Limited access restricting expression

European Union

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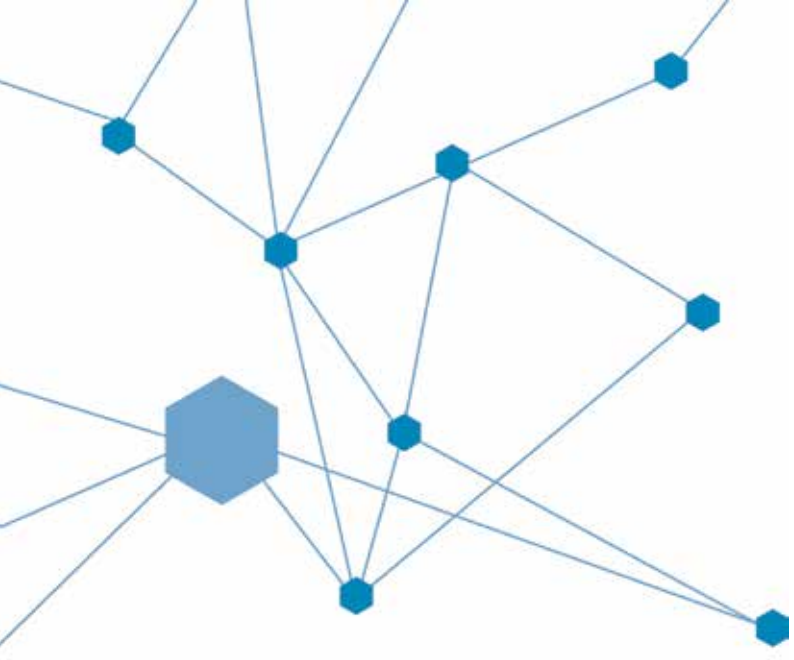

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The insights that this report presents with respect to on the ground realities in India could not have been possible without their commitment. This is not claim on the authenticity of facts and figures mentioned in the book. It is hereby declared that nobody from editors, researchers and publishers will be responsible for any error. Therefore, readers may excuse and forgive any errors and mistakes that may have occurred unintentionally.

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LIST OF ABBREVIATIONS

1. AAP: Aam Aadmi Party
2. APC: Association for Progressive Communications
3. ASHA: Accredited Social Health Activists
4. ATS: Anti-Terrorism Squad, Government of India
5. BBNL: Bharat Broadband Network Limited
6. BJP: Bharatiya Janata Party
7. BSNL: Bharat Sanchar Nigal Limited
8. C-DOT: Centre for Development of Telematics
9. CBI: Central Bureau of Investigation
10. CERT: Computer Emergency Response Team
11. CHWs: Community health workers
12. CIS: Centre for Internet and Society
13. CMS: Central Monitoring System
14. CSOs: Civil Society Organisations
15. Cyber Regulation Advisory Committee
16. DEF: Digital Empowerment Foundation
17. DelTy: Department of Electronics & Information Technology
18. DOT: Department of Telecom
19. DRI: Directorate of Revenue Intelligence
20. DSCI: Data Security Council of India
21. ECI: Election Commission of India
22. FCRA: Foreign Contributions Regulations Act
23. FoE: Freedom of Expression

24. IAMAI: Internet and Mobile Association of India
25. ICT4D: Information, Communications and Technology for Development
26. IGF: Internet Governance Forum
27. IMPACT: India, Malaysia, Pakistan Advocacy for Change through Technology
28. IPC: Indian Penal Code, 1860
29. ISMS: Information Security Management System
30. ISP: Internet Service Provider
31. IT Act: Information Technology (IT) Act, 2000
32. ITU: International Telecommunication Union
33. MEA: Ministry of External Affairs
34. MIB: Ministry of Information and Broadcasting
35. NATGRID: National Information Grid
36. NCCC: National Cyber Coordination Centre
37. NCRB: National Crime Records Bureau
38. NCSP: National Cyber Security Policy
39. NDLM: National Digital Literacy Mission
40. NGOs: non-government organisations
41. NHRC: National Human Rights Commission
42. NIA: National Intelligence Agency
43. NLU: National Lau University, Delhi
44. OTT: Over-the-top
45. PCI: Press Council of India

46. PIL: Public Interest Litigation
47. RAW: Research & Analysis Wing
48. RTI: Right to Information
49. SFLC: Software Freedom Law Centre
50. TERM: Telecom Enforcement Resource and Monitoring
51. TRAI: Telecom Regulatory Authority of India
52. TSPs: Telecom service providers
53. UAPA: Unlawful Activities Prevention Act
54. UDHR: Universal Declaration of Human Rights
55. UIDAI: Unique Identification Authority of India
56. UNCSTD: UN Commission on Science and Technology for Development
57. UNDP: United Nations Development Programme
58. UNHRC: UN Human Rights Council
59. UPA: United Progressive Alliance
60. UPR: Universal Periodic Review
61. USOF: Universal Service Obligation Fund
62. WSIS: World Summit on Information Society

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ACKNOWLEDGEMENT

India is a country of paradox. In the era of information revolution while India stands ranked among the top five contributors of the people who are online, or mobile users or even on social media; on the other hand India is also one of the top countries where more than 80 percent of the people have no access to Internet, where more than 70 percent of women in rural India do not have access to a mobile phone.

There is a long way to go for India to be a country with a comprehensively online population and to be part of the global information society. Having said that, India is also experiencing a new wave of the online world. The online world is not the same as offline, and therefore there are cultural, regulatory, monitoring, privacy, surveillance, and governance challenges.

Since Digital Empowerment Foundation (DEF) stands at the crossroad of information exchange, information poverty, information economy, and access to information, we partnered with the Association for Progressive Communication (APC) and started working in the areas of internet governance and internet rights. Recently, together with APC and with support from the European Union, we started exploring and going deeper into the issues of human rights and their violations online and offline, and particularly in relation to the right to information, right to freedom of expression, right to freedom of association, and right to freedom of assembly.

This country report is the foundation upon which DEF is engaging with stakeholders to build capacities at the local level, advocate for policies to support and strengthen human rights online and build institutional linkages so that all stakeholders can bring about systemic change across India with respect to freedom of expression. We further aim to understand how people in India exercise their freedom of speech and expression, both online and offline, using the APC-La Rue Framework. Based on this framework, we have attempted to examine the constitutional and policy frames in India and international human rights mechanisms, as they relate to various aspects of freedom of expression online, such as

access, arbitrary blocking of content, communications surveillance, criminalisation of legitimate expression, the role of internet intermediaries, women's human rights and internet governance at the global level.
I thank my colleagues Ritu Srivastava and Niki Shah for demonstrating their genuine and sincere commitment to democracy and human rights by not only studying free speech and expression in the online sphere, but questioning and diving deep into India's societal structure to understand how people express themselves online. I must also acknowledge my colleagues Pawas Suren, Rahul Choudhary, Maubani Dutta, and Bijo Abraham for their efforts on survey research and engaging communities in the field. The insights that this report presents with respect to on the ground realities in India could not have been possible without their commitment.

This report has been made, designed and printed with much care and focus. However, readers may excuse and forgive any errors and mistakes that may have occurred unintentionally.

Wishing you a thought-provoking reading!

Sincerely,
Osama Manzar
Founder & Director
Digital Empowerment Foundation
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INTRODUCTION

Freedom of expression is a fundamental right guaranteed under Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, and Article 19(1) of Constitution of India. However, the Constitution of India places "reasonable restrictions" under Article 19(2) of the Indian constitution.

To understand FoE offline and online in 21st century India, first, it is important to understand and analyse the country's complex and interwoven historical, socio-cultural, religious and philosophical, economic and political structure, and linguistic capability of 1.2 billion people. In the world's largest democracy, people have varied perspectives and methods of expression based on varied levels of understanding of this complex Indian society. However, those unique perspectives are necessary for the Indian democracy to flourish—and free speech is critical to shape a functioning and vibrant democracy.

The report aims to assist decision makers, civil society organisations (CSOs), telecom regulators, policy makers and national and international human rights and internet rights advocates in assessing the state of internet freedoms in India. Further, the report will help identify policy gaps, recommendation points and key stakeholders who can play vital roles in reforming policies, and may assist in the development of advocacy strategies to reform laws, improve internet governance and policies to protect human rights online and offline. Finally, this research seeks to contribute to understanding of how the internet can help promote and strengthen human rights.

At the time of publication, various policy changes are on the horizon such as Net-Neutrality framework, Privacy Bill, Regulation of Mobile Apps. A significant legal development took place while the report was being drafted. The Supreme Court of India struck down Section 66A of the Information Technology Act, which was subjective and inconsistent with the fundamental right to freedom of speech and expression. The Supreme Court decision is an important step for protecting and ensuring that citizens can exercise their free speech rights online.

The report concludes with general recommendations to improve the right to freedom of expression online in India. One of the major recommendations coming from the report is to expand quality internet access and last mile connectivity in urban and rural India. Internet access is the prerequisite for Indian residents and citizens to exercise their right to freedom of expression and speech. Civil society and other stakeholders will have to collaborate to make rural citizens aware of these rights online and how they can exercise these rights to contribute to the Indian democracy.

RESEARCH OBJECTIVES AND METHODOLOGY

This report aims to assess the state of specific internet rights online, including freedom of expression, by applying the APC-La Rue Framework,[1] a checklist of indicators developed by APC based on the work and recommendations of Frank La Rue, the former United Nations Special Rapporteur on Freedom of Opinion and Expression. La Rue set out a broad framework for assessing freedom of expression on the internet in his 2011 annual report to the UN Human Rights Council.[2] APC developed the "APC-La Rue Framework for Assessing Freedom of Expression and Related Rights on the Internet" based on this report, and the Human Rights Committee's General Comment 34[3] on Article 19 of the ICCPR.

This report is based on an adapted version of the APC-Frank La Rue Framework which has been customised to the Indian context. Some indicators from the original framework have not been covered in this report, while others have been expanded, so the report is most relevant in the Indian context. The report should be seen as describing the present status of internet freedom in India, as of August 2015.

In this report, we have accessed a set of eight key indicators on the basis of the APC-La Rue Framework. The report has assessed the following indicators:

Indicator 1: General protection of freedom of expression
Indicator 2: Arbitrary blocking or filtering
Indicator 3: Criminalising legitimate expressions[4]
Indicator 4: Imposition of internet intermediary liability
Indicator 5: Disconnecting users from the internet
Indicator 6: Cyber-attacks[5]

1 See Annex 1. and APC-LA Rue Framework for Assessing Freedom of Expression And Related Rights on the internet www.apc.org/en/node/16359/

2 La Rue, F. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/HRC/17/27 www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

3 Human Rights Committee. General Comment 34 (2011). www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

4 The following two sub-indicators are not covered in this section: Sub-Indicator: Journalists and bloggers are not regularly prosecuted, jailed or fined for libel; and Sub-Indicator 4: National security or counter-terrorism laws restrict expression only where a) The expression is intended to incite imminent violence; b) It is likely to incite such violence; and c) There is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

5 The following sub-indicator has not been included in the analysis. Sub-Indicator 1: State does not carry out cyber attacks.

Indicator 7: Protection of the right to privacy and data protection
Indicator 8: Access

The DEF Research team undertook four steps to understand the state of freedom of expression (FoE) in India online and offline. These steps are as follows:

- Firstly, the team customised the APC-La Rue framework to guide secondary research and to map out laws and policies, evidence and case-studies and other current issues relevant to FoE online in relation to the Indian context.
- Secondly, the team also reviewed existing legislations, laws and case law before the Supreme Court of India to draw upon trends and practices in India. As part of the process, the team identified relevant stakeholders across India that can provide inputs and recommendations on the subject matter. The framework was also subject to review and feedback from the project (APC- IMPACT) Team and project advisory committee.
- Thirdly, online and offline stakeholder consultations were held to seek inputs and recommendations around policy gaps to protect human rights online and offline by fostering dialogue among stakeholders to advance internet freedoms. While the offline consultation with stakeholders (hereafter referred as 'IMPACT stakeholders') was held in New Delhi on 4 February 2015, the online consultation was held from 30 January 2015 through 15 March 2015. The stakeholders include experts or representatives from human rights; internet governance; civil society; telecom organisations.
- Lastly as the fourth step, with support from DEF field staff, the research team conducted a quantitative survey titled IMPACT Research Study: Ownership, Usability, Accessibility & Access to Rights Using ICT Tools and Applications. The survey had a sample size of 600 primary data collected from DEF centres across 10 states of the country. The intent behind incorporating the results of the study in this report is to show the level of understanding and awareness of tools, concepts and rights, based on the APC-La Rue framework.

In addition to complementing the APC- La Rue Framework, the three-fold objective was to understand:

- The status of users' ownership, usability, accessibility of ICT tools and applications
- The status of rights and how users' are accessing information using ICT tools and applications
- The status of understanding around freedom of information, expression and association, online and offline

For more information regarding the methodology used for the IMPACT Research Study, including the sample size, demographics, survey themes, and intent, see Annexure 1.

INDIA'S DEMOGRAPHY

India is home to 1.21 billion people, spread across 29 states, 7 territories, according to the Census 2011. Seventy percent live in urban and 30% live in rural areas in 597,608 villages and 250,000 village councils and 640 districts. With diversity and demographic dividend as its major strengths, India is also home to more than 22 languages[6] and 6 major religions—Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism. The urban-rural differences are important to understand progress on human development in the country.

India already has the third largest internet population in the world today, after China with 620 million and the US with 275 million. According to the Freedom on the Net study by Freedom House and Centre for Communications Governance at National Law University (NLU) in Delhi, 65% of the mobile penetration is in urban areas and 9 out of 10 users are male. Internet penetration ranges between 15% and 19%, according to different sources—and these statistics are being debated among ICT stakeholders in India. The same study pointed out that internet usage in rural areas stands at 7%. There is a substantial gender gap in India, with women comprising just 17% of total internet users, despite accounting for 48% of the population, according to the Internet in India (I-Cube) report.[7]

Description	Figure	Date	Source
Total mobile subscriptions user base	899 million	May 2014	GSMA Intelligence
Total internet users	354 Million	June 2015	IAMAI
Urban internet users	216 million	June 2015	
Rural internet users	138 million	June 2015	

6 These languages have been officially recognised by the Constitution of India. However, according to the People's Linguistic Survey of India, more than 780 languages currently exist. http://blogs.reuters.com/india/2013/09/07/india-speaks-780-languages-220-lost-in-last-50-years-survey/

7 2007 Internet in India (I-Cube) report: http://www.iamai.in/upload/research/11720111091101/icube_3nov11_56.pdf

Description	Figure	Date	Source
Total mobile internet users	213 million	June 2015	IAMAI
Urban mobile internet users	160 million	June 2015	
Rural mobile internet users	53 million	June 2015	
Number of Facebook users[8]	112 million	December 2014	India Today
Number of Facebook mobile users	99 million	December 2014	India Today
Number of WhatsApp users[9]	70 million	November 2014	Times of India

Table 1: Digital Demographics of India (Source: IAMAI)

In order to understand the level of awareness, ownership and operation of digital devices among the rural population in India, DEF collected the primary data as part of the research study.

The study pointed out that 46% of those surveyed owned at least one mobile phone, 29% of the respondents owned two phones and 25% of the population surveyed owned more than two mobile phones. *(Figure1)*

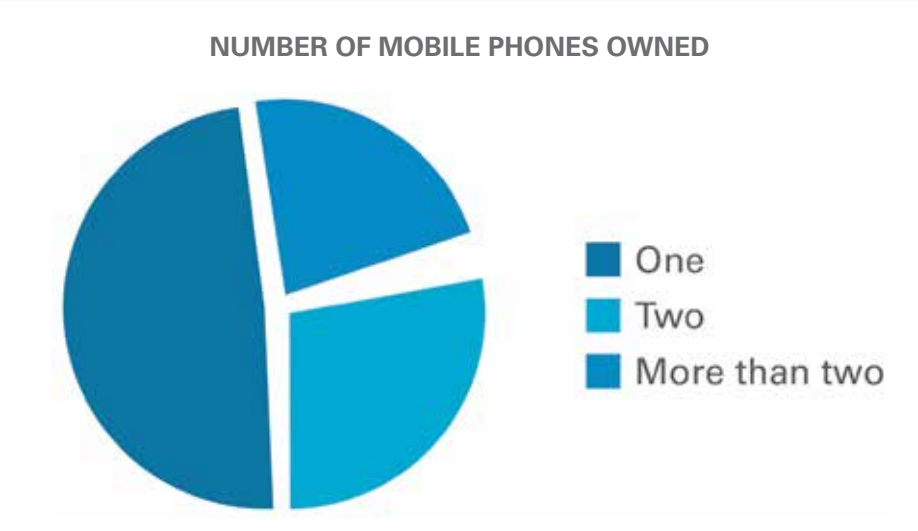


Figure 1: Number of Mobile Phones owned by DEF centre users

8 The total numbers of Facebook and WhatsApp users have been derived through media reports. (2014, 17 December). 112 million Facebook users in India, second largest user base after US. India Today. http://indiatoday.intoday.in/technology/story/112-milion-facebook-users-in-india-second-largest-user-base-after-us/1/407261.html

9 (2014, 3 November). WhatsApp's India user base crosses 70 million. The Times of India. http://timesofindia.indiatimes.com/tech/tech-news/WhatsApps-India-user-base-crosses-70-million/articleshow/45018845.cms

While 97% of those interviewed were aware of feature phones[10], 66% of them owned and knew how to operate feature phones. 88% of the respondents surveyed were aware of smartphones and 57% owned smartphones. 55% of the respondents knew how to operate them. *(Figure 2)*

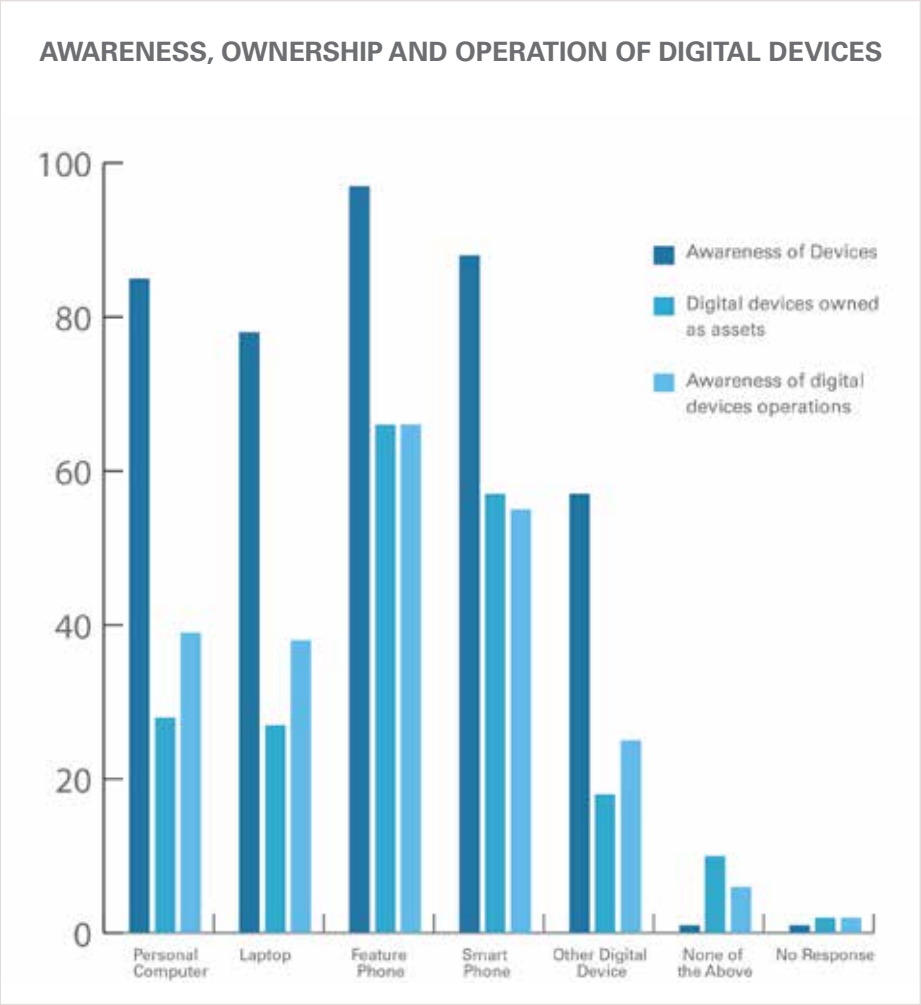


Figure 2: Awareness, ownership and operation of digital devices

10 A feature phone is a class of mobile phone; the term is typically used as a retronym to describe low-end mobile phones which are limited in capabilities in contrast to a modern smartphone. Feature phones typically provide voice calling and text messaging functionality, in addition to basic multimedia and internet capabilities, and other services offered by the user's wireless service provider.

ASSESSMENT

1 GENERAL PROTECTION OF FREEDOM OF EXPRESSION

The Indian Constitution guarantees freedom of speech and expression but also provides restrictions based on certain parameters vital to national interest, security and integrity. While the government has the prime responsibility and duty to promote and protect human rights and fundamental freedoms, individuals, non-governmental organisations and other actors in society have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research to further understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.[11] This is especially relevant in India, where there has been much debate since 2012 as to whether, how and why citizens and netizens exercise these rights and how the laws have been interpreted and implemented at the grassroots level.

The Constitution of India guarantees equality (Article 14) to all women[12] as well as equal participation of women in the social, political and economic life of the nation. However, the government has not given any definition particularly to internet rights. Regarding internet access, India is one of the lowest performing countries on the UNDP's 'gender inequality index',[13] ranking 132 out of 186 countries – worse than Pakistan (123) and Bangladesh (111). Several articles in the Indian Constitution express its provision for affirmative action in favour of women, prohibiting all types of discrimination against women to enable them in all walks of life.[14] The Constitution also recognises the equality of the sexes and provides certain provisions under the Chapter Fundamental Rights, but in practice these rights are breached more than they are respected. Women in India are still struggling in male dominant culture despite of various efforts made by various organisations to bring about equality in the society. The DEF study indicated that many women in India are still not aware of their rights even if the government is trying to make them accessible, due to the lack of awareness programmes.

Sub-Indicator 1
National constitution or laws protect internet-based freedom of expression

There exists a regulatory framework to internet-based speech and expression even if the framework does not refer to the internet explicitly.

INDIAN CONSTITUTION

First, Article 19(1)(a) of the Indian Constitution not only guarantees freedom of speech and expression, but also freedom of association, assembly and to practice any occupation, trade or business. The Article states

11 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx

12 Constitution of India; Article 14: http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss%286%29.pdf

13 UNDP (2013). Gender Inequality Index: http://www.undp.org/content/dam/india/docs/In-the-News-2013/UNDP_India_in_the_news_1503201317.pdf

14 Article 15 (1) guarantees no discrimination by the State, and equality of opportunity is guaranteed through Article 16. Article 51 (A) (e) guards against practices that are seen to be derogatory to the dignity of women and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief (Article 42).

"All citizens shall have the right to freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession, or to carry on any occupation, trade or business"

However Article 19(2), of the Constitution also imposes "reasonable restrictions" in the following interests:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality or in relation to contempt of court
- Defamation
- Or to prevent incitement for the commission of a cognizable offense relating to the above

INFORMATION TECHNOLOGY ACT (IT ACT) 2000

Second, the IT Act is relevant as it governs electronic communications, cyber security and terrorism, communications surveillance and privacy, child pornography, role of the intermediaries and liabilities, and FoE. Some of the sections of the IT Act relevant to FoE are as follows:

- **Section 66A:**[15] Governs communications that is "grossly offensive", false or causes "annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will..."
- **Section 66E:** Prohibits intentionally capturing and transmitting images of private areas of individuals in a way that infringes upon personal privacy
- **Section 66F:** Punishes acts or offenses related to cyber terrorism
- **Section 67A:** Punishes acts or offenses to publish or transmit through electronic forms any material act or conduct that is sexually explicit
- **Section 67B:** Punishment for publishing or transmitting material depicting children in sexually explicit acts in electronic formats. There are certain exclusions[16] given to books, pamphlets, paper, writing, drawing, painting and representing in an electronic form if they justify their existence for public good or in the interest of science, art, literature, learning, or used for heritage or learning purposes.
- **Section 69:** Gives the Central Government the power to issue directions to intercept or monitor communications or information in electronic format
- **Section 69A:** Gives the Central Government the power to issue orders to intermediaries to block information for public access when it deems it necessary in the interest of national security, sovereignty and integrity; to maintain friendly relations with foreign states or public order, or to prevent "incitement to the commission of any cognizable offence"
- **Section 69B:** Gives the authorized power to Central Government to monitor information and communications for cyber security purposes

Further to this, the IT Rules, 2011[17] are in place to list out procedures and safe-

15 he Supreme Court of India, however, on 25 March 2015 struck down Section 66A of the IT Act deeming it "unconstitutional" in its entirety due to its "vagueness."

16 Proviso (i) IT Act, 2000

guards to intercept and monitor information, in addition to Intermediaries Guidelines Rules, 2011 which govern the activities of the intermediaries in India.

- **Section 79:** Places certain exemptions through which intermediaries would not be liable for any content that contravenes the provisions in Section 69A and the Intermediary Guidelines. These exemptions provide respite for intermediaries against liability on content on their websites. However, these exemptions are deemed void in case an intermediary is shown to have any part to play in;
  - Ownership – initiating the transmission (of infringing content),
  - Select the receiver of the transmission and
  - Editorial acts – (selecting or modifying information in the transmission)

INDIAN PENAL CODE 1860

The Indian Penal Code (IPC), 1860[18] is a comprehensive criminal law handbook that deals in the substantive law of crime. The term "Penal" is emphasised to punish those who "transgress the law and commit offenses" to maintain public order, peace and tranquility. Sections 124A, 153, 295A, and 500 of the IPC are relevant to FoE.

- **Section 124A:** punishes offences related to sedition
- **Section 153:** penalizes offences related to promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and disturbing harmony or peace. This is also applicable to promoting disharmony or feelings, hatred or ill-will between different religious, racial, regional groups or castes or communities. The code also extends punishment to offences committed in place of religious worship
- **Section 295A:** punishes acts that are deliberate and malicious in nature and are intended to outrage religious feelings or belief, in a spoken or written manner
- **Section 500:** punishes offences related to defamation

INDIAN TELEGRAPH ACT 1885

While Section 5 of the Indian Telegraph[19] Act of 1885 authorises the government to take possession of the telegraph to intercept messages, Section 9 establishes the Universal Services Obligation Fund (USOF)[20]. The establishment of USOF is important in the context of providing internet access across rural and urban India at the present time.

RIGHT TO PRIVACY BILL AND CYBER SECURITY BILL

The Right to Privacy Bill was tabled in the Indian Parliament in 2010 and has gone through two versions in 2011 and 2014 respectively. The broad aim of the bill is to

17 Government of India (2011). Information Technology Rules. The Gazette of India. www.deity.gov.in/sites/upload_files/dit/files/GSR314E_10511(1).pdf

18 The Indian Penal Code (1860). http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf

19 Telegraph under the act is defined as "means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means".

20 USOF was passed by both Houses of Parliament in December 2003 to provide Universal Access and Universal Service to ICT (www.usof.gov.in/usof-cms/home.jsp).

protect individuals from misuse of data by government and private agencies. The Cyber Security Bill was introduced in the Indian Parliament in 2013 and its broad objective is to ensure a secured and salient cyberspace for citizens, businesses and government. These two bills are further discussed in the sections on Right to Privacy and Cyber Security.

Sub-Indicator 2
State participates in multi-stakeholder initiatives to protect human rights online

The Government of India participates in multi-stakeholder[21] initiatives with respect to human rights online both at the national and international levels. For example at the national level, the government recently conducted an open public consultation, a type of multistakeholder initiative, regarding the country's network neutrality framework, which attracted over a million comments from citizens and experts alike following one of the most extensive public campaigns in recent Indian history.

Another example of India taking a multi-stakeholder approach to protecting human rights is its preparations for participating in the Universal Periodic Review (UPR) process at the UN level. UPR is an opportunity for states to receive feedback from the international community on a range of social and environmental rights, civil, cultural and political rights and others. To follow the multi-stakeholder process in the second cycle of UPR, the Government of India prepared the draft national report through an inter-Ministerial process. All concerned ministries contributed in the preparation of the draft national report. At a later stage, the Ministry of External Affairs worked with various stakeholders consisting of several non-governmental organisations and experts involved in human rights activities. Finally, the Ministry of External Affairs (MEA) circulated the press release and the same was posted on the website inviting the civil society organisations to share their feedback and suggestions on India's Statement on UPR[22]. In the second UPR cycle, the Government of India recognized the importance of Right to Information (RTI)[23] Act, Right to Education[24] as important rights; however, India did not adopt the recommendation towards online freedom of opinion and expression and adopted other recommendations with amendments.

However as experts at the DEF consultation noted, the government holds public consultations with stakeholders, but the process often lacks transparency. For example, only a certain group(s) of civil society groups are given access to the consultation. The nature of the consulta-

21 APC uses the following definition of multi-stakeholder: A very broad term that describes groupings of civil society, the private sector, the public sector, the media and other stakeholders that come together for a common purpose. It is often used with words like "partnership" and "consultation". In multi-stakeholder partnerships the partners have a shared understanding that they play different roles and have different purposes, but that they can pursue collective goals through collaboration and common activities to achieve such goals. These partnerships are voluntary, with participation driven by the perceived benefits they may see emerging from the process. Such partnerships are increasingly being used to challenge and lobby for change in policy processes. Source: APC Glossary www.apc.org/en/glossary/term/275 See also: Frequently Asked Questions about Multi-stakeholder Partnerships in ICTs for Development https://www.apc.org/en/system/files/catia_ms_guide_EN-1.pdf

22 Government of India. Ministry of External Affairs (2011, 8 January). 2nd Universal Periodic Review of India – Draft. http://mea.gov.in/in-focus-article.htm?18794/2nd+Universal+Periodic+Review+of+India++Draft

23 Right to Information (RTI) Act: http://righttoinformation.gov.in/

24 Right to Education (RTE) Act: http://mhrd.gov.in/rte

tion, its place and time is often unknown. The outcomes are even less known.

Experts point out that an enabling environment to invite all stakeholders, specifically the civil society, should be created for maximum participation. In the current climate, prominent and well-funded CSOs have privileged access to resources, funding, and opportunities to air their concerns. Rarely are those CSOs invited or accepted to consultation that have limited funding or access to resources. Additionally, non-government organisations (NGOs) or Civil Society Organisations (CSOs) that receive funding from foreign sources are subject to inspection and scrutiny which sometimes prevents them from providing input on important issues. Despite complying with Foreign Contributions Regulations Act (FCRA), NGOs may lack the opportunity to provide input due to the fact that their methodology and procedures are different from the governments' ideology, values, and principles. More specifically, experts contend that the current government wants to ensure that there is limited interference by foreign NGOs in the Indian human development process and journey.

At the international level, India participates in both multistakeholder and multilateral processes. A key factor that distinguishes multilateral from multi-stakeholder processes is the role of the state. In multilateral processes, states play a leading if not sole role, whereas in multi-stakeholder processes, different stakeholders, including states, play different roles and have different purposes. India's position in different international fora with respect to multilateral and multi-stakeholder approaches to internet governance has varied from supporting intergovernmental approaches to internet governance to more multistakeholder ones. For example, at a recent meeting of ICANN and the UN General Assembly, India indicated its support for multi-stakeholder governance of the internet,[25] while in previous meetings at the UN Commission on Science and Technology for Development (UNCSTD) Working Group on Enhanced Cooperation, India supported government-led approach to internet governance.[26]

25 *Arun, C. . & Singh, S. (2015, 20 July). Yes to multi-stakeholderism. The Hindu. www.thehindu.com/opinion/op-ed/on-multistakeholder-governance-of-the-internet/article7440857.ece*

26 *Government of India's Response to WGEC Questionnaire http://cis-india.org/internet-governance/resources/government-of-indias-response-to-wgec-questionnaire-1*

ASSESSMENT

2 ARBITRARY BLOCKING OR FILTERING

Sub-Indicator 1

There are no generic bans on content

With the exception of pornographic content, the government does not have a sustained policy or strategy for generic bans on online content. As mentioned above, Section 69 A of the IT Act provides the power to the central government to block access to certain types of content, when it is *"in the interest of sovereignty and integrity of India, defense of India, and security of the State, friendly relations with foreign states or public order".*

Regarding pornographic content, the distribution or sale of pornographic content is a crime, whereas viewing or reading such content is not.[27] The present government recently asked the internet service providers (ISPs) to ban the pornographic websites in the *"context of Indian culture and moral obligation towards society".* According to the Computer Emergency Response Team (CERT), India, there are over 40 million porn websites and most of them operate outside India. Therefore, to block these websites in the large scale, the government also asked the industry body, Internet and Mobile Association of India (IAMAI), to list the porn websites which are to be banned. However, the Supreme Court of India denied the PIL (Public Interest Litigation) on 8 July 2015 stating that it will violate privacy and personal liberty.

At the consultation meeting, IMPACT stakeholders questioned the definition of "generic bans" on content in India. IMPACT stakeholders stated individual banning of sites may not be considered a generic ban as the banning is temporary and when an issue gets settled, sites can be accessed again.

Sub-Indicator 2

Sites are not prohibited solely because of political or government criticism

Under the law, the Government is not required to give a public explanation for banning any content. Looking at the pattern of content banning it differs from case to case and it is not solely carried out because of political or government criticism.

In the world's largest democracy, residents and citizens sometimes vociferously argue in support of or against political and/or government decisions. There are many sections of society like bloggers like Shivam Vij and journalists like Aakar Patel who do not necessarily agree with the political decision making process or the government's decision on the whole. And those who disagree are not necessarily "prohibited" or shut down by the political power or the government for expressing their views.

However there are cases in which individuals are arrested based on political criticism. For example, a 25-year-old MBA student, Waqas Barmawar, an Aam Aadmi Party (AAP) activist[28] from the coastal Karnataka town of Bhatkal was arrested in May 2014 for allegedly circulating an

27 http://www.eroticsindia.org/connect-your-rights/porn-consumption-and-privacy-a-legal-perspective/

28 MONDAL, S. (2014, 26 MAY). AAP ACTIVIST HELD FOR ALLEGEDLY SHARING ANTI-MODI MMS. HINDUSTAN TIMES. www.hindustantimes.com/india-news/aap-activist-arrested-for-allegedly-forwarding-anti-modi-mms-in-karnataka/article1-1222788.aspx

MMS ridiculing elected Prime Minister Narendra Modi. His four friends were also held in custody. The MMS that got Waqas into trouble shows a corpse morphed with Modi's face. Spoofing the BJP election slogan "Abki Bar Modi Sarkar" (This is the time for Modi Government), the image runs with the headline "Abki Baar antim sanskaar" (This is the time for last funeral). The image was allegedly doing the rounds on a few WhatsApp groups administered by AAP activists. Later on the statement was posted on Facebook page; however Facebook deleted that post stating that "it is promoting communal and social disharmony[29]"

The Government of India banned the broadcasting of a BBC documentary, India's Daughter about the 2012 infamous gang rape of a student in Delhi giving various reasons. For example, the Ministry of Information & Broadcasting (MIB), Govt. of India informed TV channels not to air the documentary stating that excerpts from the documentary *"appear to encourage and incite violence against women".*[30] While Delhi Police stated that film screening could *"create a situation of tension and fear amongst women in the society"* and that a ban on the documentary was required *"in the interest of justice and maintenance of public order".* The Home Minister, Mr. Rajnath Singh shared his comments with the Rajya Sabha, India's upper house that the government condemns the film, *"India's Daughter",* on the grounds that the film's *"objectionable content"* could cause public disorder.

While the government officials managed to ban the film, however, the YouTube link to the film received over 100,000 views before it was removed. When YouTube continued showing the film the Home Ministry summoned the head of Ministry of Electronics & Information Technology' CERT team to explore the possibility of blocking internet gateways in order to black out the film.

Another example worth considering is International Yoga Day. The Indian government organised yoga camps across the country by mobilising the BJP machinery and institutions, in an attempt to get maximum number of people to participate in the event to enter the Guinness Book of World Records. A government directive was sent to educational institutes, schools and colleges, and students and staff to perform yoga on 21 June 2015, which has been declared by the UN as International Yoga Day—a concept which Prime Minister Narendra Modi advocated for at the UN General Assembly in 2014. Subsequent to the proposal by PM Modi, more than 177 nations supported the concept and accepted the proposal to practice yoga.

Within this context, there have been arguments in support and against this activity. Change.org, for example, has started an online petition against Government of India to "stop using yoga to coercively enforce cultural homogeneity!" More than 200 petitions had been signed, but these websites and groups are still functioning, despite their objections.

29 Zakeer, S.H. (2014, 26 May). Five Muslim youths detained in Bangalore for circulating MMS on Modi. TwoCircles.Net. http://twocircles.net/2014may26/five_muslim_youths_detained_bangalore_circulating_mms_modi.html#.VbnOnfmqqko

30 Park, M. & Singh, H.S. (2015, 5 March). India: Rape documentary excerpts 'incite violence against women'. CNN. http://edition.cnn.com/2015/03/04/asia/india-rape-documentary/

Sub-Indicator 3
State blocks or filters websites based on lawful criteria

Content blocking in India takes place in the framework of Article 19(2) of the Constitution, under Section 69A of the IT Act and Blocking Rules, part of the Section 69A of the IT Act. This is a set of procedures and safeguards to which the Government has to adhere when doing so. The Blocking Rules enable the central government to direct any agency or intermediary to block access to information, according to conditions mentioned in Article 19(2). Those who fail to comply with these orders are punishable with fines and prison term up to 7 years.

According to the Blocking Rules, there is a review process applied to blocking access to the content. Any person may send their complaint to Nodal Officer (NO)[31], appointed by their organisation in pursuit of these rules. When a request is received from one person or more than one, the nodal officer sends the request to the Designated Officer[32], appointed by the central government to issue the blocking directions to the intermediary or the agency, as per Section 69A of the IT Act.

The DO subsequently chairs a review committee which includes members of the law, home affairs, and information ministries, cybersecurity, and Indian CERT. The committee reviews the blocking request before issuing recommendations to block or not to block the content. The DO then submits the recommendation to the Secretary of the Department of Electronics and Information Technology (DeitY), Government of India for approval. Once the approval is received from the Secretary of DeitY, the DO directs the agency or the intermediary to block the website or content.

In the case of emergency, the DO and Secretary of DeitY may issue blocking orders directly. However, the content can be unblocked if the officer does not obtain the approval of the review committee within 48 hours. The courts can also issue blocking orders without going through this review process. The DO is required to follow the court order after submitting the order to the secretary of DeitY.

In the case where 32 website were blocked in December 2014, the websites that removed the objectionable content or complied with the government concerning the investigations were unblocked. Institutions like CIS have argued that the term "objectionable" is vague and needs further explanation before websites and content can be blocked.

Section 69A of the IT Act and the Blocking Rules can be easily misused by the government and the courts to block websites and content. It has been argued by CIS and the Internet Democracy Project that Blocking Rules don't allow for transparency, accountability and time-limits with respect to blocking of websites and content.

31 To follow the Act 69A, every organisation shall designate one of its officers as the Nodal Officer and shall intimate the same to the Central Government in the Department of Information Technology under the Ministry of Communications and Information Technology, Government of India and also publish the name of the said Nodal Officer on their website.

32 The Central Government shall designate by notification in Official Gazette, an officer of the Central Government not below the rank of a Joint Secretary, as the "Designated Officer", for the purpose of issuing direction for blocking for access by the public any information generated, transmitted, received, stored or hosted in any computer resource under sub-section (2) of section 69A of the Act.

In *Shreya Singhal v/s Union of India [WP. (C).No. 167 of 201],* the Supreme Court upheld Section 69A of the IT Act as constitutionally valid, arguing that it has adequate procedural safeguards for blocking content and websites.

With regard to filtering, the Department of Electronics and Information Technology (DeitY) set up the Indian Computer Emergency Response Team (CERT-IN) under the amended IT Act to implement India's filtering regime. In 2004, CERT-IN became operational to review complaints and act as the sole authority for issuing blocking instructions to the DOT.
Since 2006, there have been many instances where the government has blocked websites and content.

- In 2006, CERT-IN issued an order to block 17 websites following the blog sites such as American Right Wing; Hindu extremist or Hindutava sites and a defunct website supporting the formation of "Dalit" homeland within India;
- The Ministry of Communication and Information Technology received a total of 130 court orders to block web content between February 2009 and December 2013
- On 18 September 2013, 82 URLs were blocked, in addition to 26 URLs being blocked earlier after violence broke out between Hindus and Muslims in Muzzafarnagar district of Uttar Pradesh
- In February 2014, the Minister of Communication and Information Technology told the Parliament that 62 URLs were blocked in 2013, under Section 69A of the IT Act, for hosting objectionable content that may cause public disorder
- According to the Centre for Internet and Society (CIS), a total of 362 URLs were blocked due to violence in Northeast India.

On 31 December 2014, 32 websites like vimeo.com, dailymotion.com, pastebin.com and github.com, were blocked by the Government of India Anti-Terrorism Squad (ATS), under the Blocking Rules of the IT Act 2011 for "Objectionable Content" on grounds of national security. The blocking of the websites took place to curb ISIS propaganda and prompted online protests.

The blocking took place through a confidential Department of Telecom (DOT) order on 17 December 2014 which instructed internet service licenses to block the websites after Mumbai's Anti-Terrorism Squad (ATS) approached the Indian judiciary. After the incident, the owners of the websites assured the Indian government of complying with law and the policy. Dr. Gulshan Rai, Director of CERT told Times of India:
"These websites were being used to invite youths to join ISIS. We had contacted the websites sometime back and asked for the removal of the objectionable content. At that time, our communications were ignored. Some of them have now agreed to work with the government. The websites that have complied are being unblocked,"

Moreover, Police commissioners who exercise the power of executive magistrates in times of emergency, also have power to block websites containing material that constitutes a nuisance or threat to public safety under Section 155 of the Code of Criminal Procedure.

Sub-Indicator 4

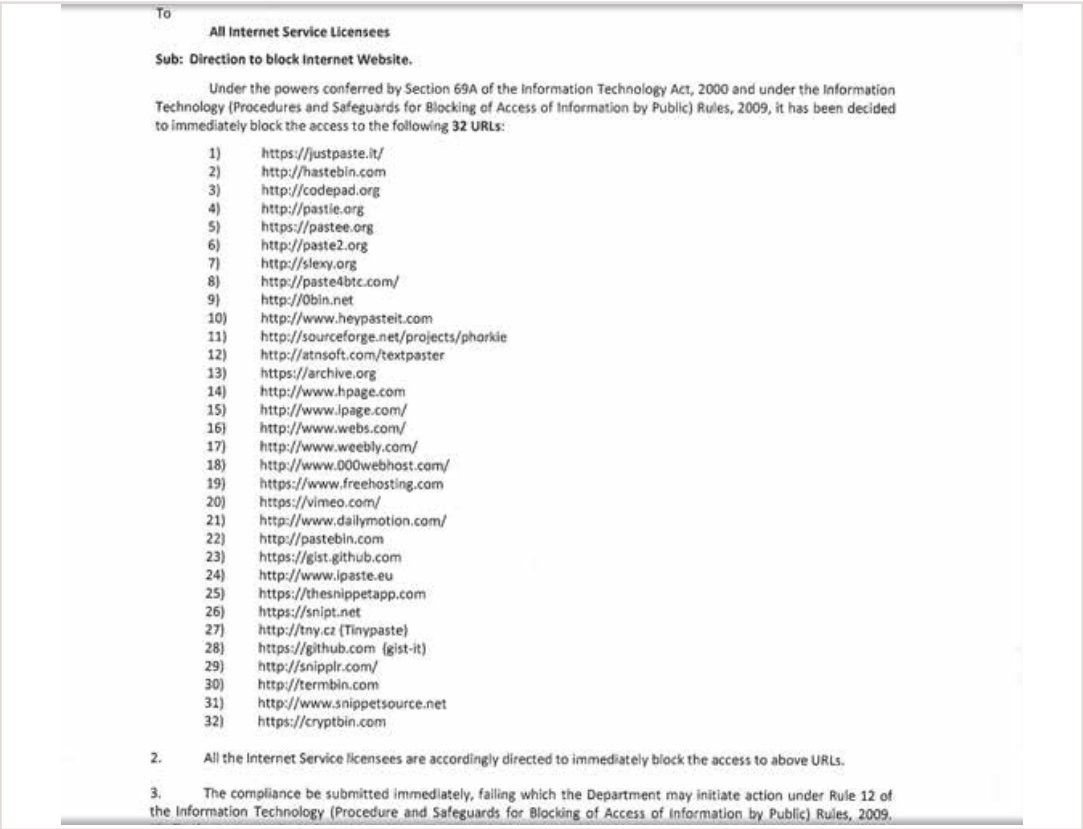
State provides lists of blocked and filtered websites

Government of India provides the list of blocked websites on a case-by-case basis. The telecom body, DOT issues the notification. However, in the case of 32 websites, like vimeo.com and github.com, being blocked in December 2014, Pranesh Prakash, Policy Director at CIS posted a screenshot of the circular on Twitter *(Figure 3)*. The circular mentions blocking of 32 websites on the basis of the government circular.

Sub-Indicator 5

Blocked or filtered websites have explanation on why they are blocked or filtered

It is uncertain whether the blocked websites provide the explanation behind their blocking. The 32 websites which were blocked or filtered by the Government of India did share their blocking notification but did not share any explanation of why they were blocked *(Figure 4)*.



To

All Internet Service Licensees

Sub: Direction to block Internet Website.

Under the powers conferred by Section 69A of the Information Technology Act, 2000 and under the Information Technology (Procedures and Safeguards for Blocking of Access of Information by Public) Rules, 2009, it has been decided to immediately block the access to the following **32 URLs**:

1) https://justpaste.it/
2) http://hastebin.com
3) http://codepad.org
4) http://pastie.org
5) https://pastee.org
6) http://paste2.org
7) http://slexy.org
8) http://paste4btc.com/
9) http://0bin.net
10) http://www.heypasteit.com
11) http://sourceforge.net/projects/phorkie
12) http://atnsoft.com/textpaster
13) https://archive.org
14) http://www.hpage.com
15) http://www.lpage.com/
16) http://www.webs.com/
17) http://www.weebly.com/
18) http://www.000webhost.com/
19) https://www.freehosting.com
20) https://vimeo.com/
21) http://www.dailymotion.com/
22) http://pastebin.com
23) https://gist.github.com
24) http://www.ipaste.eu
25) https://thesnippetapp.com
26) https://snipt.net
27) http://tny.cz (Tinypaste)
28) https://github.com (gist-it)
29) http://snipplr.com/
30) http://termbin.com
31) http://www.snippetsource.net
32) https://cryptbin.com

2. All the Internet Service licensees are accordingly directed to immediately block the access to above URLs.

3. The compliance be submitted immediately, failing which the Department may initiate action under Rule 12 of the Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009.

Figure 3: List of websites blocked by the Indian government

Following the blocking of the websites, Arvind Gupta, Head of the IT Cell at BJP tweeted that the websites were blocked because they carried anti-India content from ISIS. It can be further argued that the Head of the IT Cell of the political party first provided an explanation for blocking the websites on Twitter instead of the Indian government.

One of the blocked sites, Pastebin used Twitter for informing about the blocking of its URL. The website tweeted, "We are getting many reports about this. The Indian government has blocked us, and right now there is little we can do about it. It

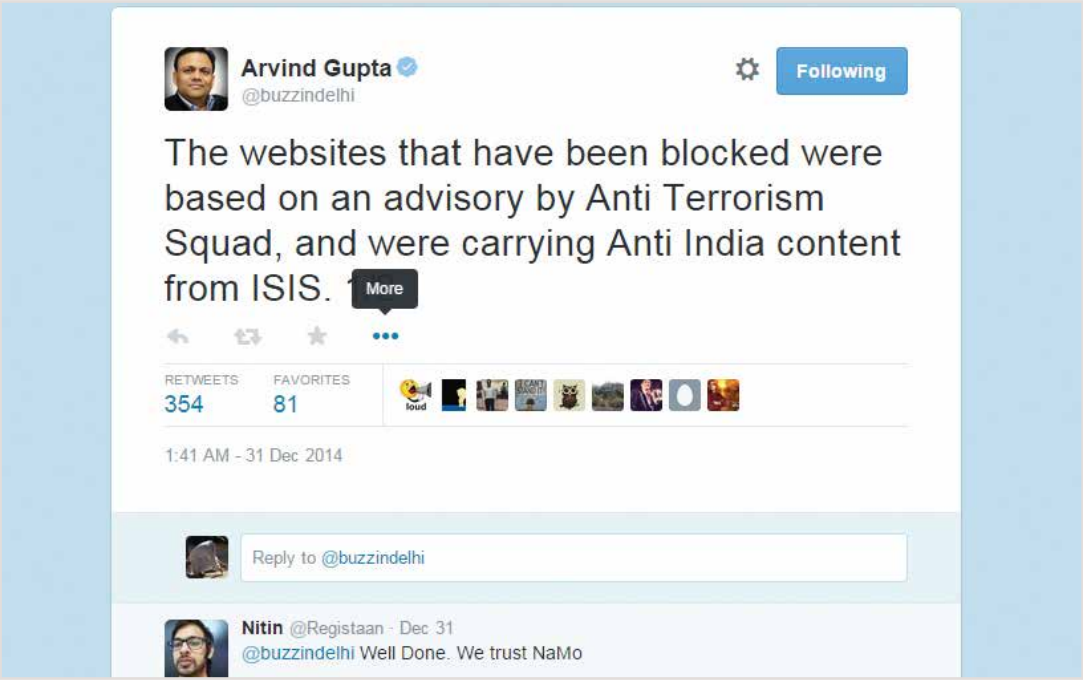


Figure 4: Explanation behind blocked websites by Arvind Gupta, Head of IT Cell of BJP

has happened in the past, and we got unblocked after some time. For now we recommend using a free proxy service if you are based in India." Another blocked site, GitHub notified that, *"We are still receiving reports that github.com is inaccessible for some users in India as of this afternoon (January 2). We have tried to reach out to the Indian government through several different channels, but so far it is still not clear to us what content caused them to put us on the list. Our top priority is to restore access to the developer community in India that depends on GitHub every day. To that end, we would like to work with the Indian government to establish a transparent process for identifying unlawful content, restore access, and ensure that GitHub continues to remain available in the future without interruption."*

However, stakeholders at the DEF consultation noted that the Indian government should be more transparent and forthcoming concerning the blocking process. Institutions like CIS and Internet Democracy Project have requested the Indian government to furnish details about the review committee, its members, meetings and the outcomes.

Sub-Indicator 6
Content blocking occurs only when ordered by competent judicial authority or independent body

There is a review process applied to blocking access to the content. As defined above, Designated Officer is not a judicial authority, but s/he is appointed from the central government to chair a committee that has members from the law, home affairs, and information ministries, cyber-security and CERT.

The committee approves the blocking orders to service providers or the government agency. In the case of emergency, the designated officer and secretary of

DeitY may issue blocking orders directly. However, the content can be unblocked if the officer does not obtain the approval of the review committee within 48 hours. The courts can also issue blocking orders without going through this review process. The designated officer is required to follow the court order after submitting the order to the secretary of DeitY.

Sub-Indicator 7

Where blocked or filtered content is child pornography, blocking or filtering online content is connected with offline national law enforcement strategies focused on those responsible for production and distribution of content

Child pornography is illegal in India both online and offline. The IT Act 67 deals with "publishing obscene information in electronic form". The law has been interpreted to criminalise the posting of pornographic content online. In 2008, Section 67B was inserted which "criminalises browsing, downloading, creation and publishing child[33] pornography". The distribution of pornography content is also illegal in India.

Currently, there is no law in India against viewing pornography. However, both Section 67A and the Section 292 of the Indian Penal Code both prohibit producing and transmitting "obscene material." The IT Act leads to three years of imprisonment for publishing and transmitting obscene material electronically.

For example, 39 websites were ordered by the court to be blocked for obscenity in June 2013. To that end, the industry body, IAMAI, has been appointed by the central government to identify objectionable content on the internet. On the basis of the list, the government intends to ask ISPs to block these websites. However, the Supreme Court of India has stated that it is impossible to block porn sites as it will also block literary content describing the meaning of such words made available to the public.

It is uncertain to state that blocking or filtering of online child pornography content is connected with offline national law enforcement strategies focused on those responsible for production and distribution of content. In India, child sexual abuse laws have been enacted as part of the nation's child protection policies. The Protection of Children from Sexual Abuses Act 2012[34] deals with all such crime against children. The Act states that *"whoever uses a child for pornographic purposes shall be liable for rigorous imprisonment which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine".*

33 For the purposes of this section, "children" means a person who has not completed the age of 18 years.

34 Protection of Children from Sexual Abuses Act (2012). http://wcd.nic.in/childact/childprotection31072012.pdf

ASSESSMENT

3 CRIMINALISING LEGITIMATE EXPRESSION

With more than 13,000 newspapers and 839 satellite channels (including 407 news channels) in several languages, there is diversity of thoughts and choices from which users select content and information. India is the biggest newspaper market in the world with more than 100 million copies sold each day. Moreover, the number of feature and short films released each, along with FM radio channels present an opportunity to disseminate information and positively influence behaviours and attitudes. However, given the diversity of these media, there are inherent risks and pressures with respect to freedom of speech, namely from large corporations and businesses, political figures and parties and top management within media organisations that have close ties with business and political figures *(Table 2)*.

Sources of Information and Content	Number
News Papers	13,761
Periodicals	85,899
No of Feature Films	1,000+
No of Short Films	1,500+
Television Channels	793
No of Private FM radio channels	242

Table 2: Sources of Information in India

The Press Council of India Norms of Journalist Conduct states that the foremost objective of journalism in India is to "serve the people with news, views, comments and information on matters of public interest in a fair, accurate, unbiased and decent manner and language."

In this context, journalists are free to write and publish articles with a balanced point of view. Though there is a difference between representing the media outlet and the general public versus personal identity. Here, the journalists' personal views are not as relevant and they frequently practice self-censorship on Facebook and Twitter because they do not want to go against the views of the media organisation in the fear of job loss or harassment by political and business personalities. However, most journalists are active on social media sites like Twitter.

Sub-Indicator 1
Journalists and bloggers are protected against abuse or intimidation

The Press Council of India (PCI) has defined Journalist as *"means any working journalist as defined in the Working Journalists Conditions of Service and Miscellaneous Provision Act, 1955."*[35] Nonetheless, there is no specific definition given by PCI on Bloggers. At the fundamental level, journalist may work online but their work and role are defined by any particular communication medium whether it is digital or traditional (TV, radio, magazine, newspaper), but bloggers' work is limited to the individual level and they tend to offer opinion and analysis that links to news stories reported by mainstream media.

The National Crime Records Bureau (NCRB) reported for the first time in January 2015 that 85 attacks on the media were recorded in 2014. In addition, 10

35 *Definition of Journalist: PCI: http://pib.nic.in/prs/accreditationguidelines.pdf*

threat cases and 3 cases of harassment were also reported. Amnesty International 2014-2015 report on World's Human Rights' stated that laws on criminal defamation and sedition were used to harass and persecute journalists, human rights defenders and other who choose to peacefully exercise their right to free speech. For example, Thushar Nirmal Sarathy and Jaison C. Cooper[36], bloggers and human rights advocates were arrested on their blogpost in which they voiced about a variety of grassroots struggles of the marginalised and dispossessed sections of society in India. They were arrested under the Unlawful Activities Prevention Act (UAPA) in Kerala.

Section 15(2) of the Press Council of India Act provides protection to the journalist from revealing the sources but not to bloggers. However, it does not provide any protection to the journalist before the court. The Court can ask the media to reveal its sources if it deems fit. Interestingly, protection provided by PCI to journalists is limited to traditional media (as defined above). It means that if journalist's sources are revealed to mew media such as websites, then PCI is not liable for the protection.
Additionally, journalists are sometimes harassed within the institutions where they work, for example by top level editors who either have political or business clout. Political pressures and threats are received which demotivates journalists from reporting the truth and compromise on journalist ethics. There are a few organisations that will back their journalists against abuse, intimidation, fraud and harassment based on merit of the story and credible information. However, that is rare.

Sub-Indicator 2
Journalists and bloggers do not engage in self-censorship

Dr. Shahid Siddiqui[37], former news producer with IBN 7 for over seven years, in his research, titled "Portrayal of marginalized communities in select Indian media" views the media as playing the role of informing the public. The research also identifies on how media agencies or journalists portrays or get influenced in regard to informing the public. In reality, however, this triangular relationship between the media institutions, political and economic interests define how news stories are framed to mobilise mass opinions. Dr. Siddiqui notes:
The different case study has been able to show that as long as the media institutions are connected with the real holders of political and economic power they would interpret and reflect on reality in such a way as to define the political, economic and social agenda of powerful who dominate the society and the State. The media does this by framing issues and keeping the tone within a particular framework, by attracting and directing attention and mobilizing opinion in favor of those issues that find favor with the privileged and powerful and by keeping the debate within the contours of the elite consensus." (Siddiqui, P 229)

For example, Doordarshan Channel's Assistant Director V M Vanol, was transferred from the city of Ahmedabad to

36 http://www.amnesty.org.in/show/news/kerala-government-must-unconditionally-release-jaison-and-thushar
37 Dr. Shahid Siddiqui, former news producer with IBN 7 and now working with Digital Empowerment Foundation holds PhD in New Media having research topic on "Portrayal of marginalized communities in select Indian media."

Andaman's for airing a news story on Jashodaben Modi filing an RTI petition about her security arrangements, as she is the wife of Prime Minister Narendra Modi. After the story was aired, 4 people from the channel were pulled up and the Assistant Director, who had one year left before retirement, was transferred out.

In multiple DEF interviews, journalists have argued that business houses or powerful social groups are guiltier than the state of manipulating/pressuring journalist and it is more difficult to hold them accountable. Not many corporate news organisations support or back their employees. They simply remove or block information/article—because these articles would not necessarily market or portray the subjects being covered in a positive way. In this case, self-interest and preservation play a central role for journalists to practice self-censorship because they want to be able to keep their jobs to maintain a living vis-à-vis pursuing journalistic ethics and excellence. In this regard, it becomes difficult to fight self-censorship. Some have stated that "media is owned by business to keep government happy."

Journalists who spoke on the condition of anonymity said that support from the media house is based on the network and influence of the journalist.

For example, Pankaj Srivastava, Associate Editor with IBN7 for seven years, sent an SMS to Sumit Awasthi, Deputy Managing Editor, opposing the informal ban of the institution on covering the Aam Aadmi Party and now Chief Minister Arvind Kejriwal during the Delhi elections in February 2015, as he felt it was against journalists' code of ethics. After the SMS, Srivastava was called in by the Human Resource department and asked to resign from his post. Srivastava maintained that he would rather be fired from the post than issue a formal resignation. Further to this, there were instructions within the organisation to refrain from any negative coverage of PM Narendra Modi. Srivastava is now pursuing legal action against the news channel.

In his diary, Srivastava mentioned about the relationship between money and politics:

Since evening, news related to formation of a government in Delhi was aired on all the news channels. However, this issue was completely blacked out at IBN7. The reason was clear, the channel doesn't want to show any news related to Kejriwal. In a Town Hall meeting called after Ambanis took over the group, the instructions were clear that news related to Kejriwal should be avoided.... Capitalism has throttled the neck of news...here is no dearth of people in newsroom who are well read. But it seems that capitalism has subdued them all. I also consider myself to be a part of it.

Journalists who have sought to shed light on the launch of Central Monitoring System (CMS), surveillance architecture deployed by the government of India, have found themselves obstructed. An economic times reporter, in an interview stated that Indian authorities, particularly high-level decision makers at cert-in, stopped talking.

Thus, it became very hard to cover such issues or topics. In this environment, it is not difficult to see how self-censorship can be an important tool for survival.

ASSESSMENT

4 IMPOSITION OF INTERNET INTERMEDIARY LIABILITY

Section 69A of the IT Act gives the Central Government the power to issue orders to intermediaries to block information for public access when it deems it necessary in the interest of national security, sovereignty and integrity; to maintain friendly relations with foreign states or public order, or to prevent "incitement to the commission of any cognizable offence." The IT Act defines intermediaries as follows:

- Telecom service providers
- Network service providers
- Internet service providers
- Web-hosting service providers
- Search engines, online payment sites, online auction sites, online market places and cyber cafes

Under the Intermediaries Guidelines 2011, intermediaries are required to inform users not to "host, display, upload, modify, publish, transmit, update or share any information" that:

- Infringes upon personal privacy of the users
- Harms minors
- Content that is grossly offensive, defamatory, obscene, libelous, hateful, or racially or ethnically objectionable;
- Relates to money laundering
- Infringes upon patent, copyright, trademark or other proprietary rights
- Threatens national security or integrity of India
- Contains viruses, files or codes that have the potential to harm computers and systems.

The IT Act and the Intermediary Guidelines 2011 set up a process where objectionable material or content is blocked or taken down. According to the intermediary guidelines, intermediaries are required to remove access to content within 36 hours of receiving notice through an individual complaint or individual screening. However, in March 2013, DeitY issued a clarification that intermediaries need to acknowledge complaints within 36 hours and subsequently must address the complaint within one month. In this system, intermediaries were subject to litigation for non-compliance.

However, these intermediaries argue that since they deal with large volumes of content and data, it is impossible for them to monitor that content individually and in practice it is unsustainable. Hence, they are granted immunity from liability for the content they circulate or publish. However, this does not apply to newspapers, blogs or website that has editorial or content-monitoring function.

The Shreya Singhal verdict[38] has changed the way intermediaries can now operate. Petitioner Shreya Singhal questioned constitutionality of the IT Act's Section 66A on basis of its "vague wording". Before the verdict, it is undeniable that Section 66A was exploited. The judgment also considered the validity of other provisions of the ICT Act namely Section 69A and 79 along with the rules made under them. Further, Section 79 has been "read down" to mean that intermediaries shall be required to block content in accordance with a Court Order or a notification issued to this effect by the government or its agency.

38 Shreya Singhal verdict by the Supreme Court of India: http://supremecourtofindia.nic.in/FileServer/2015-03-24_1427183283.pdf

The Supreme Court, however, has not struck these provisions down but now the Court has undone the need for intermediaries to undertake self-policing and self-determination of the nature of content, it has allowed the government to direct intermediaries to disable information deemed "harmful/inciteful, etc" on their websites/server space.

After the verdict, intermediaries are not liable for the "user-generated" content posted on their websites; however, these exemptions are deemed void in case an intermediary is shown to have any part to play in ownership of infringing content, selection of the receiver of content and editorial acts (selecting or modifying information in the transmission).

It is a step in a positive direction when it concerns FoE because intermediaries often lack constitutional legitimacy, resources and incentives to comply with all forms of user-requests. All non-governmental parties would have to obtain a court order which directs the intermediaries to take down the content.

Sub-Indicator 1
State does not delegate censorship to private entities

India does not have any sustained government policy or strategy to block access to internet content on a large scale, but it has been putting pressure on private entities to remove information that is perceived to endanger public order or national security and this has increased since 2009.

The Indian government does not delegate censorship to private entities directly, but intermediaries have argued in litigations before the Supreme Court of India that the Intermediary Guidelines are arbitrary and broad.

For example, in *MouthShut.com vs Union of India [W.P.(C).No. 217 of 2013],* MouthShut argued that the guidelines force intermediaries to screen and censor online content. This is important considering the lack of incentives, resources, technical know-how and constitutional legitimacy to censor content—when the interpretation of the content itself can be subjective.

In *PUCL vs Union of India[W.P.(C). No. 199 of 2013],* petitioners argued that guidelines require private entities to adjudicate over content without legislative guidance and without informing the party affected by the censorship. In this case, PUCL further argued that both online and offline content should be treated in the same manner.

Sub-Indicator 2
State's requests to internet intermediaries to prevent access to content or to disclose private information are:

- Strictly limited to purposes such as the administration of criminal justice; and
- By order of a court or independent body

While the Government of India requests internet intermediaries to prevent access to content or to disclose private information, the compliance rate by intermediaries differs. For example, Twitter complied with 7% of the removal requests from the Indian government while Google complied with 61% in 2014. Each intermediary offers explanation with respect to non-compliance.

However, in the Indian context, state's requests are not strictly limited to administration of criminal justice. For example, Google received a request from the police to remove a blog post that contained content and photographs about a politician's sex scandal. Google, in this case, did not remove the content, as per the request, because the subjects' faces in the blog post were not identifiable.

Sub-Indicator 3

State discloses details of content removal requests and accessibility of websites

It is difficult to assess whether the Indian government discloses details of content removal requests and accessibility of websites. In certain cases, the government discloses the blocking or content removal requests as discussed above in the blocking of 32 websites. However, most of the time, the government requests private entities such as Google, Facebook, Twitter and Linkedin to remove the content. Interestingly, these private corporations issue transparency reports that include the number of content removal requests or take down requests by government or the judiciary.

In recent years, there has been an increase in the disclosures that the Government of India is demanding for data or information held by large online service providers like Google, Facebook, and Twitter. These companies have created

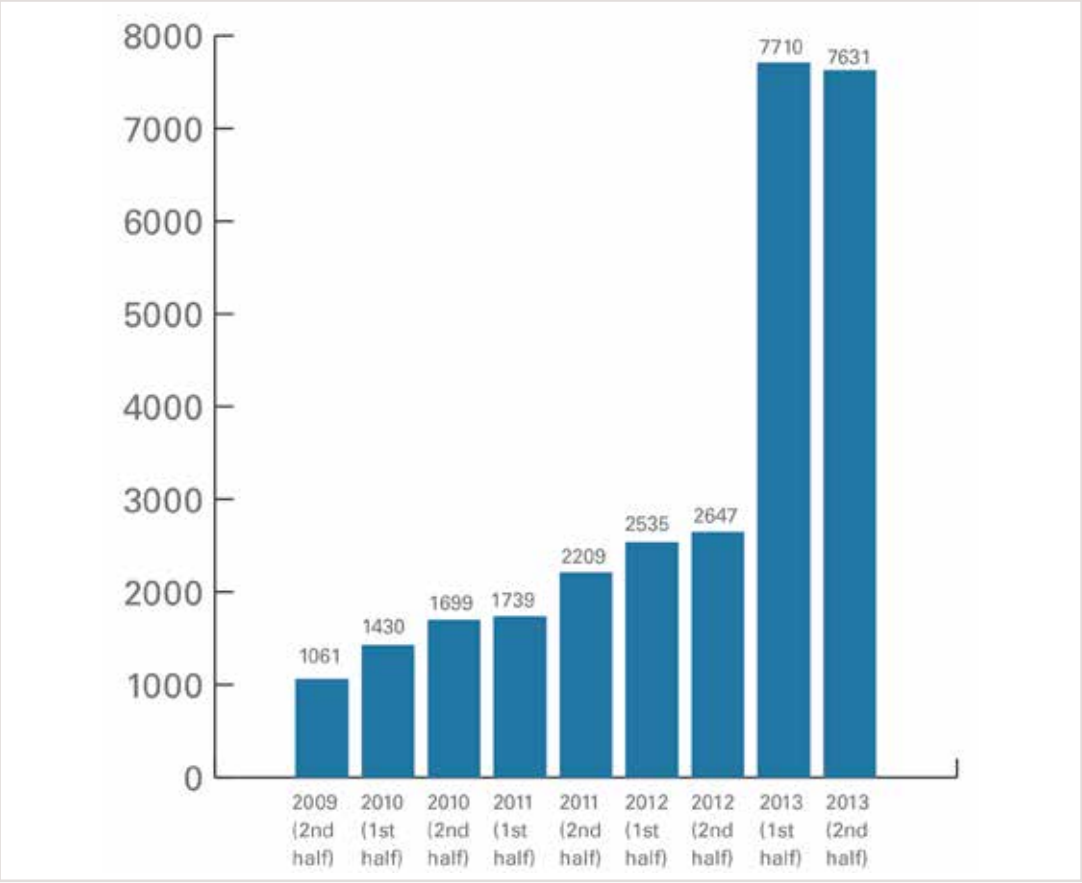


Figure 5: Requests for information from major Online Service Providers

Companies	Data Requests	Cases where some data was furnished	Cases where some data was furnished (Percentage)
Facebook	3598	1927	54%
Google	2513	1659	66%
Yahoo	1078	584	54%
Microsoft	416	313	75%
Twitter	19	6	32%
Wordpress	5	0	0%
LinkedIn	2	0	0%

Table 3: Data Requests

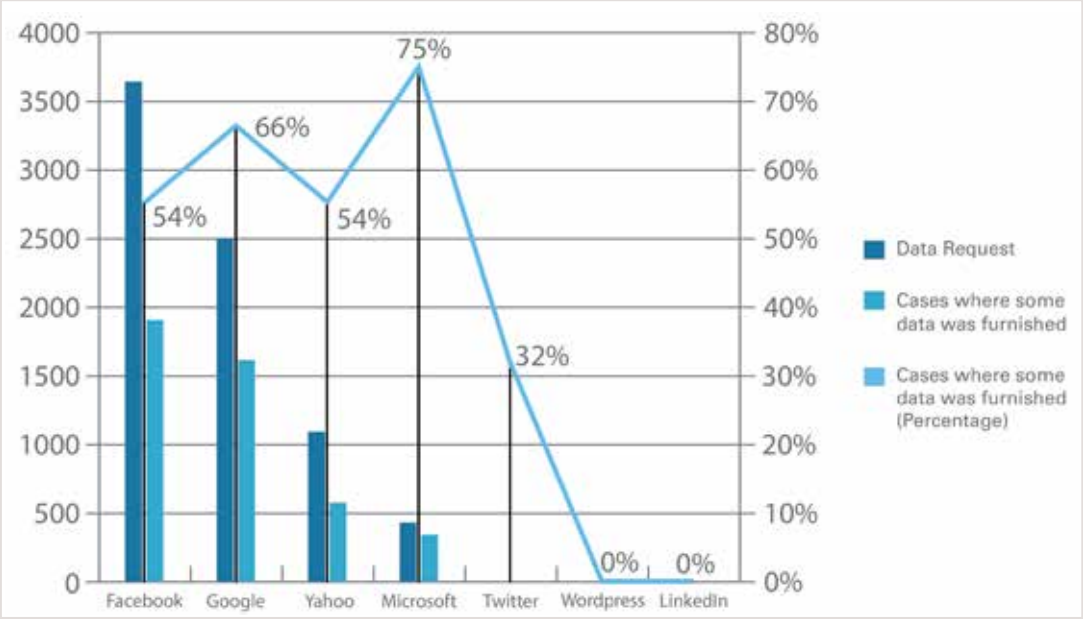


Figure 6: Data Requests by company

legal and procedural mechanisms that seek to review government requests and then decide on an appropriate plan of action: full disclosure, partial disclosure or rejection.

The total number of requests for information from the government of India to major online service providers steadily grew from 2009 to 2012, and took a major jump in 2013. From 2009 to 2013, there have been a total of 28861 requests for information from major online service providers like Google, Facebook, Yahoo, Microsoft, Twitter, Wordpress and LinkedIn *(Figure 5)*.

When we look at information available for the second half of 2013, the Indian government sent over 7600 requests for information from the six major service providers listed above. Overall, there is a 58% compliance rate with 4500 requests for information fulfilled to some extent.

Facebook received the highest number of requests for information and responded positively the maximum number of times with a compliance rate of 54%. However, Microsoft still retains the highest compliance rate at 75% with 313 requests fulfilled of 416. Wordpress and LinkedIn received the lowest number of requests and rejected all of them *(Table 3)*.

Furthermore, the top reasons for removal, according to Google, are:

- Defamation
- Religious offence
- Impersonation
- Privacy and Security
- Adult content
- Obscenity and nudity

In case of non-compliance, Google provides reasons why requests were not honoured. For example, in the period July-December 2013, Google received a request from a representative for a general elections candidate to remove a YouTube video that associated him with corrupt financial practices. Google did not comply because the requests did not go through appropriate legal channels.

Facebook, in another example, received 10,032 requests and restricted access to 10,792 pieces of content in India in 2014. Criticism of religion or the state and hate speech which could cause unrest and disharmony is the primary reason for which access to the content was restricted. Requests were reported primarily from local law enforcement officials and the CERT-In *(Figure 6)*.

Institutions like CIS argue that the Indian government lacks transparency when it comes to disclosure of details on content removal. Further to this, there is a tendency to misuse national security and the restrictions in the law for non-disclosure.

ASSESSMENT

5 DISCONNECTING USERS FROM THE INTERNET

Sub-Indicator 1

Internet access is maintained at all times, including during political unrest

Unrest in India can happen based on social, religious, communal and political grounds. While it is uncommon for the state government to routinely block protocols or tools, like instant message communications, it does so in times of unrest. For example, the government does block access to ICT tools and internet connectivity to stop violence from spreading and limit destruction. Some of the events that have taken place, since 2013, are as follows:

- **18 July 2013:** Mobile internet access in Jammu and Kashmir was suspended on this day after violent protests erupted in the state after unconfirmed reports that Indian border security guards desecrated a copy of the Quran at a local religious seminary
- **8 February 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 convicted and executed in 2013 for conspiracy in an attack on the Indian Parliament
- **5 March 2015:** The State government of Nagaland banned internet and blocked SMS services after a video related to the lynching of a rape accused went viral on 5 March 2015. Due to fears of social unrest, these bans prevented many people from accessing basic necessities like medical care or education in schools

In one instance, internet access was maintained after supporters of Bajrang Dal, a political party, took to the streets to protest and vandalise theatres and public places, after the release of the film, PK. Actor Amir Khan's film PK (released on 19 December 2014) stirred debate on social media and blogging sites like Facebook and Twitter where many expressed that the film has hurt religious sentiments of the Hindu community. BJP national president Amit Shah said every individual had the right to freedom of expression including those who opposed the film PK.

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6 CYBER ATTACKS

Data Security Council of India (DSCI) defines cyber-attacks as "deliberate actions to alter, disrupt, deceive, or destroy computer systems or networks or the information and/or programs resident in or transiting these systems or networks." Cybercrime, on the other hand, is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offense (child pornography, hate crimes). Much of the time, the two terms are used interchangeably. The definition of cyber security is much broader when individuals and businesses are introduced and threats like identity theft are brought into the picture.

Sub-Indicator 1

State takes appropriate and effective measures to investigate actions by third parties, holds responsible persons to account, and adopts measures to prevent recurrence

The Government of India has been taking steps, both reactively and pro-actively to tackle the growing cybercrime and cyberattacks. On the reactive front, CERT-IN has been designated under Section 70B of Information Technology (Amendment) Act 2008 to serve as the national agency to perform the following functions in the area of cyber security:

- Collection, analysis and dissemination of information on cyber incidents
- Forecast and alerts of cyber security incidents
- Emergency measures for handling cyber security incidents
- Coordination of cyber incident response activities
- Issue guidelines, advisories, vulnerability notes and whitepapers relating to information security practices, procedures, prevention, response and reporting of cyber incidents.[39]

Within the CERT framework there is a special provision called ISMS (Information Security Management System) Standards and ISO 27001 and a fixed list of certifying authorities. These certifications are means of ensuring security compliance. Apart from this third parties are brought under the purview by means of licenses to operate in India which binds them to let the agencies have access to their databases for incident response.

Since its inception, this organisation has been actively monitoring the online infrastructure of the country and sending out reports of defacements[40] via an Incident Response Helpdesk. Apart from this they run a Latest Security Alert section on their website through which they also disseminate important information about cyber security in the public domain.

Another recently proposed agency in the same field is the National Cyber Coordination Centre (NCCC) which would carry out its own cyber security activities along with facilitating intelligence gathering of other agencies.[41] Some of the components of NCCC include a cyber-crime prevention strategy, cyber-crime investigation training, review of out dated laws, etc.[42] Apart from this; the Data Security

39 http://cert-in.org.in/ (Accessed on 11 June 2015)
40 http://trak.in/internet/1203-cert-response-website-defaced-hacked/ (Accessed on 11 June 2015)
41 http://en.wikipedia.org/wiki/National_Cyber_Coordination_Centre (Accessed on 11 June 2015)
42 Ibid.

Council of India (DSCI) and Central Bureau of Investigation (CBI) have signed a memorandum of understanding for strengthening abilities of law enforcement officials in combating cybercrimes. The collaborative efforts of organisations in this sector suggest that the nation is swiftly progressing towards being cyber smart[43].

The other issue is that of being Cyber Ready, i.e. pro-activity. DeitY has set up a policy framework called the National Cyber Security Policy (NCSP), 2013[44] along with the Ministry of Communication and Information Technology, to protect the public and private infrastructure from cyber-attacks. The government is taking a combination of market driven and regulatory approaches to handle this issue. The objective of this framework document is to ensure a secure and resilient cyberspace for citizens, business and the government. This policy aims at building a secure cyber ecosystem in the country and to strengthen the regulatory framework. The policy defines cyber security as "cyber related incident[s] of national significance'[45]. The policy also talks about "extensive damage to the information infrastructure or key assets…. [threatening] lives, economy and national security".

On the concerns of the national security such as the maintenance of law and order, the policy neither examines the present framework of cyber-security related offences nor suggests any changes in the existing law. The policy merely calls for a "dynamic legal framework and its periodic review to address the cyber security challenges". This is self-evident; there is no need for new policy as NCSP has given power to DeitY to review the existing policies and laws and learn from the past mistakes. The policy also lacks in understanding of the cyber security laws. Moreover, Section 66A of the IT Act also criminalises the sending of annoying, offensive and inconvenient electronic messages without regard for the fact that free speech that is annoying is constitutionally protected.

Indian Computer Emergency Response Team (CERT) which was constituted under Section 70B of the IT Act to respond and take action on "cyber-incidents", is now engaged in extra-judicial censorship and responding to allegedly objectionable blogs or websites by blocking access to entire domains. Interestingly, the NCSP is duplicating the work of CERT instead of measuring or evaluating its work.

43 Cybersmart is cyber safety and cyber security education program by the government of India to make the government more responsive towards cybercrime.

44 http://deity.gov.in/sites/upload_files/dit/files/National_cyber_security_policy-2013(1).pdf (Accessed on 11 June 2015)

45 National Cyber Security Policy 2013

ASSESSMENT

7 PROTECTION OF THE RIGHT TO PRIVACY AND DATA PROTECTION

In India, the right to privacy and data protection is a concept that is work in progress. Expert interviews pointed out that the Indian government, citizenry and other stakeholders need to think about what constitutes privacy and the kinds of material or data that should be protected.

While the Indian government may use national security issues as a reason for mass surveillance and data gathering, experts say that it cannot be a justification for surveillance. Further to this, when the state is carrying out mass or individual surveillance, it can be considered as a cyber-attack on the individual.

Anonymity is being questioned by state and non-state actors. For example, if one needs a Gmail account, he or she will have to go through some form of authentication process, like by giving mobile numbers and it is through such processes one may end up not being anonymous.

There is limited opportunity for online anonymity in India. Due to prepaid and post-paid mobile accounts, identity cards (IDs) are reviewed and verified for usage and activity. Cyber cafés are required, under law, to collect ID information from customers to access the internet facilities. The cyber security law and policy fails to explain state safeguards on private communications.

To understand rural users' awareness of government regulation or monitoring of the content, the research study found that 37 percent of people stated that they are aware about government's regulation on content, while 61 percent of respondents replied that they are not aware about government's content regulation *(Figure 7)*.

Sub-Indicator 1
There are adequate data and privacy protection laws and these apply to the internet

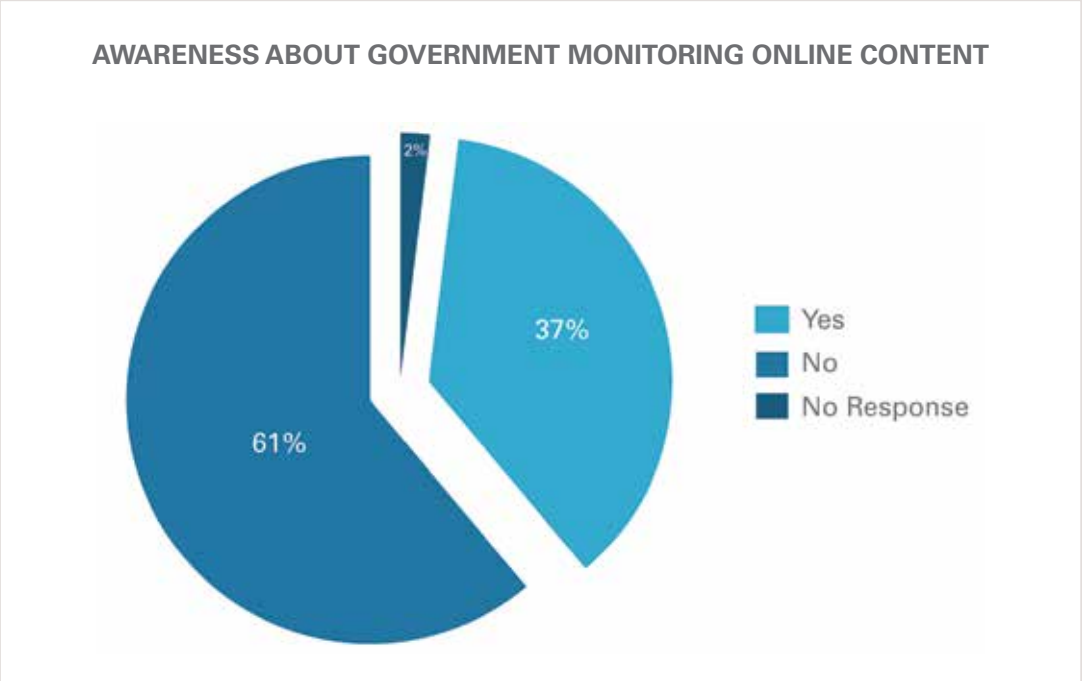

Figure 7: Awareness about Government Monitoring Online content

Since 2010, India has been making efforts to introduce legislation to protect the privacy of Indian citizens by the government and Indian private sector companies. The 2011 version of the bill extended the Right to Privacy to all Indian citizens, and the 2014 version extends privacy rights to all Indian residents. The Bill 2014 furthermore recognises the Right to Privacy as a part of Articles 21 of the Indian constitution and extends to whole India including Jammu and Kashmir. Furthermore, the 2014 version of the bill exempts insurance companies and government intelligence agencies from obtaining information, collecting and processing data *"in the interest of national sovereignty, integrity and security or strategic, scientific, or economic interests of India".* Moreover, Section 69 of the IT Act authorises Central Government to issue directions to intercept or monitor communications or information in electronic format.

Originally, Right to Privacy Bill 2011 was conceptualized to cover state and non-state actors which are collecting data through various projects such as Aadhar (also known as UID card)[46] or the National Information Grid (NATGRID) and make sure the information is not misused in any way.

An important consideration in evaluating the right to privacy in India is the Central Monitoring System (CMS). CMS is being assembled to monitor and intercept all voice and data traffic in real time. CMS is a mass surveillance system regulated under the Indian Telegraph Act to intercept communications in the interest of:

- Public emergency and public safety
- National security and public order
- For preventing incitement
- Maintain friendly relations with foreign states.

This system replaces the manual system of interception and monitoring with an automated system which is operated by Telecom Enforcement Resource and Monitoring (TERM) and implemented by Centre for Development of Telematics (C-DOT). For example, the NATGRID project was supposed to look at meta-data. For this purpose, the government is connecting users' personal data bases (voter ID; Passport, etc.) that are already available and most of it is digital data or databases which are being digitised and therefore, they are creating a platform where all the data is available. In this context, technical training is provided to law enforcement agencies like:

- Intelligence Bureau
- Central Bureau of Investigation (CBI)
- Directorate of Revenue Intelligence (DRI)
- Research and Analysis Wing (RAW)
- National Investigation Agency (NIA)
- Delhi Police.

Other liberal democracies around the world require such interceptions to be judicially sanctioned, warranted and supported by probable cause; however, India does not have any statutory law to regulate such an enterprise. Worse, the state does not possess the technological competence to build such a system by itself and tendered to a private company to build the system.

Moving forward, the government has

46 https://eaadhaar.uidai.gov.in/

also proposed to set up a Data Protection Authority (DPA) to look into issues around invasion of privacy and impose penalties on violations.

However, the current version incorporates surveillance and interception. Based on the press reports, the 2014 version of the bill was leaked and then obtained by Bangalore-based Centre for Internet and Society and the bill is not released publicly for comments.

Sub-Indicator 2
State does not regularly track the online activities of human rights defenders, activists, and opposition members

The rolling out of CMS has raised concern among human rights and internet rights advocates as it will enable the government to monitor all phone and internet communications in the country. It is uncertain to state that the Government of India tracks the online activities of human rights defenders and opposition members. But even the perception of surveillance can create intimidation and have a chilling effect on activism. For example, in a conversation with Testa Setalvad,[47] this human rights activist reported that her Facebook account is regularly suspended in every week or so. And she has to request a new password after the suspension of her Facebook account.

However, the question is: Is this type of surveillance justified? Proponents argue that these requirements are necessary for national security, peace and harmony reasons, whereas, critics argue that it does not allow users to remain anonymous to conduct their activities online. This is where individual responsibility, awareness and education and training of law enforcement agencies, Indian judiciary and executive branch around FoE online are necessary. For example, expert interview with lawyers at Software Freedom Law Centre (SFLC) pointed out that judges are not aware or educated about how individuals can or do use internet to exercise their FoE rights. Moreover, some members of the judiciary have limited knowledge to distinguish between ICT tools like laptop and desktop or LCD TV.

Sub-Indicator 3
State does not adopt real name registration policies

India both "adopts" and "enforces" real name registration policies. In this realm, there are two concerns: data collection and surveillance for the purposes mentioned under Article 19(1) (a) (2).

For example initiatives like Aadhar or also known as UID (Unique Identification) card, real name registration has been enforced to citizens to gain the benefits of services provided by the government. According to the Intermediary Guidelines 2011, cybercafés in India are required to record the names and identities of the users and keep a copy of their identification like Aadhaar Card, passports, driver's license or voter ID cards. If the cybercafés fail to comply with these requirements, they are subject to fines and imprisonment. With heavy monitoring from the government, cybercafés aim to fully comply with these requirements to avoid hefty fines. This requirement leaves users

47 https://en.wikipedia.org/wiki/Teesta_Setalvad

with no anonymity in cybercafés. Additionally, users have to reveal their identities to purchase mobile SIM cards for phone and internet connection. There is a difference, however, in postpaid connections and pre-paid connections in India. While the ID verification process retailers follow is very stringent for postpaid connections, retailers can be and are sometimes lax in ID verification for prepaid connections. For postpaid accounts for example, the telecom service provider representative like Vodafone may pay a home visit to identify and verify the individual's residence after proper ID and photographs are provided. Based on the outcome of verification process, the user is provided with the postpaid account. In contrast, in the case of prepaid accounts, the user generally gives cash to the retailers and their ID documents and a SIM is issued. However, various mechanisms, like submitting ID documents of friends and relatives, are used to bypass this requirement in order to own a SIM.

The real name registration is not limited to postpaid mobile connection[48] but opening of an e-mail account such as Gmail is also linked with the phone number for verification. Once the phone number is synced with Gmail account, the information associated with the UID is automatically synced with e-mail account. Moreover, users need to give their real-name documents for availing any public utility schemes such as gas connection and e-governance, such as land certificates services. Interestingly, most of these services can be accessed online.

Sub-Indicator 4

Limitations on privacy rights are exceptional (such as for administration of justice or crime prevention) and there are safeguards to prevent abuse

As noted above, CMS presents limitations on the right to privacy in India. In the context of CMS, stakeholders often allude to potential misuse and violations to right to privacy and other human rights. As a mass surveillance system, CMS by definition does not limit its infringement on privacy to exceptional circumstances, such as for administration of justice or crime prevention. And without safeguards to prevent abuse, such as judicial oversight, the ambitious programme allows authorities to monitor digital communications without issuing orders to service providers, either in written form or otherwise.

48 Definition of postpaid mobile connection https://en.wikipedia.org/wiki/Postpaid_mobile_phone

ASSESSMENT

ACCESS

In India, where the overall internet penetration rate is 15% and 7% in rural areas, access to internet and digital literacy is the precondition for the exercise of the right to freedom of expression online, as well as related rights, such as freedom of association and freedom of assembly.

India's intention to develop and "emerge" into one of the world's superpowers—an economic superpower—can be traced back to 1998 where the Central Government set up the National Taskforce on Information Technology. Access to internet and ICT tools is not only important for progress on human development, but also a basic human right—so that more people can access information, become more educated and aware, share information, knowledge and resources—and improve human lives.

At the 102nd Indian Science Congress in 2015, Prime Minister Modi highlighted the role of science, information and technology in alleviating poverty, spreading education and awareness and building a more sustainable internet. In that regard, he emphasised and argued in favor of utilising internet and ICTs to bring positive results in sustainable development. *"Let us also use the Internet to bring the best of our scientists in direct contact with our children and our youth. Digital connectivity should become as much a basic right as access to school."*

Expert interviews suggest that internet has the potential to become an open medium to let all kinds of people share and exchange information and views around issues that matter to human society. It becomes a source to organise and share information in an efficient, transparent, accountable manner. However, as expert interviews reveal, internet's strength lies in the fact that a broad range of people can enter and exercise their free speech rights.

95% of the respondents surveyed in the DEF study said that internet is a basic need *(Figure 8)*[49]. 95% of the respondents who said yes to the previous question also stated that internet access should be in every household. *(Figure 9)*

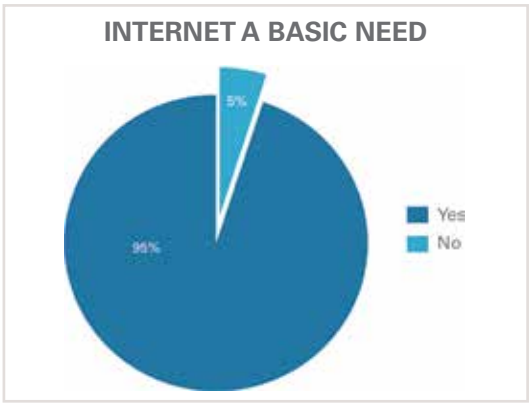

Figure 8: Perceptions of Internet as a Basic Need

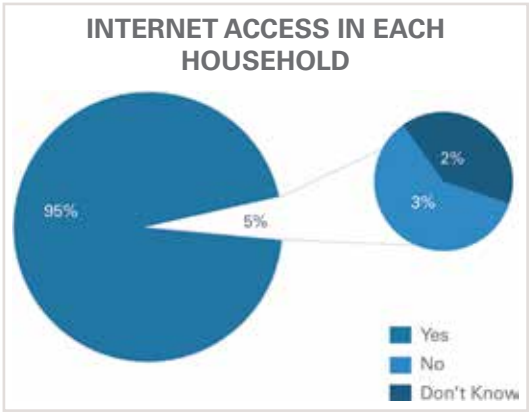

Figure 9: Internet Access at household level

49 Question 25 and 26 within Section V of the survey asked respondents if they felt that internet is a basic need and if yes, if they felt that each household in the country should access internet in their homes like electricity and water. 95% of the respondents felt that both internet is a basic need in the current times and should be accessible in their homes.

In this section on access, it is important to highlight case studies where access to internet and ICT tools has enabled individuals and communities to exercise their rights to freedom of speech and other rights, such as freedom of assembly, the right to education, the right to health, and so on.

AKODARA: A DIGITAL VILLAGE

Akodara is a digital village in Sabarkantha district in the western state of Gujarat. The ICICI Digital Village, initiative of ICICI Bank,[50] enables the people of Akodara to use technology in various aspects of life including banking, payments, education and healthcare among others. ICICI bank is digitising school attendance and school records and implementing school management software in the village school. The bank is providing smart boards, integrating projector and computer at the school and the Anganwadi centre,[51] with audio-visual digital content for classes 1 to 10. It will provide digital access to telemedicine via mobile or video conference, giving villagers access to medical expertise. The aim is also to create an enabling infrastructure to make technology available, and access and disseminate information, so that people can exercise their basic rights such as right to health services, right to education and strengthen their freedom of speech.

MISSION PRABHUGHAT: HOW INDIVIDUALS EXERCISE THEIR RIGHT TO FREEDOM OF ASSOCIATION, ASSEMBLY AND EXPRESSION ONLINE TO INSPIRE POSITIVE CHANGE

The use of social media sites like Twitter to exercise rights to freedom of association, assembly and expression empowers individuals and local communities to inspire and bring positive change. Temsutuala Imsong, a social worker from the Indian state of Nagaland and Darshika Shah from the city of Varanasi inspired individuals and local community to clean PrabhuGhat, one of the 87 Ghats[52] in the city of Varanasi. Both used Twitter (#Mission PrabhuGhat) to physically mobilise volunteers to clean the Ghats and raise funds for the initiative. By organising online on Twitter, this effort by two ordinary citizens caught the attention of public officials which include Prime Minister of India, Narendra Modi and 275,000 user accounts and 10 Million Varanasi, after failing to garner support from local public officials and conventional media. Both Darshika and Temsutula started teaching in schools and started cleaning Ghats after collecting minimal financial resources. As Darshika notes in her article, children recognised the two by saying:
"Swachh Bharat Abhiyaan ke liye aaye hain! (Came for clean India movement)"

Following this, local residents and volunteers started helping in cleaning this Ghat. The

50 Industrial Credit and Investment Corporation of India (ICICI) Bank: http://www.icicibank.com/
51 The word Anganwadi means "courtyard shelter" in Indian languages. A typical Anganwadi centre also provides basic health care in Indian villages. It is a part of the Indian public health-care system.
52 Ghats are riverfront steps leading to the banks of river Ganga in the city of Varanasi in the state of Uttar Pradesh. Most of the Ghats are used for bathing in the river, for observing religious practices and cremation by the Hindus in India.

Figure10: PM Modi recognises #MissionPrabhughat on Twitter

success of this mission helped raise awareness and helped people understand the importance of cleanliness, hygiene and sanitation. For example, offenders urinating on the Ghats are made to clean the Ghats by the volunteers. Today, one-by-one, the Ghats in Varanasi are becoming clean. This mission has been recognised on both Facebook and Twitter by individuals and in particular Prime Minister Modi in his Tweet. *(Figure 10)*

ICT ENABLES LIVELIHOOD AND FOE

Mungaska village is home to nearly 100 families and Bhapang[53] artists in Alwar district in Rajasthan. Through the DEF centre in Mungaska village, these artists are accessing internet to upload videos of their professional musical programs and network online with communities across India and abroad to gain paid professional opportunities to perform musical programs. Due to this strategy, these artists are now able to generate revenue by networking online on Facebook. For example, Bhapang artists like Jakir Khan, younger brother of Yusuf Khan who is in charge of the Mungaska Center, are now accessing social media sites like Facebook to network online for income generation from INR 500 - INR 1000, per engagement.

In an interview with DEF staff, Jakir said that these types of musical instruments combined with oral tradition are used by Muslim singers and writers, to narrate Shiv Katha or the story of Shiva, Ramayana and Mahabharata for the Muslim community in Mewat, Haryana.

Online networking has not only yielded revenue for the family but has enabled family members to travel across India and Dubai to conduct their musical programs and has enabled them to learn new cultures, customs and ways of living. This is a positive example of how internet connectivity enables communities to exercise their cultural rights and right to freedom of expression. These types of karmas or actions, or methods of expression are inspirational, because they reinforce universality, unity and the concept of "Sanatan Dharma."

53 Bhapang or "talking drum" is an instrument used for entertainment in this locality in ancient times. This traditional art of entertainment is on the verge of extinction due to modern instruments.

BROADBAND CONNECTIVITY IN THE GOVERNMENT

India's telecom minister, Ravi Shankar Prasad, said that government is looking to spread broadband connectivity across all local government bodies by 2017 to bridge the gap between the underprivileged and bring them into mainstream society. Furthermore, the central government has introduced the Cabinet—a secured and encrypted portal—for top bureaucrats and ministers to do cabinet meetings online. E-cabinet will eliminate all the physical file movements in the inter-ministerial consultation on cabinet proposals. It will further enable digital archives of all relevant documents for reference purposes. Every minister would have to login and will be restricted to share the login details and passwords.

WOMEN AND ICTS: USING TECHNOLOGY FOR WOMEN'S EMPOWERMENT IN INDIA

In India, there are 700 million mobile phone subscribers. 97 million people access the internet through their mobile phones. With the revolution of the mobile phone in India as an affordable means of communication, Indian women entrepreneurs have started using mobile phones not only as a communication tool but also as a tool to communicate with frontline health workers, receiving health information, safety alerts, etc.

Women community health workers (CHWs) in Bihar state use an interactive voice response (IVR) feature on the mobile phone with special-coded keys, called Mobile Kunji, to communicate with pregnant women while counseling them. The mobile app, Helpls, allows women to ask for help when they are in danger even if they don't have the internet.

Last year's brutal rape and murder of a 23-year old girl in Delhi, sparked a nationwide outcry. Within four days of the incident, the online petition site, Change.org, received over 65,000 signatures after an appeal to sign the petition, "President, CJI: Stop Rape Now!". The appeal was initiated by ex-journalist Namita Bhandare, and sought the intervention of President Pranab Mukherjee and Chief Justice of India Altamas Kabir. Netizens also created their own other online petitions such as "Death to Rape and Rapists in India: Death Penalty to Rapists", and "Death Penalty For Rapists", seeking capital punishment for the accused.

Internet users used social media sites like Facebook, WhatsApp and Twitter and replaced their profile photo with a 'Black Dot', signifying "shame in a country where women are unsafe". Within 10 days of the incident, Facebook groups such as "Gang Raped in Delhi", created on 20 December 2012, and "Delhi for Women's Safety", created on 18 December 2012, received 5,046 and 4.263 "likes" respectively. Twitter has approximately 16 million users in India, and has been abuzz with news of the protests. After outrage and protests erupted, four businesswomen set up Safecity.in, a website set up to identify locations where women have experienced or witnessed any type of sexual harassment. The mobile app FightBack was also launched by Anand Mahindra, Chairpersonn of the automobile company Mahindra. This allows women to seek emergency help. The app sends SMSes to emergency contacts if a woman presses a panic button. It also flashes the live alert page of a web portal, and can update a user's Facebook wall.

E-AGRICULTURE

The story of 69-year old farmer from Shirol village in Dharwad, Karnataka, BM Hanasi, made news for using Google Earth and WhatsApp to help the farmers' community to curb corruption. He advised the State government to use technology to assess crop damage and release insurance amount in a timely manner. By using these technologies, government officials can know what farmers have grown and the crops that have been damaged—and then be able to release the insurance money which otherwise is channeled away to the intermediary.

EXPANDING EDUCATION THROUGH ICT

In the education sector, it is important to bridge the gap between urban and rural students. Urban primary students, for example, are taught computer literacy and receive an education with the help of technology and internet. This is not necessarily true for rural students. To improve this scenario, 250,000 government schools are expected to be equipped with broadband and free Wi-Fi by 2017. Further to this, the All India Council of Technical Education opened the online portal "Know Your College Portal" which allows students to build awareness and seek transparency and accountability in the higher education space.

E-GOVERNANCE: BENEFITS OF MOBILE SEVA

Over 1,710 government departments and agencies across the country are using Mobile Seva to deliver services like Passport or Aadhaar Card, postal, and voter registration. On the private services, health monitoring, education and taxation are some of the other services being offered. Over 2.05 billion SMS based transactions have delivered to citizens and downloads have exceeded 222,000. For example, the Election Commission of India (ECI) has mapped more than 910,000 polling booths across the country and has made them available on a web-based map service which makes it easier for citizens to locate polling booths.

Sub-Indicator 1
State has a national plan of action for internet access

Given that internet penetration is only 7% in rural India, bridging the urban-rural divide is crucial so that more rural users can get online for multiple purposes which include exercising free speech and communicating online.

To that end, the Indian government has been working on converging the national information infrastructure (also known as Digital Infrastructure) as per Digital India Plan[54] to provide access across central and state governments and gram panchayats (GPs, also known as "village councils")—enabling a unified e-governance

54 http://www.cmai.asia/digitalindia/

structure to bring in more quality citizen services, transparency and accountability.

The Digital India plan[55] has 3 areas of focus which are based on 9 pillars[56]. The three areas are (1) digital infrastructure like mobile internet, Common Service Centres, and safe and secured cyber space; (2) governance services; and (3) digital empowerment which includes digital literacy.

Through this vision, it will enable transformation of citizens to netizens to access and share information, knowledge and resources, access rights and services, and do business. About 250,000 villages and 150,000 post offices are expected to become functional points of services for citizens to access and exercise their basic human rights. The postal network will be used to provide services around banking, passport and insurance among others. The government has received INR. 180 billion worth of investment proposals from private companies out of which INR 40 billion have been approved. This will help boost e-commerce to increase India's GDP. For example, Google estimated that India's e-commerce could reach USD 70 billion by 2020 from USD 20 billion in 2015. Furthermore, in the 2015-2016 budgets, the Indian government has set aside INR 21.5 billion for the Digital India Programme and Telecommunications and Electronic Industries.

In Delhi, for example, North Delhi Municipal Corporation is collaborating with Reliance Jio Infocomm to provide Wi-Fi

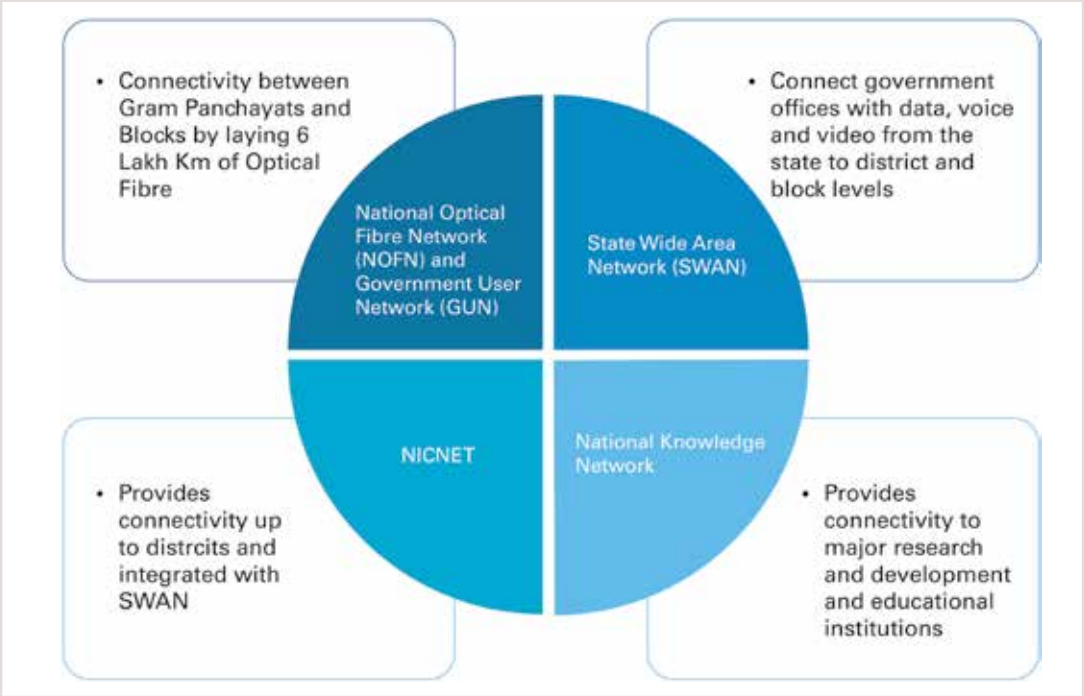

Figure 11: Convergence of India's National Information Network

55 Digital India vision, according to Government documents, would cost Rs. 100,000 cr in ongoing schemes and Rs. 13,000 cr for new schemes and activities which include in the areas of health, education, governance services, IT sector training, technology for farmers and financial inclusion and cyber security.

56 The nine pillars include: (1) Broadband Highways (2) Universal Access to Phones (3) Public Internet Access Programme (4) E-Governance (5) eKranti (6) Information for All (7) Electronics Manufacturing (8) IT for Jobs and (9) Early Harvest Programmes.

network in Central Delhi by June 2015.

The Central Government has set the target to cover cities and town with population over one million and tourist destinations with Wi-Fi services. Top 25 cities are expected to complete this project by June 2015.

Additionally, Indian government has initiated a National Optical Fibre Network (NOFN) plan to provide high-speed broadband connectivity to 250,000 gram panchayats by December 2016 by laying 700,000 km of optical fibre cable in 3 years that started in 2012. The estimated cost of the initiative is over INR 201B, through the USOF. It aims to provide 100 MbPs bandwidth at each Gram Panchayat or village, thereby bridging the gap between the villages and the blocks.

Sub-Indicator 2
State fosters independence of new media

India is Facebook's second largest market in the world with nearly 112 million people accessing the social networking site. Out of the 112 million, 99 million access it via mobile phones at least once a month, according to the Economic Times.[57] By 2017, India will surpass the United States with respect to mobile users accessing Facebook. Twitter, on the other hand, accounts for only 17% of the total social network users in one of the

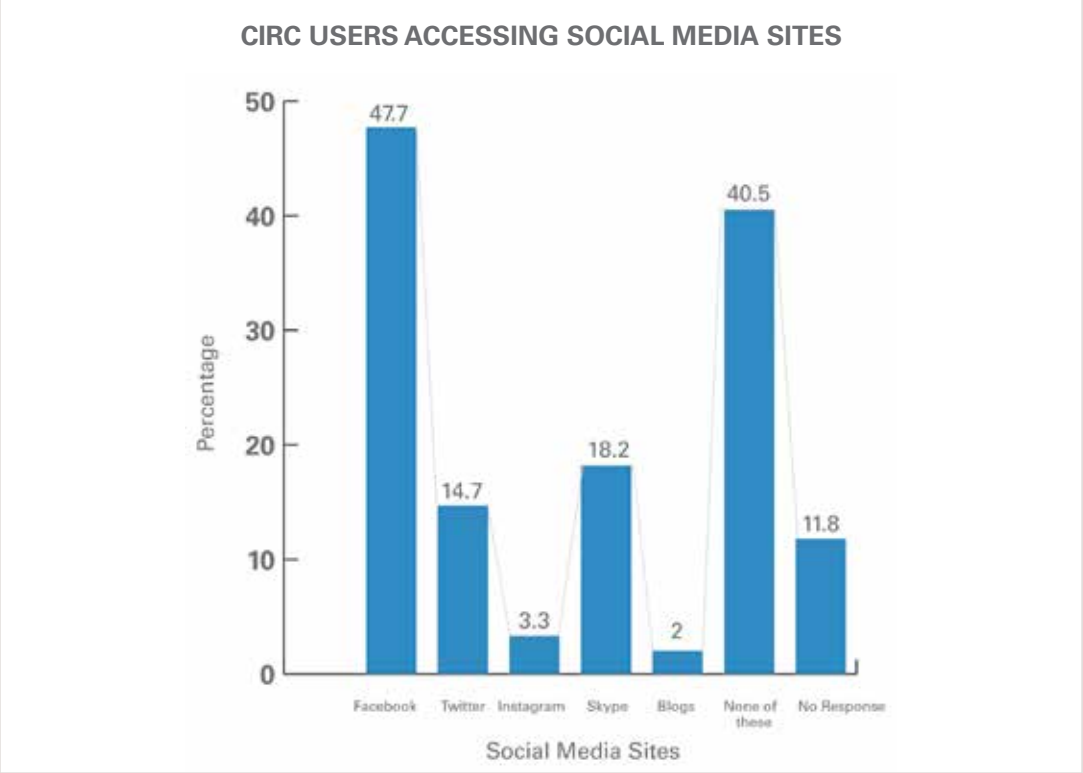

Figure 12: Centre Users Accessing Social Media Sites

57 (2015, 22 January). India to have the largest number of Facebook users on mobile by 2017: Report . Economic Times. http://economictimes.indiatimes.com/magazines/panache/india-to-have-the-largest-number-of-facebook-users-on-mobile-by-2017-report/articleshow/45978668.cms

world's largest internet market. Research projected last year that India would have 18.1 million Twitter users.

These trends suggest that growing number of people are accessing social media. DEF research suggests that nearly 48% of the population surveyed use Facebook, 15% use Twitter, 18% use Skype and only 3% use Instagram. Strikingly, however, 40% of the population surveyed said that they do not use any of these sites. *(Figure 12)*

Of those surveyed, 48% said that they use social media to meet new people and maintain relations, 35% use social media to share and receive information, 29% use it to know and share current status of the country and 20% share views on work stories. Only 12% of the population indicated that the purpose of using social media is to market products and services. *(Figure 13)*

With Prime Minister Modi a huge proponent of social media, the Indian government is actively using social media sites like Facebook, Twitter, YouTube and Google to communicate with citizens and the world. For example, 275,000 users follow @IndianDiplomacy handle of Ministry of External Affairs, 237,000 users follow the Indian Home Ministry, and the Ministry of Information and Broadcasting (MIB) has 220,000 followers. On Facebook, The Ministry of External Affairs (MEA) has over 682,000 likes among all the ministries of the Indian government.

Prime Minister Modi, as of December 2014, had 26 million Facebook likes on his Facebook page while his Twitter @narendramodi has 893,000 followers.

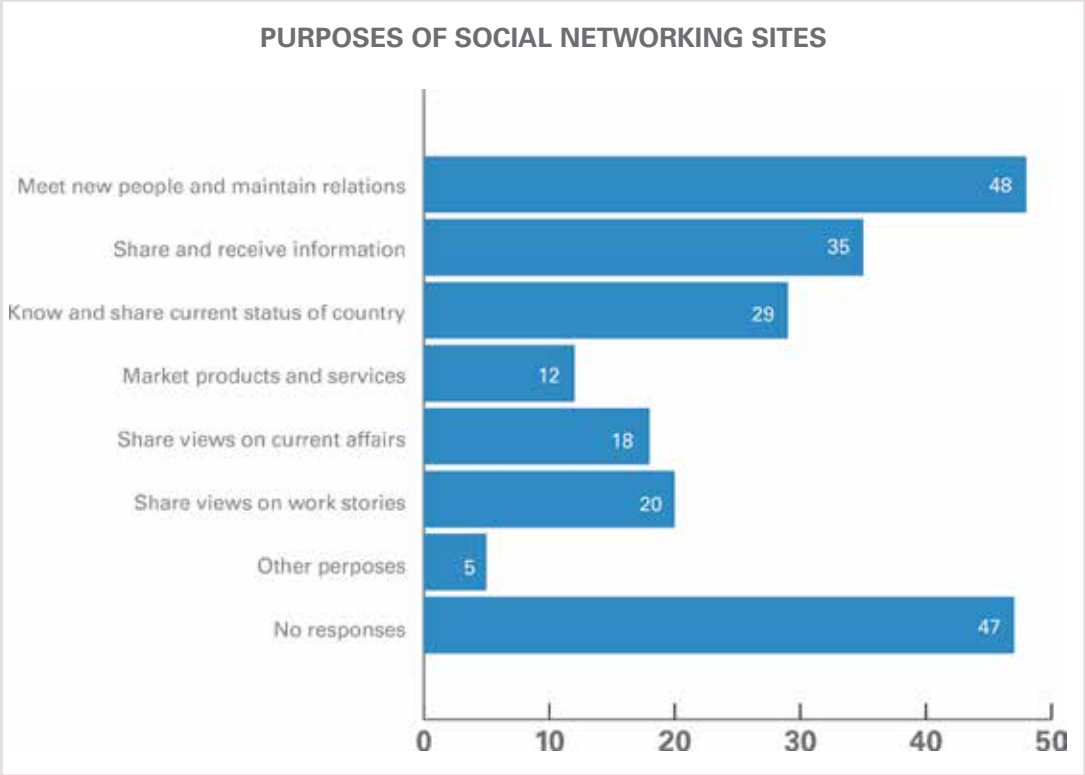

Figure 13: Purposes of Social Networking Sites

The official handle of the Prime Minister's Office @PMOIndia is followed by over 410,000 people on Twitter. To that end, as the Former Chief Minister of Gujarat, Mr. Modi protested against the former United Progressive Alliance (UPA) government on online censorship and curbing FoE. To that end, Mr. Modi tweeted:
'As a common man, I join the protest against crackdown on freedom of speech! Have changed my DP[58]. Sabko Sanmati De Bhagwan.'

In the context of governance, DeitY has issued the Framework and Guidelines for Use of Social Media for Government Organisations. These guidelines enable the various government bodies and agencies to communicate and interact with stakeholders. However, these guidelines exist for government bodies and stakeholders indicate that such a policy for individual users should not exist because the IT Act and other guidelines are imposing limits on online FoE and is subject to interpretations which actually curb FoE online.

The Indian government in the Shreya Singhal case argued that limitations are necessary because online medium has the strength and capacity to influence a wide range of stakeholders—a medium which is unlike print and television media. Additional Solicitor General, Tushar Mehta, argued on behalf of the Indian government that print media has the potential to reach only one country and literate people, whereas the internet has the strength to reach the global community and can be used to create social disorder through morphing of images and changing of images. Furthermore, he argued while the ownership of print and television media is restricted, each individual on the internet is a "publisher, printer, producer, director and broadcaster of the content without any statutory regulation."

Prime Minister Modi himself is a proponent of social media and using technology for development and FoE, however, it is confined to the parameters listed out in the Indian constitution to prevent public disorder, among other factors.

Sub-Indicator 3
Concrete and effective policy is developed with public and private sector to make the internet available, accessible and affordable to all

Private sector institutions like Google are working with the Indian government to roll out optical fibre-based broadband services, as part of the Digital India plan. Google plans to roll out the plan in a small area as a pilot project, similar to Google Fiber launched in Kansas City, USA. Google Fiber is one of the fastest commercial internet and TV service offering 1 Gbps download and upload speeds—500 times faster than average internet connection speeds in India. However, to offer this service, Google will have to obtain licenses which are auctioned, or partner with existing ISPs like BSNL to start this service.

Additionally, Microsoft has been engaging with the Indian government to set up digital centers to encourage digitisation by leveraging cloud technology and

58 Display profile.

mobility. There are concerns around data security for India's population.

DEBATE ON NET NEUTRALITY IN INDIA

Recent circulation of Telecom Regulatory Authority of India's (TRAI) consultation paper on "Regulatory Framework for Over-the-top (OTT) services" initiated debate and discussion on Net Neutrality and Zero rating.[59] The paper raised several questions with great bearing on the future of the internet and its underlying principle of net-neutrality, and attracted over a million comments following one of the most extensive public campaigns in recent Indian history.

As far as the telecom industry is concerned, the consultation paper mentioned that telecom service providers (TSPs) are moving from a voice-dominated to a data dominated era and there are pressures arising therefrom. The complexity arises because the current business model and revenue model of TSPs is largely dominated by voice, which is relatively low in terms of data intensity. However, in response to this many civil society organisations argued that there is no difference between data packages whether they carry voice or a web page. Hence there is no reason to treat them differently.

In a response to the TRAI's Consultation Paper question, growth of Internet/OTT impacting the traditional revenue stream of Telecom operators/Telecom operators, DEF argued that data is a series of 0's & 1's. And a telecom network sees all data as a series of 01's and 1's. The key advantage of the internet, it does not care what the data is ultimately going to be assembled into – picture; text; voice and message. Therefore, the cost of carrying 1GB of text data and 1 GB of video data on the internet is exactly the same (Read DEF's full submission on NN[60]).

TRAI has divided the comments into three sections- Comments from the Service Providers; Comments from the Service Providers' Association, and Comments from other Stakeholders (which includes the regular folks, tech start-ups, etc.) The committee is yet to submit its final recommendation points to the DOT.

Sub-Indicator 4
Development programmes and assistance policies facilitate universal internet access

As defined above, NOFN under Digital India plan by the Government of India is enabling universal internet access of all. The vision of the Digital India aims to transform the country into a digitally empowered society and knowledge economy. Out of 9 pillars of Digital India, 4 of them are trying to enable universal access. These four pillars are:

- Broadband Highways – to create the National Information Infrastructure (NII) integrating with the network and cloud infrastructure to provide high speed connectivity and cloud platform to various departments up to the panchayat level (village council)

59 ZERO Rating (also called toll-free data or sponsored data) is the practice of mobile network operators (MNO) and mobile virtual network operators (MVNO) not to charge end customers for data used by specific applications or internet services through the MNO's mobile network, in limited or metered data plans.

60 Manzar, O. (2015, 24 April). Digital Empowerment Foundation (DEF) response to the Consultation on Regulatory Framework for Over-the-top (OTT) Services/ Internet Services and Net Neutrality. http://internetrights.in/wp-content/uploads/2014/05/DEF-Submission-on-TRAI_Net-Neutrality_24042015.pdf

- Universal Access to Mobile Connectivity - to focus on network penetration and fill the gaps in connectivity in the country
- Public Internet Access Programme – to develop multi-functional end points for delivery of government and business services by strengthening the existing common services centres (CSCs) and post offices as multi-services centres.
- Information for All - for facilitating open platform for online hosting of information and documents to facilitate open and easy access to information for citizens

Sub-Indicator 5
State supports production of local multicultural and multilingual content

Diverse and open content must be available in local languages for people to access the internet. Brookings India research highlights that only around 6 percent of the population speak or understand English, globally; but more than 90

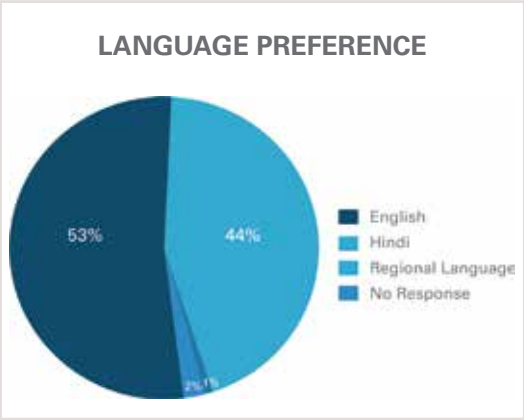

Figure 14: LInguistic Preference of Online Content

percent of the content available online is in English. This stresses the need to understand the relevance of local content and diversity to enable access. In India, one of the main challenges to internet access is the availability of relevant content in local language. According to the DEF study, while 53% of those surveyed preferred online content in English, 44% preferred the content to be in Hindi *(Figure 14).* Only 1% preferred the content in regional language—which is the language and dialect spoken, written and read in each state—like Gujarati, Marathi, Malayalam, Bhojpuri, among others because of two reasons – firstly the unavailability of content in the local language, or it is difficult to understand.

The DEF study further suggested local citizens want the government to support and encourage local content online. 46% of the population surveyed thinks that government should support and encourage local content while 32% did not know how to respond. Only 19% said that government should not support or encourage local content. *(Figure 15)*

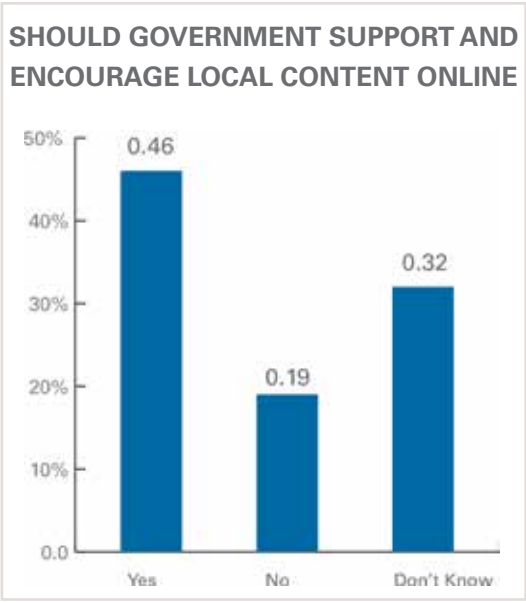

Figure 15: Government Support for Local Content Online

Sub-Indicator 7
Digital literacy programmes exist, and are easily accessible, including primary school education and

training to use the internet safely and securely

The Central Government's National Digital Literacy Mission (NDLM) is expected to educate over 1 million people by 2019. This is relevant as [only] 48% of urban Indians are computer literate and only 14% of rural Indians is able to use a computer efficiently, according to McKinsey Global Institute. The private sector is also joining hands to add on to government efforts. Intel has announced plans to train people at the panchayat levels of 1,000 villages under NOFN. The aim was to reach 5 million people by 2015.

In a public-private partnership, DEF and Intel partnered with the Government of India on a pilot project around Digital Literacy. The pilot project covered 3 centers the states of Rajasthan, Tripura and Andhra Pradesh. In Arain Panchayat, Rajasthan, the pilot was successful in engaging youth in digital literacy. More than 90% of the people gained knowledge about Google, 40% gained knowledge about Facebook, and 89% gained knowledge about emails. Moreover, it enabled girls and women to access information and resources for self-development and equip with skills to address their individual and community related problems in a better manner.Further to this, the state of Haryana has launched 'Digital Saksharta Abhiyaan' to make 110,000 people in five selected blocks of the state digitally literate. One person from every eligible household has been selected since March 2015. Under level 1 of the training, a person would be IT-literate and be able to operate a computer or digital access device, send and receive emails and browse through the internet for information. The next phase would train the person to access government and business services, according to the spokesman of the Haryana government.

CHALLENGES TO ACCESS

Despite these partnerships to make internet available, accessible and affordable to all, there are significant challenges to internet, as the DEF study points out. Most of the respondents cited infrastructural issues as the key challenges to accessing the internet; whether public or private. Non-functioning computers and poor roads were singled out. Family obligation and wishes also ranked very high on the scale. A small but significant percentage of the respondents stated that they do not access the internet for the fear of becoming a bad person. *(Figure 16)*

A Connection vs. Connectivity

There is a difference between having a hard-line connection (i.e. wires and cables) versus those wires and cable lines working smoothly for a long period of time. For instance, DEF conducted a review study to analyze National Optic Fibre Network[61] (NOFN) connectivity in schools, Panchayats and government offices in Rajasthan, Andhra Pradesh and Tripura which revealed that there is an "uneven distribution of NOFN among Gram Panchayats". For example, out of the 112 institutions surveyed, 67% wireline connection reached to them through NOFN, whereas 20.5% have no connection to NOFN at all.

61 National Optical Fibre Network (NOFN) is a project initiated in 2011 and funded by Universal Service Obligation Fund (USOF) to provide broadband connectivity to 250,000 village councils of India.

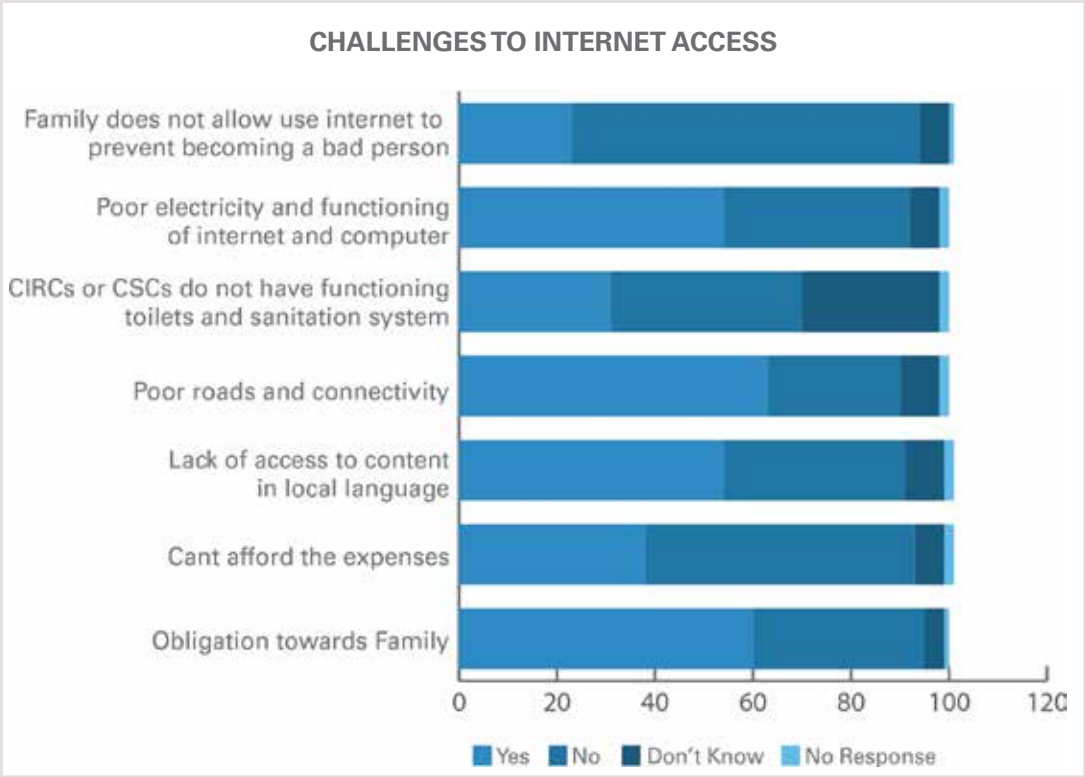

Figure 16: Challenges to Internet Access

There is a striking differences between the institutions connected through wireline connection and the institutions being able to use the connection for connectivity. For example, only 45% of the total surveyed had working connection to NOFN, however, 21% had wireline connection but no access to services. Furthermore, NOFN envisioned providing connectivity at 100MBPs whereas DEF study revealed average broadband connectivity at 50MBPs at Gram Panchayat level.

Looking at the speed and quality of access, a study conducted by Facebook-led Internet.org stated that only 13% of subscribers in India are using 3G and 4G network even though high-speed mobile data services exists in the country.

B Infrastructure

On the infrastructure side, finding appropriate tower locations to establish connection is an issue because the land is owned by government or is not fit for the purpose. In addition, many villages lack consistent power supply as India has 75 million households without access to electricity in 2013. 54% of those surveyed in the DEF study also suggested that poor electricity and functioning of internet and computer affects access to ICT tools and internet. 63% cited poor roads and connectivity as another obstacle to access. Due to the precarious power scenario ~40% of the telecom towers face load shedding for more than 12 hours per day. These challenges limit the internet connectivity and as a result, access to information becomes one of the major challenges in rural regions of the country. To overcome this obstacle, DEF Wireless

for Communities (W4C) initiative, for example, is using solar power to enable access in rural communities.

Four years after the Central Government approved the NOFN project, only 6% of the work has been completed. Slow progress has been attributed to the Department of Telecom which should have rolled out the program earlier. However, agencies like BSNL and BBNL have made it clear that they expect to achieve the target of connectivity to 250,000 GPs by December 2016.

C Affordability

It is important that services are available at an affordable rate for the people—many of whom are living in dire poverty—because in the current global economic system and capitalist economy, people have to have affordable and quality services. DEF research points out that 55% of the 601 people surveyed said that they can afford the expenses associated with accessing the internet at the centre which includes a bus ride, petrol costs, or even an auto ride as it costs less than accessing the internet at city. However, accessing the internet at their home is still not feasible for users due to associated cost such as device and connectivity cost.

D Digital Literacy

Computers have provided an entirely new medium for literacy (reading and writing). In many instances in urban and rural areas, it is difficult to find locally trained and qualified technical professionals with basic computer and digital literacy. Therefore, in ideal situation, even if state and non-state actors have provided the information infrastructure including computers and internet connectivity in rural regions of the country, the digital literacy rate in rural India is limited to 6.5%. Therefore, with limited digital literacy, it is difficult to exercise freedom of expression online.

E Socio-cultural and political norms

While digital connectivity and access are a precondition for communities to exercise their internet rights in rural areas, local culture, social and political norms, religion and language, human rights awareness, and livelihood factors are also determinants that enable communities to express their views and share stories, online and offline. 60% of those surveyed cited that family, children and village-related obligations leaves them with no time for other activities which include access to internet, however, they also mentioned that if the services are available in their home, they would prefer to access it. And 23% of women said that they do not access the internet because their "family does not allow" them due to the perception that it will make them a "bad person."

DEFs research team observed after a field visit in Alwar, Rajasthan, that rural population may not be communicating their views or sharing their stories or even exercising their internet rights due to existing development challenges—public health and education, financial, and other political, social and cultural impediments—and due to lack of awareness or education about internet rights around freedom of information, expression, association and assembly online.

RECOMMENDATIONS

1. Government and institutions have the prime responsibility and duty to respect and guarantee human rights; however it is recommended that individuals consider their role within family, society, country and the global community and how they can through their expression further understanding, tolerance, and peace among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities. It is further recommended that individuals be open to accept and tolerate differing points of views, and to understand that free speech can positively affect the human consciousness at large.
2. It is recommended that government should be transparent in terms of blocking, filtering and removal of the content and comply with international standards.
3. It is recommended that the CMS and UID systems be reviewed and reformed so that it is in line with international standards regarding the right to privacy.
4. It is recommended that the government, in collaboration with all stakeholders expand quality internet access in a transparent, accountable, and affordable manner so that communities can access quality and timely public services—and become aware of and begin exercising internet rights as part of basic human rights in the 21st century. In this context, opportunities are increasing to advance development and human rights, particularly FoE and FoAA which can enable good governance and strengthen democracy.
5. It is recommended that National Commission on Human Rights incorporate internet rights as part of their approach to human rights, as articulated by the UN Human Rights Council. This step would raise awareness about internet rights in both urban and rural India.
6. It is recommended that civil society organisations collaborate with private sector, government, industry bodies and educational institutions to raise awareness about internet rights, within the human rights framework, particularly FoE and FoAA among grassroots citizens.
7. It is further recommended that all stakeholders incorporate the following components within:

- Understand the importance and purpose of access and ICT tools
- Deconstruct internet rights and human rights
- Understanding the concepts of FoE online and international and national legal mechanisms
- Encourage understanding of responsible digital citizenship and security.

8. It is recommended that the government of India consider international and UN mechanisms and accept certain important international human rights mechanism, like the UN Special Procedures and treaty bodies. It is important not only to protect and promote its human rights but also to continue to play a leadership position in persuading other developing countries.
9. There is also an urgent need for the NHRC and the State Human Rights Commissions to have more independence and power of enforcement in particular to ensure their "recommendations".
10. It is recommended that administrative and law enforcement officials be provided with guidance, directives and training to uphold FoE online and offline.
11. It is recommended that law enforcement authorities be held liable and accountable for human rights violations by an independent and democratic oversight body and court of law.
12. It is recommended that individuals and communities should be able to seek financial and other resources, in a timely, equitable, transparent and accountable manner to exercise their FoE rights.
13. It is recommended that consistent oversight of blocking of internet based content by competent authority be set up on a regular basis so that arbitrary actions are ruled out.
14. It is recommended that victims of violations and abuses to rights of FoE have the right to effective remedy and redress in the court of law.

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ANNEXURE 1: RESEARCH METHODOLOGY

SAMPLE SIZE

The study included a sample size of 600 primary data sets collected from DEF centres across 10 states of the country. These states are Uttar Pradesh, Bihar, Karnataka, Tamil Nadu, Jharkhand, Uttarakhand, Madhya Pradesh, Delhi, Telangana and Rajasthan. The study was conducted by random quota sampling.

FACE-TO-FACE INTERVIEWS

Out of the 600 primary data sets, DEF research team conducted 286 face-to-face interviews in rural villages. Out of the 286 interviews, 50 interviews were conducted with Accredited Social Health Activists (ASHA), women who use internet and mobile technology for health and wellness programmes in rural communities.

SELF-ASSESSMENT QUESTIONNAIRE

Out of the 600 primary data, 314 respondents filled the questionnaire by themselves under the guidance of the centre coordinator. It is important to note that respondents regularly come to the centres to access the information and digital services.

The responses to the interviews were captured in Google Form for analysis by the research team. Further to this, paper-based interviews were coded and manually entered in Google Form and merged for analysis. The survey instrument presented questions, based on the APC-Frank La Rue Framework, on the following themes:

1. Ownership and usability of ICT tools and applications
2. Accessibility
3. Access to Information and Services
4. Access to social media
5. Access to Rights
6. Violation of laws
7. Challenges to Internet Access

CONFIDENTIALITY AND PRIVACY

On average, it took one hour to complete the interview. The respondents were made aware of the confidentiality and privacy rights, including anonymity. This time frame allowed field staff, after undergoing

survey training methods, to thoroughly go through all the questions and answer follow-up questions that respondents may have posed. It is uncertain to assess whether respondents would have posed follow-up question, however, probing techniques were used to elicit answers from the respondents, as rural residents often are unsure about concepts. Therefore, to get maximum input from the respondents, it was necessary to probe and follow-up with questions.

DEMOGRAPHICS

62% of the respondents were female, 38% were male. 45% of the respondents were in the age category 25-40 and 49% of the respondents belonged to the age category 15-24. In terms of educational attainment, 35% of the respondents were attending higher secondary school, 19% of the respondents were college graduates, and 8% were post graduates. In the occupation category, a quarter or 25% of the population were students, 25% of the populations were housewives and 25% associated themselves with private work. In the context of regional language, 68% of those surveyed indicated that their regional language was Hindi and the rest of 32% was divided between Kannada, Kotha, Telugu and Bhojpuri.

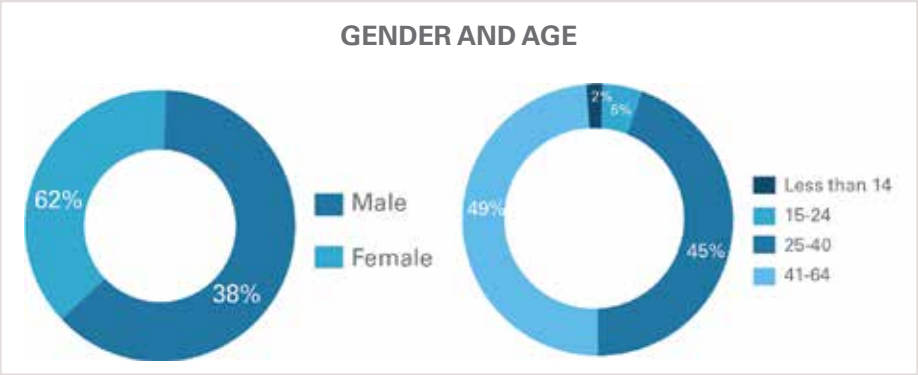

Figure 1: Demographic details of respondents - Age & Gender

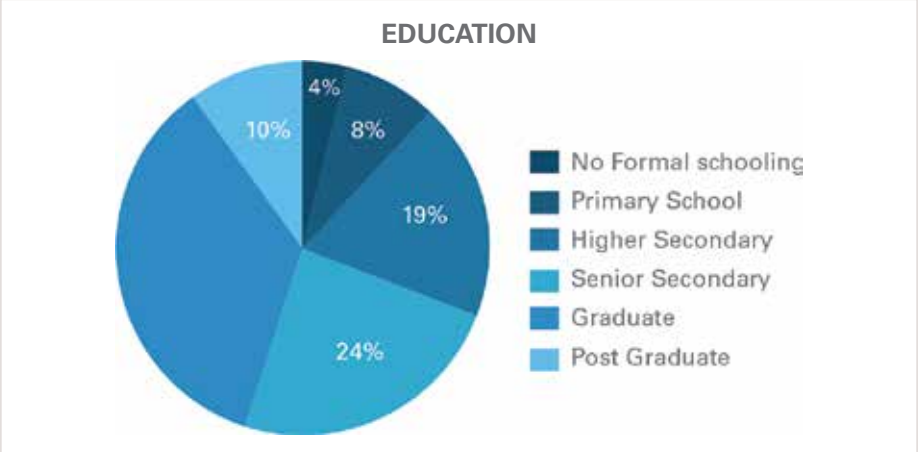

Figure 3: Educational Levels of the Respondents

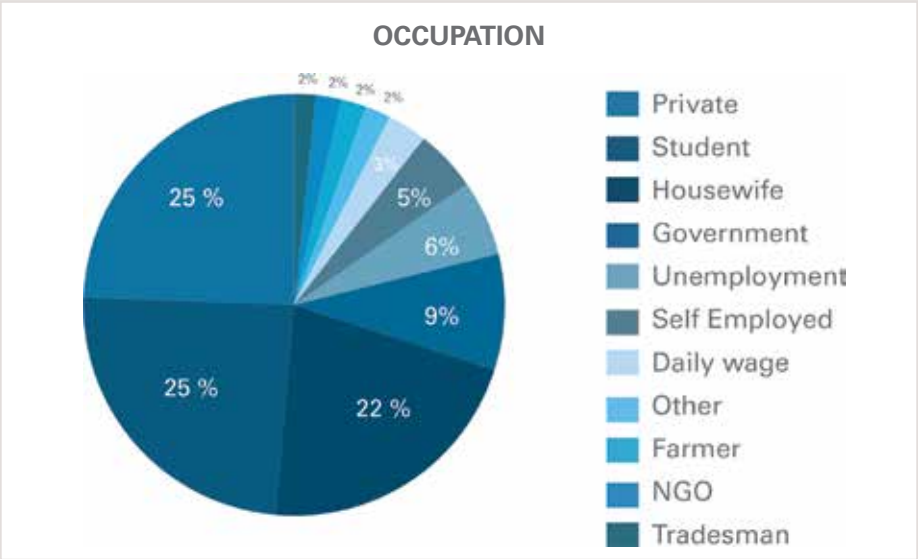

Figure 4: Occupation

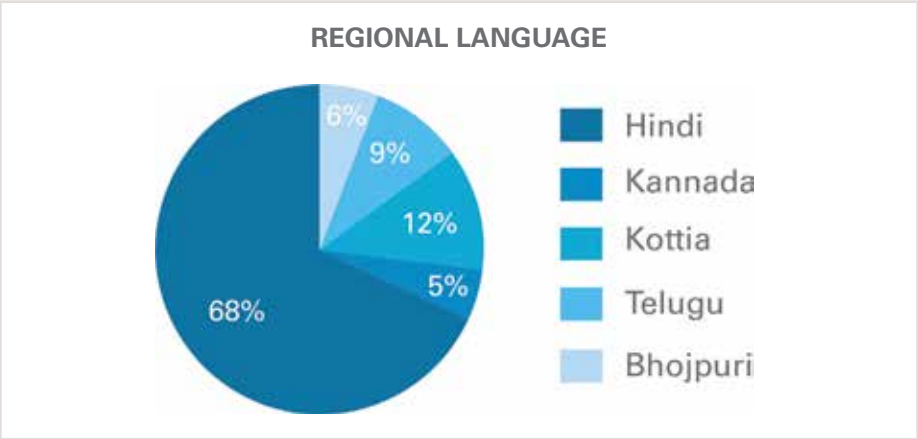

Figure 5: Regional Language

EXPERT INTERVIEWS

Fourth, based on the literature review, case-studies, relevant news briefings, and consultations, the research team prepared a set of questions on the basis of FLR framework for expert interviews and members of the IMPACT Project Advisory Committee set up by DEF. Expert interviews were conducted through email, phone interviews, in person meetings, and using ICT tools like Skype.

INTENTION

Finally, the intention behind this report is not to scale or compare India with other countries because the context might be significantly different and the team deems that scaling or rating FoE would be unfair. The intention is to present a clear framework, structure, facts and information to analyze the current status of Freedom of Expression offline and online on an objective basis.

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2011

01

Published report on 'The Internet, Human Rights and Social Resistance' in GIS Watch addressing the issue of internet and making it as a basic human right in India;

02

Initiated a project, Internet Rights advocating towards free flow of information on the internet;

Initiated a proje
'Networking for f
online and
protecting free
information, express
association on the
in India, Malay
Pakistan (IMPACT)'

03

Initiate monitoring of National Human Rights & Internet Rights violations using Martus

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06

Publishing white papers and statements on contemporary Internet rights-related issues

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2012

01

Organized the national consultation on 'Internet Rights, Accessibility, Regulation & Ethics' Focusing on internet access, regulations and ethics in India;

02

Participated at the 13th Universal Periodic Review (UPR) on 24 May 2012 at the United Nations, Geneva, Switzerland and presented its recommendation points globally;

03

Its recommendation point published at the Summary Report prepared by Human Rights Council, 'Working Group on the Universal Periodic Review'

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02
Organize national-level consultations as a follow-up action for UPR;

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nise capacity building workshops
training programmes around
nternet related human rights
sues and the IRHR curriculum

05
Strengthen 'human rights defenders' and 'right to information' practitioners network;

07
Engage with National Human
ights Institutions (NHRIs), Right
o Information practitioners and
other stakeholders on issues
on Internet Rights

08
Rolling out 'Digital Literacy, Safety & Security Programme' nationwide and strengthening internet governance initiatives

2013

01
DEF is working with national level institutes such as IIM Indore and NISG (National Institute of Smart Governance) to deliver training programmes on m-Governance;

02
DEF Director invited as policy advocator and member at Working Group 'Internet Governance Forum' under the Ministry of Communication & IT;

03
Advocating towards 'Internet as a Basic Right' by publishing its articles in various media groups

2014

01
Initiating Internet Research (IR) Programme catering to issues around internet and publish one white paper/research paper in every quarter;

02
Initiated Digital Literacy, safety and security programme to impart digital literacy and promoting ways and means for users to stay and safe online and advocate digital security and privacy needs in India;

03
Initiated mapping of online sexual assaults in India;

India stands at the brink of a huge push towards digitalisation. India has the second largest number of users that connect to the internet through the mobile. However, there are still over 900 Million users that still have no access to or have limited interaction with the internet.

The report aims to assess the state of internet freedoms in India and to assist decision makers, CSOs, policy makers, national and international human rights and internet rights advocates. Further, the report will help identify policy gaps, generate recommendation points and identify key stakeholders who play vital roles in reforming policies, and assist in the development of advocacy strategies to protect human rights online and offline. Finally, this research seeks to contribute to the understanding of how the internet can help promote and strengthen human rights as laid down in national and international frameworks.

Supported by the European Union under the Instrument for Democracy and Human Rights (EIDHR)