INTRODUCTION, BACKGROUND AND METHODOLOGY

BY ARINDRAJIT BASU

INTRODUCTION

Background

Amidst global trends towards authoritarianism and closing space for civil society, India's dynamic changing landscape calls for ongoing attention. In the last year alone, upheaval around the Citizenship Amendment Act protests, sectarian violence and communal riots in Delhi and elsewhere, the emergence of Covid-19, and issues of statelessness and discrimination have raised questions about the state of civic freedoms in India. At the same time, efforts to mold and restrict civil society, through funding limitations and a narrative against activism and 'foreign agents,' continue to reverberate across the non-profit sector. Technology has played a major role in all of these developments, with expression and democratic debate increasingly carried into the digital sphere, and privacy, data, and surveillance taking center stage, particularly amidst a global pandemic. India additionally has the notorious distinction of being the world's democracy with the longest-running internet shutdown. Other examples of how digital rights are being impacted in India abound: possible government-sanctioned surveillance on activists and journalists; various forms of censorship, and denial of access to information.

Documentation and consideration of such phenomena is critical, given the role digital developments will play shaping Indian society in the 21st century. Technology can be a great enabler of constitutional values, welfare, and act as a facilitator of public discourse. It can also be used by the state to fetter the realization of constitutional rights and restrict the growth of civil society activism and public discourse. To date, there exists little comprehensive coverage of the overall universe of policies and laws affecting digital rights, and how their implementation is impacting Indian civil society actors, including non-profits, activists, media, minority groups, and others.

India's constitutional ethos provides for a wide array of fundamental rights designed to protect and empower the most vulnerable. It views the state as a key actor in breaking existing barriers of structural inequality - something technology can play a role in - if designed and implemented reasonably, with the widest possible consultation. Given India's status as the world's most populous democracy, along with its considerable heft in the Information and Communications Technology (ICT) sector globally, how these issues play out will be critical for the future of digital civic space, in South Asia, Asia, and beyond.

This report undertakes an examination of key topics related to digital rights and civic space in India. It focuses on four areas of particular concern, where restrictive policies threaten to violate fundamental freedoms and restrict civil society and public participation. The topics covered include: 1) Internet Shutdowns, 2) Online Censorship, 3) Platform Governance, and 4) Surveillance. Each chapter begins with a factual overview identifying the scope of the problem across the country. It proceeds to evaluate relevant Indian laws and regulations affecting the enjoyment of fundamental human rights of members of

civil society online, including the rights to free association, assembly, expression, privacy, access to information and public participation. The chapter then summarizes relevant international law and standards, many of which are obligatory on the Indian government and constitute binding international commitments, and concludes with some reflections and recommendations.

Ultimately, the report emphasizes the importance of a free, fair, and democratic digital civic space in line with international law and best practices. It evaluates ongoing Indian policies in the four topic areas in light of these standards, and provides suggestions for paths to reform that Indian policymakers can undertake to enable the use of technology in consonance with India's rich constitutional ethos.

Methodology

This report was researched and written by the Centre for Internet and Society (CIS), with support from the International Center for Not-for-Profit Law (ICNL). Researchers at CIS with specialized knowledge in digital rights undertook an expansive review of a wide range of sources related to this topic, including academic scholarship and legal literature, news articles, government documents, laws, and other publications. In addition to desk research, two teams of CIS researchers travelled across five cities - Jodhpur and Jaipur (state of Rajasthan), Ahmedabad (state of Gujarat), Siliguri (state of West Bengal), and Guwahati (state of Assam). Each of these states have a vibrant civic space, and have seen a number of individuals and organizations engaging with key issues in the digital space over the past months. Researchers interviewed a diverse array of stakeholders, including student activists, public interest lawyers, government officials, party workers, and journalists. While refraining from undertaking quantitative or empirical analysis of the fieldwork findings, the qualitative insights and data gathered from these interviews were instrumental in the shaping of this report.

This report uses the World Bank's definition of "civil society," namely: "a wide array of organizations: community groups, non-governmental organizations [NGOs], labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations."[1] However, to truly understand public participation in a democracy, the report looks beyond organised groups and their workings, and examines how various individuals participate in public processes - including through protests, writing, and engagement through social media. Thus, when considering the impact of digital rights, this report did not limit its investigation only to organised civil society but considered a larger scope to engage with a broader notion of public participation.

To read the rest of the report, click here.

---

1 https://www.worldbank.org/en/about/partners/civil-society/overview

ACKNOWLEDGEMENTS