee is intended to ensure performance under the license agreement, including compliance with instructions issued by the licensor.<sup>72</sup>

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.<sup>73</sup> Critics said the rules were “poorly framed,”<sup>74</sup> but penalties for noncompliance are unclear, and enforcement has reportedly been patchy. (CSCs are exempt, and operate under separate guidelines.<sup>75</sup>)

## Regulatory Bodies

The principal institution in India for the ICT sector is the Ministry of Communications and Information Technology.<sup>76</sup> 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;<sup>77</sup> DeitY formulates policy relating to information technology, electronics, and the internet.<sup>78</sup> Internet protocol (IP) addresses are regulated by the Indian Registry for Internet Names and Numbers (IRINN).<sup>79</sup> Since 2005, the registry has functioned as an autonomous body within the not-for-profit National Internet Exchange of India.<sup>80</sup>

The Telecom Regulatory Authority of India (TRAI), an independent regulator, was created in 1997 to regulate the telecom, broadcasting, and cable TV sectors.<sup>81</sup> The Telecom Regulatory Authority of India Act mandates transparency in the exercise of its operations, which include monitoring li-

71 Draft License Agreement for Unified License, Department of Telecommunications, Ministry of Communications and IT, page 22, available at: [http://dot.gov.in/sites/default/files/Unified%20Licence\\_0.pdf](http://dot.gov.in/sites/default/files/Unified%20Licence_0.pdf). Guidelines and General Information for grant of licence for operating internet services, 24 August 2007, available at: <http://www.dot.gov.in/data-services/internet-services>; Guidelines and General Information for grant of licence for operating internet services, 24 August 2007, available at: <http://www.dot.gov.in/data-services/internet-services>; The TRAI has recommended steps so as to incentivise telecom operators to expand operations by suggesting that revenue generated by these companies from their non-telecom activities be excluded while calculating their AGR. This would help to reduce the revenue share that these companies would have to pay to the government as well as reduce their license fees and spectrum charges. Shauvik Ghosh, Trai recommends non-telecom activity be excluded from AGR, Live Mint, 7 January 2015, available at: <http://www.livemint.com/Industry/7ivGxiayiOsumswo1KMlN/Trai-recommends-nontelecom-activity-be-excluded-from-AGR.html>.

72 Draft License Agreement for Unified License, Department of Telecommunications, Ministry of Communications and IT, page 22, available at: [http://dot.gov.in/sites/default/files/Unified%20Licence\\_0.pdf](http://dot.gov.in/sites/default/files/Unified%20Licence_0.pdf).

73 Department of Information Technology, Information Technology (Guidelines for Cyber Cafe) Rules, 2011, [http://deity.gov.in/sites/upload\\_files/dit/files/GSR315E\\_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR315E_10511(1).pdf); Notification, Ministry of Communications and Information Technology, March 16, 2012, [http://deity.gov.in/sites/upload\\_files/dit/files/GSR153E\\_242012.pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR153E_242012.pdf).

74 Bhairav Acharya, “Comments on the Information Technology (Guidelines for Cyber Cafe) Rules, 2011”, Center for Information and Society, March 31, 2013, <http://bit.ly/13KCBY5>.

75 Department of Information Technology, Guidelines for the Implementation of the Common Service Centre Scheme in States, October 9, 2006, [http://deity.gov.in/sites/upload\\_files/dit/files/downloads/policiesandguidelines/csc/cscguidelines.pdf](http://deity.gov.in/sites/upload_files/dit/files/downloads/policiesandguidelines/csc/cscguidelines.pdf).

76 Organizational Structure, Department of Telecommunications, Ministry of Communications & IT, Government of India, <http://www.dot.gov.in/about-us/organizational-structure>; Organization Chart, DeitY, Ministry of Communications & IT, Government of India, <http://deity.gov.in/content/organization-chart>.

77 Profile, Department of Telecommunications, Ministry of Communications & IT, Government of India, <http://www.dot.gov.in/about-us/profile>.

78 Functions of Department of Electronics and Information Technology, Ministry of Communications & IT, Government of India, <http://deity.gov.in/content/functions-deit>.

79 IRINN, IRINN Policy Version 1.1, [http://www.irinn.in/pages/static/IRINN\\_V1.pdf](http://www.irinn.in/pages/static/IRINN_V1.pdf).

80 About Us, Indian Registry for Internet Names and Numbers, [http://www.irinn.in/pages/static/about\\_us.html](http://www.irinn.in/pages/static/about_us.html).

81 History, Telecom Regulatory Authority of India, <http://www.trai.gov.in/Content/History.aspx>.



## India

censing terms, compliance, and service quality.<sup>82</sup> Its reports are published online, usually preceded by a multi-stakeholder consultation.<sup>83</sup> A 2000 amendment to the Act established a three-member Telecommunications Dispute Settlement and Appellate Tribunal chaired by a former senior judge.<sup>84</sup> The TRAI, which criticized government departments in 2013, is perceived to be largely free of official influence.<sup>85</sup> 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.<sup>86</sup>

TRAI opinions, however, are generally perceived as independent. During the coverage period, for instance, its pricing recommendations for the 2100 MHz band spectrum auctions were repeatedly rejected by the DoT.<sup>87</sup>

## Limits on Content

*Content blocking increased during the coverage period with various instances of overbroad blocking and copyright restrictions. The constitutionality of Section 69A of the IT Act was upheld before the Supreme Court of India, but additional safeguards were interpreted. The intermediary liability guidelines issued under the IT Act, creating a notice and takedown system, were limited to exclude requirements for companies to respond to takedowns in case of user complaints. There was a significant increase in digital mobilization, especially on the issue of net neutrality.*

## Blocking and Filtering

Blocking of websites takes place under Section 69A of the IT Act, and a 2009 secondary 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 so to do” 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

82 Section 11(4), The Telecom Regulatory Authority of India Act, 1997; Snehashish Ghosh, “The Telecom Regulatory Authority of India Act, 1997”, The Centre for internet & society, March 15, 2013, <http://cis-india.org/telecom/resources/trai-act-1997>.

83 “DTH operators should provide inter-operability of STBs, says TRAI Chairman”, *The Economic Times*, December 10, 2013, [http://articles.economictimes.indiatimes.com/2013-12-10/news/45035128\\_1\\_dth-operators-dth-licence-dth-service-providers](http://articles.economictimes.indiatimes.com/2013-12-10/news/45035128_1_dth-operators-dth-licence-dth-service-providers); TRAI released the draft of: ‘The Telecom Commercial Communications Customer Preference (Fifteenth Amendment) Regulations, 2014’ for comments from the Stakeholders, January 29, 2014, <http://www.trai.gov.in/WriteReadData/ConsultationPaper/Document/draftTCCCP%2015%20AMEND%202014final.pdf>.

84 Section 14, The Telecom Regulatory Authority of India Act, 1997; The tribunal was empowered to adjudicate between the licensor (DoT) and the licensee; between two or more service providers; between a service provider and a group of consumers; and to hear appeals against TRAI decisions.

85 “Trai wants Auction of 3G Spectrum After Formation of New Govt”, *The Indian Express*, February 12, 2014, <http://archive.indianexpress.com/news/trai-wants-auction-of-3g-spectrum-after-formation-of-new-govt/1225198/>.

86 Amendment to the TRAI Act, 1997, <http://www.prsindia.org/uploads/media/Recent%20Acts/Telecom%20Regulatory%20Act.%202014.pdf>.

87 Recommendations On Valuation and Reserve Price of Spectrum: 2100 MHz Band, TRAI, January 15, 2015, <http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Final%20Response%20Dated%202015.01.2015.pdf>; “Telecom Commission fixes 2,100-MHz base price at Rs 3,705 cr”, *Business Standard*, January 20, 2015, [http://www.business-standard.com/article/economy-policy/spectrum-auction-telecom-commission-clears-rs-3700-cr-base-price-for-2-100-mhz-115011900345\\_1.html](http://www.business-standard.com/article/economy-policy/spectrum-auction-telecom-commission-clears-rs-3700-cr-base-price-for-2-100-mhz-115011900345_1.html).

**India**

commission of any cognizable offence relating to above.”<sup>88</sup> Intermediaries failing to comply are punishable with fines and prison terms up to seven years.<sup>89</sup>

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.<sup>90</sup> Those requests are reviewed by a committee which includes senior representatives of the law, home affairs, and information ministries, and the nodal agency for cyber security, the Indian Computer Emergency Response Team (CERT-IN).<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup>

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.<sup>94</sup> ISPs are not legally required to inform the public of blocks and the Blocking Rules mandate that executive blocking orders be kept confidential.<sup>95</sup> 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.<sup>96</sup>

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.”<sup>97</sup> It is not clear how many complied.

In the landmark Shreya Singhal case decided by the Supreme Court during the coverage period, the petitioners challenged the constitutionality of Section 69A, citing opaque procedure among other issues.<sup>98</sup> However, on March 24, 2015, in the judgment of *Shreya Singhal v. Union of India*,<sup>99</sup> the Supreme Court upheld Section 69A and the Blocking Rules, saying safeguards within the section were adequate, narrowly constructed, and not in contravention of the provisions of the Constitution of India.<sup>100</sup> 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 hear-

88 Section 69A(1), The Information Technology Act, 2008.

89 Section 69A(3), The Information Technology Act, 2008.

90 Rule 6, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

91 Members must be of the rank of joint secretary or above, see Rule 7, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

92 Rule 8, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

93 Rule 9, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

94 Melody Patry, “Index on censorship digital freedom India: Digital freedom under threat?”, *Xindex*, November 2013, p. 9, <http://www.indexoncensorship.org/2013/11/india-online-report-freedom-expression-digital-freedom-1/>

95 Rule 16, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

96 “Verizon Releases Transparency Report”, January 22, 2014, <http://newscenter.verizon.com/corporate/news-articles/2014/01-22-verizon-releases-transparency-report/>

97 Rule 6(5), Information Technology (Guidelines for Cyber Cafe) Rules, 2011.

98 *Common Cause v. Union of India* [W.P.(C) No. 21 of 2013]; *PUCL v. Union of India* [W.P.(CrI) No. 199 of 2013]

99 (2015) 5 SCC 1.

100 [W.P. (CrI).No.167 of 2012]

## India

ing before the blocking order is issued.<sup>101</sup> However, given that the Blocking Rules require strict confidentiality to be maintained regarding the requests received, as well as the actions taken,<sup>102</sup> it remains to be seen how and whether the judgment will be effectively implemented.<sup>103</sup>

Implementation of blocks appears to depend on the technological capacity of ISPs. In 2013, Citizen Lab reported 90 instances of PacketShaper technology being used in India, 53 on public networks.<sup>104</sup> PacketShaper can delay some or all packets carrying specific information,<sup>105</sup> so that users seeking to access it experience unreliable service.<sup>106</sup> On May 12, 2015, when the DoT ordered ISPs to block URLs advertising unlicensed taxi services like Uber, ISPs blocked two sites but said they lacked the ability to block others which were using HTTPS encryption.<sup>107</sup> Separately in 2015, the state-owned BSNL stated that the Broadband Network (BBNW) Circle, established in 1988 to handle data services,<sup>108</sup> has the capability to block entire websites only, not individual pages.<sup>109</sup>

The number of blocked URLs increased during this reporting period, according to public information. Some of that information was contradictory. In a submission before the Supreme Court, the government said 2,455 URLs were blocked from January through December 6, 2014, of which 2,162 were blocked by court order and 293 through the committee constituted under Section 69A.<sup>110</sup> Separately, in April 2015, the Minister for Communication and Information Technology told parliament that 2,091 URLs were blocked by court order in 2014 and another 143 between January 1, 2015 and March 31.<sup>111</sup> A total of 255 URLs were blocked in 2014 under Section 69A through the committee, and none between January and March 31, 2015, according to the minister. While the reason for the different figures is unclear, however, the number of URLs affected is clearly rising. In 2014, the government said 1,299 URLs were blocked in compliance with court orders between January 2013 and January 31, 2014; and a further 62 URLs were blocked following the committee's review.<sup>112</sup> (A single court order can block multiple URLs or domain names. For example, in reply to a Right to Informa-

101 Chinmayi Arun, "The Case of the Online Intermediary," April 7, 2015, *The Hindu*, <http://www.thehindu.com/opinion/op-ed/shreya-singhal-case-of-the-online-intermediary/article7074431.ece>.

102 Rule 16, Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.

103 Chinmayi Arun, "The Case of the Online Intermediary," April 7, 2015, *The Hindu*, <http://www.thehindu.com/opinion/op-ed/shreya-singhal-case-of-the-online-intermediary/article7074431.ece>.

104 "Some Devices Wander by Mistake: Planet Blue Coat Redux", Available as part of data set for Morgan Marquis-Boire, Collin Anderson, Jakub Dalek, Sarah McKune, and John Scott-Railton, , July 9, 2013. The data set may be accessed at <https://docs.google.com/spreadsheets/pub?key=0AtJqKcMmUwTKdEMxMDk4VV80em1mclRqVzFDeGN5VEE&output=html>.

105 Traffic Shaping, <http://searchnetworking.techtarget.com/definition/traffic-shaping>.

106 T. Ramachandran, "Indian ISPs too resorting to censorship," *The Hindu*, February 9, 2013, <http://www.thehindu.com/todays-paper/tp-national/indian-isps-too-resorting-to-censorship/article4395907.ece>.

107 Anandita Singh Mankotia&Deepali Gupta, "Internet companies to write to DoT on their inability to block websites of Uber & Ola," May 15, 2015, *The Economic Times*, [http://articles.economictimes.indiatimes.com/2015-05-15/news/62192113\\_1\\_telecom-department-websites-ispai](http://articles.economictimes.indiatimes.com/2015-05-15/news/62192113_1_telecom-department-websites-ispai).

108 "Broadband Network Circle: About Us," [http://www.bsnl.co.in/opencms/bsnl/BSNL/circleweb/DataNetworks/About\\_Us.html](http://www.bsnl.co.in/opencms/bsnl/BSNL/circleweb/DataNetworks/About_Us.html)

109 Reply to the RTI Application filed by Shagun Belwal at Software Freedom Law Centre, Delhi to Bharat Sanchar Nigam Limited, March 25, 2015 available at: <http://sflc.in/wp-content/uploads/2015/05/RTIBSNL.pdf>

110 Submission by the Union of India in the matter of PUCL v. Union of India W.P.(CrI) No. 199 of 2013. (On record with the authors).

111 Sarvjeet Singh, "Government's Response to Fundamental Questions Regarding the Internet in India," *CCG Blog*, April 24, 2015, <https://ccgnludelhi.wordpress.com/2015/04/24/governments-response-to-fundamental-questions-regarding-the-internet-in-india/>.

112 Ministry of Communication and Information Technology, "Objectionable Contents on Websites," Question No. 318, February 12, 2014, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=151935> ; See PTI, "Govt asks social networking sites to block 1,299 URLs", *The Mint*, February 12, 2014, <http://www.livemint.com/Politics/xtpfYq0UoSx6haja5alkK/Govt-asks-social-networking-sites-to-block-1299-URLs.html>.

## India

tion request, DEITY said the information ministry received a total of 130 court orders to block web content between February 2009 and December 2013.<sup>113</sup>)

In most cases, the content targeted through these orders is not known. However, there were multiple reports of overbroad blocks affecting legitimate online activity.

- On December 17, 2014, Deity blocked 32 websites based on a court order for “spreading anti-India messages by the ISIS terrorist group.”<sup>114</sup> The blocks affected large platforms including Archives.org, Dailymotion, Vimeo, and Github, among others. Weebly, Vimeo, Github and Dailymotion were unblocked on December 31,<sup>115</sup> but others remained blocked till January 9 2015.<sup>116</sup> The government temporarily blocked the image sharing platform Imgur around the same time, but the reason remains unknown.<sup>117</sup>
- In the aftermath of the attack on the satirical magazine *Charlie Hebdo* in Paris, the social media watch cell of the Mumbai Police intelligence went through potentially harmful posts on a popular social networking website and stated that they had blocked three to four posts carrying objectionable content.<sup>118</sup> Although one newspaper said that over 650 pages or posts were blocked, the Mumbai police denied this.<sup>119</sup>
- On June 23, 2014 the Delhi High court issued an order to block nearly 500 websites if they were found to be broadcasting the FIFA World Cup,<sup>120</sup> whose exclusive broadcast rights were held by Multi Screen Media.<sup>121</sup> The court revised the order in response to objections from the opposing counsels that the list was overbroad, including the URL for Google Docs,

113 Reply to the RTI Application filed by Sarvjeet Singh at Centre for Communication Governance at National Law University, Delhi to the Department of Electronics and Information Technology, E-Security Division, March 25, 2014 (On record with the authors).

114 DevjyotGhoshal and SaptrishiDutta, “A threat From ISIL prompted India to block Github and 31 other sites,” *Quartz*, December 31, 2014, <http://qz.com/319866/a-threat-from-isis-prompts-india-to-block-github-and-a-handful-of-other-sites/>; Direction to Block Internet Website, No.813-7/25/2011-D5(Vol.-IV), Department of Telecommunication, available at: [http://cis-india.org/internet-governance/resources/2014-12-17\\_DoT-32-URL-Block-Order\\_compressed.pdf](http://cis-india.org/internet-governance/resources/2014-12-17_DoT-32-URL-Block-Order_compressed.pdf); Arvind Gupta@ buzzindelihi, Twitter, December 31, 2014 1:41 AM, Tweet available at: <https://twitter.com/buzzindelihi/status/550225247455035392>;

“Government Blocks 32 Websites Allegedly Carrying Anti-India Content From ISIS,” NDTV, January 01, 2015, available at: <http://www.ndtv.com/india-news/government-blocks-32-websites-allegedly-carrying-anti-india-content-from-isis-720952>.

115 Ravi Sharma, “Indian government unblocks Vimeo, Dailymotion, 2 other websites,” *Times of India*, January 2, 2015, <http://timesofindia.indiatimes.com/tech/tech-news/Indian-government-unblocks-Vimeo-Dailymotion-2-other-websites/articleshow/45731251.cms>; “Websites Blocked Following Court Order,” Press Information Bureau, December 31, 2014, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=114259>.

116 “Government unblocks 32 websites as they promise to cooperate,” *IBNLive*, January 10, 2014, <http://ibnlive.in.com/news/government-unblocks-32-websites-as-they-promise-to-cooperate/522238-3.html>; Neha Alawadhi, “Government orders ISPs to unblock 32 websites, links,” *The Economic Times*, January 10, 2015, [http://articles.economictimes.indiatimes.com/2015-01-10/news/57913097\\_1\\_isps-internet-service-providers-websites](http://articles.economictimes.indiatimes.com/2015-01-10/news/57913097_1_isps-internet-service-providers-websites).

117 Nikhil Pahwa, “Updated: Indian government blocks image sharing site imgur,” *Medianama*, December 27, 2014, <http://www.medianama.com/2014/12/223-india-blocks-imgur/>.

118 Ayesha Arvind, “Mumbai Police say they ‘only blocked three or four’ Charlie Hebdo cartoons,” *Mail Online India*, January 12, 2015, <http://www.dailymail.co.uk/indiahome/indianews/article-2905878/Mumbai-Police-say-blocked-three-four-Charlie-Hebdo-cartoons.html>.

119 DebashishPanigrahi, “After Paris Attack, Mumbai police block 650 controversial posts,” *Hindustan Times*, January 09, 2015, <http://www.hindustantimes.com/india-news/after-paris-attack-mumbai-police-block-650-controversial-posts/article1-1305032.aspx>.

120 Multi Screen Media Ltd. Versus Sunit Singh and Ors., CS(OS) 1860/2014, Order dated June 23, 2014, High Court of Delhi (India) available at: [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=119642&yr=2014](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=119642&yr=2014).

121 NDTV Correspondent, “Torrent and Other Websites Being Blocked by ISPs in India: Reports,” July 7, 2015, <http://gadgets.ndtv.com/internet/news/torrent-and-other-websites-being-blocked-by-isps-in-india-reports-554317>; Multi Screen Media Ltd. Versus Sunit Singh and Ors., CS(OS) 1860/2014, Order dated June 23, 2014, High Court of Delhi (India) available at: [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=119642&yr=2014](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=119642&yr=2014).

## India

the cloud-based document processing service. At least some users experienced disruption of listed services on some ISPs before the order was revised in July;<sup>122</sup> it was withdrawn at the end of the event.<sup>123</sup>

- In March 2015, the documentary *India's Daughter*, directed by Leslee Udwin and produced by the BBC, was blocked online in India.<sup>124</sup> The film tells the story of the 2012 rape victim, Jyoti Singh, whose case took India by storm in December of that year, inciting large-scale protests. On March 4, 2015, the government ordered blocking of its broadcast, filing a complaint with the Delhi Police,<sup>125</sup> and obtaining a restraining order from the Delhi District Court against the screening in any form.<sup>126</sup> A public interest litigation filed against the actions in the Delhi High Court remains pending.<sup>127</sup> The video continued to be available despite the ban, as it was reposted multiple times.<sup>128</sup>

The IT Act and the Indian Penal Code prohibit the production and transmission of “obscene material,”<sup>129</sup> but there is no specific law against viewing pornography in India, except child pornography, which is prohibited under the IT Act.<sup>130</sup> In the case of *Kamlesh Vaswani v. Union of India*,<sup>131</sup> a petition was filed asking the Supreme Court to direct the government to block all online pornography from view in India. In a 2013 order,<sup>132</sup> the Supreme Court acknowledged this as an important matter, especially for children aged 14 to 18, and asked the government to “control the menace.” In the past, the government has informed the Supreme Court that it is not technically feasible to block pornographic sites and that doing so will violate Articles 19 and 21 of the Constitution,<sup>133</sup> however, the Supreme Court permitted the matter to be referred to the Cyber Regulation Advisory Committee.<sup>134</sup> The

122 Nikhil Pahwa, “World Cup 2014: 219 websites blocked in India, after Sony complaint,” *Medianama*, July 7, 2014, <http://www.medianama.com/2014/07/223-world-cup-2014-472-websites-including-google-docs-blocked-in-india-following-sony-complaint/>; Multi Screen Media Ltd. Versus Sunit Singh and Ors., CS(OS) 1860/2014, Order dated July 01, 2014, High Court of Delhi (India) available at: [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=122739&yr=2014](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=122739&yr=2014)

123 CS(OS) 1860/2014 (July 1, 2014), High Court of Delhi (India) available at: [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=136945&yr=2014](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=136945&yr=2014)

124 Colin Freeman, “Interview with Delhi gang rapist left ‘stain on my soul’, says British film maker,” *The Telegraph UK*, March 03, 2015, <http://www.telegraph.co.uk/news/worldnews/asia/india/11446337/Interview-with-Delhi-gang-rapist-left-stain-on-my-soul-says-British-film-maker.html>

125 “Court orders restraint on broadcast of December 16 rape documentary, FIR filed,” *The Indian Express*, March 4, 2015, <http://indianexpress.com/article/cities/delhi/interview-of-dec-16-rapist-ib-ministry-asks-channels-not-to-air-documentary-fir-filed/2/#sthash.mmk1yCe1.dpuf>

126 Sanjay Hegde, “The Ban that actually isn’t,” *The Hindu*, March 10, 2015, <http://www.thehindu.com/opinion/lead/indias-daughters-the-ban-that-actually-isnt/article6975342.ece>

127 Kritika Padode and Anr. V. Union of India, W.P.(C) 2399/2015, available at: [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=55704&yr=2015](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=55704&yr=2015)

128 “Impossible to block all content of India’s Daughter documentary, say cyber experts,” *Firstpost*, March 6, 2015, <http://www.firstpost.com/india/impossible-to-block-all-content-of-indias-daughter-documentary-say-cyber-experts-2138679.html>

129 Section 67, The Information Technology Act 2000.

130 Section 67(B), The Information Technology Act 2000.

131 W.P.(C).No. 177 of 2013

132 Kamlesh Vaswani versus Union of India, W.P.(C).No. 177 of 2013, Order dated July 12, 2013, Supreme Court of India, available at: <http://courtnic.nic.in/supremecourt/temp/177201331272013p.txt>

133 Chinamiy Arun & Sarvjeet Singh, “Online Intermediaries in India,” available at: <http://ccgtr.org/wp-content/uploads/2015/02/CCG-at-NLUD-NOC-Online-Intermediaries-Case-Studies.pdf>

134 “Can’t block pornographic sites on our own: ISPs tell SC,” *India Today*, January 28, 2014, <http://indiatoday.intoday.in/story/cant-block-pornographic-sites-on-our-own-isps-tell-sc/1/340204.html>; Kamlesh Vaswani versus Union of India, W.P.(C).No. 177 of 2013, Order dated 29 August, 2014, Supreme Court of India, available at: [http://courtnic.nic.in/supremecourt/casestatus\\_new/querycheck\\_page2.asp](http://courtnic.nic.in/supremecourt/casestatus_new/querycheck_page2.asp)

## India

committee consists of the telecom minister, government officials from DoT, DEITY, CBI and industry representatives.<sup>135</sup>

At a 2015 meeting of the Cyber Regulation Advisory Committee, the Minister of Communications and Information Technology asked the Internet and Mobile Association of India, an industry association, to monitor and prepare a list of pornographic sites for blocking by ISPs.<sup>136</sup> A secretary for the Law Ministry said, "It is not desirable to submit the plea to Supreme Court that it is difficult to filter or block pornography sites and we must try to evolve a solution."<sup>137</sup>

On August 31, 2015, outside the coverage period of this report, the government of India blocked access to 857 websites that are considered pornographic.<sup>138</sup> DEITY asked DOT to notify the ISPs to implement the block, as these websites were found to be violating the morality and decency under Article 19(2). The order resulted in protests and backlash on social media and a widespread debate on censorship across India resulting in a subsequent order partially revoking the earlier order to limit the ban to only child pornography.<sup>139</sup> Subsequently, the government informed the Supreme Court in the Kamlesh Vaswani matter that it would only block child pornography.<sup>140</sup>

## 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.<sup>141</sup> Intermediaries Guidelines issued in 2011 required intermediaries to remove access to certain content within 36 hours of a user complaint.<sup>142</sup> The jurisprudence on notice and takedown changed significantly with the Supreme Court's judgment in *Shreya Singhal v. Union of India*, in which the court read down Section 79 and the intermediary guidelines.<sup>143</sup> While intermediaries had previously been required to take down content on receipt of user complaints, court orders, or government requests, they are no longer required to act on user complaints in the wake of the ruling.<sup>144</sup> Further, the court order or government notification for removal of content will only be legitimate if it falls within the reasonable restrictions provided for under Article 19(2) of the constitution, while earlier there was no requirement for the order to comply with Article 19(2). Unlawful content beyond the ambit of

135 Minutes of the Cyber Regulation Advisory Committee meeting held on 5<sup>th</sup> September, 2014 in DeitY, available at: [http://deity.gov.in/sites/upload\\_files/dit/files/Min-CRAC-5\\_percent20Sept.pdf](http://deity.gov.in/sites/upload_files/dit/files/Min-CRAC-5_percent20Sept.pdf); Chinmayi Arun, "Blocking online porn: who should make Constitutional decisions about freedom of speech?" Scroll.in, February 3, 2015, <http://archives.scroll.in/article/703746/blocking-online-porn-who-should-make-constitutional-decisions-about-freedom-of-speech>.

136 Chinmayi Arun, "Blocking online porn: who should make Constitutional decisions about freedom of speech?" Scroll.in, February 3, 2015, <http://archives.scroll.in/article/703746/blocking-online-porn-who-should-make-constitutional-decisions-about-freedom-of-speech>; Chinmayi Arun & Sarvjeet Singh, "Online Intermediaries in India," 26, <http://ccgtr.org/wp-content/uploads/2015/02/CCG-at-NLUD-NOC-Online-Intermediaries-Case-Studies.pdf>.

137 Chinmayi Arun & Sarvjeet Singh, "Online Intermediaries in India," 26, <http://ccgtr.org/wp-content/uploads/2015/02/CCG-at-NLUD-NOC-Online-Intermediaries-Case-Studies.pdf>.

138 Order no. 813-7/25/2011-DS (Vol.-V), available at: [http://cis-india.org/internet-governance/resources/dot-morality-block-order-2015-07-31/at\\_download/file](http://cis-india.org/internet-governance/resources/dot-morality-block-order-2015-07-31/at_download/file).

139 Aditya Kalra, "India withdraws order to block pornography sites," *Reuters*, August 5, 2015, <http://in.reuters.com/article/2015/08/05/india-porn-ban-idINKN0QA0K20150805>.

140 Sarvjeet Singh, "We are not a totalitarian state and cannot be asked to moral police: AG tells SC in the Porn Petition" CCG Blog, August 10, 2015, <https://ccgnludelhi.wordpress.com/2015/08/10/we-are-not-a-totalitarian-state-and-cannot-be-asked-to-moral-police-ag-tells-the-sc-in-the-porn-petition/>.

141 Section 79, The IT (Amendment) Act 2008; Section 72A, IT (Amendment) Act, 2008.

142 Rule 3, Information Technology (Intermediaries Guidelines) Rules, 2011.; Pritika Rai Advani, "Intermediary Liability in India", <http://www.epw.in/special-articles/intermediary-liability-india.html>.

143 W.P. (Cr.) No. 167/2012.

144 *Shreya Singhal v Union of India*, Writ Petition (Criminal) No.167 Of 2012.



## India

Article 19(2) cannot be restricted. Thus, the court restricted the earlier broad grounds for takedown notices.<sup>145</sup>

In February 2015, before the Shreya Singhal judgment, a comedic video titled “AIB Roast,” which was broadcast on YouTube, garnered more than 7 million views and prompted online and offline protests for content people called offensive. The organization apologized and removed the video from YouTube and other online video hosting platforms, though the content continued to be widely available.<sup>146</sup> However, news reports said legal complaints were lodged against YouTube for distributing the content on grounds it was offensive.<sup>147</sup> Separately, a petition filed before the Bombay High Court asking that YouTube videos be monitored for offensive content remains pending.<sup>148</sup>

The Indian government made 295 content removal requests to Google from January to June 2014, a marked increase from the 154 requests received between July to December 2013.<sup>149</sup> Facebook received 4,960 requests for content removal from January to June 2014.<sup>150</sup> Twitter received 15 requests for content removal from July to December 2014, of which 1 was court ordered and 14 were from police or government agencies.<sup>151</sup>

Intermediaries can separately be held liable for infringing the Copyright Act 1957,<sup>152</sup> under the law and licensing agreements.<sup>153</sup> 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.<sup>154</sup> Rules clarifying the amendment in 2013 gave intermediaries

145 Shreya Singhal v Union of India, Writ Petition (Criminal) No.167 Of 2012.

146 Sugam Singhal, “AIB Explanation for taking down the roast has us LOL,” NDTV, February 4, 2015, <http://www.ndtv.com/cheat-sheet/aib-explanation-for-taking-down-the-roast-has-us-lol-736956>; All India Bakchod, Facebook post available at: <https://www.facebook.com/IndiaBakchod/posts/859141927463136>

147 Tejas Mehta, “Ranveer, Deepika, YouTube, AIB Named in New Complaint: Police,” NDTV, February 06, 2014, <http://www.ndtv.com/india-news/pune-police-register-fir-against-aib-roast-youtube-737303>; also see: Shashidahr KJ, “AIB Row: Pune FIR names YouTube for distributing ‘obscene’ video; Karan Johar, Ranveer Singh, among others named,” *Medianama*, February 09, 2015, <http://www.medianama.com/2015/02/223-aib-row-pune-fir-youtube/>

148 Chinmayi Arun, “Using Law to Bully comedians,” *The Hindu*, February 16, 2014, <http://www.thehindu.com/opinion/op-ed/comment-using-law-to-bully-comedians/article6898848.ece>; “Petition filed in High Court against AIB roast,” *The Times of India*, February 7, 2015, <http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Petition-filed-in-High-Court-against-AIB-roast/articleshow/46153158.cms>.

149 Google Transparency Report 2014, available at: <http://www.google.com/transparencyreport/removals/government/IN/?hl=en>.

150 Facebook Government Requests Report, January-June 2014, available at: <https://govtrequests.facebook.com/country/India/2014-H1/#>.

151 Twitter Transparency Report, July- December 2014, <https://transparency.twitter.com/removal-requests/2014/jul-dec>.

152 In the Copyright Act, 1957, Section 51(a)(ii) read with Section 63 of Act the criminalizes use of any place for profit for the communication of the work to the public where such communication constitutes an infringement of the copyright, exempting only those who are unaware or have no reasonable grounds for believing that such communication would constitute infringement of copyright. Moreover, Section 51(b) read with Section 63 also prohibits sale, hire, or distribution to the prejudice of the copyright owner, as well as exhibition in public and import to India of infringing copies also amount to infringement of copyright, with no exemptions. See, Pritika Rai Advani, “Intermediary Liability in India”, *Economic & Political Weekly*, December 14, 2013, Vol. XLVIII No. 50, p. 122.

153 The guidelines and license requirements for intermediaries also prohibit the carrying of communication that infringes copyright or other intellectual property rights. Guideline 1.3(27), Guidelines and General Information for Grant of License for Operating internet Services, <http://www.dot.gov.in/data-services/internet-services>; Unified License Agreement, Rule 38, [http://www.dot.gov.in/sites/default/files/Amended\\_percent20UL\\_percent20Agreement\\_0.pdf](http://www.dot.gov.in/sites/default/files/Amended_percent20UL_percent20Agreement_0.pdf)

154 Specifically, any providers offering “transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public” through “links, access or integration.” See, Pranesh Prakash, “Analysis of the Copyright (Amendment) Bill 2012,” Center for Internet and Society, May 23, 2012, <http://bit.ly/JSDMLg>; Ministry of Law and Justice, “Copyright (Amendment) Act 2012”, June 7, 2012, <http://bit.ly/Kt1vIQ>

## India

aries power to assess the legitimacy of the notice from the copyright holder and refuse to comply.<sup>155</sup> However, critics said the language was vague.<sup>156</sup>

### Media, Diversity, and Content Manipulation

Online media content is diverse and lively. 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 organisations.<sup>157</sup>

Social media users accused news outlets of removing controversial articles without explanation during the coverage period. An article by journalist Rana Ayyub about a prominent member of the ruling BJP party, published on the DNA news website on July 8, 2014, was taken down without explanation on July 12 after the critical piece prompted online discussion.<sup>158</sup>

Economic forces also have the potential to influence online content. Paid news articles, or “advertorials,” are common in the mainstream media, ranging from unclear disclosure of paid endorsements to bribery and other kickbacks for coverage.<sup>159</sup> In 2013, the Indian digital media website *Medianama* reported this phenomenon had increased on digital platforms in the past three years.<sup>160</sup> Service providers took steps to limit access to communication tools which threatened their profits in 2014. In December 2014, Bharti Airtel planned to exclude Voice over Internet Protocol (VoIP) services from being accessed via regular data packages.<sup>161</sup> The TRAI chairman told journalists this would not be illegal, as India lacked any laws protecting net neutrality, the principle that providers should not discriminate against certain content or data.<sup>162</sup> Social media users were outraged, and the policy was widely criticized.<sup>163</sup>

In February 2015, Facebook launched Internet.org in India, in collaboration with Reliance Commu-

155 Ministry of Human Resource Development, “Copyright Rules 2013”, March 14, 2013, <http://bit.ly/YrhCS5>

156 ChaitanyaRamachandran, “Guest Post: A Look at the New Notice and Takedown Regime Under the Copyright Rules, 2013”, Spicy IP, April 29, 2013, <http://bit.ly/16zSzWf>

157 “Literary Censorship in the era of Internet,” *Times of India*, February 21, 2015, <http://timesofindia.indiatimes.com/city/chandigarh/Literary-censorship-in-the-era-of-internet/articleshow/46319279.cms>

158 “A ‘harsh’ article on Amit Shah deleted, sparks outrage on social media,” *ABP Live*, July 12, 2014, <http://www.abplive.in/india/2014/07/12/article361638.ece/A-harsh-article-on-Amit-Shah-deleted-sparks-outrage-on-social-media>; ShivamVij, “DNA’s explanation about its self-censorship is not convincing,” *Scroll.in*, July 14, 2014, <http://scroll.in/article/670367/dnas-explanation-about-its-self-censorship-is-not-convincing>.

159 Sub-Committee Report, “Paid News”: How corruption in the Indian media undermines democracy”, Press Council of India, <http://presscouncil.nic.in/OldWebsite/Sub-CommitteeReport.pdf>; Report on Paid News, Press Council of India, July 30, 2010, <http://presscouncil.nic.in/OldWebsite/CouncilReport.pdf>; Paranjay Guha Thakurta, “Manufacturing News”, *Economic and Political Weekly*, April 2, 2011, <http://www.epw.in/commentary/manufacturing-news.html>.

160 Nikhil Pahwa, “Our Views On Paid News In Digital Media & Blogs In India,” *Medianama*, June 21, 2013, <http://bit.ly/17r8VRE>.

161 “For Skype, Airtel will charge Rs 75 for 75MB, postpaid packs soon,” *The Financial Express*, December 27, 2014, <http://www.financialexpress.com/article/industry/tech/for-skype-airtel-will-charge-rs-75-for-75mb-postpaid-packs-soon/23571/>;

“Government to Look Into Airtel’s Plan to Charge for Internet Calls: Ravi Shankar Prasad,” *NDTV*, December 25, 2014, <http://gadgets.ndtv.com/telecom/news/government-to-look-into-airtels-plan-to-charge-for-internet-calls-ravi-shankar-prasad-639713>; Yuthika Bhargava, “Airtel drops plans to charge extra for internet voice calls,” *The Hindu*, December 31, 2014, <http://www.thehindu.com/business/Industry/airtel-will-not-charge-extra-for-internet-voice-calls-via-skype-viber/article6735030.ece>.

162 Rishi Raj, “Can’t fault Airtel on VoIP rates: Trai chief Rahul Khullar,” *The Financial Express*, December 27, 2014, <http://www.financialexpress.com/article/industry/companies/cant-fault-airtel-on-voip-rates-rahul-khullar/23513/>.

163 “Rage against Airtel spills onto social networking sites,” *Economic Times*, December 29, 2014, [http://articles.economictimes.indiatimes.com/2014-12-29/news/57495222\\_1\\_bharti-airtel-voice-services-voip-services](http://articles.economictimes.indiatimes.com/2014-12-29/news/57495222_1_bharti-airtel-voice-services-voip-services).

## India

nications and other corporations. The service provides limited offline access to certain websites at no cost for Reliance customers without full internet access, reviving the net neutrality debate.<sup>164</sup> On March 27, 2015, the TRAI issued a consultation paper envisaging a regulatory framework to support service providers charging extra fees for consumers using communication applications such as Viber, Skype, and WhatsApp, which the paper characterized as “over-the-top services,” going against the principles of net neutrality.<sup>165</sup> The paper invited comments over a period of 29 days. This led to criticism and claims that the TRAI was hoping to minimize the public’s response by keeping such a short deadline. As a result of the criticism and the huge online mobilization, more than a million people submitted comments (see Digital Activism).<sup>166</sup> Some corporations, including Clear Trip, NDTV and Times Internet, withdrew their content from Internet.org due to the negative publicity.<sup>167</sup>

The DoT formed an eight-member panel to consider net neutrality in January; in May 2015, the panel had yet to release its report. The Parliamentary standing committee on Information Technology is also considering the issue of net neutrality.

Major political parties mobilized thousands of supporters using social networks in advance of the 2014 election.<sup>168</sup> In November 2013, the *Cobrapost* news website exposed the practice of politicians paying around two dozen specialized IT companies nationwide to artificially boost their popularity and malign their opponents on social media. Their investigation particularly accused the BJP of this conduct.<sup>169</sup>

The internet has given a voice to people in remote areas helping them become a part of the public discourse. 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.<sup>170</sup> The Delhi-based company Gram Vaani operates a Mobile Vaani initiative using an interactive voice response system to connect reports from mobile phone users to stakeholders including governments or NGOs. In Jharkhand and Bihar, it has over 400,000 users that call 5,000 times a day.<sup>171</sup>

## Digital Activism

Different instances of digital activism were observed in the reporting period. In December 2014, a

164 Lalatendu Mishra and SriramSrinivasan, “Facebook launches internet.org in India,” February 11, 2015, <http://www.thehindu.com/business/Industry/facebook-launches-internetorg-in-india/article6879310.ece>

165 See TRAI Consultation Paper on Regulatory Framework for Over-the-top (OTT) services, Consultation Paper No. 2/2015, March 27, 2015, <http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/OTT-CP-27032015.pdf>

166 “Parliamentary Committee to discuss net neutrality issue on Thursday,” DNA, May 20, 2015, <http://www.dnaindia.com/india/report-parliamentary-committee-to-discuss-net-neutrality-issue-on-thursday-2087575>

167 Aayush Soni, “How people power took on big business in the fight for net neutrality in India,” May 25, 2015, *The Guardian*, <http://www.theguardian.com/technology/2015/may/25/india-net-neutrality-people-power>

168 “In India’s Polarizing Election Of 2014, Twitter and Facebook Already Winners,” *Forbes*, July 25, 2013, <http://www.forbes.com/sites/saritharai/2013/07/25/in-indias-polarizing-election-of-2014-twitter-and-facebook-already-winners/>

169 “Operation Blue Virus: Complete Story,” *Cobrapost*, November 28, 2013, <http://www.cobrapost.com/index.php/news-detail?nid=4026&cid=23>

170 “India: Use Mobile Technology to Bring News to Isolated Tribal Communities,” International Centre for Journalists, available at: <http://www.icfj.org/knight-international-journalism-fellowships/fellowships/india-using-mobile-technology-bring-news-is-0>

171 “Gram Vaani: About Us”, [http://www.gramvaani.org/?page\\_id=76](http://www.gramvaani.org/?page_id=76); “How Mobile Vaani Works”, [http://www.gramvaani.org/?page\\_id=15](http://www.gramvaani.org/?page_id=15)

## India

petition for net neutrality in India on Change.org garnered more than 70,000 signatories, becoming the fastest growing Indian petition ever launched on the global campaigning site.<sup>172</sup>

Large scale online mobilization was observed in April 2015 after the TRAI released a consultation paper suggesting a legal framework that would limit net neutrality in India.<sup>173</sup> To meet the deadline for public comment, civil society groups started a “Save the Internet” campaign,<sup>174</sup> including a video by AIB that highlighted the potentially drastic impact of the TRAI recommendations.<sup>175</sup> By April 24, nearly 1.1 million Indian people had emailed TRAI to support net neutrality and asking the regulator not to allow licensing of “over the top” charging for services.<sup>176</sup> Responding to pressure, various corporations that were a part of the Internet.org agreement withdrew and<sup>177</sup>a committee was set up by the government to give recommendations on the issue. The Parliamentary Standing Committee on Information Technology also agreed to examine the issue in response to the campaign.<sup>178</sup>

A different type of digital activism was seen in the “Kiss of Love” campaign, launched in October 2014 and spearheaded on Facebook, which mobilized people to protest against moral policing by ultra-conservative groups who object to public displays of affection.<sup>179</sup> Facebook blocked the Kiss of Love page following user complaints, but reinstated it the next day.<sup>180</sup> Support for the site grew, with many Facebook users posting pictures of themselves kissing.<sup>181</sup> The movement started in Kerala but collected supporters from cities all over India, including Kolkata, Bombay,<sup>182</sup> Hyderabad,<sup>183</sup> and Delhi, while events organized on Facebook saw significant turnout.<sup>184</sup>

172 Sandeep Pillai, “TRAI: Don’t allow differential pricing of services on the Internet & let the consumers choose how they want to use Internet,” Change.org, available at: <https://www.change.org/p/rsprasad-traidontallowdifferentialpricingofservicesletconsumerschoosehowtheywanttouseinternetnetneutrality>; Trisha Thomas, “‘Save the Internet’ net neutrality petition wins wide backing online,” *rtn.asia*, February 20, 2015, <http://rtn.asia/t/t/10438/save-the-internet-net-neutrality-petition-wins-wide-backing-online>.

173 See TRAI Consultation Paper on Regulatory Framework for Over-the-top (OTT) services, Consultation Paper No. 2/2015, March 27, 2015, <http://www.trai.gov.in/WriteReadData/ConsultationPaper/Document/OTT-CP-27032015.pdf>.

174 <http://www.savetheinternet.in/>; Ashish K. Mishra, “Indias net neutrality crusaders,” *LiveMint*, May 10, 2015, <http://mintonunday.livemint.com/news/indias-net-neutrality-crusaders/2.3.2289565628.html>.

175 Aayush Soni, “How people power took on big business in the fight for net neutrality in India,” May 25, 2015, *The Guardian*, <http://www.theguardian.com/technology/2015/may/25/india-net-neutrality-people-power>; AIB video is available here: <https://www.youtube.com/watch?v=mfY1NKrzqj0>.

176 Aayush Soni, “How people power took on big business in the fight for net neutrality in India,” May 25, 2015, *The Guardian*, <http://www.theguardian.com/technology/2015/may/25/india-net-neutrality-people-power>.

177 Aayush Soni, “How people power took on big business in the fight for net neutrality in India,” May 25, 2015, *The Guardian*, <http://www.theguardian.com/technology/2015/may/25/india-net-neutrality-people-power>.

178 “Parliamentary Committee to discuss net neutrality issue on Thursday,” *DNA*, May 20, 2015, <http://www.dnaindia.com/india/report-parliamentary-committee-to-discuss-net-neutrality-issue-on-thursday-2087575>.

179 Tony Tharakan, “‘Kiss of Love’ protests rattle Modi’s conservative India,” *Reuters*, November 10, 2014, <http://in.reuters.com/article/2014/11/10/india-kissing-idINKN0IU1QB20141110>.

180 “Kiss of Love Facebook page blocked, activated again,” *Deccan Chronicle*, November 4, 2014, <http://www.deccanchronicle.com/141104/nation-current-affairs/article/kiss-love-facebook-page-blocked-activated-again>; SR Praveen, “‘Kiss of Love’ page blocked, reinstated,” *The Hindu*, November 4, 2014, <http://www.thehindu.com/news/national/kerala/kiss-of-love-page-blocked-reinstated/article6561544.ece>.

181 KS Sudhi, “Kiss of Love protests: Taking matters, personally,” November 4, 2014, *The Hindu*, <http://www.thehindu.com/news/cities/Kochi/kiss-of-love-prtests-taking-matters-personally/article6563143.ece>; Raviprasad Kamila, “BJP, Hindu Mahasabha oppose ‘Kiss of Love’ campaign in Bengaluru,” *The Hindu*, November 21, 2014, <http://www.thehindu.com/news/cities/Mangalore/bjp-hindu-mahasabha-oppose-kiss-of-love-campaign-in-bengaluru/article6621571.ece>.

182 Yogita Rao, “IIT-B to lock lips with Kochi’s ‘Kiss of Love’ movement,” *Times of India*, November 2, 2014, <http://timesofindia.indiatimes.com/city/mumbai/IIT-B-to-lock-lips-with-Kochis-Kiss-of-Love-movement/articleshow/45009285.cms>.

183 “Kiss of Love’ supporters face case for obscenity in Hyderabad,” *The Hindu*, November 5, 2014, <http://www.thehindu.com/news/cities/Hyderabad/kiss-of-love-supporters-face-case-for-obscenity-in-hyderabad/article6567793.ece>.

184 Kritika Sharma and Vijetha SN, “Peaceful ‘Kiss of Love’ protest in Delhi,” *The Hindu*, November 9, 2014, <http://www.thehindu.com/news/cities/Delhi/peaceful-kiss-of-love-protest-in-delhi/article6578997.ece>.

## India

On February 6, 2015, women's rights activist Sunitha Krishnan adopted a creative way of tracing alleged rapists with the "Shame the Rapist" campaign, which centered around a video demonstrating how to blur the face of victims in video footage of assaults shared on WhatsApp.<sup>185</sup> The video went viral, garnering 16,000 views on YouTube,<sup>186</sup> and an alleged rapist was arrested in March 2015 based on the shared images.<sup>187</sup> Since then, Krishnan has received at least 90 videos submitted by rape survivors who had remained silent due to social stigma or fear. The Supreme Court has ordered an investigation into the alleged crimes portrayed in the footage<sup>188</sup> and has asked the Government how to block dissemination of such videos.<sup>189</sup>

## Violations of User Rights

*Even though the number of criminal complaints regarding online content filed were quite high, arrests under Section 66A of the IT Act continued to decline in the reporting period. In a landmark judgment which will define the freedom of expression online in India, Section 66A was declared unconstitutional and all pending prosecutions dropped. However, charges under other sections continue to stand. Intimidation and violence against women was especially prevalent as a result of online activity. Online activity also led to an increase in religious tensions in two different incidents. The central authorities continue to develop the Central Monitoring System, which will allow officials to retrieve content and metadata from any electronic communication in India in real time.*

## Legal Environment

The Constitution of India grants citizens the fundamental right to freedom of speech and expression,<sup>190</sup> including the right to gather information and exchange thoughts with others within and outside of India.<sup>191</sup> Press freedom has been read into the freedom of speech and expression.<sup>192</sup> These freedoms are subject to reasonable 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.<sup>193</sup> The right to privacy has been read into the right to life guaranteed by Article 21 of the constitution.<sup>194</sup>

The Indian Penal Code (IPC) criminalizes several kinds of speech, and applies to online content. Indi-

185 Uma Sudhir and Gargi Rawat, "Gang Rape Video Shared on WhatsApp. Help trace these men," NDTV February 6, 2015, <http://www.ndtv.com/india-news/gang-rape-video-shared-on-whatsapp-help-trace-these-men-73740>.

186 "Activist Sunitha Krishnan starts 'Shame the Rapist' campaign, gets attacked," *Firstpost*, February 6, 2015, <http://www.firstpost.com/india/activists-car-attacked-for-whatsapp-shame-the-rapist-video-2083061.htm>.

187 Abhinav Bhatt, "First Arrest In Case of Men Who Filmed, Posted Rape Videos on WhatsApp," NDTV, March 26, 2015, <http://www.ndtv.com/india-news/first-arrest-in-case-of-men-who-filmed-posted-rape-videos-on-whatsapp-74943>.

188 "Shame the rapist campaign: Activist Sunitha Krishnan gets 90 videos from rape survivors," *Firstpost*, April 13, 2014, <http://www.firstpost.com/living/shame-the-rapist-campaign-activist-sunitha-krishnan-receives-90-videos-of-sexual-assault-2194697.html>.

189 Press Trust of India, "Supreme Court asks IT Ministry to respond on blocking circulation of rape videos," *Firstpost*, August 28 2015, <http://www.firstpost.com/india/supreme-court-asks-it-ministry-to-respond-on-blocking-circulation-of-rape-videos-2412640.html>.

190 Article 19(1)(a), The Constitution of India.

191 Maneka Gandhi v. Union of India, 1978 AIR 597.

192 Report of the Press Commission, Part I, 1954, Government of India, p. 357.

193 Article 19(2), The Constitution of India; *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

194 *R Rajagopal v. State of Tamil Nadu* AIR 1995 SC 264; *Kharak Singh v. State of UP* (1975) 2 SCC 148.

## India

viduals could be punished with a jail term ranging from two to seven years for speech that is found to be seditious,<sup>195</sup> obscene,<sup>196</sup> defamatory,<sup>197</sup> “promoting enmity between different groups on ground of religion, race, place of birth, residence, language,”<sup>198</sup> committing acts “prejudicial to maintenance of harmony,”<sup>199</sup> or consisting of statements, rumors, or reports that may cause fear, alarm, disturb public tranquility, or promote enmity or ill will.<sup>200</sup> 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.<sup>201</sup>

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.<sup>202</sup>

Through part of the reporting period, the IT Act included the infamous Section 66A, which criminalized information that was grossly offensive, of a menacing character, or any information which is false, but causes “annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will. This section 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 for violating Article 19 of the constitution.<sup>203</sup> 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).<sup>204</sup>

## Prosecutions and Detentions for Online Activities

A handful of prosecutions filed during the previous coverage period were still ongoing in 2014, while others were dropped for lack of evidence.<sup>205</sup> However, outstanding prosecutions under Section 66A will no longer be pursued in the wake of the Supreme Court’s March ruling, which declared it unconstitutional, though charges under other laws still stand.<sup>206</sup> Prior to that judgment, at least 10 complaints were filed and at least 4 arrests took place during the reporting period under Section 66A. The complaints and arrests were for different types of social and political content, much of it involving statements against politicians.

195 Section 124A, The Indian Penal Code, 1860.

196 Section 292 and 293, The Indian Penal Code, 1860.

197 Section 499, The Indian Penal Code, 1860.

198 Section 153A, The Indian Penal Code, 1860.

199 Section 153B, The Indian Penal Code, 1860.

200 Section 505, The Indian Penal Code, 1860.

201 Section 5, Official Secrets Act, 1923.

202 Section 67, Section 67A, Section 67B The Information Technology Act, 2000.

203 (2015) 5 SCC 1.

204 UjwalaUppaluri&Sarvjeet Singh, Supreme Court ruling on Section 66A: As much online as offline, *The Economic Times*, March 25 2015, <http://blogs.economictimes.indiatimes.com/et-commentary/supreme-court-ruling-on-section-66a-as-much-online-as-offline/>.

205 See, for example, YahyaHallare, Bhatkal: Anti-Modi MMS - AAP member released, all charges withdrawn, May 28, 2014, [http://www.daijiworld.com/news/news\\_disp.asp?n\\_id=23787](http://www.daijiworld.com/news/news_disp.asp?n_id=23787); Amresh Sent to Jail on Remand, *The Pioneer*, May 16, 2014, <http://archive.dailypioneer.com/state-editions/lucknow/amresh-sent-to-jail-on-remand.html>; Supreme Court seeks UP government response on Facebook post in support of Durga Sakthi Nagpal, August 16, 2013, *The Economic Times*, [http://articles.economictimes.indiatimes.com/2013-08-16/news/41417800\\_1\\_section-66a-facebook-post-shreya-singhal](http://articles.economictimes.indiatimes.com/2013-08-16/news/41417800_1_section-66a-facebook-post-shreya-singhal).

206 Shreya Singhal v Union of India, Writ Petition (Criminal) No. 167 of 2012; What next: What happens to Section 66A now, *The Indian Express*, March 26 2015, <http://indianexpress.com/article/india/india-others/what-next-what-happens-to-section-66a-now/>.



## India

- In one November 2014 example, a case was registered against the Andhra Pradesh Chief Minister's son for allegedly comparing K Chandrashekhar Rao, the chief minister of Telangana, with Hitler.<sup>207</sup>
- In September 2014, a 25-year-old man was arrested under charges of sedition for booing the national anthem, and under Section 66A for allegedly publishing abusive social media posts about the Indian Independence Day. He was later denied bail. The charge was widely criticized.<sup>208</sup>
- In October 2014, a student was arrested in Andhra Pradesh under Section 66A and Section 153 of the IPC for a Facebook post celebrating a recent cyclone for "punishing" political opponents. He was released on bail.<sup>209</sup>
- In October 2014, police in the Malda district of West Bengal arrested a man accused of making a derogatory remark against Chief Minister Mamata Banerjee on her Facebook page. A court remanded him to 14 days' judicial custody while his family sought bail.<sup>210</sup>

## Surveillance, Privacy, and Anonymity

There is limited opportunity for anonymity on the internet in India. Pre- and post-paid mobile customers have their identification verified before connections are activated.<sup>211</sup> There is a legal requirement to submit identification at cybercafes,<sup>212</sup> and while subscribing to internet connections.

The effective implementation of privacy rights remains a significant issue. Communications surveillance may be conducted under the Telegraph Act,<sup>213</sup> as well as the IT Act,<sup>214</sup> 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."<sup>215</sup>

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.<sup>216</sup> These are reviewed by a committee of government officials of a certain rank, and carried out by intermediaries.<sup>217</sup> A

207 N Chandrababu's son booked for comparing KCR with Hitler, November 19, 2014, *Firstpost*, <http://www.firstpost.com/politics/n-chandrababus-son-booked-for-comparing-kcr-with-hitler-1810057.html>.

208 Amnesty Flays Youth's Arrest on Sedition Charge, *The New Indian Express*, September 3, 2014, <http://www.newindianexpress.com/cities/kochi/Amnesty-Flays-Youths-Arrest-on-Sedition-Charge/2014/09/03/article2411498.ece>.

209 Student arrested for FB post on Hudhud, *The Hindu*, October 29, 2014, <http://m.thehindu.com/news/national/andhra-pradesh/andhra-pradesh-law-student-arrested-for-facebook-comment-on-cyclone-hudhud/article6544417.ece/>.

210 Youth arrested for making anti-Mamata Banerjee remark on Facebook, October 15, 2015, <http://www.dnaindia.com/india/report-youth-arrested-for-making-anti-mamata-banerjee-remark-on-facebook-2026496>; Kin seek CM apology for Facebook abuse- BJP contrasts guard's plight with Tapas Paul case, October 17 2014, [http://www.telegraphindia.com/1141017/jsp/siliguri/story\\_18934498.jsp#.VdTUwvVhBc](http://www.telegraphindia.com/1141017/jsp/siliguri/story_18934498.jsp#.VdTUwvVhBc).

211 Press Release, Ministry of Communication and Information Technology, Government of India, March 13, 2013, <http://pib.nic.in/newsite/erelease.aspx?relid=93584>.

212 Rule 4, Information Technology (Guidelines for Cyber Cafe) Rules, 2011, [http://deity.gov.in/sites/upload\\_files/dit/files/GSR315E\\_10511\(1\).pdf](http://deity.gov.in/sites/upload_files/dit/files/GSR315E_10511(1).pdf).

213 Section 5(2), Indian Telegraph Act, 1885.

214 Section 69, Information Technology Act, 2000.

215 Section 69, Information Technology (Amendment) Act, 2008.

216 JadineLannon, "Rule 419A of the Indian Telegraph Rules, 1951," Center for Information and Society, June 20, 2013, <http://cis-india.org/internet-governance/resources/rule-419-a-of-indian-telegraph-rules-1951>.

217 Committee members are limited to a certain rank. JadineLannon, "Indian Telegraph Act, 1885, 419A Rules and IT

## India

similar framework applies to the IT Act.<sup>218</sup> Interception orders are not reviewed by a court and are limited to 60 days, renewable for a maximum of 180 days.<sup>219</sup> 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.<sup>220</sup> Eight separate intelligence bodies are authorized to issue surveillance orders to service providers under these circumstances.<sup>221</sup> Around 7,500-9,000 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.<sup>222</sup>

Online intermediaries are required by law to “intercept, monitor, or decrypt” or otherwise provide user information to officials.<sup>223</sup> Where the Telegraph Act levied civil penalties for non-compliance with an interception order<sup>224</sup> while also creating the possibility of loss of license, the IT Act carries a possible seven year jail term.<sup>225</sup> Unlawful interception is punishable by just three years’ imprisonment.<sup>226</sup>

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.<sup>227</sup> The procedures restricted interception to a service provider’s “chief nodal officer,” and mandated that interception orders be in writing.<sup>228</sup> Rules issued in 2011 under the IT Act increased protection of personal data handled by companies.<sup>229</sup> 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.<sup>230</sup>

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

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(Amendment) Act, 2008, 69 Rules,” Center for Information and Society, April 28, 2013, <http://bit.ly/14N1qCT>.

218 Chinmayi Arun, “Way to Watch”, *The Indian Express*, June 26, 2013, <http://cis-india.org/internet-governance/blog/indian-express-june-26-2013-chinmayi-arun-way-to-watch>.

219 Jadinelannon, “Indian Telegraph Act, 1885, 419A Rules and IT (Amendment) Act, 2008, 69 Rules,” Center for Information and Society, April 28, 2013, <http://cis-india.org/internet-governance/blog/indian-telegraph-act-419-a-rules-and-it-amendment-act-69-rules>.

220 Privacy International, “Chapter iii: Privacy Issues,” in India Telecommunications Privacy Report, October 22, 2012, [https://www.privacyinternational.org/reports/india/iii-privacy-issues#footnoteref1\\_ni8ap74](https://www.privacyinternational.org/reports/india/iii-privacy-issues#footnoteref1_ni8ap74).

221 Research and Analysis Wing, the Intelligence Bureau, the Directorate of Revenue Intelligence, the Enforcement Directorate, the Narcotics Control Bureau, the Central Bureau of Investigation, the National Technical Research Organization and the state police. See, Privacy International, “Chapter iii: Privacy Issues,” in India Telecommunications Privacy Report, October 22, 2012, [https://www.privacyinternational.org/reports/india/iii-privacy-issues#footnoteref1\\_ni8ap74](https://www.privacyinternational.org/reports/india/iii-privacy-issues#footnoteref1_ni8ap74).

222 “India’s Surveillance State”, SFLC, <http://sflc.in/wp-content/uploads/2014/09/SFLC-FINAL-SURVEILLANCE-REPORT.pdf>.

223 Section 69(4), Information Technology (Amendment) Act, 2008.

224 Sunil Abraham and Elonnai Hickok, “Government Access to Private Sector Data in India, International Data Privacy Law”, 2012, Vol. 2, No. 4, p. 307, <http://idpl.oxfordjournals.org/content/2/4/302.full.pdf+html>

225 Information Technology Act, 2000, Section 69(4).

226 Indian Telegraph Act, 1885, Section 26.

227 Shalini Singh, “Centre issues new guidelines for phone interception”, *The Hindu*, January 10, 2014, <http://www.thehindu.com/news/national/centre-issues-new-guidelines-for-phone-interception/article5559460.ece>.

228 Divij Joshi, “New Standard Operating Procedures for Lawful Interception and Monitoring”, Centre for Internet and Society, March 13, 2014, <http://cis-india.org/internet-governance/blog/new-standard-operating-procedures-for-lawful-interception-and-monitoring>.

229 Bhairav Acharya, “Comments on the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011”, Centre for Internet and Society, March 31, 2013, <http://cis-india.org/internet-governance/blog/comments-on-the-it-reasonable-security-practices-and-procedures-and-sensitive-personal-data-or-information-rules-2011>.

230 Kochhar& Co., “2011 Indian Privacy Law”, Outsourcing.net, July 13, 2011, <http://www.outsourcing-law.com/2011/07/2011-indian-privacy-law/>.

## India

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 non-transparent, prone to misuse, and that does not provide remedy for aggrieved individuals.”<sup>231</sup> In early 2015, the Government was finalizing the draft of the Privacy Bill to be tabled in the Parliament.<sup>232</sup> 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.<sup>233</sup>

License agreements require service providers to guarantee the designated security agency or licensor remote access to information for monitoring;<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup> “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.<sup>237</sup> The agreement remains effective, though various GSM operators lobbied for the clause to be removed from the license agreement because of compliance issues.<sup>238</sup> In November 2014, an amendment to licensing conditions mandated government testing for all telecom equipment prior to use, effective in 2015.<sup>239</sup>

Cybercafe owners are required to photograph their customers, arrange computer screens in plain

231 “Report of the Group of Experts on Privacy”, Planning Commission of India, 7: 19, p. 60-61, October 16, 2012, [http://planningcommission.nic.in/reports/genrep/rep\\_privacy.pdf](http://planningcommission.nic.in/reports/genrep/rep_privacy.pdf)

232 Yatish Yadav, “Centre Giving Final Touches to Right to Privacy Bill”, March 17 2015, <http://www.newindianexpress.com/nation/Centre-Giving-Final-Touches-to-Right-to-Privacy-Bill/2015/03/17/article2717271.ece..>

233 Amit Anand Choudhary, “Five-judge constitution bench to adjudicate on right to privacy”, August 11 2015, [234 SaikatDatta, “A Fox On A Fishing Expedition,” \*Outlook India\*, May 3, 2010, <http://www.outlookindia.com/article.aspx?265192>.](http://timesofindia.indiatimes.com/india/Five-judge-constitution-bench-to-adjudicate-on-right-to-privacy/articleshow/48437244.cms; Sidharth Pandey , “Is Privacy a Fundamental Right? Constitution Bench of Supreme Court to decide”, August 11 2015, http://www.ndtv.com/india-news/is-privacy-a-fundamental-right-constitution-bench-of-supreme-court-to-decide-1206100.</a></p>
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235 Guideline 8, Guidelines and General Information for Grant of License for Operating internet Services, Department of Telecommunication, Ministry of Communication and Information and Technology, Government of India, August 24, 2007.

236 Amendment to the Unified Access Service License Agreement for security related concerns or expansion of Telecom Services in various zones of the country, Item 9, Department of Telecom, September 7, 2011, <http://www.dot.gov.in/access-services/amendments-access-service-licences>; Nikhil Pahwa, “New Telecom Equipment Policy Mandates Location Based Services Accuracy Of 50Mtrs: COAI,” *Medianama*, June 17, 2011, <http://bit.ly/keKNxY>.

237 “Additional Cost Implication for the Telecom Industry as Government Mandates Location Based Services to Meet its Security Requirements,” Cellular Operators Association of India Press release, June 16, 2011, [http://www.indiaonline.com/article/print/news/additional-cost-implication-for-the-telecom-industry-5179349791\\_1.html](http://www.indiaonline.com/article/print/news/additional-cost-implication-for-the-telecom-industry-5179349791_1.html); “Operators Implementing Location-based Services: Govt,” Press Trust of India via NDTV, August 9, 2012, <http://bit.ly/S4zNcT>. In June 2014, outside the coverage period of this report, the DoT issued a letter to all Cellular Mobile Telephone Service Licensees, Unified Access Licensees and Unified Licensees, asking them to submit the status of implementation of location based services within seven days of receipt. Department of Telecom, Implementation of Location Based Services with Time Frame and Accuracy as Mandated by License Amendment dated 31.05.2011 to UASL – Reg, June 19, 2014, <http://www.dot.gov.in/sites/default/files/DOC240614-005.pdf>.

238 “GSM operators ask DoT to remove ‘location based service’ clause in licence”, *The Business Standard*, January 21, 2013, [http://www.business-standard.com/article/economy-policy/gsm-operators-ask-dot-to-remove-location-based-service-clause-in-licence-113012100610\\_1.html](http://www.business-standard.com/article/economy-policy/gsm-operators-ask-dot-to-remove-location-based-service-clause-in-licence-113012100610_1.html).

239 Amendment to Unified Licensing Guidelines, November 13 2014, <http://www.dot.gov.in/sites/default/files/Amended%20UL%20Guidelines%2013112014.PDF>; Sandeep Dixit, “Testing of Telecom Equipment in India Mandatory from next year”, *The Hindu*, 11 August 2014, available at: [http://www.thehindu.com/news/national/testing-of-telecom-equipment-in-india-mandatory-from-next-year/article6304138.ece?utm\\_source=RSS\\_Feed&utm\\_medium=RSS&utm\\_campaign=RSS\\_Syndication&utm\\_reader=feedly](http://www.thehindu.com/news/national/testing-of-telecom-equipment-in-india-mandatory-from-next-year/article6304138.ece?utm_source=RSS_Feed&utm_medium=RSS&utm_campaign=RSS_Syndication&utm_reader=feedly).

## India

sight, keep copies of client IDs and their browsing histories for one year, and forward this data to the government each month.<sup>240</sup>

ISPs setting up cable landing stations are required to install infrastructure for surveillance and keyword scanning of all traffic passing through each gateway.<sup>241</sup> 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;<sup>242</sup> and mandates prior approval from the DoT or a designated officer to install encryption equipment.<sup>243</sup>

Since 2011, officials have sought to prevent international providers from encrypting user communications,<sup>244</sup> and required some, such as Nokia and BlackBerry, to establish local servers subject to Indian law under threat of blocking their services.<sup>245</sup> In 2013, BlackBerry confirmed their “lawful access capability” met “the standard required by the Government of India,” though business customers would be unaffected.<sup>246</sup>

The Indian government also seeks user information from international web-based platforms. According to the Google Transparency Report, the government made 3,112 user data requests and 4,684 requests to access accounts between July and December 2014,<sup>247</sup> the second highest number of requests from any single government.<sup>248</sup> The government requested access to 5,958 Facebook accounts between January and June 2014, and some data was produced in 51 percent of cases.<sup>249</sup> Twitter received 113 account information requests pertaining to 2,963 accounts from January to June 2015.<sup>250</sup> Yahoo received 1,001 government data requests involving 1,178 accounts from July to December 2014, showing a decline from the first half of 2014.<sup>251</sup>

Besides retrieving data from intermediaries, the government’s own surveillance equipment is becoming more sophisticated. The 2013 announcement of a Central Monitoring System (CMS), which will allow 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, caused widespread concern.<sup>252</sup> Execution of the CMS has been entrusted to

240 Rule 4, Information Technology (Guidelines for Cyber Cafe) Rules, 2011.

241 Guideline 42, Guidelines and General Information for Grant of License for Operating internet Services, Department of Telecommunication, Ministry of Communication and Information and Technology, Government of India, August 24, 2007.

242 Guideline 13(d)(vii), Guidelines and General Information for grant of License for Operating internet Services, Department of Telecommunication, Ministry of Communication and Information and Technology, Government of India, August 24, 2007.

243 Guidelines and General Information for grant of License for Operating internet Services, Department of Telecommunication, Ministry of Communication and Information and Technology, Government of India, August 24, 2007.

244 Joji Thomas Philip, “Can’t Track Blackberry, Gmail: DoT,” *Economic Times*, March 16, 2011, <http://bit.ly/1bhkFo8:Joji>  
Thomas Philip and HarsimranJulku, “E-services like Gmail, BlackBerry, Skype Can’t be Banned for Lack of Scrutiny: Telecoms Security Panel,” *Economic Times*, June 16, 2011, <http://bit.ly/16TBotD>.

245 Thomas K Thomas, “Despite India Server, IB Unable to Snoop into Nokia E-mail Service,” *The Hindu*, July 14, 2011, <http://bit.ly/1fRqjAt>.

246 Anandita Singh Mankotia, “Government, BlackBerry Dispute Ends,” *Times of India*, July 10, 2013, <http://timesofindia.indiatimes.com/tech/tech-news/Government-BlackBerry-dispute-ends/movie-review/20998679.cms>;

247 Google Transparency Report 2014, available at: <http://www.google.com/transparencyreport/userdatarequests/IN/>.

248 Google Transparency Report 2014, available at: <http://www.google.com/transparencyreport/userdatarequests/countries/?p=2014-06>.

249 Facebook Government Requests Report, January-June 2014, available at: <https://govtrequests.facebook.com/country/India/2014-H1/#>.

250 Twitter Transparency Report, July- December 2014, <https://transparency.twitter.com/information-requests/2014/jul-dec>.

251 Yahoo Transparency Report, July-December 2014, <https://transparency.yahoo.com/government-data-requests/index.htm>.

252 Melody Patry, “India: Digital freedom under threat? Surveillance, privacy and government’s access to individuals’ online data”, November 21, 2013, <http://www.indexoncensorship.org/2013/11/india-online-report-freedom-expression-digital-freedom-3/>.

## India

the DoT's Centre for Development of Telematics.<sup>253</sup> New reports differed as to when it would become operational,<sup>254</sup> but at least one cited significant technical shortcomings preventing the system from coming online in 2013.<sup>255</sup> A minister told parliament in early 2014 that it is being phased in over the next three years,<sup>256</sup> and in 2015 the parliament was informed that New Delhi and Karnataka have been chosen for the initial phase.<sup>257</sup> In the meantime, licensing agreements were amended to require the licensee to provide connectivity up to the nearest point of presence of the CMS network at its own cost.<sup>258</sup>

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."<sup>259</sup> The timing for its release is not known.

## Intimidation and Violence

While there is no systematic violence against internet users, many are periodically targeted in reprisal for online activities, including during the coverage period of this report.

Women are particularly vulnerable. In July 2014, a social activist complained to the Bangalore police after a man posted a comment on her Facebook wall calling for women like her to be raped.<sup>260</sup> In February 2015, activist Sunitha Krishnan, who started the "Shame the Rapist" campaign on social media, was subject to an attack where her car was stoned by some people smashing the rear window, just two hours after she posted the video.<sup>261</sup>

Social media also inflamed religious tensions. In June 2014, protests by a right wing Hindu mob in Pune, Maharashtra, against images posted on Facebook resulted in the killing of a Muslim man, though he was not associated with the content.<sup>262</sup> Separately, in October 2014, an offensive image relating to Islam posted on Facebook sparked four days of violence in Vadodara, a city in Gujarat.<sup>263</sup>

253 Reply given by Milind Deora, Minister of the State in The Ministry of Communications and Information Technology, in Parliament, February 19, 2014, *Lok Sabha Questions*, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=150407>.

254 See for example, Shalini Singh, "India's surveillance project may be as lethal as PRISM," *The Hindu*, June 21, 2013, <http://bit.ly/15FeV2o>; Kalyan Parbat, "India's Surveillance System CMS to be Operational Soon," *Economic Times*, September 5, 2013, <http://bit.ly/17QbPiT>; Shalini Singh, Govt. violates privacy safeguards to secretly monitor Internet traffic, 9 September 2013, <http://www.thehindu.com/news/national/govt-violates-privacy-safeguards-to-secretly-monitor-internet-traffic/article5107682.ece>.

255 R. Jai Krishna, "India's Surveillance Program Stalled", *Wall Street Journal*, July 6 2013, <http://blogs.wsj.com/indiarealtime/2013/07/06/indias-surveillance-program-stalled/>

256 Reply given by Milind Deora, Minister of the State in The Ministry of Communications and Information Technology, in Parliament, February 19, 2014, *Lok Sabha Questions*, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=150407>.

257 Sarjeet Singh, "Government's Response to Fundamental Questions Regarding the Internet in India," *CCG Blog*, April 24, 2015, <https://ccgnludhli.wordpress.com/2015/04/24/governments-response-to-fundamental-questions-regarding-the-internet-in-india/>

258 "India's Central Monitoring System (CMS): Something to Worry About?", January 30 2014, Centre for Internet Society, <http://cis-india.org/internet-governance/blog/india-central-monitoring-system-something-to-worry-about>.

259 Mackenzie Sigalos, "Has World's Biggest Democracy got a Big Brother Problem?", *CNN*, February 17 2015, available at: <http://edition.cnn.com/2015/02/16/asia/india-internet-freedom/>.

260 "Woman files complaint against man who called for "women like her to be raped by rapists"", *The News Minute*, July 28, 2014, <http://www.thenewsminute.com/socials/114>.

261 "Activist Sunitha Krishnan starts 'Shame The Rapist' campaign, gets attacked", *FirstPost*, February 6 2015, <http://www.firstpost.com/india/activists-car-attacked-for-whatsapp-shame-the-rapist-video-2083061.html>.

262 Chandan Shantaram Haygunde & Sushant Kulkarni, "Muslim techie beaten to death in Pune, 7 men of Hindu outfit held, *The Indian Express*", July 4 2014, <http://indianexpress.com/article/india/politics/muslim-techie-beaten-to-death-in-pune-7-men-of-hindu-outfit-held/>.

263 Rahi Gaikwad, "BJP leader among 90 held for Vadodara violence", *The Hindu*, October 2 2014, <http://www.thehindu.com/>

## India

As in many countries, digital technology also played a disturbing role in helping criminals promote violence against women. In February 2015, three men were arrested under Section 376 of the IPC (which criminalizes rape), the Protection of Children from Sexual Offences Act, and the IT Act, on suspicion of gang rape and distributing video and photos of the incident on WhatsApp and YouTube.<sup>264</sup>

## Technical Attacks

In September 2014, Communications and IT Minister Ravi Shankar Prasad said a total of 96,383 security incidents including phishing, scanning, spam, malicious code, and website intrusions, were reported to the Indian Computer Emergency Response Team.<sup>265</sup> Other reports said cybercrime had registered an annual increase of more than 40 percent in the past two years.<sup>266</sup> Governments and corporations are the primary targets.

Many attacks are reported to have originated in Pakistan, including a November 2014 breach of 22 government department and organization websites of Andhra Pradesh, Telangana, and Odisha states.<sup>267</sup> In December, the website of the Sri Meenakshi Sundareswarar Temple in Madurai was defaced by a hacking community called Pak Teen Leets through a U.S.-based server.<sup>268</sup>

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