



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
INDIA: RECENT HUMAN RIGHTS REPORTING

March 21, 2024, 10:00 a.m.
Room H-313, Capitol

Written Testimony by Adrian Shahbaz
Vice President for Research and Analysis, Freedom House

Co-Chair McGovern, Co-Chair Smith, and Members of the Commission, thank you for the opportunity to testify.

Freedom House has evaluated the state of political rights and civil liberties in India for over 50 years, through our annual [*Freedom in the World*](#) report. India is the world's largest democracy, with a history of pluralistic governance and a robust constitution. However, we have tracked a decline in freedoms over the past decade, with the country losing 11 points in our 100-point index. In 2021, we changed the country's rating from Free to Partly Free.

The decline has impacted several categories of human rights. I will concentrate on three areas where the deterioration has been acute: a crackdown on online dissent, restrictions on civil society organizations, and concerns around the rule of law.

Threats to human rights online

India hosts a lively and diverse online environment, with some 865 million people using the internet. As the government has exercised greater control over the digital realm, respect for the rights to freedom of expression, access to information, and privacy has fallen. India's score has dropped by 10 points since 2015 in our [*Freedom on the Net*](#) index, which measures respect for human rights online.

In 2021, the government enacted new legislation known as the IT Rules that placed requirements on popular social media companies to remove content that authorities have deemed unlawful. Companies have 36 hours to respond to these takedown requests and face significant penalties if they fail, including the criminal prosecution of their corporate officers based in the country. Amendments to the IT rules passed in 2023 required platforms to remove content identified as "fake or false" by a government "fact-checking" unit.

These laws have translated into an uptick in political censorship, particularly content that has been perceived as critical of the prime minister, the ruling party, or its broader social policies. Authorities recently took down reporting from *Caravan Magazine* on state violence in Jammu and

Kashmir. The government has restricted over a dozen social media accounts linked to the leaders of a farmers' protest, who had mobilized around demands for a stronger social safety net for agriculture workers. Finally, authorities have targeted those that report critically on members of India's far-right, including two websites dedicated to tracking hate crimes and hate speech in India, Hindutva Watch and India Hate Lab. These incidents all occurred in the first two months of 2024.

Rules introduced in 2022 require virtual private network (VPN) providers to store information about their users, driving several companies to remove servers from the country over privacy concerns. Activists, journalists, and lawyers in the country have been targeted with sophisticated spyware technology to monitor their activities. Provisions of the Telecommunications Act, an overhaul of the country's telecommunications regulatory framework passed in December 2023, are likely to undermine end-to-end encryption. India's Telecommunications Act also asserts that India's government can restrict internet access absent judicial oversight or any transparency measures.

The Indian government holds the dubious honor of being a world leader in internet shutdowns. Police often impose connectivity restrictions in response to protests, taking people offline as they exercise their right to assembly. For example, authorities enforced internet shutdowns across the country in 2019 and 2020 when Indians engaged in large protests against the Citizenship Amendment Act. Some blackouts have lasted hundreds of days, such as those in Manipur and Kashmir. These disproportionate restrictions not only have a significant impact on people's abilities to access healthcare, continue education, and run businesses, but they curtail the exercise of political and civil rights.

Legal restrictions on civil society organizations

Freedom House has noted the controversial use of tax and finance laws to curb the activities of nonprofit organizations and the media. While some of these investigations may be legitimate, the general pattern around the timing and targets of these investigations has raised concerns about administrative resources being selectively used to target the political opposition and critics of the ruling party. For example, in January 2023, the central government restricted access to a British Broadcasting Corporation (BBC) documentary that examined whether Prime Minister Narendra Modi did enough to stop inter-religious clashes in the state of Gujarat in 2002, when he was its chief minister. One month later, tax officials raided two of the BBC's India offices and questioned staff members.

Authorities frequently launch probes under the Foreign Contribution Regulation Act (FCRA) against organizations that report critically on the government. In order to raise funds from foreign donors, nonprofits must be licensed under the FCRA, which carries significant compliance burdens. Thousands of FCRA licenses have been revoked on politicized grounds, limiting the ability of those organizations to function.

Undermining the rule of law

Finally, Freedom House has documented steps to undermine equal treatment, judicial independence, and checks and balances. The Supreme Court has played an important role in safeguarding fundamental rights, but in recent years, Prime Minister Modi has broken norms around judicial appointments and observers have noted increased political interference in decisions. In 2018, four senior members of the court took the unprecedented step of publicly raising concerns about judicial independence.

Several recent and upcoming judicial decisions are likely to have outsized impact on democracy and human rights in the country, particularly ahead of elections that start next month. Last August, the court overturned an earlier ruling against opposition leader Rahul Gandhi, in which he was disqualified from parliament and sentenced to two years in prison for defaming Prime Minister Modi and others with the same surname. This February, the Supreme Court intervened to scrap a murky campaign finance regime introduced in 2017.

Last week, the government announced plans to implement the controversial Citizenship Amendments Act, which excludes Muslims from a fast-track naturalization procedure for refugees from three Muslim-majority countries. Recent reporting indicates that the Supreme Court will review petitions that argue that the CAA is unconstitutional.

The undermining of the rule of law in India has spilled over into other democracies. The US government and others have accused Indian officials of assassinating a Sikh activist in Canada and planning the assassination of another activist in the US. It is alarming to see these serious allegations, as it would signal that the Indian government is willing to employ the same type of overseas repressive tactics as the governments of China, Russia, and Saudi Arabia.

Recommendations

In closing, there are several measures that Congress can take to stall further backsliding in India. The future of democracy in India has enormous implications not just for the people of India but globally.

First, raise issues of concern related to rights and democracy directly with Indian officials in all meetings and at all levels; advocate for the immediate, unconditional release of Indian journalists, commentators, and others imprisoned for online expression that is protected under international human rights standards, including in bilateral and multilateral engagement with the Indian government; and ensure that FCRA compliance measures are free from political interference and not disproportionately leveraged against organizations that are critical over the government.

Second, urge the Indian government to respect human rights online, specifically to refrain from imposing connectivity restrictions or blocks on social media platforms, and refrain from censoring expression that is protected under international human rights standards; refrain from asserting the Telecommunications Act, the IT Rules, or other laws to mandate that providers of end-to-end encryption services ensure that messages are traceable, provide law enforcement with “back door”

access, or otherwise weaken their security; and enshrine standards to govern the use of commercial spyware products, as in the US-government led Joint Statement on Efforts to Counter the Proliferation and Misuse of Commercial Spyware.

Finally, urge the Indian government to ensure that the conduct of the 2024 election is free and fair, specifically to ensure that opposition politicians, candidates, and parties can engage in campaigning without fear of arrest, suspension, or other restrictions on liberty; refrain from using state resources to privilege the ruling party, as set out in the Model Code of Conduct; and ensure that neutral election observers from internationally accredited organizations and reputable domestic groups are invited to monitor the totality of election processes without any undue restrictions.