

# India

	2013	2014		
Internet Freedom Status	Partly Free	Partly Free	Population:	1.28 billion
Obstacles to Access (0-25)	15	13	Internet Penetration 2013:	15 percent
Limits on Content (0-35)	12	10	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	20	19	Political/Social Content Blocked:	Yes
TOTAL* (0-100)	47	42	Bloggers/ICT Users Arrested:	Yes
			Press Freedom 2014 Status:	Partly Free

\* 0=most free, 100=least free

## Key Developments: May 2013 – May 2014

- India became the third largest internet consumer base in the world in 2013, after China and the United States (see **Obstacles to Access**).
- The Supreme Court is assessing the constitutionality of provisions in the IT Act and secondary legislation that restrict content and criminalize speech online (see **Limits on Content and Violations of User Rights**).
- The Supreme Court curtailed arrests for online expression under the IT Act, though at least nine criminal complaints were filed for social media posts (see **Violations of User Rights**).
- The Central Monitoring System, a mass surveillance program which enables real-time monitoring of digital communication, is being put in place without judicial oversight (see **Violations of User Rights**).

## Introduction

The Bharatiya Janta Party (BJP) replaced the Indian National Congress-led government after a sweeping electoral victory in 2014, and its leadership candidate Narendra Modi was sworn in as prime minister on May 26.<sup>1</sup> Reports of online content manipulation rose before the polls, but discourse and social media campaigning remained robust on all sides. Blocks on content, thought to disturb public order, declined in comparison to the previous coverage period.

The regulatory framework that governs the internet in India is at a pivotal moment. The Information Technology Act 2000 (IT Act), which was amended in 2008, provides a legal framework for internet use. Section 66A of the IT Act criminalizes a wide range of speech and led to several arrests for social media posts in 2012 and early 2013. However, detentions declined in the past year in the wake of negative publicity, as well as intervention from the government and Supreme Court. Unfortunately, a spate of new charges filed in May 2014, some relating to speech against the present prime minister, were a reminder that reform is badly needed. Several petitioners have challenged parts of the IT Act, including rules introducing potential criminal liability for intermediary companies for content posted by third parties, as unconstitutional in the Supreme Court. The court's decision in these cases will be critical to the protection of freedom of expression online in India.

Legislation and procedures to effectively protect privacy, meanwhile, remain lacking, and the scope of a privacy law currently being drafted is unclear. Allegations of procedural abuses by state officials in surveillance cases have emerged in the states of Himachal Pradesh and Gujarat, in the latter while the present prime minister was chief minister. Partly in response to these scandals, the government tightened procedures in January 2014, saying officials must issue interception orders to telecommunications providers in written form, though they still require no warrant or judicial oversight. At the same time, news reports from 2013 and 2014 indicate that the government is continuing to develop the Central Monitoring System. This ambitious nationwide surveillance program allows authorities to monitor individuals' digital communications directly without issuing orders to service providers, written or otherwise.

## Obstacles to Access

With around 200 million users<sup>2</sup>—nearly 150 million active at least once a month—India became the third largest internet consumer base in the world in 2013 after China and the United States.<sup>3</sup> None-

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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 "Internet Users in India Crosses 200 Million Mark", IAMA Press Release, November 13, 2013, [http://www.iamai.in/PRelease\\_detail.aspx?nid=3222&NMonth=11&NYear=2013](http://www.iamai.in/PRelease_detail.aspx?nid=3222&NMonth=11&NYear=2013); There were almost 250 million subscribers. See, "The Indian Telecom Services Performance Indicators January-March 2014", Telecom Regulatory Authority of India, July 30th, 2014, 30. <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

3 "India is now world's third largest internet user after U.S., China", The Hindu, August 24, 2013, <http://www.thehindu.com/sci-tech/technology/internet/india-is-now-worlds-third-largest-internet-user-after-us-china/article5053115.ece>; "IAMA internet in India 2013", Internet and Mobile Association of India, p. 1-3, <http://www.iamai.in/introductionres.aspx>.

theless, internet penetration remained low at an estimated 15 percent.<sup>4</sup> India has a comparatively low broadband adoption rate, and access speeds are among the slowest in the Asia Pacific region.<sup>5</sup>

Mobile penetration was higher at 71 percent.<sup>6</sup> Over 230 million subscribers accessed the internet using their phones in 2013.<sup>7</sup> Sixty-five percent of active urban internet users were mobile customers in urban areas.<sup>8</sup> In 2013, more providers brought parity for data connection charges on 3G and earlier 2G networks.<sup>9</sup> Bharti Airtel is the only carrier to launch 4G service so far.<sup>10</sup> Devices remain expensive.

Information and communication technology (ICT) access was among the world's most affordable in 2013, according to a World Economic Forum and INSEAD report, which ranked India sixth least expensive out of 144 countries for the average per-minute cost of mobile calls,<sup>11</sup> and third for monthly fixed broadband subscriptions.<sup>12</sup> In local terms, however, the cheapest available yearly broadband connection, INR 588 to INR 661 (\$10-\$11), still represents a significant chunk of the average per capita income.<sup>13</sup> which was estimated at INR 39,168 (\$655) for 2012 and 2013.<sup>14</sup>

Inadequate infrastructure is an obstacle to access. India had 75 million households without access to electricity in 2013.<sup>15</sup> In 2013, less than half of India's internet users were from rural areas.<sup>16</sup> Less than 19 percent of households and 20 percent of schools in rural India had computers in 2013,<sup>17</sup> and internet access via cybercafes is declining nationwide as the number of venues shrank dramatically in the past two years. While the exact count for the coverage period is not known, an industry

4 International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2013," <http://bit.ly/14llykM>. The Broadband Commission for Digital Development ranked India 145th out of 200 countries assessed for in terms of percentage of people using the internet. "The State of Broadband 2013: Universalizing Broadband", The Broadband Commission, September, 2013, p. 97-98, <http://www.broadbandcommission.org/documents/bb-annualreport2013.pdf>.

5 India was ranked 55 out of the 76 countries surveyed in the "The State of the internet 3<sup>rd</sup> Quarter 2013 Report", Akamai, January 2014, 22-23, [http://www.akamai.com/dl/akamai/akamai-soti-q313.pdf?WT.mc\\_id=soti\\_Q313](http://www.akamai.com/dl/akamai/akamai-soti-q313.pdf?WT.mc_id=soti_Q313).

6 International Telecommunication Union, "Mobile-cellular Telephone Subscriptions, 2000-2013."

7 "The Indian Telecom Services Performance Indicators January-March 2014", Telecom Regulatory Authority of India, July 30th, 2014, 30. <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

8 IAMAI internet in India 2013, Internet and Mobile Association of India, p. 13, <http://www.iamai.in/introductionres.aspx>.

9 Deepali Gupta, "Telecom companies launch price war in data services", Times of India, November 13, 2013, <http://timesofindia.indiatimes.com/tech/tech-news/telecom/Telecom-companies-launch-price-war-in-data-services/articleshow/25684286.cms>.

10 "Another 2 years before 4G takes off in India: Experts", The Times of India, June 30, 2014, <http://timesofindia.indiatimes.com/tech/tech-news/Another-2-years-before-4G-takes-off-in-India-Experts/articleshow/37518886.cms>.

11 Beñat Bilbao-Osorio, SoumitraDutta, and Bruno Lanvin (Eds.), "Global Information Technology Report 2013", World Economic Forum and INSEAD, 2013, p. 320, [http://www3.weforum.org/docs/WEF\\_GITR\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GITR_Report_2013.pdf).

12 Beñat Bilbao-Osorio, SoumitraDutta, and Bruno Lanvin (Eds.), "Global Information Technology Report 2013", World Economic Forum and INSEAD, 2013, p. 321, [http://www3.weforum.org/docs/WEF\\_GITR\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_GITR_Report_2013.pdf).

13 "Top 5 internet plans by price for India", Internet Compared India, <http://www.internet-compared.com/>; "Postpaid Broadband Tariff Plans", [http://mtnlideli.in/broadband/postpaid\\_broadband\\_tariff\\_plans.htm](http://mtnlideli.in/broadband/postpaid_broadband_tariff_plans.htm); "Detailed information for MTNL Delhi :TriB 49", Internet Compared India, [http://www.internet-compared.com/info/india/mtnl\\_delhi/trib\\_49/1230/](http://www.internet-compared.com/info/india/mtnl_delhi/trib_49/1230/).

14 "Provisional Estimates of Annual National Income, 2012-13 and Quarterly Estimates of Gross Domestic Product, 2012-13", Press Information Bureau, May 31, 2013, [http://mospi.nic.in/mospi\\_new/upload/nad\\_pr\\_31may13.pdf](http://mospi.nic.in/mospi_new/upload/nad_pr_31may13.pdf).

15 "7.5 cr Indian households without access to electricity: Report", The Financial Express, February 4, 2014, <http://www.financialexpress.com/news/7-5-cr-Indian-households-without-access-to-electricity--Report/1221026>; Debjani Ghosh, "India still out of the Net", The Hindu, March 24, 2013, <http://bit.ly/14hfEuu>.

16 "IAMAI internet in India 2013", Internet and Mobile Association of India, p. 2, <http://www.iamai.in/introductionres.aspx>.

17 "Annual Status of Education Report (Rural) 2013 Provisional", Annual Status of Education Report, January 15, 2014, p. 279, [http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER\\_2012/fullaser2012report.pdf](http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER_2012/fullaser2012report.pdf).

expert estimated the number of operational cafes declined from 75,000 in 2013 to 55,000 in 2014.<sup>18</sup> However, the number of government-sponsored common service centers (CSCs) providing ICT access along with government, financial, social, and private sector services passed 90,000 in 2011 and continued to rise in 2013.<sup>19</sup> Meanwhile, Bangalore became the first Indian city to introduce free Wi-Fi hotspots in January 2014,<sup>20</sup> followed by Patna in February.<sup>21</sup> Users have to authenticate their registration via mobile phones.<sup>22</sup>

Low digital literacy and limited English also impede access. While online content is available in 17 Indian languages,<sup>23</sup> over 100 remain unrepresented.<sup>24</sup> Seventy-five percent of internet users in 2013 were under 35.<sup>25</sup> The digital gender divide is also pronounced, with women consisting of only 39 percent of internet users.<sup>26</sup> One 2013 survey found that 9 out of 10 mobile internet users in India were men.<sup>27</sup>

Twelve submarine cables connect India to the global internet. Six are consortium owned; the rest are private.<sup>28</sup> Cable-landing stations, where submarine cables meet the mainland, often impose hefty fees on internet service providers (ISPs); however, lower charges came into effect in 2013.<sup>29</sup> As of 2012, there were 10 such landing stations in India, of which 5 were owned by Tata Communications and 2 by Bharti Airtel.<sup>30</sup> News reports said India's Competition Commission would probe the two companies for monopolizing the market in 2012, but no investigation was announced.<sup>31</sup>

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18 Email interview with industry expert, September 2014.

19 "About Common Services Centres Scheme," <http://csc.gov.in/>; Common Service Centers and cybercafes are the main point of access for 40 percent of the active internet population in rural India. See, Internet and Mobile Association of India, p. 13, <http://www.iamai.in/introductionres.aspx>.

20 Radhikalyer, "Bangalore becomes first Indian city to have free wifi hotspots", NDTV, <http://www.ndtv.com/article/cities/bangalore-becomes-first-indian-city-to-have-free-wifi-hotspots-475164>.

21 SubhashPathak, "Patna will have world's longest free Wi-Fi zone: Bihar govt", Hindustan Times, February 20, 2014, <http://www.hindustantimes.com/india-news/patna-will-have-world-s-longest-free-wi-fi-zone-bihar-govt/article1-1186263.aspx>.

22 "Bangalore: India's first city to get free public Wi-Fi", Times of India, January 24, 2014, <http://timesofindia.indiatimes.com/tech/tech-news/Bangalore-Indias-first-city-to-get-free-public-Wi-Fi/articleshow/29347577.cms>.

23 Indian Newspapers, <http://www.onlinenewspapers.com/india.htm>.

24 "Speakers' strength of languages and mother tongues", Census 2001, [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); "IAMAI internet in India 2013", Internet and Mobile Association of India, p. 15-16, <http://www.iamai.in/introductionres.aspx>.

25 "India Digital Future in 2013", ComScore, 22 August 2013, p.13, available at: [http://www.comscore.com/Insights/Presentations\\_and\\_Whitepapers/2013/2013\\_India\\_Digital\\_Future\\_in\\_Focus](http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_India_Digital_Future_in_Focus).

26 "India Digital Future in 2013", ComScore, 22 August 2013, p.14, available at: [http://www.comscore.com/Insights/Presentations\\_and\\_Whitepapers/2013/2013\\_India\\_Digital\\_Future\\_in\\_Focus](http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_India_Digital_Future_in_Focus). This paper indicates that the proportion of women online in India is significantly lower than other BRIC countries (with China at 45 percent, Russia at 52 percent and Brazil at 49 percent).

27 "The Mobile Internet Consumer – India," 2013, Mobile Marketing Association, <http://bminewsletter.com/mailler/Mobile-internet-Consumer-India.pdf>.

28 The six are: Bharat Lanka cable System, EIG, IMEWE, SEA-ME-WE 3, SEA-ME-WE4, and SAT3/WACS/SAFE. See, "Consultation Paper on Access Facilitation Charges and Co-location Charges at Cable Landing Stations", TRAI, March 22, 2012, [http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/Consultation\\_paper\\_on\\_CLS.pdf](http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/Consultation_paper_on_CLS.pdf).

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

30 "Consultation Paper on Access Facilitation Charges and Co-location Charges at Cable Landing Stations", TRAI, March 22, 2012, [http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/Consultation\\_paper\\_on\\_CLS.pdf](http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/Consultation_paper_on_CLS.pdf).

31 Thomas K Thomas, "Cable landing points: Tata Comm, Airtel under competition panel lens", <http://www.thehindubusinessline.com/industry-and-economy/info-tech/cable-landing-points-tata-comm-airtel-under-competition-panel-lens/article3862930.ece>.

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Over 80 percent of telecommunications towers are privately owned.<sup>32</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>33</sup> Bharti Infratel, a subsidiary of Bharti, is one of the largest tower infrastructure providers.<sup>34</sup>

The top 10 ISPs hold almost 98 percent of the total internet subscriber base,<sup>35</sup> though there were 350 ISP license holders reported in 2014.<sup>36</sup> In the wired market, state-owned providers BSNL and MTNL are dominant,<sup>37</sup> with BSNL holding almost 72 percent of the market as of March 2014.<sup>38</sup> However, in the wireless internet market private companies have met with more success. In 2014, Bharti was the leading wireless operator, with 25 percent of the market, followed by Vodafone with 21 percent.<sup>39</sup> Financial requirements are not considered a barrier to entry into the service provider market.<sup>40</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>41</sup> Critics said the rules were “poorly framed,”<sup>42</sup> but penalties for non-compliance are not clear, and enforcement has reportedly been patchy. (CSCs are exempt, and operate under separate guidelines.<sup>43</sup>)

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. Within the reporting period, mobile internet access in Jammu and Kashmir was suspended for a day on July 18, 2013 after violent protests erupted in the state following unconfirmed reports that Indian border security guards had desecrated a copy of the Quran at a local religious semi-

32 “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).

33 “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).

34 “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>.

35 “The Indian Telecom Services Performance Indicators January-March 2014”, Telecom Regulatory Authority of India, July 30th, 2014, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

36 “Licensing of internet Services”, <http://www.dot.gov.in/data-services/internet-services>.

37 “The Indian Telecom Services Performance Indicators January-March 2014”, Telecom Regulatory Authority of India, July 30th, 2014, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

38 “The Indian Telecom Services Performance Indicators January-March 2014”, Telecom Regulatory Authority of India, July 30th, 2014, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

39 “The Indian Telecom Services Performance Indicators January-March 2014”, Telecom Regulatory Authority of India, July 30th, 2014, <http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Indicator%20Reports%20-%20Mar-14.pdf>.

40 The cost of a Unified Licence (for all services) is an entry fee of \$2.44 million with a Performance Bank Guarantee of \$3.6 million and Financial Bank Guarantee of \$71 million. The license-seeker is also required to have a minimum equity of \$4.07 million and minimum net-worth of \$0.47 million. For individual services, the entry fee and the guarantees depend on the services. See, “Guidelines for Grant of Unified License”, January 8, 2014, <http://www.dot.gov.in/licensing/unified-license>.

41 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).

42 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>.

43 “The Commercial Terms and Instructions to Bidders”, 5.8-Guidelines for delivering B2C services rule (iv), October 9, 2006, p. 60 <http://deity.gov.in/content/common-services-centrescsc>.

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nary.<sup>44</sup> Internet services offered by multiple cellular companies, including the 3G networks of BSNL, Airtel, and Reliance, were disconnected in Jammu and Kashmir from August 10 to August 15 during clashes between Hindu and Muslim communities in Kishtwar in the aftermath of the Eid festival.<sup>45</sup> On February 8, 2014, the Jammu and Kashmir government partially blocked internet services for one day, after a local group proposed a commemorative strike for Afzal Guru, who was controversially convicted and executed in 2013 for conspiracy in an attack on the Indian Parliament.<sup>46</sup> In March, the Press Trust of India said the Defense Ministry was seeking “interception and selective banning” of mobile internet in “terrorist hot spots” in the state.<sup>47</sup>

The Ministry of Communication and Information Technology’s Department of Telecommunications (DoT) manages the overall development of the telecommunications sector, licenses internet and mobile service providers, and manages spectrum allocation.<sup>48</sup> The Department of Electronics and Information Technology (DEITY) formulates policy relating to information technology, electronics, and the internet.<sup>49</sup> Internet protocol (IP) addresses are regulated by the Indian Registry for Internet Names and Numbers.<sup>50</sup> Since 2005, the registry has functioned as an autonomous body within the not-for-profit National Internet Exchange of India.<sup>51</sup>

The independent Telecom Regulatory Authority of India (TRAI) was created in 1997 to regulate the telecom, broadcasting, and cable TV sectors.<sup>52</sup> The Telecom Regulatory Authority of India Act mandates transparency in the exercise of its operations, which include monitoring licensing terms, compliance, and service quality.<sup>53</sup> Its reports are published online, usually preceded by a multi-stakeholder consultation.<sup>54</sup> A 2000 amendment to the act established a three-member Telecommunica-

44 “Journalists attacked by Police In Kashmir, internet And 3G Suspended”, Reporters without Borders, July 23, 2013, <http://en.rsf.org/india-journalists-attacked-by-police-in-23-07-2013,44961.html>.

45 “No internet in Kashmir: Media, Professionals and Students continue to suffer”, Free Press Kashmir, August 13, 2014, <http://freepresskashmir.com/no-internet-in-kashmir-media-professionals-students-continue-to-suffer-090113/>.

46 “Internet Block from Midnight”, Kashmiri Dispatch, February 8, 2014, <http://www.kashmirdispatch.com/headlines/080220524-kashmir-govt-to-block-internet-from-midnight.htm>.

47 Defence Ministry seeks selective ban on mobile Internet in J&K, Business Standard, March 11, 2014, [http://www.business-standard.com/article/pti-stories/defence-ministry-seeks-selective-ban-on-mobile-internet-in-j-k-114031100760\\_1.html](http://www.business-standard.com/article/pti-stories/defence-ministry-seeks-selective-ban-on-mobile-internet-in-j-k-114031100760_1.html).

48 See, <http://www.dot.gov.in/about-us/profile>.

49 See, <http://deity.gov.in/content/functions-deit>.

50 IRINN Policy Version 1.0, available at: [http://www.irinn.in/pages/static/IRINN\\_V1.pdf](http://www.irinn.in/pages/static/IRINN_V1.pdf).

51 [http://www.irinn.in/pages/static/about\\_us.html](http://www.irinn.in/pages/static/about_us.html).

52 “ICT Sector Information: Country Profile India”, Commonwealth Telecommunications Organisation, <http://www.cto.int/media/ICT-data/india.pdf>.

53 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>.

54 See “DTH operators should provide inter-operability of STBs, says TRAI Chairman”, The Economic Times, December 10, 2013, [http://articles.economicstimes.indiatimes.com/2013-12-10/news/45035128\\_1\\_dth-operators-dth-licence-dth-service-providers](http://articles.economicstimes.indiatimes.com/2013-12-10/news/45035128_1_dth-operators-dth-licence-dth-service-providers); “TRAI Releases Draft of: ‘the Telecom Commercial Communications Customer Preference (Fifteenth Amendment) Regulations, 2014’ for Comments from the Stakeholders”, \ Government World, January 29, 2014, <http://www.government-world.com/trai-releases-draft-of-the-telecom-commercial-communications-customer-preference-fifteenth-amendment-regulations-2014-for-comments-from-the-stakeholders/>; [http://www.trai.gov.in/Content/CONSULTATION/0\\_CONSULTATIONS.aspx](http://www.trai.gov.in/Content/CONSULTATION/0_CONSULTATIONS.aspx).

tions Dispute Settlement and Appellate Tribunal chaired by a former senior judge.<sup>55</sup> The TRAI, which criticized government departments in 2013, is perceived to be largely free of official influence.<sup>56</sup>

The Supreme Court has ruled on regulation issues in the past, and said in 2012 that a “first come, first served” model of allocating spectrum was arbitrary.<sup>57</sup> In October and November 2013, industry players accused the regulator of favoring incumbent 2G providers and setting auction prices too high.<sup>58</sup> Lucrative 2014 auctions for two 2G spectrum bands were perceived as fair.<sup>59</sup>

## Limits on Content

Content blocking in the name of maintaining public order declined during the coverage period, as did over-broad copyright restrictions documented in past reports. The constitutionality of Section 69A of the IT Act, under which blocking orders are issued, is being challenged before the Supreme Court. Guidelines for intermediaries issued under the act face similar legal challenges. Reports of online content being manipulated for political purposes rose in early 2014 in anticipation of the general election, but did not significantly distort discourse or suppress mobilization.

Blocking of websites takes place under Section 69A of the IT Act, and secondary legislation passed in 2009 entitled 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 commission of any cognizable offence relating to above.”<sup>60</sup> Intermediaries failing to comply are punishable with fines and prison terms up to seven years.<sup>61</sup>

The Blocking Rules apply to orders issued by government agencies, who must appoint a “nodal officer” who sends the requests to the “designated officer,” and demonstrate that they are necessary or expedient under Section 69A.<sup>62</sup> The designated officer chairs a committee which includes senior representatives of the law, home affairs, and information ministries, and the nodal agency for cyber-

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

56 See “Auction 3G Spectrum After New Govt Takes Charge: Trai”, The Indian Express, February 11, 2014, [http://www.newindianexpress.com/business/news/Auction-3G-Spectrum-After-New-Govt-Takes-Charge-Trai/2014/02/11/article2050942.ece1#.Uv-DC\\_mSykM](http://www.newindianexpress.com/business/news/Auction-3G-Spectrum-After-New-Govt-Takes-Charge-Trai/2014/02/11/article2050942.ece1#.Uv-DC_mSykM).

57 Center for Public Litigation and others v. Union of India (Writ Petition (Civil) No. 423 of 2010) with Dr. Subramaniam Swamy v. Union of India and Others (Writ Petition (Civil) No. 10 of 2011), see: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=39041>.

58 “Decision on spectrum pricing next week: Department of Telecom”, The Economic Times, October 29, 2013, [http://articles.economictimes.indiatimes.com/2013-10-29/news/43495866\\_1\\_cdma-spectrum-mhz-base-price](http://articles.economictimes.indiatimes.com/2013-10-29/news/43495866_1_cdma-spectrum-mhz-base-price); Eileen Yu, “GSMA rebukes India’s decision on 2G Spectrum Pricing”, ZDNET, <http://www.zdnet.com/in/gsma-rebukes-indias-decision-on-2g-spectrum-pricing-7000023123/>.

59 ShishirAsthana, “What is the Spectrum auction all about?”, The Business Standard, February 7, 2014, [http://www.business-standard.com/article/companies/what-is-spectrum-auction-all-about-114020700227\\_1.html](http://www.business-standard.com/article/companies/what-is-spectrum-auction-all-about-114020700227_1.html); “Spectrum sale exceeds expectations”, The Hindu, February 13, 2014, <http://www.thehindu.com/business/Industry/spectrum-sale-exceeds-expectations/article5685140.ece>.

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

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

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

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security, the Indian Computer Emergency Response Team (CERT-IN).<sup>63</sup> The designated officer issues orders approved by the committee to service providers or government agency; the committee must also notify the host of contested content of the request.<sup>64</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>65</sup>

Indian courts can order content blocks without this review process. The designated officer is required to implement the court order after submitting it to the secretary of DEITY. In reply to a Right to Information request, DEITY said the information ministry received a total of 130 court orders to block web content between February 2009 and December 2013.<sup>66</sup>

Implementation appears to depend on the technological capacity of ISPs. In the past, ISPs tampered with domain names to block content, so entire websites could be affected by a request pertaining to a single webpage.<sup>67</sup> However, many are becoming more sophisticated. In July 2013, Citizen Lab reported 90 instances of PacketShaper technology being used in India, 53 on public networks.<sup>68</sup> PacketShaper can delay some or all packets carrying specific information,<sup>69</sup> so that users seeking to access it experience unreliable service and give up.<sup>70</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>71</sup> It is not clear how many complied.

ISPs are not legally required to inform the public of blocks and the IT Act provides for no appeal. In fact, the Blocking Rules mandate that executive blocking orders be kept confidential.<sup>72</sup> A January 2014 transparency report issued by Verizon stated that the Indian government required the company to block access to websites, but was precluded by law from identifying how many blocking requests were received.<sup>73</sup> Court orders can theoretically be challenged in a higher court, but internet users are not consistently notified of their implementation.<sup>74</sup>

63 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.

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

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

66 Reply to the RTI Application filed by Sarjeet 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).

67 OpenNet Initiative, Country Profile: India, p. 304, 9 August 2012, <http://access.opennet.net/wp-content/uploads/2011/12/accesscontested-india.pdf>.

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

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

70 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>.

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

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

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

74 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/>.

The scale of blocking is consequently difficult to assess. In February 2014, the minister of communication and information technology told parliament that 62 URLs were blocked in 2013 through the government process under Section 69A for “hosting objectionable information” with “potential to disturb” public order.<sup>75</sup> A news report separately said 26 URLs—many on social media—were blocked on September 10, 2013 and another 82 blocked on September 18 after violence flared between Hindu and Muslim communities in the Muzaffarnagar district of Uttar Pradesh.<sup>76</sup> Blocks related to public order declined compared to 2012, when a total of 362 URLs were blocked, 312 of them in a single instance in response to communal violence in the northeast, according to the minister.<sup>77</sup>

Blocking based on court orders, however, increased in 2013. The minister said the government asked social networking sites to block 1,299 URLs in compliance with court orders between January 2013 and January 31, 2014, compared to 8, 21, and 352 URLs in 2010, 2011 and 2012, respectively.<sup>78</sup> Separately in June 2013, news reports citing a government spokesperson said 39 websites had been ordered to be blocked for obscenity, based on a court order.<sup>79</sup> Currently, there is no law against viewing pornography with the exception of creating, transmitting or browsing child pornography, though both the IT Act and the penal code prohibit the production and transmission of “obscene material.”<sup>80</sup>

Many limits on content remain obscure. In June 2013, observers noted some ISPs were blocking at least two image hosting websites and a political blog hosted on a United Kingdom-based service;<sup>81</sup> the reason for these apparent blocks is not known.<sup>82</sup>

Efforts to combat this lack of transparency are ongoing. As of May 2014, the case of Common Cause versus Union of India was pending before the Supreme Court. The petitioners challenged the constitutionality of Section 69A, citing the opaque procedure among other problems.<sup>83</sup> In a separate petition, the NGO People’s Union for Civil Liberties (PUCL) called the Blocking Rules unconstitutional.<sup>84</sup> That case has been joined with other pending Supreme Court petitions.

Content is also affected by takedown requests to service providers. In the first half of 2013, Google received 16 court orders to take down content and complied with 38 percent; it also received 147 re-

75 See “Govt asks social networking sites to block 1,299 URLs”, The Mint, <http://www.livemint.com/Politics/xtpfYq0UoSx6haja5alkK/Govt-asks-social-networking-sites-to-block-1299-URLs.html>

76 The blocks took place soon after violence broke out but were “not necessarily related to the Uttar Pradesh riots alone.” See, Shalini Singh, “ISPs lack tools to block communal content on web”, The Hindu, September 26, 2013, <http://www.thehindu.com/news/national/isps-lack-tools-to-block-communal-content-on-web/article5168432.ece>.

77 “Govt demands social networking sites to block 1,299 websites”, Business Standard, February 12, 2014, [http://www.business-standard.com/article/pti-stories/govt-asks-social-networking-sites-to-block-1-299-urls-114021201126\\_1.html](http://www.business-standard.com/article/pti-stories/govt-asks-social-networking-sites-to-block-1-299-urls-114021201126_1.html)

78 <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=151935> ; See “Govt asks social networking sites to block 1,299 URLs”, The Mint, <http://www.livemint.com/Politics/xtpfYq0UoSx6haja5alkK/Govt-asks-social-networking-sites-to-block-1299-URLs.html>

79 Javed Anwar, “Govt goes after porn, makes ISPs ban sites”, Times of India, June 27, 2013, <http://www.siliconindia.com/news/technology/ISPs-Block-39-Pornographic-Websites-In-India-Following-Govt-Order-nid-149637-cid-2.html>.

80 Section 67, The Information Technology Act 2000.

81 L. Gopika, “The trend of blocking URLs on ISP’s continues in India?”, Spicy IP, June 19, 2013, <http://spicyip.com/2013/06/the-trend-of-blocking-urls-on-isps.html>.

82 Apurva Chaudhary, “Updated: Filesharing Sites Uploaded.net, Ul.to, Stoorage& Blog On Politics Blocked On Some ISPs”, Medianama, June 26, 2013, <http://www.medianama.com/2013/06/223-filesharing-sites-uploaded-net-ul-to-stoorage-blog-on-politics-blocked-on-some-isps/>.

83 Common Cause v. Union of India [W.P.(C) No. 21 of 2013], <http://sflc.in/common-cause-vs-union-of-india-w-p-c-no-21-of-2013/>.

84 PUCL v. Union of India [W.P.(CrI) No. 199 of 2013]; <http://sflc.in/pucl-v-union-of-india-w-p-crl-no-199-of-2013/>.

quests from executive and law enforcement agencies, complying with 18 percent.<sup>85</sup> Twitter's transparency report for the period from July to December 2013 documents 8 takedown notices from India, with a 13 percent compliance rate.<sup>86</sup>

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>87</sup> However, Intermediaries Guidelines issued in 2011 required intermediaries to remove access to certain content within 36 hours of receiving actual knowledge of it, whether via an individual complaint or proactive screening.<sup>88</sup> The range of content covered by the rules is particularly broad.<sup>89</sup> In March 2013, a parliamentary standing committee recommended clearer definitions of prohibited content, expressing concern that the ambiguity could lead to censorship without due process and harassment of intermediaries.<sup>90</sup>

In March 2013, DEITY clarified that intermediaries only need to acknowledge complaints within 36 hours, and are subsequently free to address them within a month.<sup>91</sup> Technically the intermediary may refuse to remove the content without liability, but their decision can be challenged in court. If a judge decides that the information ought to have been taken down, the intermediary would be liable to fines or imprisonment, depending on the alleged offence, just like the individual who posted the content. Given these possible penalties, the framework incentivizes intermediaries to take down content, even in response to illegitimate complaints<sup>92</sup>.

In 2011, a journalist filed a criminal complaint against 21 internet firms for hosting content he considered offensive.<sup>93</sup> Some had the charges dismissed on technical grounds.<sup>94</sup> In May 2013, the Ministry of Home Affairs told a Delhi court that U.S. authorities had refused to serve a legal summons to 11 U.S.-based companies in relation to this case, and the prosecution effectively stalled.<sup>95</sup> Civil complaints against intermediaries are also being heard by Indian courts, including one against several internet firms filed by Islamic scholar Aijaz Arshad Qasmi in 2011.

85 The company reported 38 court orders and 122 executive orders from July to December 2012, with 53 and 30 percent compliance rates, respectively. See, Google; Google Transparency Report; Requests to Remove Content; From Governments; "July to December 2012," "January to June 2013," <http://www.google.com/transparencyreport/removals/government/countries/>.

86 "Twitter Transparency Report 2013India", <https://transparency.twitter.com/country/in>.

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

88 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>.

89 It covers content that is harassing, blasphemous, defamatory, obscene, pornographic, pedophilic, libelous, invasive of another's privacy, hateful, racially or ethnically objectionable, disparaging, relating to or encouraging money laundering or gambling, or otherwise unlawful. See, Rule 3, Information Technology (Intermediaries Guidelines) Rules 2011.

90 "Thirty First Report on the Information Technology Rules, 2011", Parliament of India, Committee on Subordinate Legislation, March 22, 2013, para 25-26, <http://www.prsindia.org/uploads/media/IT%20Rules/IT%20Rules%20Subordinate%20committee%20Report.pdf>.

91 Government of India, Ministry of Communications and Information Technology, Department of Electronics & Information Technology, Clarification on The Information Technology (Intermediary Guidelines) Rules, 2011 under section 79 of the Information Technology Act, 2000, March 18, 2013 [http://deity.gov.in/sites/upload\\_files/dit/files/Clarification%2079rules%281%29.pdf](http://deity.gov.in/sites/upload_files/dit/files/Clarification%2079rules%281%29.pdf).

92 RishabhDara, Intermediary Liability in India: Chilling Effects on Free Expression on the Internet 2011, April 10, 2012, <http://cis-india.org/internet-governance/intermediary-liability-in-india>.

93 Amol Sharma, "Facebook, Google to Stand Trial in India," Wall Street Journal, March 13, 2012, <http://on.wsj.com/x7z1ZI>.

94 Pratap Patnaik and Bibhudatta Pradhan, "Indian Court Quashes Charges Against Microsoft on Content," Bloomberg, March 19, 2012, <http://bloom.bg/x8qhvq>; KulBhushan, "Web Censorship: Delhi Court Drops Google India, 7 Others From Lawsuit," April 13, 2012, [http://www.thinkdigit.com/internet/Web-censorship-Delhi-court-drops-Google-India\\_9279.html](http://www.thinkdigit.com/internet/Web-censorship-Delhi-court-drops-Google-India_9279.html).

95 "US unable to execute summons to websites including Facebook, Google: MHA tells court", The Economic Times, May 3, 2013, [http://articles.economictimes.indiatimes.com/2013-05-03/news/39009491\\_1\\_mutual-legal-assistance-treaty-the-mha-request](http://articles.economictimes.indiatimes.com/2013-05-03/news/39009491_1_mutual-legal-assistance-treaty-the-mha-request).

Other petitions pending before the Supreme Court have challenged the Intermediary Guidelines. In *Rajeev Chandrashekar versus Union of India*, a member of parliament called the guidelines arbitrary and overbroad.<sup>96</sup> In *MouthShut.com versus Union of India*, a local web company argued that they force intermediaries to screen and censor online content.<sup>97</sup> In *PUCL versus Union of India*, the petitioners argued that the guidelines require private entities to adjudicate over content without legislative guidance, and without notifying or hearing the party affected. The PUCL also iterated that similar content is treated differently online than it would be offline.<sup>98</sup>

Intermediaries can separately be held liable for infringing the Copyright Act 1957,<sup>99</sup> under the law and licensing agreements.<sup>100</sup> 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>101</sup> Rules clarifying the amendment in 2013 gave intermediaries power to assess the legitimacy of the notice from the copyright holder and refuse to comply.<sup>102</sup> However, critics said the language was vague.<sup>103</sup>

Since 2011, courts have blocked content relating to copyright violations through broad John Doe (Ashok Kumar) orders, which can be issued preemptively and do not name a defendant.<sup>104</sup> ISPs have occasionally implemented them to block entire websites instead of individual URLs, whether or not they were hosting pirated material.<sup>105</sup> In 2012, the Madras High Court ruled that John Doe orders should not be used to block entire websites,<sup>106</sup> and the incidence of such orders declined in the reporting period. A December 2013 order from the Delhi High Court asked several ISPs to block sites which illegally hosted the movie *Dhoom 3* within 48 hours of receiving a written complaint from its

96 W.P.(C) No. 23 of 2013.

97 W.P.(C).No. 217 of 2013.

98 W.P.(CrI) No. 199 of 2013.

99 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.

100 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%20UL%20Agreement\\_0.pdf](http://www.dot.gov.in/sites/default/files/Amended%20UL%20Agreement_0.pdf).

101 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," 5Center 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>.

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

103 Chaitanya Ramachandran, "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>.

104 Kian Ganz, "Update: Bombay HC Passes First Anti-piracy John Doe Order, as Law Firms Commoditise the New Vertical", *Legally India*, June 15, 2012, <http://bit.ly/Klibkl>. These orders are passed by virtue of the inherent powers of the court under Section 151 of the Civil Procedure Code read with Rule 1 and Rule 2 of Order 39 of the Civil Procedure Code which deal with temporary injunctions.

105 Ananth Padmanabhan, "Can Judges Order ISPs to block websites for Copyright Infringement", January 30, 2014, Center for internet and Society, <http://cis-india.org/a2k/blog/john-doe-orders-isp-blocking-websites-copyright-1>.

106 M/s. R.K. Productions Pvt. Ltd. v. Bharat Sanchar Nigam Limited & 19 Others, C.S.(OS) 208/ 2012 (June 22, 2012), The High Court of Judicature at Madras (India).

production house, Yashraj Films, but limited implementation to specified URLs.<sup>107</sup> In January 2014, YouTube blocked a video spoofing Rahul Gandhi, who headed the Congress party election campaign, citing a copyright claim.<sup>108</sup>

In general, self-censorship is not widespread. Some internet users in conflict regions may avoid addressing sensitive political or religious issues which other journalists and activists report freely. Criminal penalties on online speech in India have had a “chilling effect” on online speech.<sup>109</sup> At the same time, outspoken blogs are widely visible and help inform the public. During the coverage period, websites accused the mainstream media of failing to investigate a December 2013 car crash involving a vehicle owned by a powerful businessman.<sup>110</sup>

Economic forces also have the potential to influence online content. Paid news, or “advertorials,” are common in the mainstream media, ranging from unclear disclosure of paid endorsements to bribery and other kickbacks for coverage.<sup>111</sup> In June 2013, Indian digital media website Medianama reported this phenomenon had increased on digital platforms in the past three years.<sup>112</sup>

Political parties are often thought to be impacting content on the internet, and major ones mobilized thousands of supporters using social networks in advance of the 2014 election.<sup>113</sup> The then-opposition BJP acknowledged operating 100 social media campaigners, several of them paid, for posting under multiple IDs in early 2013, but denied allegations that they “flood the internet with right-wing propaganda.”<sup>114</sup> The Congress party launched a rival online campaign later in the year but denied compensating participants.<sup>115</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>116</sup>

107 Yashraj Films Pvt. Ltd. v. Cable Operators Federation of India and Ors. CS(OS) 2335/2013 Order dated December 2, 2013, [http://delhihighcourt.nic.in/dhcqrydisp\\_O.asp?pn=234845&yr=2013](http://delhihighcourt.nic.in/dhcqrydisp_O.asp?pn=234845&yr=2013); High Court Restrains Cable Operators from illegally showing Dhoom 3, Business Standard, December 2, 2013, [http://www.business-standard.com/article/pti-stories/hc-restrains-cable-operators-from-illegally-showing-dhoom-3-113120201327\\_1.html](http://www.business-standard.com/article/pti-stories/hc-restrains-cable-operators-from-illegally-showing-dhoom-3-113120201327_1.html)

108 Kim Arora, “YouTube removes Rahul Gandhi’s spoof video”, The Economic Times, January 28, 2014, [http://articles.economictimes.indiatimes.com/2014-01-28/news/46734939\\_1\\_video-sharing-website-copyright-speech](http://articles.economictimes.indiatimes.com/2014-01-28/news/46734939_1_video-sharing-website-copyright-speech).

109 Shivprasad Swaminathan, Saving free speech from the police, November 26, 2012, <http://www.thehindu.com/todays-paper/tp-opinion/saving-free-speech-from-the-police/article4135301.ece>

110 Hari Kumar, “When media steers clear of a car crash”, South China Morning Post, January 6, 2014, <http://www.scmp.com/comment/insight-opinion/article/1398609/when-media-steers-clear-car-crash>.

111 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>.

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

113 “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/>.

114 Kunal Pradhan, “Election #2014: As Cyber War Rooms Get Battle Ready, BJP and Congress are Reaching Out to a New Constituency Spread Across Social Media”, India Today, February 8, 2013, <http://bit.ly/16DM9Rv>.

115 The Congress Party advertised for hiring persons to monitor what is going viral on the internet. See: “Congress to hire 50 social media activists”, India Wires, July 18, 2013, <http://indiawires.com/25099/news/national/congress-to-hire-50-social-media-activists/>; Congress spokespersons also acknowledged the need to counter right-wing propaganda on the internet through a more established Internet presence. See: Niharika Mandhania, “Congress Prepares for Social Media Blitz”, Blog of the Wall Street Journal, August 19, 2013, <http://blogs.wsj.com/indiarealtime/2013/08/19/congress-prepares-for-social-media-blitz/>.

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

Other political mobilization was more positive. The Aam Aadmi Party, which contested assembly elections in New Delhi for the first time in 2013, used social media to mobilize voters extensively in their campaign.<sup>117</sup> Its website had over a million likes on Facebook, ahead of Congress and second only to the BJP.<sup>118</sup> The party emerged with the second largest share of the vote and formed a government with the support of the Congress party, though it was less successful at the national stage in 2014.<sup>119</sup>

The internet is increasing access to the public sphere in remote areas. 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 which do not reach the mainstream media.<sup>120</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, it has over 100,000 users that call 2,000 times a day.<sup>121</sup>

Online media spurred social mobilization during the coverage period. In July 2013, the government announced plans to regulate the sale of acid in response to an online petition launched by the survivor of an acid attack signed by more than 27,000 people.<sup>122</sup> In January 2014, former Supreme Court Justice A.K. Ganguly retired as chairman of the West Bengal Human Rights Commission after a lawyer published allegations of sexual harassment against him online.<sup>123</sup> A powerful response from the internet community led to an official investigation into the incident,<sup>124</sup> and a Supreme Court committee began accepting sexual harassment complaints submitted by email.<sup>125</sup>

After the Supreme Court's reinstatement of the criminalization of homosexual intercourse in December 2013—previously lifted by a lower court—protests by members and supporters of the

117 "Salute to Arvind Kejriwal, AAP for using mobile internet, social media", Telecom Lead, December 9, 2013, <http://www.telecomlead.com/news/salute-to-arvind-kejriwal-aap-for-using-mobile-internet-social-media-51545/>.

118 "Aam Aadmi Party website a hit on social media", India Today, January 3, 2014, <http://indiatoday.intoday.in/story/aam-aadmi-party-website-a-hit-on-social-media/1/334136.html>

119 Deepshikha Ghosh, Election Results 2014: Single seat for AAP, But not a complete loss, May 16, 2014, <http://www.ndtv.com/elections/article/election-2014/election-results-2014-single-seat-for-aap-but-not-a-complete-loss-525359>

120 "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>.

121 "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).

122 See: <http://www.change.org/en-IN/petitions/stop-selling-acid-stopacidattacks>.

123 Shiv Sahay Singh and J. Venkatesan, Ganguly yields to pressure, quits, The Hindu, January 7, 2014, <http://www.thehindu.com/news/national/ganguly-yields-to-pressure-quits/article5544913.ece>; "Through my Looking Glass", Blog of Journal of Indian Law and Society, November 6, 2013, <http://jilsblognujs.wordpress.com/2013/11/06/through-my-looking-glass/>.

124 Kian Ganz, "Law student sexually harassed by ex-Supreme Court judge: case is not unique, but speaking out is nearly impossible", Legally India, November 11, 2013, <http://www.legallyindia.com/201311114099>; Preeti Pawar, "Timeline of the Justice AK Ganguly law intern sexual harassment case", One India, January 6, 2014, <http://news.oneindia.in/kolkata/timeline-of-the-justice-ak-ganguly-law-intern-sexual-harassment-case-1371729.html>. "Supreme Court sets up committee to deal with sexual harassment complaints", The Economic Times, November 26, 2013, [http://articles.economictimes.indiatimes.com/2013-11-26/news/44487185\\_1\\_child-rights-chief-justice-internal-complaints-committee](http://articles.economictimes.indiatimes.com/2013-11-26/news/44487185_1_child-rights-chief-justice-internal-complaints-committee).

125 Women can e-mail, post complaints to Supreme Court sexual harassment cell, The Indian Express, February 20, 2014, <http://indianexpress.com/article/india/india-others/women-can-e-mail-post-complaints-to-supreme-court-sexual-harassment-cell/>.

LGBTQI community made extensive use of the internet.<sup>126</sup> A “Global Day of Rage” protest four days after the verdict was largely coordinated on social media, spreading to 30 global cities.<sup>127</sup>

## Violations of User Rights

Arrests under Section 66A of the IT Act initially declined during the coverage period after the Supreme Court enforced a government advisory trying to restrict its abuse. Though at least five criminal complaints regarding online content were filed, this marked an improvement over the previous reporting period until May 2014, when four more complaints were filed and the number of arrests increased. Several legal challenges regarding the constitutionality of Section 66A are pending. Two scandals regarding state officials allegedly abusing their surveillance powers emerged in the states of Gujarat and Himachal Pradesh, even as the central authorities continued to develop the Central Monitoring System, which will allow officials to retrieve content and metadata from any electronic communication in India in real time. In July 2013, Blackberry said the Indian government is now able to access encrypted emails and chats, excluding corporate communications.

The Constitution of India grants citizens the fundamental right to freedom of speech and expression,<sup>128</sup> including the right to gather information and exchange thoughts with others within and outside India.<sup>129</sup> Press freedom has been read into the freedom of speech and expression.<sup>130</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 offence, 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>131</sup> The right to privacy has been read into the right to life guaranteed by Article 21 of the constitution.<sup>132</sup>

The Indian Penal Code criminalizes several kinds of speech, and applies online. Individuals could be punished with a jail term ranging from two to seven years for speech that is found to be seditious,<sup>133</sup> obscene,<sup>134</sup> defamatory,<sup>135</sup> “promoting enmity between different groups on ground of religion, race, place of birth, residence, language,”<sup>136</sup> committing acts “prejudicial to maintenance of harmony,”<sup>137</sup> or consisting of statements, rumors, or reports that may cause fear, alarm, disturb public tranquility, or promote enmity or ill will.<sup>138</sup> Internet users are also subject to criminal punishment under the Of-

126 Ishita Bhatia and Soumya Pillai, Protestors mark ‘global day of rage’ against Section 377, Hindustan Times, December 15, 2013, <http://www.hindustantimes.com/india-news/protestors-mark-global-day-of-rage-against-section-377/article1-1162965.aspx>.

127 See, [https://www.facebook.com/events/1374294672825321/?ref\\_newsfeed\\_story\\_type=regular](https://www.facebook.com/events/1374294672825321/?ref_newsfeed_story_type=regular); <http://www.awid.org/Library/Join-the-global-day-of-rage-against-the-Indian-Supreme-court-s-Criminality-of-Homosexuality-judgement>; <http://www.buzzfeed.com/tasneemnashrulla/the-world-raging-against-indias-ban-on-same-sex-intercourse>.

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

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

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

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

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

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

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

135 Section 499, The Indian Penal Code, 1860.

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

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

138 Section 505, The Indian Penal Code, 1860.

ficial Secrets Act for wrongful communication of information which may have an adverse effect on the sovereignty and integrity of India.<sup>139</sup>

The IT Act criminalizes online speech 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>140</sup> Its infamous Section 66A criminalizes information that is grossly offensive, of menacing character, any information which is false, but causes “annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.”

Arrests for online communication under Section 66A declined during the coverage period, while many earlier complaints were dropped or appeared to lapse. Although new complaints were filed, the longest period of detention reported in relation to a social media post was two days.

The central government and the Supreme Court tried to restrict abuse under the IT Act with mixed success. DEITY issued a January 2013 advisory restricting approval of Section 66A arrests to senior police officers.<sup>141</sup> Despite this, police in Andhra Pradesh arrested local PUCL president Jaya Vindhya-la in May 2013 for criticizing officials from Tamil Nadu on her personal Facebook account.<sup>142</sup> She was released after two days, but charges are pending.<sup>143</sup>

On May 16, 2013, the Supreme Court directed states and territories to comply with the DEITY advisory, and subsequently intervened in two cases.<sup>144</sup> In August, police in Uttar Pradesh detained scholar Kanwal Bharti for four hours under Section 66A in August after he posted Facebook comments in support of a civil servant who allegedly demolished an illegal mosque.<sup>145</sup> The Supreme Court required the Uttar Pradesh government to submit an explanation, but it has yet to respond.<sup>146</sup> In November, cleric Hasan Raza Khan filed a criminal complaint in Uttar Pradesh under Section 66A against Bangladeshi writer Taslima Nasreen for using Twitter to criticize a meeting between a prominent politician and a cleric instrumental in issuing a fatwa against her.<sup>147</sup> The Supreme Court restrained the police from arresting her, though the case remains pending.<sup>148</sup>

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139 Section 5, Official Secrets Act, 1923.

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

141 Advisory on implementation of Section 66A of the Information Technology Act, 2000, No. 11(6)/2012-CLFE, Government of India, Department of Electronics and Information Technology, January 9, 2013.

142 “PUCL leader gets bail in Facebook post case”, The Hindu, May 14, 2013, <http://www.thehindu.com/news/national/andhra-pradesh/pucl-leader-gets-bail-in-facebook-post-case/article4715188.ece>.

143 “PUCL Condemns Arrest of Jaya Vindhya, PUCL - AP State President: PUCL Demands Release And Dropping Of Charges”, PUCL Press release, May 12, 2013, <http://www.pucl.org/Topics/Media/2013/vindhayala.htm>.

144 Shreya Singhal v. Union of India Writ Petition (Criminal) 167 of 2012; Order dated May 16, 2013.

145 “Dalit scholar arrested for Facebook post on Durga’s suspension”, Hindustan Times, August 6, 2013, <http://www.hindustantimes.com/india-news/dalit-scholar-arrested-for-facebook-post-on-durga/article1-1104208.aspx>.

146 Shreya Dhoundial, Durga suspension: SC notice to UP govt over Dalit scholar’s arrest, August 16, 2013, <http://ibnlive.in.com/news/durga-suspension-sc-notice-to-up-govt-over-dalit-scholars-arrest/414726-3.html>; Shreya Singhal v. Union of India, Crim Petition No. 167/2012, Order dated August 16, 2013.

147 Pervez IqbalSiddiqui, “Cleric files FIR against TaslimaNasreen’s anti-fatwa tweet”, The Times of India, December 6, 2013, [http://articles.timesofindia.indiatimes.com/2013-12-06/india/44862619\\_1\\_taslima-nasreen-tasleema-nasreen-aam-aadmi-party](http://articles.timesofindia.indiatimes.com/2013-12-06/india/44862619_1_taslima-nasreen-tasleema-nasreen-aam-aadmi-party).

148 Utkarsh Anand, “SC accords protection to TasleemaNasreen from arrest over contentious tweet”, The Indian Express, December 17, 2013, <http://www.indianexpress.com/news/sc-accords-protection-to-tasleema-nasreen-from-arrest-over-contentious-tweet/1208685/>.

Cases filed in 2014 involved social media comments about Narendra Modi and actor Aamir Khan's television show.<sup>149</sup> There were at least three arrests in May 2014 with two relating to speech against the present Prime Minister Narendra Modi,<sup>150</sup> thereby increasing the number of attempted prosecutions during the coverage period.

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>151</sup> There is a similar legal requirement to submit identification at cybercafes and while subscribing to internet connections.<sup>152</sup>

The effective implementation of privacy rights remains a significant issue. Communication surveillance may be conducted under the Telegraph Act,<sup>153</sup> as well as the IT Act,<sup>154</sup> to protect defense, national security, sovereignty, friendly relations with foreign states, public order and to prevent incitement to a cognizable offence. Section 69 of the IT Act appears to add another broad category, allowing surveillance for "the investigation of any offence."<sup>155</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>156</sup> These are reviewed by a committee of government officials of a certain rank, and carried out by intermediaries.<sup>157</sup> A similar framework applies to the IT Act.<sup>158</sup> Interception orders are not reviewed by a court, and are

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149 In March 2014, a businessman in Goa filed a Section 66A criminal complaint against local shipbuilder Devu Chodankar for allegedly inflammatory Facebook comments about Narendra Modi, and in April a retired merchant navy officer from Karnataka was arrested for allegedly posting a defamatory message on social media about Aamir Khan's television show in response to a complaint by the actor. He was released on bail, but charges are pending. See, "Opposition, Facebook users slam FIR over anti-Modi post", First Post, March 28, 2014, <http://freepressjournal.in/opposition-facebook-users-slam-fir-over-anti-modi-post/>; "Devu Chodankar's arrest for anti-Modi post on Facebook ordered by court: Parrikar", IBN Live, May 24, 2014, <http://ibnlive.in.com/news/devu-chodankars-arrest-for-antimodi-post-on-facebook-ordered-by-court-parrikar/474076-3-253.html>; and S Ahmad Ali, "Manipal man arrested for defaming actor Aamir Khan", The Times of India, April 19, 2014, <http://timesofindia.indiatimes.com/city/mumbai/Manipal-man-arrested-for-defaming-actor-Aamir-Khan/articleshow/33922865.cms>.

150 In March 2014, a MBA student was arrested for allegedly circulating an MMS ridiculing Narendra Modi. Four of his friends were also called for questioning but were not detained. The MBA student was subsequently released and charges against him were dropped. See, "AAP activist held for allegedly sharing anti-Modi MMS", Hindustan Times, May 25, 2014, <http://www.hindustantimes.com/india-news/aap-activist-arrested-for-allegedly-forwarding-anti-modi-mms-in-karnataka/article1-1222788.aspx>; "Anti-Modi MMS - AAP member released, all charges withdrawn", Daijiworld Media Network, May 28, 2014, [http://www.daijiworld.com/news/news\\_disp.asp?n\\_id=237873](http://www.daijiworld.com/news/news_disp.asp?n_id=237873); "Man who threatened to kill Modi on Twitter arrested from Gurgaon", Hindustan Times, May 15, 2014, <http://www.hindustantimes.com/elections2014/election-beat/man-who-threatened-to-kill-modi-on-twitter-arrested-from-gurgaon/article1-1219320.aspx>; and "Techie arrested for hacking, sending abusive mails to boss", Times of India, May 2, 2014, <http://timesofindia.indiatimes.com/city/mumbai/Techie-arrested-for-hacking-sending-abusive-mails-to-boss/articleshow/34545836.cms>

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

152 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).

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

154 Section 69, Information Technology Act, 2000.

155 Section 69, Information Technology (Amendment) Act, 2008. Also see Pranesh Prakash, "How Surveillance Works in India," New York Times, July 10, 2013, <http://nyti.ms/164b2sm>.

156 Jadine Lannon, "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>.

157 Committee members are limited to a certain rank. Jadine Lannon, "Indian Telegraph Act, 1885, 419A Rules and IT (Amendment) Act, 2008, 69 Rules," Center for Information and Society, April 28, 2013, <http://bit.ly/14N1qCT>.

158 Chinmayi Arun, "Way to Watch", The Indian Express, June 26, 2013, <http://archive.indianexpress.com/news/way-to-watch/1133737/0>.

limited to 60 days and renewable for a maximum of 180 days.<sup>159</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>160</sup> Eight separate intelligence bodies are authorized to issue surveillance orders to service providers under these circumstances.<sup>161</sup>

Online intermediaries are required by law to “intercept, monitor, or decrypt” or otherwise provide user information to officials.<sup>162</sup> Where the Telegraph Act levied civil penalties for non-compliance with an interception order,<sup>163</sup> the IT Act carries a possible seven year jail term.<sup>164</sup> Unlawful interception is punishable by just three years’ imprisonment.<sup>165</sup>

Some improvements to the framework have been made, including during the coverage period. 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>166</sup> The procedures restricted interception to a service provider’s “chief nodal officer,” and mandated that interception orders be in writing.<sup>167</sup> Rules issued in 2011 under the IT Act increased protection of personal data handled by companies.<sup>168</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>169</sup>

Experts point out that despite these improvements, the framework is inadequate or inconsistent on key points. In 2012, a government-appointed group of experts said the Telegraph and the IT Acts are inconsistent with regard to “permitted grounds,” “type of interception,” “granularity of information that can be intercepted,” the degree of assistance from service providers, and the “destruction and retention” of intercepted material.” These differences, it concluded, “have created an unclear regulatory regime that is non-transparent, prone to misuse, and that does not provide remedy for

159 Jadine Lannon, “Indian Telegraph Act, 1885, 419A Rules and IT (Amendment) Act, 2008, 69 Rules,” Center for Information and Society, April 28, 2013, <http://bit.ly/14N1qCT>.

160 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).

161 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).

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

163 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>

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

165 Section 26, Indian Telegraph Act, 1885.

166 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>

167 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>

168 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>.

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

aggrieved individuals.<sup>170</sup> A privacy bill in draft since 2011 is still subject to internal discussion within the Department of Personnel and Training.<sup>171</sup> It is unclear when it will be tabled.

License agreements require service providers to guarantee the designated security agency or licensor remote access to information for monitoring;<sup>172</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>173</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>174</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>175</sup> The agreement remains effective, though various GSM operators are lobbying for the clause to be removed from the license agreement after most failed to comply.<sup>176</sup>

Cybercafe owners are required to photograph their customers, follow instructions on how their cafes should be set up so that all computer screens are in plain sight, keep copies of client IDs and their browsing histories for one year, and forward this data to the government each month.<sup>177</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>178</sup> The ISP license bars internet providers from deploying bulk encryption; restricts the level of encryption for individuals, groups or organiza-

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170 "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).

171 Gulveen Aulakh, "India proposes to penalise invasion of privacy offences in draft bill", The Economic Times, February 18, 2014, [http://articles.economictimes.indiatimes.com/2014-02-18/news/47451233\\_1\\_personal-data-privacy-bill-draft-bill](http://articles.economictimes.indiatimes.com/2014-02-18/news/47451233_1_personal-data-privacy-bill-draft-bill); Elonnai Hickok, "Leaked Privacy Bill: 2014 vs. 2011", Centre for Internet and Society, March 31 2014, <http://cis-india.org/internet-governance/blog/leaked-privacy-bill-2014-v-2011>.

172 Saikat Datta, "A Fox On A Fishing Expedition," Outlook India, May 3, 2010, <http://www.outlookindia.com/article.aspx?265192>.

173 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.

174 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/sites/default/files/AS%207-9-12\\_0.pdf](http://www.dot.gov.in/sites/default/files/AS%207-9-12_0.pdf); Nikhil Pahwa, "New Telecom Equipment Policy Mandates Location Based Services Accuracy Of 50Mtrs: COAI," Medianama, June 17, 2011, <http://bit.ly/keKNxY>.

175 "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>

176 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)

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

178 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.

tions to a key length of 40 bits;<sup>179</sup> and mandates prior approval from the DoT or a designated officer to install encryption equipment.<sup>180</sup>

Since 2011, officials have sought to prevent international providers from encrypting user communications,<sup>181</sup> and required some, such as Nokia and BlackBerry, to establish local servers subject to Indian law under threat of blocking their services.<sup>182</sup> In July 2013, BlackBerry confirmed their “lawful access capability” met “the standard required by the Government of India,” though business customers would be unaffected.<sup>183</sup> Citing a government document, the Economic Times said the interception system would provide real time access to consumer data including email and web access. BlackBerry, which is based in Canada, would train five officials in the system in Ontario, according to the Times. Of the providers with BlackBerry access in India, the system was being installed by all but one, SSSL, which discontinued its BlackBerry service.<sup>184</sup> Others delayed, citing pricing negotiations with the U.S.-headquartered company Verint Systems over the required software.<sup>185</sup>

The Indian government also seeks user information from international web-based platforms. Google received 2,794 data requests from Indian government agencies from January to June 2014, a number that has increased every reporting period since the first in 2009; Google complied with 61 percent of the requests.<sup>186</sup> Over the same period, Facebook said it had complied with 54 percent of 3,598 requests,<sup>187</sup> Twitter said it had complied with 32 percent of 19 requests.<sup>188</sup>

Besides retrieving data from intermediaries, the government’s own surveillance equipment is becoming more sophisticated. A Central Monitoring System (CMS) which will allow government agencies to intercept any online activities, phone calls, text messages and even social media conversations in real time by directly accessing interception equipment on intermediary premises, has caused widespread concern.<sup>189</sup> Execution of the CMS has been entrusted to the DoT’s Centre for

179 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.

180 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.

181 Joji Thomas Philip, “Can’t Track Blackberry, Gmail: DoT,” Economic Times, March 16, 2011, <http://bit.ly/1bhkFo8>; Joji Thomas Philip and Harsimran Julku, “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>.

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

183 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>; <http://thenextweb.com/asia/2013/07/10/after-a-lengthy-battle-blackberry-will-finally-let-the-indian-government-monitor-its-servers/>; <http://www.bbc.com/news/technology-23265091>.

184 Sanjay Singh, SSSL to wind up BlackBerry services, says it’s a cost-cutting exercise, Business Today, July 23, 2013, <http://businesstoday.intoday.in/story/sstl-to-wind-up-blackberry-services/1/197088.html>

185 BSNL, MTNL get more time for Blackberry Interception, The Hindu, August 11, 2013, <http://www.thehindubusinessline.com/industry-and-economy/info-tech/bsnl-mtnl-get-more-time-for-blackberry-interception/article5012107.ece>

186 The requests covered 5,002 users or accounts. Google Transparency Report; Security and Privacy; Requests for User Information; India; Summary of Requests; <https://www.google.com/transparencyreport/userdatarequests/IN/>

187 See, <https://govtrequests.facebook.com/country/India/2013-H2/>.

188 See <https://transparency.twitter.com/country/in>.

189 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/>.

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Development of Telematics.<sup>190</sup> New reports differed as to when it would become operational,<sup>191</sup> but at least one cited significant technical shortcomings preventing the system from coming online in mid-2013.<sup>192</sup> A minister told parliament in February 2014 it is being phased in over the next three years.<sup>193</sup>

The existing framework lends itself to misuse. On June 26, 2013 the Himachal Pradesh anticorruption bureau filed a case against unidentified people under sections of the Telegraph Act and the IT Act in relation to alleged surveillance abuse.<sup>194</sup> The incumbent state Congress government said the previous BJP administration tapped over 1,300 phones when the Home Department had authorized only 170 taps.<sup>195</sup> Targets included the political opposition and journalists.<sup>196</sup>

In November 2013, investigative news websites Cobrapost and Gulail published allegations of illegal surveillance by the BJP state government of Gujarat in 2009.<sup>197</sup> The sites said police, intelligence officials, and telecommunications company employees flouted procedure to monitor the communications of an architect from Karnataka for at least two months. The Gujarat government is investigating the leak of audiotapes documenting the surveillance.<sup>198</sup> There were no prominent instances of physical attacks on bloggers, although there are reports of people being threatened with physical violence in response to their speech online. Activist Kavita Krishnan was harassed online by a person using the handle “@RAPIST,” while journalist Sagarika Ghose was repeatedly threatened with gang rape on Twitter.<sup>199</sup> The Criminal Laws Amendment Act in effect since February 2013 punishes cyber stalking of women.<sup>200</sup> It penalizes monitoring of internet usage or electronic communication resulting in a fear of violence, serious alarm, or distress with fines and jail terms from one to three years.

Cyberattacks did not systematically target opposition groups or human rights activists during the coverage period, though one 2013 study ranked India as the fifth-most targeted country globally

190 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>.

191 See for example, Shalini Singh, “India’s surveillance project may be as lethal as PRISM,” The Hindu, June 21, 2013, <http://bit.ly/15EeV2o>; Kalyan Parbat, “India’s Surveillance System CMS to be Operational Soon,” Economic Times, September 5, 2013, <http://bit.ly/17QbPit>.

192 <http://blogs.wsj.com/indiarealtime/2013/07/06/indias-surveillance-program-stalled/>

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194 “Himachal Pradesh: Case registered in Massive Phone Tapping, IBN-Live, June 27, 2013, <http://ibnlive.in.com/news/himachal-pradesh-case-registered-in-mass-phone-tapping/402096-3-254.html>; “Over 1,000 phones tapped by BJP, says Himachal Pradesh Chief Minister Virbhadra Singh”, NDTV, February 18, 2013, <http://www.ndtv.com/article/india/over-1-000-phones-tapped-by-bjp-says-himachal-pradesh-chief-minister-virbhadra-singh-332484>.

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