

Transparency International Anti-Corruption Helpdesk Answer

Overview of corruption and anti-corruption developments in India

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Once regarded as the world's largest democracy, the success of India's democratic performance stands at a crossroads with increasing restrictions on fundamental freedoms and a crackdown on those speaking against the government. Corruption remains an endemic problem that affects various areas in the public and private sectors, including institutions such as the police and judiciary, while affecting all levels of governance. The vast majority of human rights abuses in the country are enabled via a corrupt environment. The government has crippled critical law enforcement and accountability institutions at the central and the state level by the twin devices of amending the anti-corruption laws to curb their effectiveness, functional autonomy and politicising the appointments to human rights commissions, information commissions and anti-corruption agencies like Lokpal and Lokayuktas. Systemic corruption has resulted in the curbing of voices of dissent raised by anti-corruption campaigners, transparency and accountability advocates and human rights activists. Journalists reporting corruption are particularly at risk in an increasingly curtailed civic space.

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Query

Please provide an overview of corruption and anti-corruption developments in India.

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Background

Once regarded as the world's largest democracy, India's democratic performance currently stands in question. The country was declared an "electoral autocracy" by the Varieties of Democracy (V-Dem) Institute (2020, 13) and a "flawed democracy" by the Global Democracy Index 2020 (EIU 2020). Political analysts opine that the incumbent government, led by Prime Minister (PM) Narendra Modi and his Hindu nationalist¹ Bharatiya Janata Party (BJP), is one with "all the trappings of democracy while operating as a *de facto* autocracy" (Freedom House 2021a; Ibrahim 2020; Biswas 2021; Ganguly 2021).

A key topic of Modi's populist agenda that brought him to power in 2014 was the fight against corruption and "black money"² (Bertelsmann Stiftung 2020, 11). The background to this was a

¹ Hindu nationalism, Hindutva and Hindu extremism may be used interchangeably to refer to the "project of achieving a Hindu Rashtra, or state, in India". Described as right-wing extremist, the ideology emerged in colonial India through "sustained interaction with ideologues in Fascist Italy and

Main points

- Corruption remains an endemic problem for India, pervading all levels of governance.
- The violation of human rights in the Indian context is enabled by corruption, with the government using its control over key institutions, including but not limited to the police and judiciary, to silence dissent.
- Key anti-corruption legislation, such as the right to information and the Lokpal and Lokayukta laws, have been undermined in recent times.
- Accountability institutions are being strategically subverted.
- Media and CSOs face increasing pressures from incumbent powers to toe their line or simply shut down.

Nazi Germany" but only gained mainstream momentum post-Modi coming to power in 2014 (Leidig 2020).
² Black money can be classified as money hidden from tax authorities. It stems from two broad categories: illegal activity and legal but unreported activity (Raghavan 2019).

large anti-corruption movement that started in 2011 as a response to a series of high-level scams³ within the previous congress party-led coalition (Singh 2014, 18). The Indian anti-corruption movement was based on extensive anger against the “corporate loot of public exchequer”. The movement mobilised large sections of the population and affected the Indian anti-corruption discourse by creating a general awareness of corruption (Singh 2014, 18; Anuja 2019; Bertelsmann Stiftung 2020, 11). Nevertheless, corruption remains endemic, prevailing at all levels of governance and affecting sectors including but not limited to public services, procurement, police and the judiciary (Bertelsmann Stiftung 2020, 11).

Most corruption is believed to go “unreported and unpunished”, and the “authorities have been accused of selective, partisan enforcement” (Freedom House 2021a). Bertelsmann Stiftung (2020, 11) notes that office-bearers engaging in corrupt activities are not prosecuted effectively and often slip through “political, legal or procedural loopholes” (Freedom House 2021a). The Lokpal (ombudsman authority) was a “non-starter” for five years after coming into force and has been significantly weakened (Johri and Bhardwaj 2020). Other anti-corruption reforms such as the 2016 “demonetisation”,⁴ which washed away at least 1 per cent from the country’s GDP and cost approximately 1.5 million jobs, have been cited as being “entirely unsuccessful” (Safi, 2018; Bertelsmann Stiftung 2020, 3, 20). Demonetisation particularly affected the poor and

marginalised groups. For example, 80 per cent of women in India do not have access to bank accounts according to a 2015 UNDP report and use saved cash as a safety net (Jha 2016). In such a context, the erosion of cash reserves is deemed to “severely impact a large number of physically and emotionally abused women” (Mukherjee 2016; Jha 2016).

While the constitution ensures civil liberties (such as freedom of expression and freedom of religion), persecution of government critics, journalists, non-governmental organisations (NGOs) and minorities such as Muslims, Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis)⁵ has increased significantly in various parts of the country (Freedom House 2021a; HRW 2021; Press Trust of India 2020; Das 2020; Brader 2021). The freedom of assembly and association is also being curbed as witnessed by the repression of peaceful protests (ICJ 2020).

The country faces issues of significant human rights violations with the government using “draconian laws such as the sedition provisions of the penal code [of colonial vintage], the criminal defamation law, and laws dealing with hate speech,” as well as its control over key institutions, including but not limited to the police and judiciary to restrict freedom of the press, silence dissent, and arbitrarily arrest and detain critics (HRW 2016; Amnesty International 2020; US Department of State 2020, 1-2). Such a scenario is telling of corruption and human rights violations being closely linked in India as the former enables

³ Including, but not limited to, *2G spectrum scam* - estimated at US\$40 billion; the *Commonwealth Games held in Delhi* causing losses of US\$38 million; *Coal block allocation scam*, *Adarsh Housing Society scam* (Singh 2014, 18).

⁴ Overnight replacement of banknotes in an attempt to fight corruption and black money in circulation.

⁵ Scheduled castes and scheduled tribes also known as SC and ST.

violation of the latter via abuse of power to stifle dissent among others.

The ongoing COVID-19 pandemic and ensuing lockdowns have had an adverse impact on the lives of ordinary Indians, especially marginalised groups. Apart from the impact on health care infrastructure, which crumbled under the strain, there has been an excessive loss of livelihood for migrant workers during the lockdowns, challenges surrounding food availability, health, nutrition, education and access to public facilities (UNICEF 2021, 3; Seervai and Shah 2021). The pandemic also provided the incumbent government with a "convenient pretext" to silence critics and consolidate power (Roth 2020). Corruption has been a prominent feature of the pandemic, with reports of black-marketing essential medical items and services, overcharging COVID-19 patients, fraud in the procurement of ventilators and distribution of fake vaccines, among others (Press Trust of India 2021; Afridi 2021; Mateen 2021; Cuadrado 2020). A COVID-19 relief fund known as the Prime Minister's Citizen Assistance and Relief in Emergency Situations (PM-CARES) also faces issues regarding its transparency (Sharma 2021).

Extent of corruption

India ranks 85 out of 180 countries with a score of 40 in Transparency International's 2021 Corruption Perceptions Index (CPI).

The World Bank's Worldwide Governance (WGI) Indicators (2020) assign the following scores (in percentile rank)⁶ to the country:

Indicator	2016	2018	2020
Control of corruption	47.6	49.5	46.6
Government effectiveness	55.8	63.5	66.8
Political stability and absence of violence/terrorism	14.8	14.2	17.0
Regulatory quality	41.3	44.2	47.6
The rule of law	53.4	55.3	54.3
Voice and accountability	61.6	58.0	53.1

⁶ Percentile rank showcases the country's rank among all countries under the aggregate indicator, with 0

Control of corruption	47.6	49.5	46.6
Government effectiveness	55.8	63.5	66.8
Political stability and absence of violence/terrorism	14.8	14.2	17.0
Regulatory quality	41.3	44.2	47.6
The rule of law	53.4	55.3	54.3
Voice and accountability	61.6	58.0	53.1

The WGI indicators show that voice and accountability have taken a hit over the years, with the percentile rank steadily falling. At the same time, regulatory quality is deemed to have improved while still being low on the percentile rank scale.

The 2021 TRACE Bribery Risk Matrix places India in the "medium" risk category, ranking it 82 out of 194 countries, with a risk score of 44 (TRACE International 2021a; TRACE International 2021b).

Freedom House (2021a) stated India is "partly free" in its Freedom in the World 2021 report with a score of 67/100. This is a drop from the erstwhile "free" status held by the country. The decline is attributed to a "multi-year pattern" of the Hindu nationalist government and its allies who have "presided over rising violence and discriminatory policies affecting the Muslim population and pursued a crackdown on expressions of dissent by the media, academics, civil society groups, and protesters" (Freedom House 2021a). Other

relating to the lowest rank and 100 to the highest.

minorities in the country are also facing increasing attacks. Persecution Relief, a non-profit organisation that monitors violence against Christians reports that crimes against the community have increased by 60 per cent between 2016 and 2019 (Krishnan 2021c).

Transparency International's Global Corruption Barometer (GCB) Asia 2020 reports that:

- 89 per cent of respondents believe that government corruption is a big problem (Transparency International 2020a, 41)
- India has the “highest overall bribery rate” as well as the “highest rate of citizens using personal connections” in the region, standing at 39 per cent and 46 per cent, respectively (Transparency International 2020a, 23; Transparency International 2020b)
- 50 per cent of the respondents that had paid a bribe stated that they were asked to pay a bribe to access a particular service (Transparency International 2020a, 23)
- 36 per cent of those using personal connections believed that they would be unable to access services without using such connections⁷ (Transparency International 2020a, 23)
- the percentage of respondents who either experienced sextortion⁸ themselves or knew someone who had stood at 11 per cent (Transparency International 2020a, 26)
- 18 per cent of respondents had been offered bribes in exchange for votes (Transparency International 2020a, 29)
- 56 per cent of respondents thought that ordinary citizens could make a difference in the fight against corruption (Transparency International 2020a, 30)

⁷ Perhaps the starkest evidence of this phenomenon was present during the COVID-19 pandemic. A survey found that 55 per cent of patients in India “needed clout or connections to get COVID ICU beds” (Zompa 2021).

⁸ Sextortion is defined by the International Association of Women Judges (IAWJ) as “a form of sexual exploitation



CORRUPTION BY INSTITUTION*

*Percentage who think that most or all people in these institutions are corrupt.

President / Prime Minister	42%
Members of Parliament	42%
Government officials	41%
Local government officials	46%
Police	46%
Judges and magistrates	20%
Religious leaders	36%
NGOs	22%
Business executives	29%
Bankers	15%
Army leaders	10%

Figure 1: corruption by the institution in India according to GCB Asia 2020 (Source: Transparency International 2020a, 41).

Forms of corruption

There are various forms of corruption, including but not limited to petty corruption, nepotism, patronage networks and grand corruption operating in India (Bertelsmann Stiftung 2020, 8; Khan and Sandhu 2020)

It ought to be noted that certain forms of corruption are intrinsically linked to discriminative practices in the country. For example, nepotism is known to extend beyond kinship networks to

and corruption that occurs when people in positions of authority ... seek to extort sexual favours in exchange for something within their power to grant or withhold. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe" (IBA n.d.).

operate along the caste⁹ axis as well (Sampath 2020). Citing the caste-based nepotism system as being “ubiquitous”, a report from the Economist states that, while there are reservations for Scheduled Castes and Scheduled Tribes in legislatures and civil services “...in the government as in the private sector, the highest positions remain a near-monopoly for the three top tiers or varnas of the broader caste pyramid” (Khan and Sandhu 2020). A study conducted by Oxfam India and Newsland (2019) found that Indian media is “predominated by the upper castes”, adding that “Scheduled Tribes are almost entirely absent, whereas the Scheduled Castes are represented mostly by social activists and politicians rather than journalists”.

Due to varying levels of corruption, as well as the quality of public service delivery, the prevalent forms of corruption may differ according to the region. For the purpose of this paper, three illustrative forms of corruption are being listed.

Petty corruption

As mentioned in the previous section, India has the highest bribery rate and the highest rate of citizens using personal connections in Asia (Transparency International 2020b). A complicated and slow bureaucracy, excessive red tape and ambiguous regulatory mechanisms enable a culture where citizens use “networks of familiarity and petty corruption” to access basic services (Transparency International 2020a, 23). Bribes are paid to both obtain and expedite services, such as police protection, school admission, water supply and

government assistance (US Department of State 2020, 43). However, what ought to be noted is that the digitisation of several public services has given rise to newer forms of fraud and corruption. In the context of India where banking literacy is low, there are several cases reported wherein a nexus of corrupt businesses/banking correspondents on the pretext of providing access to banking services rob beneficiaries entitled to wages, pensions, direct benefit transfers (DBT) and scholarships (Angad 2020; The Wire 2020).

Bribery and corruption are also widespread in business activities, with 44 per cent of Indian respondents to a survey conducted by EY saying that at least one of the practices, such as “offering cash, entertainment, personal gifts and misstating financial performance is acceptable for business survival” (Press Trust of India 2018).

A study on *jugaad*, which is a “regular way of doing business in India”, shows that corruption, especially petty corruption, is entrenched in the cultural fabric (Jauregui 2014, 76-77). *Jugaad* refers to “goal-oriented improvisation, especially the use of informal social networks to advance one’s interests” (Jauregui 2014, 76). While being understood as being possibly corrupt, *jugaad* is also regarded as essential for “getting by” and even as a “virtuous practice” involving innovation (Jauregui 2014, 76-77). With respect to peoples’ attitude towards the concept, it ranges from being negative due to its association with explicit *bhrashtaachar* (corruption) to neutral nonchalance and finally “positive pride in their demonstrations of ingenuity” (Jauregui 2014, 82-84). Stemming from the

⁹ In the caste system, Hindus are divided up into four classes based on birth: Brahmins (the priestly class); Kshatriyas (the ruling, administrative and warrior class); Vaishyas (the class of artisans, tradesmen, farmers and merchants); Shudras (manual workers). Some people fall

outside the system, including tribal people and the Dalits, previously known as “untouchables”. While the Indian constitution abolishes castes, inequalities under the system persist (Jones 2017).

“capability to provide a social good and a temporary means of mobility geared toward a better future”, *jugaad* can help shed light on petty corruption practices that are morally acceptable in the country (Jauregui 2014, 87).

A range of measures could be applied to address petty corruption in the country. These include but are not limited to streamlining of administrative processes at the central and state levels,¹⁰ employing preventative measures to counter nepotism and bribery, and setting up user-friendly online platforms to offer quick and efficient service delivery with appropriate safeguards (Transparency International 2020a, 23).

Civil society initiatives for petty corruption

Countering everyday institutionalised corruption can be a challenge in India. Some recent attempts at awareness-raising and changing established norms include:

I Paid a Bribe: an online platform where citizens can report having paid a bribe or not in a given situation. Reports and statistics are made openly available and are forwarded to the Central Vigilance Commission (CVC) (ipaidabribe.com n.d.).

Zero Rupee note: an initiative that started in 2015 distributed Zero Rupee notes in areas where officials are known to solicit bribes. The notes are identical to Indian banknotes but carry the slogan, “Eliminate corruption at all levels”, and the pledge,

“I promise to neither accept nor give bribe”. The main aim of the campaign was to spread awareness and build citizen interest in anti-corruption while at the same time mounting pressure on authorities to act against corruption (Lloyd 2015).

Political corruption

Political corruption severely undermines the rule of law in India. Officeholders engaging in corrupt activities often make use of “political, legal or procedural loopholes” to avoid prosecution (Bertelsmann Stiftung 2020, 11). There are several ways in which political corruption manifests in India, ranging from voter suppression, opacity in political party financing and cases of embezzlement and fraud involving influential political actors, among others (Trivedi 2019, Bertelsmann Stiftung 2020, 33; Desai 2020; Bhardwaj and Johri 2020; Vij 2019).

Ahead of the 2019 national elections, the names of 12 crore (120 million) Indians were estimated to be missing from the electoral rolls¹¹ by the No Voter Left Behind campaign. The majority of missing voters belonged to the vulnerable groups of Muslims, Dalits and women (Trivedi 2019). S.Y. Quraishi, the former chief election commissioner of India, opined that, “In today’s charged atmosphere of communal polarisation and the fact that political parties use a lot of money, they can bribe election officials instead of seeking votes through a campaign... Anything is possible. You could simply delete a whole chunk of voters”

¹⁰ India is quasi federal with a central or union government at the federal or national, state governments at the regional levels and special union territories that come under federal administration.

¹¹ Another case of disenfranchisement comes from the phenomenon of “doubtful voters” in state assembly

elections of Assam. A list of doubtful voters was prepared as a part of the National Register of Citizens (NRC) and contains the names of those who cannot offer proof of their Indian nationality and “whose cases are pending with the foreigners tribunals or who have been declared as foreigners by the tribunal” (Deccan Herald 2021).

(Shankar 2019). An exercise was undertaken to match data on missing voters with on-ground surveys in 10 sample constituencies. Several cases were reported wherein people with valid voting cards who had cast their votes in previous elections were deleted from electoral rolls (Shankar 2019).

Missing voters mobile application: a free app that can be used to discover missing voters, conduct household surveys and apply for the new voter IDs was launched ahead of the 2019 elections. In 2019, the app had logged over 80,000 downloads on Android and 5,000 on iOS, resulting in voter registrations for 40,000 people (Google Play 2022; Shankar 2019).

Political finance has been a major source of pervasive corruption in India, particularly as the costs of elections in the country have “soared past the multi-billion-dollar mark” (Desai 2020).

New political party financing rules now allow corporations, including those firms owned by foreign entities,¹² to fund elections anonymously. One instrument in this regard, electoral bonds, was argued by the incumbent powers to bring transparency into the usually murky realm of political finance. The government-owned State Bank of India sells electoral bonds to anyone in denominations ranging from ₹1,000 to ₹10 million (US\$14 to US\$140,000). Once these bonds are received by a political party, they can exchange them for cash. These bonds do not list the donor’s details and are exempt from taxation (Rodrigues et al. 2019).

¹² As long as the ownership by the foreign entity remains less than 50 per cent.

The bonds, coupled with other rules removing caps on corporate donation¹³ and allowing newly formed companies to donate to political parties creates a scenario wherein shell companies can be set up explicitly for the purpose of funding elections. It is important to note that these amendments did not meet much resistance as parties, even in opposition, were suspected of benefiting from the lax rules (Rodrigues et al. 2019). Such changes in political financing rules have “only further legitimised anonymity, opacity and obfuscation” in the sector (Vaishnav 2019). The legal challenge to the electoral bonds is yet to come up for hearing in the supreme court (DHNS 2021).

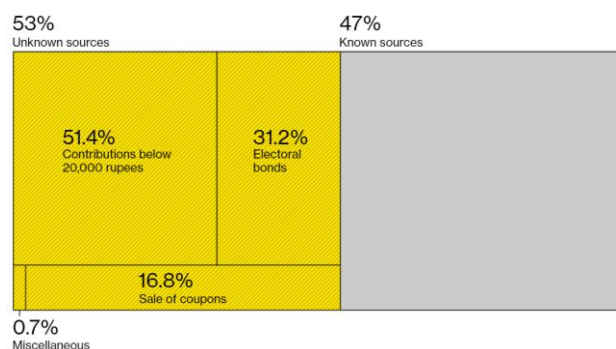


Figure 2: Indian political parties were largely funded via unknown sources for the financial year 2018. Source: Parties’ audited declarations to the Election Commission of India, compiled by Association for Democratic Reforms (ADR) and Rodrigues et al. 2019.

Vote buying in Indian elections is such a common phenomenon that Still and Dusi (2020) opine that it has “become a key feature of election culture”. It is a practice that cuts across political parties operating at the national and regional levels. Candidates are known to distribute handouts – primarily cash and gifts in kind before elections as voters have come to

¹³ Which was limited to 7.5 per cent of the company’s average net profit over a three-year period.

expect them (Biswas 2018). Taking the example of a small city, Ongole, in Andhra Pradesh, Murali (2017) reports that the people have been “enjoying the freebies offered by the two main parties of Tamil Nadu — the DMK¹⁴ and the AIADMK¹⁵” – for a long period of time. These gifts, including but not limited to colour televisions, fans and mixer-grinders, apart from being used by recipients, are also often then sold by them at “dirt cheap prices” (Murali 2017).

Crony capitalism

“Big-ticket corruption” scams continue to emerge. For example, the €7.87 billion Indo-French Rafale deal for fighter aircrafts signed in 2016 bypassed mandatory procedures and was deemed to be inflated (Ram 2019; the Hindu 2021c). A French portal, Mediapart, alleges that aircraft manufacturer Dassault Aviation had paid bribes amounting to €1 million to an intermediary to secure the deal (Philippin 2021; The Indian Express 2021). The intermediary in question, Sushen Gupta, was already on a charge sheet from the Enforcement Directorate in a different corruption case involving the AgustaWestland VVIP chopper deal¹⁶ (The Indian Express 2021). The Punjab National Bank (PNB) scam also showcases how fraudulent guarantees worth US\$1.8 billion were obtained over seven years to secure loans from lenders outside India through collusion between Nirav Modi,¹⁷ his uncle Mehul Choksi, and other relatives and a few PNB employees (Bloomberg 2018; Business Standard 2018).

While these cases that have emerged over the last few years are indicative of large-scale corruption,

major transactions involving these scams occurred during the time of the previous United Progressive Alliance (UPA) regime headed by the Indian National Congress Party. Representatives of the current government claim that not a “single instance of corruption” has taken place since the BJP lead National Democratic Alliance came to power (The Telegraph 2021). Nevertheless, what ought to be noted is the country is witnessing new forms of corruption challenges that highlight risks, such as crony capitalism (Nayar 2021; Ray 2021).

Rajshekhhar (2020) opines that due to “funding compulsions of Indian politics,¹⁸ crony capitalism will remain”, adding that only the mechanisms that favour certain firms over others are changing. For instance, an investigation by Reporters Collective (2021) found the “government auctioned 19 [coal] mines in the middle of the pandemic” at low prices under a new bidding method that allows “private and foreign companies in any sector to dig mines and sell coal”. The sale value of two coal mines in Chhattisgarh in 2020, for example, was a quarter less for the first mine, and nearly 60 per cent less for the second mine than the price that the government had previously rejected for being too low in 2015 (Jalihal and Tapasya 2021). Furthermore, recent measures such as the National Monetisation Pipeline (NMP), which involves handing over essential public services to the private sector, carries large risks for short-changing public sector partners and poor service delivery (Nayar 2021).

¹⁴ Dravida Munnetra Kazhagam.

¹⁵ All India Anna Dravida Munnetra Kazhagam.

¹⁶ The AgustaWestland VVIP chopper deal was struck under the previous UPA government (Bambha 2018).

¹⁷ Nirav Modi is a fugitive Indian businessman, he was running a business of luxury diamond jewellery (Business Standard n.d.).

¹⁸ Companies are known to fund political parties to gain “future goodwill” and in exchange of “policy and regulatory discretion” (Guha 2019).

The manner of privatisation of key infrastructure components such as ports, airports and public sector enterprises also signals the strengthening of crony capitalism. In 2018, the Adani group,¹⁹ with no prior history of operating airports, won the bid for all six airports that were approved for privatisation by the government (Findlay and Lockett 2020). It been alleged that during the takeover of three of these airports, aeronautical and non-aeronautical assets of the Airports Authority of India (AAI) worth ₹1,300 crore (approximately US\$17.5 million) were sold to the Adani group at less than half the price – ₹500 crore (approximately US\$6.7 million) (Chandra 2021).

Corruption and human rights

The negative impacts of corruption on the enjoyment of human rights are widely accepted (HRC 2015, 6). The Office of the High Commissioner for Human Rights (OHCHR) (2013) states that corruption can have a harmful impact on the “availability, quality and accessibility of human rights-related goods and services”, adding that disadvantaged groups are disproportionately affected by corruption. States are required by international law to respect, protect and fulfil human rights. These obligations are (OHCHR n.d.):

- “The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.
- The obligation to protect requires States to protect individuals and groups against human rights abuses.

- The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.”

By undermining the “functioning and legitimacy of institutions and processes, the rule of law and ultimately the State itself”, corruption can have an adverse impact on the aforementioned obligations of states vis a vis human rights (OHCHR 2013). Moreover, corruption can also provide an environment in which the violation of human rights can be enabled via the denial of access to justice and repression of fundamental freedoms, among others. The following sections explore the link between corruption and the three obligations of the Indian state with respect to human rights.

Respecting human rights

Numerous cases of alleged human rights violations have emerged in India over the past few years (Brader, 2021). The government’s responsibility to respect human rights means that the state must not act in violation of these rights. Corruption can undermine this duty. For instance, when the government makes use of law enforcement agencies and justice institutions to unfairly detain, arrest or intimidate opponents or dissidents, then people’s safety and the pursuit of justice is endangered.

Amnesty International (2021) noted that during the recent farmers’ protest against the agricultural reform laws passed in 2020, the Indian government cracked down on journalists and protestors by “hindering access to protest sites, shutting down the Internet, censoring social media and using draconian laws” for their arrest. Similar crackdowns were levied on those protesting the

¹⁹ Adani group is promoted by Gautam Adani who is a key supporter of the ruling party (Findlay and Lockett 2020).

Citizenship Amendment Act (CAA)²⁰ (Lokaneeta 2020). Police were “deployed to violently suppress dissent” during both protests (Aheed 2021). Journalists and politicians reporting on farmers’ protests were charged with sedition (Amnesty International 2021).

Human rights defenders and anti-corruption activists are also at significant risk. According to the [Hall of Shame](#), a platform that monitors attacks on right to information (RTI) users, 96 have been murdered, 177 assaulted, and 186 have been threatened or harassed since 2010²¹ (CHRI 2022).

Watchdog organisations such as Amnesty International India had to close operations in the country after facing “reprisal” from the government. The Enforcement Directorate (ED) froze the organisation’s accounts on alleged money laundering charges stemming from supposedly violating the Foreign Contribution Regulation Act (FCRA) (Shantha 2020).

Modifications to the law are being used by the BJP government to restrict the functioning of civil society organisations (CSOs) (V-Dem 2021, 21). However, Freedom House (2021a) notes that the organisation was apparently punished for criticising the “government’s actions in Kashmir and the Delhi police’s complicity in the February 2020 communal violence, in which Muslims were the main victims”. Amnesty International also reported on an alleged “coordinated spyware campaign” whose targets were several human rights activists (Freedom House 2020a).

²⁰ CAA allows illegal immigrants to become citizens. However, only Hindu, Sikh, Buddhist, Jain, Parsi or Christian illegal immigrants are eligible to become citizens. The law denies the right to Muslims. Critics opine that the

Protection of human rights

States are tasked with protecting human rights, and they must ensure that there is no infringement of these rights. Corruption can undermine this obligation by enabling states to turn a blind eye to human rights abuses carried out by various actors, including but not limited to corporations, criminal groups and their affiliated agencies, as was touched upon in the previous sections.

Statutory organisations meant to protect human rights in the country have been undermined. For instance, the National Human Rights Commission (NHRC), which is India's statutory human rights body, “intended to act as an independent watchdog to monitor the actions of the state and its agencies”, has been reduced to a “loyal lapdog of the institutions it is supposed to monitor” (Krishnan 2021a).

Legislative frameworks are being amended to permit the exploitation of natural resources with fewer accountability measures. For example, the country’s environmental regulatory system is meant to monitor and mitigate the impacts that “resource-intensive and potentially harmful” projects can have on the environment and communities. This framework has witnessed a “major overhaul since 2015” (Kohli and Menon 2021).

In 2020, the Ministry of Environment, Forests and Climate Change (MoEFCC) issued the draft environmental impact assessment (EIA) notification. It delineates the procedure and requirement of gaining environmental clearance for infrastructural and industrial projects. The

law violates the constitution, which prohibits discrimination by religion (Pillai and Lindberg 2021; V-Dem 2021, 20).
²¹ As of 26 January 2022.

most controversial and criticised portions of the draft include ex-post-facto environmental clearance, allowing for numerous project categories to bypass public consultation and the functioning of expert appraisal committees being put more under central oversight (Kapoor and Dinesh 2021). The EIA has been criticised for being drafted in a way which “allows for industries to continue turning a blind eye to environmental concerns” and undercutting “India’s biodiversity and climate goals” (Lo 2020; Mishra et al. 2020).

Kohli and Menon (2021) argue that corruption in natural resource management and public governance inefficiency, combined with an atmosphere in which economic development and environmental regulations have been politicised is resulting in “democratic engagement being reduced” and “ignorance” when it comes to the legality of projects and their impact on ecology and communities, among others.

Corruption and discrimination are closely tied in India. Various forms of corruption operate via a caste nexus in India. While the law provides safeguards for Dalits, significant cases of violence (especially sexual violence against Dalit women) and discrimination in access to services, such as health care, education, access to justice, freedom of movement, access to institutions, among others, have been witnessed (US Department of State 2020, 62).

As highlighted earlier, corruption affects vulnerable groups disproportionately (OHCHR 2013). Anecdotal evidence suggests that marginalised communities, including Dalits, regularly face

harassment and corruption in accessing public services (that is, Dalits are often prevented from owning state allocated land due to objections by higher castes and bribery demands by local authorities) (Chandran 2016). Such crimes against marginalised communities often go unpunished as authorities fail to prosecute perpetrators or because victims do not report such abuses due to fear of retaliation (US Department of State 2020, 62). Corruption is rampant in prisons where inmates are most vulnerable. Tihar jail officials in the country’s capital reportedly extorted bribes in exchange for basic amenities for inmates (Pal Singh 2019). On the other hand, the case of Sukesh Chandrashekhar,²² wherein he supposedly paid Rs60-75 lakh (approximately US\$87,000 to US\$93,000) per fortnight as bribes to have an entire prison barrack to himself and for access to a mobile phone, shows how broken the prison system is with respect to corruption (Haider et al. 2021).

Fulfilling human rights

Corruption can substantially harm a government’s ability to fulfil its human rights obligations. For example, when public funds meant for social welfare, such as health care or education, are embezzled, or when collusion in procurement procedures fails to provide the required goods and services for the citizenry, states can fail to fulfil citizens’ human rights.

PM-CARES Fund (Prime Minister’s Citizen Assistance and Relief in Emergency Situation Fund), for instance, created in March 2020 for assisting in COVID-19 pandemic relief work, is shrouded in secrecy (Bhatnagar 2022). Portions of the fund were earmarked (₹20 billion / US\$268

²² He allegedly extorted ₹200 crores (approximately US\$27 million) from a desperate wife of a millionaire who was trying to bail out her husband (Pandey 2021).

million) for bolstering health care infrastructure, including procuring ventilators and oxygen for hospitals. However, “the fund failed to adequately provide essential supplies during the catastrophic second wave” (Sharma 2021). There were also reports of the procurement of defective ventilators under the PM-CARES Fund (Afridi 2021).

While the fund is housed in the prime minister's office and managed by officials on an “honorary basis”, the government claims that it is a “public charitable trust,”²³ and therefore not within the purview of the country's right to information act (RTI) (Sharma 2021; Bhatnagar 2022). Substantial funding from government ministries, including even money meant for “assistance related to Bhopal gas leak disaster²⁴”, has been “drained” into the fund (the Hindu 2021b). CSR (corporate social responsibility) from businesses and large donations by private individuals and government employees have also been made to PM-CARES (Sharma 2021; Bhatnagar 2022).

The fund has been exempted from Foreign Contributions Regulation Act (FCRA), which regulates foreign contributions to NGOs operating in India (Bhatnagar 2022). Government machinery, including the prime minister and Indian embassies, were used to promote the fund in India and across the world (Sharma 2021). An anti-corruption activist, Bhardwaj, opines that “essentially, at the time of taking funds, the government said that PM-CARES is a public authority, but when it comes to giving information

and being transparent, the government is claiming that it's not a public authority” (Sharma 2021).

Corruption and financial leakage affect several other government programmes, such as the Integrated Child Development Services (ICDS), which is India's flagship programme to address malnutrition and health problems among children and mothers (Bertelsmann Stiftung 2020, 23).

Legal framework

International conventions and initiatives

The United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC) were ratified by India in 2011 (UNODC 2022). The country is not a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business. India is a member of the G20 Working Group against Corruption (GAN Integrity 2020).

Domestic legal framework

India has several laws dealing with corruption, the most prominent ones at the federal level are as follows (please note that Indian states could have instituted their own rules, which is not covered in this section):

²³ The union government recently submitted before the Delhi high court that PM-CARES Fund was set up as a charitable trust, and “it was not permissible to disclose third party information” pertaining to it (Bhatnagar 2022).

²⁴ The disaster took place in 1984 when in an accident at the Union Carbide pesticide plant in Bhopal, 30 tons of

highly toxic gases were released into the atmosphere exposing 600,000 people at the time. Government figures state that 15,000 people were killed as a result of the accident (Taylor 2014).

Indian Penal Code (IPC), 1860: deals with the unlawful purchase of property and criminal breach of trust in public servants²⁵ (PRS n.d.).

The Benami Transactions (Prohibition) Act, 1988: prohibits any Benami transaction – the purchase of property in the name of another person or under a false name²⁶ (PRS n.d.).

The Prevention of Money Laundering Act, 2002: delineates the definition of money laundering, which takes place when a “person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property”. The law also calls for the maintenance and verification of all customer records by banks, financial institutions and intermediaries and its provision of this information to relevant authorities (PRS n.d.).

Companies Act, 2013: outlines rules for companies²⁷ operating in the country and has elements to counter private sector corruption. For example, the law highlights mechanisms for the protection of whistleblowers, industry codes of conduct and the appointment of independent directors to company boards (GAN Integrity 2020). The law calls for a “vigil mechanism” for directors and employees of listed and other companies.²⁸ The audit committee is tasked with scrutinising financial records as well as acting as an “ethics watchdog” (Kapoor and Kanuga 2021).

Whistle Blowers Protection Act, 2014: drafted in 2011, the law was renamed The Whistleblowers

Protection Act, 2014 and was passed by both houses of parliament, but it has not been notified in the official gazette as yet (Arora and Chawla 2020; Kapoor and Kanuga 2021). The act is limited to public servants and public sector undertakings (Kapoor and Kanuga 2021). Anonymous complaints are not allowed, and penalties can be levied for providing false information (Rana 2021).

In practice, the legal framework for whistleblower protection is aimed largely at listed companies and works through the companies act as well as the Securities and Exchange Board of India (SEBI) regulations, which incentivise employees to report insider trading (Kapoor and Kanuga 2021).

Lokpal and Lokayuktas (Amendment) Act, 2016: the original ombudsman law passed in 2013 was to “provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries” (Ministry of Law and Justice 2014). Amendments to the act have diluted the law. For example, while public servants are required to declare their assets, the form and manner of doing so will be prescribed by the central government (PRS 2016).

The Prevention of Corruption (Amendment) Act, 2018: criminalises “attempted corruption, active and passive bribery, extortion, abuse of office and money laundering”²⁹. However, the law does not cover facilitation payments (GAN Integrity 2020).

²⁵ Public servants include government employees, officers in the military, navy or air force; police, judges, officers of court of justice, and any local authority established by a central or state act (PRS n.d.).

²⁶ An exception to this is the purchase of property in “his wife’s or unmarried daughter’s name” (PRS n.d.).

²⁷ Including public sector undertakings which are state-owned enterprises.

²⁸ Companies accepting deposits from the public, companies that have borrowed money from banks and public financial institutions in excess of 50 crore rupees (Section 177(9), Companies Act, 2013).

²⁹ Definition of public servant mentioned in IPC was extended in the understanding of PCA to include “office bearers of cooperative societies receiving financial aid from the government, employees of universities, public service commission and banks (PRS n.d.).

The amended law includes “undue advantage”, which has been defined to mean any gratification other than legal remuneration³⁰ (Biswas and Narasimhan 2018). The amendment also criminalises bribe giving unless the transaction is reported within seven days to the appropriate authorities. The erstwhile law contained a provision that a person could not be prosecuted for abetment if, during the course of a corruption trial, they provided a statement of having given an undue advantage to a public official. The 2018 amendment does away with this provision, creating a situation wherein there is a potential risk for bribe givers to testify against corrupt public officials, and they can be discouraged from coming forward as witnesses (Prakash et al. 2018).

Prior sanctions of the appropriate government³¹ was required before prosecuting any government official for corruption in the earlier version of the law. The amendment now expands this protection to public officials by requiring prior approval for investigation prior to prosecution (Prakash et al. 2018). Thus, on one hand, private citizens who do not report corrupt transactions as per the amendment are in a position to be prosecuted without difficulty, while public officials accused of corruption can receive protection.

Corporate entities have been tasked with tightening their compliance processes and actively preventing their employees from engaging in any acts of corruption or fraud. Anti-corruption agencies have had their mandate broadened to investigate and prosecute a company along with its director, managers and other officers who

participated in the acts of corruption or fraud (D’Andrea & Partners 2021).

Right to Information (Amendment) Act, 2019: originally passed in 2005, the law was hailed as an effective anti-corruption tool wielded by citizens and activists alike. It is widely used by “the poorest and the most marginalised who have understood the tremendous potential of the law to empower them to access their basic rights and entitlements like rations, pensions and healthcare” (Bhardwaj and Johri 2020).

A 2011 Yale study found that “using the RTI Act is as effective as paying a bribe in ensuring service delivery”. However, despite strong opposition, the amendments to the law were passed in 2019, which has whittled it down by compromising the independence of information commissions by granting the central government powers to set the tenure and salaries of all information commissioners (Bhardwaj and Johri 2020).

THEN AND NOW	
<p>TERM 2005 ACT: Chief Information Commissioner (CIC) and Information Commissioners (ICs) at central and state levels will serve for five years. 2019 BILL: Central government will notify the term of office.</p>	<p>government. DEDUCTIONS 2005 ACT: At the time of appointment, if CIC and ICs (at central and state levels) are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to that pension. Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government. 2019 BILL: The Bill removes these provisions.</p>
<p>SALARY 2005 ACT: At central level, salary of CIC and ICs equivalent to salary of Chief Election Commissioner and Election Commissioners, respectively. At state level, equivalent to salary of Election Commissioners and Chief Secretary, respectively. 2019 BILL: Salaries, allowances, and other terms and conditions of service of central and state CIC and ICs will be determined by the central</p>	<p>Source: PRS Legislative Research</p>

Figure 3: comparison of the original and amended RTI provisions. Source: Yadav 2019.

³⁰ The term “legal remuneration” has been clarified to include all remuneration a public servant is permitted to

receive by the concerned authority (Biswas and Narasimhan 2018).

³¹ Central or state.

Another blow comes from creating deliberate impediments to the functioning of information commissions by not filling vacancies for information commissioners in a timely manner (Bhushan and Bhardway 2020). Since May 2014, “not a single commissioner of the Central Information Commission (CIC) has been appointed without citizens having to approach courts” (Bhardwaj and Johri 2020).

Institutional framework

A challenge noted in the Indian context is the adequate working of key institutions, which “often fall prey to quarrels among the particularistic interests of political actors, or alternately to abuse of office” (Bertelsmann Stiftung 2020, 38). Bertelsmann Stiftung (2020, 38) notes that anti-corruption discourse as a part of the current “populist agenda” needs to be “accompanied by substantive policy measures”.

The main institutions dealing with corruption are as follows:

Lokpal (Ombudsman)

The Lokpal and Lokayuktas Act, meant to tackle corruption of senior government officials through the creation of independent ombudsman institutions at the union (Lokpal) and state (Lokayukta) levels, was originally passed after a struggle in 2014.

The Lokpal operating at the central level is set up to operate via two branches (Lokpal 2022):

- administrative branch: headed by an officer of the rank of secretary to government of India, and takes care of areas such as investigation, prosecution, scrutiny, budget, finance and

accounts and media coordination, among others

- judicial branch: which is to be headed by a judicial officer of “appropriate level” and is discharged with assisting the Lokpal with their judicial functions

When it comes to the independence of the institution, it has been “subverted” through amendments and lack of implementation (Bhardwaj and Johri 2020). For example, key provisions regarding the compulsory public disclosure of assets and liabilities of public servants were diluted through amendments (the timeline criteria for disclosure were removed, and the central government was granted powers to set the manner and form of disclosure) (Bhatnagar 2016).

The chairperson and members of the Lokpal were not appointed for over five years after the law was passed. Finally, appointments were made by a selection committee predominated by the government and its representatives, “raising serious doubts about the independence of the Lokpal even before it became operational” (Bhardwaj and Johri 2020).

The rules for lodging a complaint were issued in 2020, wherein those bringing complaints of corruption against a public official have to provide proof of identity and a sworn affidavit. Moreover, to avoid misuse, the Lokpal, if it believes the complaint is false, can penalise the whistleblower with “imprisonment extending up to one year and a fine which may exceed a maximum of ₹1 lakh³²” (Singh 2020). Three years after it was launched, the Lokpal continues to be a non-starter with

³² Approximately US\$1,350

dwindling complaints³³ and vacancies in key positions. Many observe the corruption watchdog as being toothless and allege that this may have been the intention from how the institution was set up (Das Gupta 2022).

At the state level, the quality and effectiveness of Lokayuktas differ. For example, out of 28 states and three union territories, nine (Assam, Bihar, Chhattisgarh, Delhi, Goa, Jharkhand, Kerala, Madhya Pradesh and Uttar Pradesh) have not amended their laws to bring them in line with the Lokpal and Lokayukta Act of 2013. Moreover, 10 states do not have a Lokayukta website, and only three (Odisha, Maharashtra and Mizoram) make provisions for online complaints (The Economic Times 2020). A recent RTI probe revealed that in the first 26 months of its operations, the West Bengal Lokayukta did not finalise a single case (Bhattacharya 2022).

Central Vigilance Commission (CVC)

The CVC is the “apex vigilance institution” for monitoring corruption cases against the central government. It also advises various central government authorities in planning, executing, reviewing and reforming their vigilant work (CVC 2019). The institution’s [website](#) provides detailed guidelines for filing complaints and has an online form to submit and track complaints (CVC 2019).

The commission comprises a central vigilance commissioner who acts as chairperson and not more than two vigilance commissioners (members). The CVC directs the Central Bureau of Investigation (CBI) on matters relating to the Prevention of Corruption Act and those offences that deal with

central government officials. The director of enforcement is also appointed by the PM on the recommendation of the CVC (CVC 2019).

Central Bureau of Investigation (CBI)

The CBI is the “premier investigative agency, with a dual responsibility to investigate grievous cases and provide leadership and direction in fighting corruption to the police force across the country”. It functions under the Department of Personnel, Ministry of Personnel, Pension and Public Grievances, Government of India. It collects information in three areas (CBI 2022):

- anti-corruption: this includes cases of corruption and fraud pertaining to government departments, public sector undertakings and financial institutions at the central level
- economic crimes: these include fraud, financial fraud, import-export and foreign exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items, among others
- special crimes: pertaining to “cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/the underworld”

With respect to the jurisdiction of the CBI and state police, the former only investigates cases at the central government level, have interstate or international impacts or are large cases of fraud (CBI 2022).

Enforcement Directorate (ED)

Operating under the Department of Revenue, Ministry of Finance, Government of India, the ED

³³ *Thirty complaints were lodged in the first seven months of 2021 (latest data available).*

is a specialised financial investigation agency implementing the following laws (ED n.d.):

- Foreign Exchange Management Act, 1999 (FEMA): it conducts investigations into “suspected contraventions of the foreign exchange laws and regulations” and imposes penalties on offenders
- Prevention of Money Laundering Act, 2002 (PMLA): the ED is tasked with examining suspected cases of money laundering and tracing assets “derived out of the proceeds of crime”, consequently freezing or confiscating the same traced assets, and arresting and prosecuting those engaged in money laundering.

The institution is headed by the director of enforcement. It is headquartered in Delhi and has five regional, 16 zonal and 13 sub-zonal offices (ED n.d.).

Election Commission of India (ECI)

The ECI is an “autonomous and permanent constitutional body responsible for organising free and fair elections in the union and states of India”. It has a constitutional mandate for the “direction, superintendence, and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India” (Business Standard n.d.). There is one chief election commissioner and two other election commissioners. The body has several powers, including but not limited to (Laxmikanth 2019):

- establishing electoral constituencies’ territorial areas throughout the country
- registering all eligible voters, and preparing and regularly revising electoral rolls
- recognising parties and giving them the status of a national or regional party depending on their poll performance
- determining a code of conduct for parties and the candidates during elections

- setting limits of expenditure by candidates during elections and collecting details on candidates assets at the time of submission of nomination papers

Comptroller and Auditor General of India (CAG)

The office of the CAG, along with the Indian Audit and Accounts Department (IAAD) reporting to the CAG, constitute the supreme audit institution of the country. The body is tasked with auditing “all receipts and expenditure” of the central and state governments. It also audits public sector undertakings, as well as independent bodies that the Indian government finances. CAG reports are presented to national and state-level legislatures (CAG 2021).

Judiciary

Indian judiciary operates via a single integrated system. The constitution divides the institution into superior judiciary (the supreme court and the high courts) and the subordinate judiciary (the lower courts under the control of the high courts). While the supreme court is the apex court, the high courts have jurisdiction limited to one or more states and union territories (Bhan and Rohatgi 2021). The independence of the judiciary is provided by law; however, the institution faces challenges in the form of delays, capacity issues and corruption (US Department of State 2020, 14).

Current trends show that the judiciary is getting increasingly politicised. For example, numerous supreme court decisions in recent years have been “favourable” to the BJP (Freedom House 2021a):

- supreme court judgement on the Ayodhya civil case that allowed the “construction of a Hindu temple on the site of a historic mosque” has been accused of being “possibly driven by

political motivations or compulsions” (Freedom House 2021a; Mukhopadhyay 2021).

- Anand Teltumbde was denied bail by the Special National Investigation Agency (NIA) (the Hindu 2021a). An advocate for the rights of marginalised communities, especially Dalits, Teltumbde is a critic of the current government and has accused PM Modi of being “complicit in the anti-Muslim carnage of 2002” while “comparing him to Hitler” (Ayyub 2020).
- the decision to accept the Aadhaar Act³⁴ as a money bill “emboldens” the government to bypass the upper house³⁵ by introducing any bill as a money bill by “citing some remote connection with the consolidated fund of India” (Sebastian 2019)
- another observable trend is the “evasion of decision by delaying the hearing of highly controversial matters” such as in the cases of demonisation and electoral bonds, among others (Sebastian 2019)

Independence of institutions

Political commentators believe that “India’s democratic institutions are experiencing a serious atrophy”. The CBI, ECI, CVC, ED, the Income Tax Department and the National Investigation Agency (NIA) are allegedly being “immobilised under an authoritarian regime”. Officials within these institutions opposing the government’s narrative are replaced (Jha et al. 2018). For example, former CBI Director Alok Verma was removed by a selection committee led by PM Narendra Modi within two days of him being reinstated by the supreme court (Economic Times 2019). Verma had accused his successor Rakesh Asthana of being

involved in a “murky extortion mafia operation” (Jha et al. 2018).

The ECI is becoming increasingly aligned with the interests of the central government in the form of its handling of complaints of electoral rules violations against influential politicians, the lack of transparency about key decision making processes within the commission, the undue secrecy over Electronic Voting Machine (EVMs), allegations over the hasty destruction of voter verifiable paper audit trail (VVPAT) slips before the stipulated date, and the targeting of a dissenting election commissioner, among others (Mody 2019; Trivedi 2019; Times News Network 2020; Nayak 2021; Raman 2021; Gowda and Hashmi 2022).

Other stakeholders

Media

The Indian government “rarely, if ever, used to exercise censorship” (Pillai and Lindberg 2021; V-Dem 2021, 13). Nevertheless, now there is widespread censorship of journalists and academics criticising the government, many of whom are then labelled as “anti-national” (Prabhu 2017; Pillai and Lindberg 2021; V-Dem 2021, 13). While journalists regularly face harassment and violence, the threat to female journalists is “particularly acute” (US Department of State 2020, 24).

Journalists reporting on corruption and against the government are particularly at risk. A news

³⁴ Aadhaar relates to the unique identification number project for Indian citizens. Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 was passed to provide legal support to the authentication drive of the Aadhaar unique identification number project. Legal observers note that “as per Article 110 of the Constitution, a money Bill can have provisions

only relating to the spending and receiving of money by the Union government. The manner in which identity of a person is authenticated before delivery of subsidies, services, benefits cannot be a concern of money Bill” (Sebastian 2019).

³⁵ which has limited decision making powers with regards to money bills.

reporter for Kambu Mail, Shubham Mani Tripathi, was shot dead as an alleged retaliation for his investigation into corruption involving illegal sand mining (US Department of State 2020, 25). The attacks on journalists are “rarely punished”. Police are known to be complicit or actively involved in such attacks (Freedom House 2021a).

Several journalists critical of the government’s COVID-19 response were arrested. Simultaneously PM Modi asked the media to prevent the spread of “pessimism, negativity, and rumour mongering,” which was observed as “warning not to criticise officials’ management of the pandemic” (Freedom House 2021a). The pressure on media to “amplify government perspectives” has increased after Modi’s re-election in 2019 (US Department of State 2020, 24).

Those against Hindutva (which has given rise to radical right-wing Hindu nationalism) face a backlash and attempts are made to “purge them from the public debate” (RSF 2021). The situation is even worse in Kashmir where media outlets and reporters have to deal with “Orwellian content regulations” and harassment from police and paramilitary forces (RSF 2021). The Kashmir Times, the valley’s leading daily, has also been shut down (RSF 2021).

Freedom House (2021) notes that there are close ties “between politicians, business executives, and lobbyists, on the one hand, and leading media personalities and owners of media outlets, on the other”, which goes to erode public confidence in the press.

India’s fake news problem, based on both digital illiteracy and propaganda, has made online

disinformation “ubiquitous” (Hussain and Menon 2020; Saxena 2021; Freedom House 2021a). Fake news propaganda also targets key players outside India. For example, EU DisinfoLab researchers revealed a pro-India fake news network that is designed to “influence decision-making at the UN Human Rights Council (UNHRC) and European Parliament” (Hussain and Menon 2020). While there is no evidence to link the fake news network to the Indian government, Asian News International (ANI), India’s leading wire service, is being used to spread content produced by fake media outlets (Hussain and Menon 2020).

Reporters Without Borders (RSF) ranks India 142 out of 180 countries in the world rankings of 2021. RSF (2021) adds that “India is one of the world’s most dangerous countries for journalists trying to do their job properly”. Journalists are subjected to various attacks, including but not limited to “police violence against reporters, ambushes by political activists, and reprisals instigated by criminal groups or corrupt local officials” (RSF 2021).

The country holds the title of being the “internet shutdown capital of the world” (Petersen 2020). An internet tracker called [Internetshutdowns.in](https://internetshutdowns.in) maintained by Software Freedom Law Centre (SFLC), recorded a total of 553 internet shutdowns in India³⁶ since 2012, 50 per cent of which were imposed since 2019 (The Federal 2021). A report from the Parliamentary Standing Committee on Information Technology has called for “defining the parameters and setting up of a robust mechanism for internet shutdowns”, adding that “frequent suspension of telecom services and the internet affected the life and liberty of people, and

³⁶ Until 26 January 2022.

caused a huge setback to the economy of the country” (The Federal 2021).

The internet shutdown problem is particularly acute in Kashmir. India’s 2019 internet shutdown in the region, after the repeal of its special status and subsequent split it into two territories under the control of the central government, breaks records for the “longest ever in a democracy” (Masih et al. 2019; Peterson 2020). Full 4G internet services were only restarted after 552 days (Internetshutdown.in 2022).

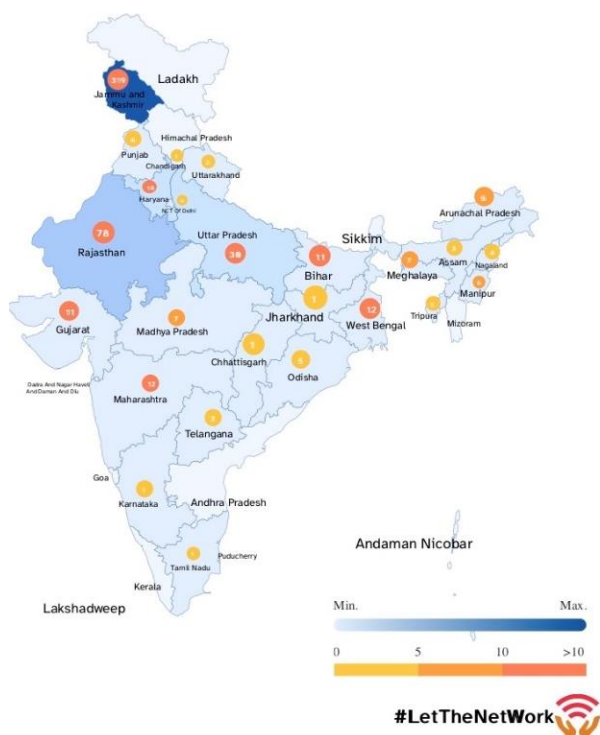


Figure 4: Heat map showcasing internet shutdowns across India (Source: Internetshutdown.in 2022).

Freedom on the Net 2021 by Freedom House (2021b) reports India as being partly free with a score of 49/100. The report states that internet freedom has been “weakened for a fourth straight year” in the country (Freedom House 2021b). The new and controversial Information Technology

(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have enforced extensive requirements for large social media companies to “further moderate online content, undermine end-to-end encryption, and increase retention of personal data” (Freedom House 2021b).

Civil society

Civil society is “being muzzled” in the Indian “autocratisation process” (Pillai and Lindberg 2021; V-Dem 2021, 20). The government is using “security, defamation, sedition, and hate speech laws, as well as contempt-of-court charges, to quiet critical voices” (Freedom House 2021). One such example is the Unlawful Activities (Prevention) Act (UAPA) of 1967, subsequently amended in 2019, which is being used to “harass, intimidate, and imprison political opponents,” as well as ordinary citizens that are organising protests against the government. By targeting academia and punishing students and activists engaging in protests against the CAA and agricultural reforms, the law is being actively used to stifle dissent (Pillai and Lindberg 2021; V-Dem 2021, 20; Sachdev 2020).

Legal observers suggest that a critical point to note about UAPA is that it is designed in a way to allow denial of bail for undertrials even when there is “little to no reasonable evidence against a person” (Sachdev 2020). For example, Umar Khalid, a well-known government critic arrested under UAPA for his alleged involvement in the 2020 Delhi Riots, has remained in jail without a trial since September 2020 “despite several loopholes” in the investigation by Delhi Police (Dahiya 2021; Philipose 2021; Mandhani 2021).

Other laws being used include Jammu and Kashmir Public Safety Act, which allows administrative detention without judicial intervention for up to two

years. A human rights defender was detained under this law in 2016 a “few days before his participation in the UN Human Rights Council” on accusations of “anti-India” activities (Orozobekova 2016). The police are known to use Section 66A of the IT Act to arrest dissenters on social media and grassroots level journalists despite the supreme court having struck down the provision in 2015 (Mahapatra 2021).

A leaked list of those targeted by the high-tech surveillance Pegasus project³⁷ in India include politicians from the opposition, dissenting journalists, activists, lawyers, academics, businesspeople, “a non-compliant official of India’s election commission, a non-compliant senior intelligence officer, cabinet ministers and their families, foreign diplomats” among others. Government spokespersons have stated that the list is fake (Roy 2021). According to an [investigative report](#) by The Wire, the ruling party has access to an app known as “Tek Fog” to manage its IT cells that automates widespread online trolling and manipulates trends on social media (Kaul and Kumar 2022; Sampath 2022; Zhang 2022). A political actor cites the app as having “serious ramifications [that] could jeopardise national security” (Sampath 2022).

With members of “hard-line Hindu nationalist organisations” being appointed to critical positions in various sectors, there is growing concerns of autonomy and self-censorship. For example, academia is suffering in such a scenario (Bertelsmann Stiftung 2020, 38). Activists note that the BJP government is “waging a campaign against NGOs and social activists”, especially those kinds of organisations that are working among the “rural poor, forest dwellers, the low castes, and the

marginalised and on issues of inequality” (Dhillon 2022). However, it ought to be noted that the reverse is taking place for CSOs supporting the Hindutva movement, who have gained more freedom (Pillai and Lindberg 2021; V-Dem 2021, 21).

The amendment to the Foreign Contributions Regulation Act (FCRA) was passed in 2020 without consulting with CSOs (Freedom House 2021a). The FCRA, which tightens restrictions on foreign funding, is being used by incumbent powers to restrict the “entry, exit and functioning of CSOs” (Pillai and Lindberg 2021; V-Dem 2021, 21).

The FCRA affected the operations of prominent NGOs such as Missionaries of Charity founded by Mother Teresa and Oxfam India, among several others (Dhillon 2022). However, the FCRA licence for the Missionaries of Charity was renewed earlier this year, and potentially paves the way for other organisations to demand the same (Kaushik 2022; ET Bureau 2022).

Calling the government's actions, a “complete witch hunt” against its critics, the executive director of People's Watch, Henri Tiphagne, says that his organisation's foreign funding was suspended after it opposed the construction of a nuclear power plant (Krishnan 2021b).

Another prominent NGO working at the intersection of human rights and anti-corruption, and a specialist in the RTI field, the Commonwealth Human Rights Initiative (CHRI), lost its foreign funding in 2021 (Krishnan 2021b). The organisation challenged this move at the Delhi

³⁷ Pegasus is a hacking software or spyware, which is developed, marketed and licensed to governments across

the world by the NSO Group in Israel (Peg and Cutler 2021).

High Court which then allowed CHRI to use 25 per cent of foreign contributions lying in its custody (Mazumdar 2021).

Other prominent anti-corruption NGOs include, but are not limited to:

- PRS Legislative Service aims to improve transparency in legislatures while simultaneously improving citizen engagement in parliamentary processes (PRS 2021).
- Centre for Budget and Governance Accountability (CBGA) works towards enhancing transparency and accountability in governance via analysis of policies and budgets while promoting participation in policy processes (CBGA 2022).
- Satark Nagrik Sangathan (SNS) is a citizens' group that aims to encourage transparency and accountability in the functioning of the government and to safeguard the active participation of citizens in governance (SNS 2022).
- Association for Democratic Reforms (ADR) conducts the election and political parties watch and produces reports on criminal, financial, educational and income tax details of candidates and winners (MPs, MLAs and Ministers) (ADR 2014).

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