

# India

Pursuing truth in the  
face of intolerance



Cover: Indian activists take part in a protest rally against the killing of Indian journalist Gauri Lankesh at the India Gate memorial in New Delhi on September 6, 2017. Indian activists, politicians and journalists demanded a full investigation on September 6 into the murder of Gauri Lankesh, a newspaper editor and outspoken critic of the ruling Hindu nationalist party whose death has sent shockwaves across the country. SAJJAD HUSSAIN/AFP/Getty Images

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PEN members observe a minute's silence in remembrance of Kasturba and Mahandas Gandhi



Carles Torner, executive director of PEN International; Jennifer Clement, president of PEN International; Ganesh Devy president PEN South India, offering tribute at Kasturba Memorial, Aga Khan Palace in Pune during the 84th PEN International Congress.

**Falsehood flies, and the Truth comes limping after it; so that when Men come to be undeceiv'd, it is too late; the Jest is over, and the Tale has had its Effect...**

**Jonathan Swift, 1710**

## 84th PEN International Congress

Pune, September 2018

**As we - writers from all corners of the globe - gather here in Pune, we celebrate the unique literary and linguistic diversity of this region, but also reflect on the state of free expression in India.**

**Spaces for free expression are shrinking: dissenting voices - be they journalists, academics, writers or students - face intimidation, harassment, online abuse, violence. Some of our friends have paid the ultimate price for expressing their views.**

**This report outlines our current concerns - we are incredibly grateful to our contributing authors: Raksha Kumar, Gautam Bhatia, Apoorvanand and Nilanjana Roy.**

**We gather here in solidarity with defenders of free expression in India, those who are pursuing truth in the face of intolerance.**

**As we mark the 150th anniversary of the birth of the great Mahatma Gandhi, we call upon the Indian government to act to protect freedom of expression.**

**The time to act is now.**

**Carles Torner**  
Executive Director  
PEN International

Jonathan Swift, that master of irony and satire, hadn't anticipated the Internet nor had he any inkling of what social media platforms like WhatsApp could do, when he wrote these lines in *The Examiner*. But it has an axiomatic virtue - that lies travel far faster than truth can. Truth can be inconvenient - it complicates a narrative and is elusive by nature - lies are easier and more seductive, because they enable the purveyor to tell a story.

Fiction writers have the liberty to make stuff up. Journalists and chroniclers of history don't have that luxury. They must investigate, verify, and then report. But in the fast-paced world we live in, evidence-gathering is laborious, and facts interfere with good theories.

None of this would have mattered, if lies were treated as lies. But at a time of growing distrust of mainstream media - newspapers, magazines, radio and television - the word-of-mouth has gained ascendancy. During the Cold War, people in Eastern Europe often said that when you can't believe the printed word, you trust the spoken word. Today, the Berlin Wall has fallen, but mistrust has risen, and because the media is trusted less, messages circulated on WhatsApp, theories propounded on Twitter, excerpts of video shared on Facebook, and manipulative documentaries on YouTube are influencing people's minds.

India is no exception. While India doesn't currently appear to be considering fresh, specific legislation to deal with falsehoods spread through technology, it has enough laws in place to arrest the trend if it wishes. As this report shows, conventional means of intimidating editors, harassing journalists, and threatening publishers have continued unabated. Writers have also faced threats on social media, and women reporters and journalists have been threatened with sexual violence and murder. Powerful litigants have used India's punitive defamation laws to mute criticism. The government shows no signs of amending India's sweeping laws that enable those who are offended to lodge criminal complaints against writers. Some nervous publishers have asked journalists to be less critical of authorities. The climate of fear pervades on some campuses too, where student activism is curbed, professors are not being invited, textbooks withdrawn, and academic freedom is under threat.

Social media platforms accentuate the problem because of their wider reach and speedier means of dissemination, posing unprecedented challenges to the authorities as well as for those who seek to protect freedom of expression. Indian government officials have now demanded from social media platforms that they take steps to stop the spread of hatred and lies on the Internet. This may sound admirable, but it is problematic at two levels - one, it shows the state abdicating its obligation and asking a private sector entity to do its work, without any constitutional or

legal mandate, and without the expertise or skills to do so; and two, the state has done little to rein in its own supporters from using the technology platforms to spread lies and hatred. As diligent journalists in India have shown, many state supporters have persistently attacked women journalists, journalists with whose views they disagree, and others on the opposite side of the political debate. They act with impunity, and many among them proudly declare that their social media accounts are 'followed' by senior government officials, including, often, the Prime Minister himself.

The profound question then emerges – what should an organisation such as PEN, committed to freedom of expression, do when the tools which are meant to liberate expression, such as social media platforms, are used to disseminate hatred and lies? Banning the platforms, as some countries have done temporarily, is deeply problematic, for it removes access to entire platforms where there are many sites serving public purpose. Banning individuals on the platforms too is a problem, as they can return creating new accounts. Besides, if a platform denies access to a popular individual to a specific platform, there are other platforms to which the traffic will shift. After Facebook banned Myanmar's military chief from its platform, he simply went to a Russian platform similar to Facebook, taking his views and politics, and presumably his millions of followers with him, continuing his propaganda. Besides, banning the platform itself in its entirety will harm freedom of expression for those who use the medium more responsibly, or those who wish to express dissent, or even to provide entertainment or information. Expecting companies to play a society's moral police is also wrong – for companies do not have the capacity, mandate, skills, or resources to take on the task of sifting through data that they disseminate every nanosecond.

While not perfect, one way to approach the issue whilst being consistent with the principles of freedom of expression and protecting the rights of vulnerable people, is to allow full freedoms, but also to establish clear processes for victims of abuses to report; to protect private individuals but not public personalities; to investigate claims thoroughly and quickly; to let the law take its course where there is clear and present danger of imminent physical violence to specific individuals or groups; to prosecute such offences swiftly; and to prevent persistent wrongdoers from accessing the platforms again. None of this will eliminate hatred or violence. But it will impose a stiff cost on those who wish to use means of communication with a view to cause harm.

India's task is not easy – other countries have tried, and are failing, to address this problem. Some of those believing in Internet-based rumours have already threatened or killed people in India because they thought the victims were trading cattle, worshipping different gods, marrying outside their faith, expressing political views that they found unacceptable, or considered to be unpatriotic.<sup>1</sup> Relying on social media platforms to fix the problem is impractical and an abrogation of state responsibility. But as the world's most populous democracy with astonishing linguistic, religious, cultural, and ethnic diversities and range of opinions, India owes it to its billion-plus citizens to get it right, and set an example to the rest of the world in our increasingly polarized times.

### Salil Tripathi

Chair

Writers in Prison Committee

# Introduction

By Raksha Kumar

For the first time, seventy-one years after India rid itself of colonial rule, a Hindu nationalist party was democratically elected to rule the country on its own strength. Future generations will likely look back at Bharatiya Janata Party's (BJP) win in 2014 elections as the beginning of a drastically different era in independent India.

While the first few post-Independence Indian governments treated the media as an extension of the newly-formed state, in later years the media gradually began asking the government uncomfortable questions. Many observers have argued that in the previous decade of rule by the Congress Party-led alliance, the corporate-owned media were largely co-opted as they could not be coerced.

However, in the eyes of the current BJP government, media seems to be meant to further the cause of the government. While some sections of the media are willingly compliant, hidden camera investigations by the independent website CobraPost have discovered that other media organisations are amenable to financial transactions and toe the line.

A sliver of Indian media today, bombarded with independent critical voices, are termed seditious. This report, which serves to update PEN's previous reports on the freedom of expression landscape in India,<sup>2</sup> largely concentrates on the atrocities against such committed journalists, writers and academics. In the essays that follow, experts write about legal threats, pressures on editors, threats of violence, challenges to academic freedom, and the chilling effect on writing.

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The report elaborates on unreasonable legal boundaries placed on free expression, not only by law-making bodies but also by the judiciary. If constitutionally-validated laws, such as those criminalising defamation, can be used to muzzle free speech, what would the future of such a democracy look like?

When legal tools and online threats fail to silence criticisms, the powerful can turn to physical violence. Such examples have increased in India today. What protects the perpetrators is their perception that they are immune from prosecution because of political support, sluggish law enforcement, and overburdened courts.

India has the world's largest youth population, therefore a hard look at university and academic spaces becomes critical.<sup>3</sup> In the essay 'Censorship and Universities,' which documents shrinking spaces in academic institutions across the country, we ask whether younger Indians are being trained to ask tough questions.

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According to the World Association of Newspapers and News Publishers (WAN-IFRA), India is among the largest newspaper markets in the world.<sup>4</sup> Sixty-six per cent of 1.3 billion Indians have access to television.<sup>5</sup> And about 400 million Indians use the internet.<sup>6</sup> The potential media market in a country with established democratic credentials, a rapidly growing middle class and the youngest urban population in the world, is unparalleled.

What good is such ubiquitous media presence if the media are not speaking truth to power? In order to garner courage to stand up to the influential, media solidarity is of great relevance.

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Seventy-one years of modern independent India has survived massive blows to its democratic foundations due to state excesses, extremist religious factions, left-wing armed groups, and an apathetic civil society. An optimist might argue that the current onslaught on independent voices will not completely cripple entrenched democratic values.

Currently though, speech is free in India as long as it conforms to a majoritarian perspective furthered by the establishment.

<sup>2</sup> See *Fearful Silence: the Chill on India's Public Sphere* (2016) and *India: Imposing Silence: Use of Laws to Suppress Free Speech* (2015), available at: <https://pen-international.org/defending-free-expression/policy-advocacy/reports>

<sup>3</sup> <https://www.theguardian.com/commentisfree/2018/jan/13/india-600-million-young-people-world-cities-interne>

<sup>4</sup> <https://www.weforum.org/agenda/2017/05/despite-the-decline-of-printed-papers-theres-one-place-that-is-bucking-the-trend>

<sup>5</sup> <https://economictimes.indiatimes.com/industry/media/entertainment/television-remains-the-choice-of-the-masses-even-in-digital-times/article-show/65097493.cms>

<sup>6</sup> <https://timesofindia.indiatimes.com/business/india-business/number-indian-internet-users-will-reach-500-million-by-june-2018-iamai-says/article-show/62998642.cms>

<sup>1</sup> <https://www.nytimes.com/interactive/2018/07/18/technology/whatsapp-india-killings.html>

# “... and then they came for the journalists”

By Raksha Kumar

In India today, if a journalist cannot be lured by money or scared away from a story, then the threat of intimidation – sometimes leading to violence and murder – looms large. The past few years have been bloody for some journalists and writers who took on the powerful.

Many journalists, especially in smaller towns and villages of India, enter the profession fueled purely by passion and a thirst to speak truth to power. They often have to rely on alternative ways to supplement their income, including collecting local advertising for newspapers, or doing other odd jobs to make their journalism sustainable. Many of them face immense pressure from families to give up journalism – a profession that certainly puts them in harm’s way and doesn’t guarantee a shilling in their pockets.

What compounds the crisis are the numerous incidences of violent attacks on journalists. A growing climate of intolerance in the country and the tendency among those with power to intimidate journalists have combined to make safety of journalists a critical issue. To make matters worse, the state has been sluggish in prosecuting cases, perpetuating a climate of impunity.

Coupled with the dangers of surveillance and oversharing of personal information in the age of the internet, the gap has narrowed between physical violence and virtual threats (More in the essay titled ‘Surviving in a world of ‘virtual’ abusers’).

## Silenced by Death

“From Kashmir to Kanyakumari” is a phrase commonly used in India to describe pan-Indian phenomena, applying everywhere regardless of geographic, political and language diversities. In the case of journalists being killed at point blank range, the expression sits alarmingly true.

Two journalists of international repute – Gauri Lankesh<sup>7</sup> and Shujaat Bukhari<sup>8</sup> – were shot dead within a span of nine months. Gauri Lankesh, editor of *Gauri Lankesh Patrike* in the southern city of Bangalore was killed by two men outside her home in September 2017. In June 2018, Shujaat Bukhari, editor of *Rising Kashmir*, was killed by three gunmen in front of his office in the northern town of Srinagar.

Both were targeted for their outspoken views on state repression. Both had a near cult-like following among their readers. Both were in their 50s. And both ran local newspapers in their hometowns, which had extremely limited subscriptions. *Gauri Lankesh Patrike* and *Rising Kashmir* sold merely a few thousand copies.

It was clear that it was not only their newspapers which were swaying the masses, they were. Their individual personalities, with incisive views on religion, state repression and violence were immensely influential. Both journalists’ Twitter handles, Facebook pages and fiery speeches in public rallies and conferences were seen as a threat to the powerful. They were attacked by both the left and the right; the extreme right considered them to be too liberal and the extreme left thought they were too moderate.

Within hours of Lankesh’s murder, many supporters of Hindu nationalism praised the killing.<sup>9</sup> A year on, the police have framed charges against a few suspects who are linked with extreme Hindu organisations.<sup>10</sup>

Bukhari had a pivotal seat observing the Kashmir conflict – an immensely complicated, long-drawn conflict with local and international stakeholders. He tried to maintain a neutral stance in a highly politicised situation in one of the world’s most militarised zones. He could not please every side. His killers have not been identified, though police suspect some Kashmiri separatist militant groups.

The murders of Lankesh and Bukhari shocked India. But less high profile killings of journalists occur with even greater frequency. For instance, three journalists were killed within a span of 24 hours in March 2018.<sup>11</sup>

In the remote Bhojpur district of the eastern state of Bihar, two journalists, Navin Nishchal and Vijay Singh, who worked for *Dainik Bhaskar*, a leading Hindi newspaper, were run over by a sports utility vehicle which belonged to a local political leader. The two had covered a Hindu festival and had got into an argument with the said leader the night they were killed.

These killings were closely followed by that of Sandeep Sharma, a reporter with a local news channel, who was working on an illegal sand mining story in Central India’s Bhind district, whose motorbike was hit by a dumper truck and he was killed. A CCTV camera captured the footage of his motorbike being crushed by a truck. This was circulated widely among local journalists, inciting fear among them.

## Police violence against journalists

Police have used sticks and tear gas to defuse crowds and attack journalists in many parts of India. In a recent case, in July 2018, Ahmedabad police hit Pravin Indrekar, a photojournalist for the Mumbai-based *DNA* newspaper, with sticks and confiscated his camera when he tried to photograph a police crackdown in the Chharanagar area of the city.<sup>12</sup> According to the First Information Report filed after the incident, police charged Indrekar on 11 counts including rioting, looting, and attacking the police. Over 150 journalists attended a protest organised by the Mumbai Press Club in support of Indrekar.

In March 2018, a few dozen journalists gathered outside the Delhi police headquarters to protest against police attacks on two women journalists who were covering a march by the students and teachers of Jawaharlal Nehru University.<sup>13</sup> The Delhi Police allegedly roughed up and beat the journalists, seized their cameras and injured many reporters. Anushree Fadnavis, a woman photojournalist with the English-language daily *Hindustan Times* who was allegedly attacked by the police, lodged a complaint. Another reporter alleged that a Station House Officer (SHO) molested her while she was covering the same protest-march by the students.

In the north-eastern state of Assam, at least seven journalists were injured in March 2018 when police beat them with batons as they tried to cover a student demonstration. Emmy C Lawbei, a Mizo journalist with News18, captured the attack on video, which described the place as looking ‘like a war zone’<sup>14</sup>.

Other incidents of attacks against journalist abound: On 29 July 2018, in Punjab’s Jalalabad town, Sandeep Kumar and Neeraj Bali, two reporters from the Punjabi-language television station News18 Punjabi, were attacked<sup>15</sup>. The men believe they were targeted for their reportage on illegal sand mining.

In August 2018, Lucknow police forcibly entered the home of a senior Urdu journalist, Mohammad Sahid Khan, alleged that he was a terrorist and forcefully took pictures of him and his family.<sup>16</sup> The police apologised to Khan after several other journalists took the matter up with senior bureaucrats in the state.

Silencing the media through violent means signals the breakdown of a functioning democracy. Not only is impunity the result of weak law enforcement and criminal justice systems, but it also points to an unquestioning society that accepts and perpetuates violence. Both Lankesh and Bukhari were abused online for their views after they were killed.

When there are no checks on power, it ceases to be a democracy even in name.

<sup>7</sup> <http://pen-international.org/news/india-murder-of-journalist-is-a-devastating-blow-to-freedom-of-expression>

<sup>8</sup> <https://pen-international.org/news/india-murder-of-kashmiri-journalist-shujaat-bukhari>

<sup>9</sup> <http://www.catchnews.com/india-news/gauri-lankesh-s-murder-celebrated-by-right-wing-trolls-on-social-media-80366.html>

<sup>10</sup> <https://www.thenewsminute.com/article/gauri-lankesh-murder-sit-files-chargesheet-zeros-four-more-suspects-82155>

<sup>11</sup> See: <https://cpj.org/2018/03/indian-authorities-must-investigate-deaths-of-jour.php> and <https://cpj.org/2018/03/indian-reporter-hit-by-truck-dies-after-investigat.php>

<sup>12</sup> <https://www.dnaindia.com/ahmedabad/report-ahmedabad-dna-lens-man-beaten-up-recounts-night-of-horror-2642595>

<sup>13</sup> <http://www.ifj.org/nc/news-single-view/backpid/1/article/journalists-assaulted-by-police-covering-demonstrations-in-delhi/>

<sup>14</sup> <https://www.thequint.com/news/hot-news/journalist-attacked-by-police-in-assam>

<sup>15</sup> <https://www.tribuneindia.com/news/punjab/scribes-attacked-by-sand-mafia/628982.html>

<sup>16</sup> <https://www.firstpost.com/india/up-police-officials-barge-into-urdu-journalists-home-in-lucknow-call-him-terrorist-issue-apology-later-4988241.html>

# Law and Free Expression in Today's India

By Gautam Bhatia

**Spaces for free expression in India have seen a steady decline especially in the past few years. Newer and more worrying trends of this shrinking space have emerged. In this essay, I shall briefly discuss three legal developments that illustrate such trends: the growth of judicial censorship, the proliferation of internet shut-downs and the judicial support of criminal defamation.**

## Judicial censorship

Article 19(1)(a) of the Indian Constitution guarantees the right to freedom of speech and expression. Article 19(2) allows the State to pass laws imposing “reasonable restrictions” upon free speech, for eight specified purposes.

Until recently, it was widely believed – based upon clear Supreme Court judgments to that effect – that “State” under Article 19(2) did not include the Supreme Court, and “law” did not mean judicial decisions.

In other words, the Constitution envisaged a two-step procedure before speech could be restricted: *first*, Parliament would have to pass a law. And *then*, the law could be challenged before the Supreme Court.

Unfortunately, in a series of judicial orders, the Supreme Court – or, more specifically, the present Chief Justice, Dipak Misra – has deviated from some established constitutional procedures.

The most glaring example is the now-notorious “national anthem” order. Acting on a public interest litigation (PIL) filing, the Supreme Court ordered that all cinema halls in the country must compulsorily play the national anthem at the beginning of every film. As an example of compelled speech – imposed both upon theatre owners and upon cinema audiences – the Supreme Court’s order clearly interfered with Article 19(1)(a), and was previously unfounded in law. However, arguments that the Court had no jurisdiction to act in this way fell on deaf ears, and the order continued for more than a year.

In a moment of high irony, the Court finally recalled its original order when the *government* requested that it do so, and gave an assurance that it was looking into formulating rules.

There have been many other instances of similar judicial censorship – that is, the Court itself acting as a censor, instead of being the protector of free speech and expression.

The disease has also percolated down to the High Courts. The Madras High Court, for example, “ordered” that all schoolchildren in the state be compelled to study the *Thirukkural* epic.<sup>17</sup> In 2016, the court ordered the state government to include 108 chapters from the classic Tamil text in the curriculum for children of Classes 8 to 12.

And in a particularly egregious case, the Bombay High Court acted upon a complaint that the Hindi film *Jolly LLB II* insulted *lawyers*, bypassed the normal censor board procedure, set up its own committee (consisting of lawyers and judges) to review the film, and mandated four cuts.<sup>18</sup> Even more egregiously, the Supreme Court (this time through the man slated to be the next Chief Justice, Ranjan Gogoi) refused to intervene,<sup>19</sup> and the cuts had to be made.

In fact, it has now become common practice to see regular PILs filed in the Supreme Court, asking for bans on books and films. Most of them have not succeeded, and indeed, have provided the Court with an opportunity for a certain kind of liberal grandstanding, as was seen during the controversy over the release of the Hindi film *Padmaavat*. The Supreme Court admonished parties seeking a ban on the film and engaged in some ear-pleasing rhetoric about the value of free speech in a democracy.

That, however, misses the wood for the trees: namely, that such cases should never even be *admitted* by the Supreme Court for hearing in the first place, as they bypass a carefully-crafted Constitutional scheme that consciously *denies* the Court the power of censorship.

The Court is only authorised to *review* censorship that is imposed by the government (and test it for constitutionality), and to decide, in a specific case, whether speech has violated provisions of the Indian Penal Code (such as the prohibition upon sedition, or upon communal hatred).

<sup>17</sup> <https://www.thehindu.com/news/cities/Madurai/high-court-orders-indepth-study-of-tirukkural-compulsory-in-schools/article8525839.ece>

<sup>18</sup> <https://indianexpress.com/article/entertainment/bollywood/jolly-llb-2-is-just-a-film-not-a-documentary-cbfc-chief-pahlaj-nihalani-4512890/>

<sup>19</sup> <https://www.livelaw.in/jolly-llb-2-sc-allows-hc-panel-scrutinize-movie/>

<sup>20</sup> <https://indiakanoon.org/doc/29352399/>

<sup>21</sup> <https://timesofindia.indiatimes.com/india/Government-can-block-net-for-law-and-order-Supreme-Court/articleshow/50950023.cms>

<sup>22</sup> <http://www.dot.gov.in/circulars/temporary-suspension-telecom-services-public-emergency-or-public-safety-rules-2017>

<sup>23</sup> <https://www.internetshutdowns.in/>

<sup>24</sup> <https://indianexpress.com/article/technology/tech-news-technology/india-witnessed-highest-number-of-internet-shutdowns-in-2017-18-unesco-report-5176087/>

<sup>25</sup> <https://indianexpress.com/article/india/maratha-agitation-internet-services-suspended-in-navi-mumbai-5278579/>

## Internet Shut-Downs

Over the last couple of years, internet shut-downs have proliferated in India. India has become a world-leader in the frequency of shut-downs, with stated justifications ranging from preventing cheating in exams, to combating militancy and containing riots. The only judicial challenge to an internet shut-down failed before the High Court of Gujarat in September 2015.<sup>20</sup>

In a deeply regressive judgment, the High Court held that the colonial-era Section 144 of the Indian Penal Code, which granted blanket powers to the police to declare curfew in specified areas and prohibit assemblies, also justified shutting down the internet. The Supreme Court refused to intervene.<sup>21</sup>

Internet shut-downs operated in a legal vacuum until 2017, when the Government hurriedly passed the Temporary Suspension of Telecom Services Rules,<sup>22</sup> which essentially codified the earlier, arbitrary, discretion. Far from improving the situation, however, the number and frequency of shut-downs has only increased.<sup>23</sup> Recent – and particularly glaring – examples – include repeated shut-downs in Kashmir<sup>24</sup> and in Mumbai<sup>25</sup>, with the specific purpose of impeding political organising and protests.

## Criminal Defamation

Criminal defamation was introduced into India by the colonial regime, as part of the Indian Penal Code (IPC) in 1860 (Section 499). At this time, it was already going out of fashion in the country of its birth.

The British, however, viewed it as one of the many legal weapons to suppress a restive population (sedition and press laws being two other examples). Section 499 of the IPC, nonetheless, remained unchallenged for many years after Independence.

A two-judge bench of the Supreme Court finally heard arguments challenging its legal validity, in 2016. There were two broad arguments made for abolishing criminal defamation: *first*, that criminalising a civil wrong was a disproportionate interference with freedom of speech; *secondly*, that in its present form, criminal defamation fell much below the standards that the Supreme Court had outlined for *civil* defamation to be constitutional. However, in a long, rambling, and, at times

incoherent, judgment spanning 270 pages, the Supreme Court upheld criminal defamation without engaging with either argument.<sup>26</sup> It simply held that Article 21 of the Indian Constitution granted a “right to reputation” as part of the right to life, and that therefore, criminal defamation – that served to vindicate this right – was a reasonable restriction upon free speech.

The Court's holding was a setback, not only in terms of its outcome, but also in further crystallising a judicial trend of viewing freedom of speech as something secondary and dispensable, rather than as a right that is central to a democratic republic.

The effects of the Court's judgment are evident. Leaders of various political parties have spent the better part of the last two years contesting criminal defamation claims in Court. And perhaps more worryingly, we recently saw a rare criminal defamation conviction – and prison sentence – handed down to five Dalit college students in Hyderabad, in a case filed by a faculty member.<sup>27</sup> A salutary reminder – if any were needed – that harsh laws disproportionately target the already vulnerable.

Apart from these new trends that are deeply concerning for the future of free speech in India, older worries continue to persist. A combination of judicial apathy, state complicity, and the emboldening of those who would exercise the “heckler's veto” became evident most recently, when the Malayalam writer S. Hareesh was forced to “withdraw” his novel (which was in the process of serialisation), after being threatened for “anti-Hindu dialogues.”<sup>28</sup> That controversy continues to rumble, and is marked by its extra-legal character. However, when the Courts have been asked to rule on censorship, they have been extremely disappointing. Last year, for example, the Supreme Court upheld the State of Karnataka's decision to ban a book by the Kannada author Mate Mahadevi, *without even passing a reasoned order*.<sup>29</sup>

More recently, a Delhi trial court granted an injunction with respect to a biography of Baba Ramdev.<sup>30</sup> After extensive litigation, the Court agreed to lift it and allow the book to be published; however, the injunction was promptly restored by the High Court, and the Supreme Court refused to intervene.<sup>31</sup>

The judiciary's breathtakingly callous approach on issues of free speech and suffocation of writers through the legal process remains, perhaps, the single greatest contributory factor towards the state of free speech in India today.

Standing in 2018, therefore, the picture looks rather bleak. While the executive and the judiciary have never been great friends of free speech, the judiciary's emerging role as the Supreme Censor has presented a new set of threats.

Perhaps, however, things cannot get any worse before they get better.

# Criminal Defamation: An effective legal gag on free speech

By Raksha Kumar

India has absorbed many foreign influences and made them look native. Imports to India - be it food, clothing or culture - take on a life of their own and don a distinct “Indian-ness”.

Similarly, democracy in India, drawn from foreign ideas and coupled with local traditions, has developed its unique attributes over time. An undesirable feature of Indian democracy is a fragile media ecosystem, not immune to harassment from other powerful institutions.

As outlined in the preceding section, laws criminalising defamation contribute immensely to further weaken the media. While many democracies world-wide are decriminalising defamation, India not only holds on to such laws, but their repetitive use against investigative journalists in the past few years signals the ill health of Indian democracy.

While physical threats (more under the essay titled ‘...and then they came for the journalists’) or online abuse against a journalist or writer are not legal acts, the criminal defamation law provides a legal sanction to intimidate investigative journalists. This allows the powerful to muzzle criticism against them, aided by the law.

## The high cost of Criminal Defamation

Criminal defamation cases against media companies can adversely affect their financial models, many of which have tenuous balance-sheets reliant on corporate advertising. It is more so in overburdened Indian courts, where cases take years to settle.

Often, the case is against an individual journalist. A multimillion-dollar lawsuit can financially cripple a journalist's bank account.

In the 1990s, Sameer Jain, the owner of the world's largest selling English daily - *Times of India* - famously said, “we are not in the newspaper business, we are in the advertising business.” Since then other large newspapers have adopted a similar model, focusing more on developing new ways of marketing to increase revenues and reduce costs.

India doesn't have clear laws over media ownership to protect against conflicts of interest. Many of the 400 or so TV news channels in India are owned by politicians, so any investigations by those channels are perceived as a political vendetta. The management of corporate-owned media are often reluctant to approve investigative reporting that can land the companies in legal or political trouble.

As a result, in the past five years, the burden of doing hard-hitting journalism has fallen disproportionately on news websites and niche magazines that either depend on meagre digital advertising or philanthropic money for survival. Such organisations find it difficult to bear the burden of expensive defamation suits.

26 Subramanian Swamy vs Union of India, Ministry of Law and ORs, full judgement: [http://supremecourtindia.nic.in/FileServer/2016-05-13\\_1463126071.pdf](http://supremecourtindia.nic.in/FileServer/2016-05-13_1463126071.pdf); PTI, “SC upholds constitutional validity of defamation law”, New Indian Express, online: <http://www.newindianexpress.com/nation/SC-upholds-constitutional-validity-of-defamationlaw/2016/05/13/article3430780.ece>; Bhairav Acharya, “The Supreme Court's Loss of Reputation,” (14 May 2016), online: <https://notacoda.net/2016/05/14/the-supreme-courts-lossof-reputation/>

27 <https://indianexpress.com/article/india/five-dalit-students-convicted-of-defamation-get-6-months-in-jail-4426014/>

28 <https://scroll.in/article/887544/writers-decry-withdrawal-of-serial-novel-from-kerala-magazine-after-author-receives-death-threats>

29 <https://thewire.in/books/mate-mahadevi-kannada-author-loses-case-against-book-ban>

30 <https://pen-international.org/news/india-delhi-court-places-injunction-on-the-sale-and-publication-of-a-book>

31 <https://legaldesire.com/supreme-court-continues-ban-on-sale-and-publication-of-book-on-baba-ramdev/>

A quick look at the criminal defamation cases brought against media outlets in recent years illustrates the point. A 46-year-old billionaire, Arindam Chaudhuri, whose interests range from education to the media, sued a narrative journalism magazine *Caravan*, which has a circulation of less than 30,000 copies, after it published an investigative piece about his businesses.<sup>32</sup> A weekly news magazine, *Outlook*, was sued by Tata Sons, the holding company of one of India's largest business groups, after it published a story that alleged corruption.<sup>33</sup> Another large conglomerate, the Adani group, sued *Economic and Political Weekly*, a reputed 50-year-old weekly academic journal, over a story it published about the group's business operations. The son of the ruling BJP president sued the *Wire*, a relatively new not-for-profit news website, after it published a story that questioned his business deals. (See below).

Notably, there have been only a handful of convictions in criminal defamation cases. But the law criminalising defamation has cast a chill among editors, and it has become an effective tool for harassing and intimidating journalists by forcing them through lengthy legal processes.

In addition, even if the defendant wins the case, the material often loses its relevance since it remains gagged for years.

## The Wire and Jay Shah

In its three-year existence, *The Wire*, founded by three senior editors, has published many stories challenging government policies; stories from which others would keep a distance. When most other large media are often cautious, *The Wire* takes a strongly critical approach, publishing incisive opinions and reportage.

On 8 October 2017, *The Wire* published a story<sup>34</sup> documenting the spectacular rise of a new company which was formed a year after the present BJP government took power at the Centre. The company's owner and director was Jay Shah, the son of BJP's president Amit Shah.

The journalist who wrote the story for the *Wire* used public records, such as filings with the Registrar of Companies, to piece together a story showing how Shah's company, Temple Enterprise Private Ltd, had managed to increase its turnover more than 16,000 times within the year.

Merely four days after the story was published, Jay Shah's lawyers filed a civil defamation suit of one billion rupees (approximately USD 13.8 million at the time of writing) against the publication and its journalists. A separate criminal defamation case of another billion rupees was also filed against *The Wire*.

The cases were filed in the Mirzapur court of Ahmedabad, the commercial capital of Gujarat state, to which Shah belongs, and where his father Amit Shah had been a minister when the current Prime Minister Narendra Modi was the state's Chief Minister.

*The Wire* story's public interest was not in doubt.<sup>35</sup> Shah's company had managed to rake up a large turnover, coinciding with the BJP's coming to power. The journalist had used publicly available documents for her story.

The case should have raised an important question: why was it admitted in the court when it could have been dismissed, citing exceptions to defamation under the law? Instead, the court's first ruling went against the journalists.

The Ahmedabad court declared on 12 October 2017 that the story should be removed from its website by *The Wire* and other publications that may have carried it. The court said:

"...using and publishing or printing in any electronic, print, digital or any other media, or broadcast, telecast, print and publish in any manner including by way of interview, holding TV talks, debate and debates, news items, programs in any language on the basis of the article published in 'THE WIRE' (dated 8/10/2010) (sic) either directly or indirectly on the subject matter with respect to the plaintiff in any manner whatsoever."<sup>36</sup>

The gag order didn't matter. While most media organisations<sup>37</sup> carried the news about Jay Shah wanting to sue *The Wire*, very few reported or discussed the affairs of Shah's company detailed in the exposé.

In the past, when one organisation broke a big story other media organisations did extensive follow-ups. But in *The Wire*'s case, a criminal defamation suit not only silenced the investigative journalist in question, but it also deterred other media organisations from following up the story.

*The Wire* is a non-profit organisation, relying on philanthropic and reader donations. The founding editor of *The Wire*, Siddharth Varadarajan, said in an interview that the defamation suits were a method of harassment, ensuring not only that their meagre financial resources are depleted but most importantly, they serve to keep "us from doing the actual work of journalism."<sup>38</sup>

The same court lifted the gag order on the story in December 2017, but the Gujarat High Court restored the order in February this year. Currently, the case is under appeal in the Supreme Court.

Another example of cash-strapped publications being sued by strong companies is that of *Economic and Political Weekly* (EPW). EPW, a peer-reviewed journal with a long history of publishing essays and articles on economic policy and development issues, received a criminal defamation notice from the Adani Group, one of India's largest business groups, in July 2017. The group's founder and Chairman, Gautam Adani is close to Prime Minister Modi and has travelled with him on some of his overseas trips.<sup>39</sup>

In July 2017, the Adani group sued EPW's editor, Paranjay Guha Thakurta, editorial assistant, Abir Dasgupta, and two independent journalists, Advait Rao Palepu and Shinzani Jain, for half a billion rupees (approximately US\$ 6.9 million) for an article the magazine published, which alleged that the Adanis had acquired land under questionable circumstances and had received a massive tax refund.

Following the legal notice, trustees of the Sameeksha Trust, which publishes the journal, met and decided to withdraw the article. Some critics have alleged that the article was withdrawn under pressure of the legal case, others have argued that the trustees were unhappy about editorial standards applied to the story.

Paranjay Guha Thakurta resigned from his post after the piece was withdrawn.

## Harassment and intimidation

With media companies under financial pressure and budgets shrinking, and with new media organisations appearing on small budgets with leaner newsrooms, there has been a corresponding increase in freelance journalists. In addition, since media companies do not have the resources to sustain a newsroom where investigative journalists may spend months researching a specific story, freelance, or independent journalists have taken on that task.

Independent freelance journalists who conduct investigations that ruffle the feathers of the powerful are more vulnerable than journalists working with news organisations. They do not have a secure source of income and they face more risks when confronted with a criminal lawsuit. A further challenge is that Indian publications do not pay freelance and independent contributors well or promptly. Independent journalists are not in a position to spend vast amounts of money defending themselves in expensive lawsuits.

It is in that context that the work of journalists like Niranjana Takle, who investigated the death of Justice Loya in controversial circumstances for *Caravan* magazine, and Rohini Singh who wrote about Shah's companies for the *Wire*, is important.

Another interesting case is that of Swati Chaturvedi. She is an independent journalist who had expressed her displeasure in a critical tweet when Tajinder Singh Bagga was appointed as BJP's official spokesperson. Bagga is a controversial politician who assaulted a lawyer in the past over a political disagreement.<sup>40</sup>

Chaturvedi's tweet read: "Now the man who beat up @pbhushan1 was arrested in a sexual harassment case speaks for @BJP4India. Good job"<sup>41</sup> Bagga filed a criminal defamation case against her.<sup>42</sup>

Chaturvedi's tweet refers to an incident in 2011, when Bagga and two others allegedly attacked Advocate Prashant Bhushan in his Supreme Court chambers. According to Chaturvedi's petition in the High Court to quash the case, Bagga had allegedly tweeted: "We hit Prashant Bhushan hard in his chamber in Supreme Court. If you will try to break my nation, I will break your heads." The tweet is now unavailable.

Bhushan has taken up many public interest causes for litigation and is an advocate of peace between India and Pakistan. Bagga is a nationalist politician who defends the Indian army and is highly critical of any rapprochement with Pakistan.

In 2016, Chaturvedi published a book titled *I am a troll: Inside the secret world of the BJP's digital army*. In the book, Bagga is referred to as "BJP's internet warrior", who exhibited potential for actual physical violence. In July 2018, the Delhi High Court stayed the case Bagga had initiated against Chaturvedi.

While these cases involve the English-language media in India, the reach of such media in India is relatively limited; it includes the tiny influential and elite circles of Indian

32 <https://www.firstpost.com/ideas/arindam-chaudhuri-sues-caravan-penguin-and-google-for-rs-500-million-29422.html>

33 <https://timesofindia.indiatimes.com/business/india-business/Tata-Sons-files-defamation-case-against-Outlook-magazine/articleshow/7945557.cms>

34 <https://thewire.in/business/ amit-shah-narendra-modi-jay-shah-bjp>

35 As explained in 'Law and Free Expression in Today's India' section 499 of the IPC makes certain exceptions while ruling defamation, among them that the information is truthful and for the public good.

36 <https://thewire.in/media/victory-wire-court-lifts-injunction-granted-jay-amit-shah>

37 <https://www.newslandry.com/2017/10/09/amit-shah-rs-100-crore-defamation-media-blackout-times-of-india-hindu-indian-express-aaj-tak-ndtv>

38 <https://www.youtube.com/watch?v=pEXws5nwDEA>

39 <https://www.hindustantimes.com/india/gautam-adani-pm-modi-s-constant-companion-on-overseas-trips/story-CMDqyMTSNxoewG-pQVqEeDK.html>

40 <https://timesofindia.indiatimes.com/india/Prashant-Bhushan-trying-to-break-India-I-broke-his-head/articleshow/10333319.cms>

41 <https://twitter.com/bainjal/status/841842178116608001>

42 <https://www.livelaw.in/delhi-hc-issues-notice-to-tajinder-singh-bagga-on-journalist-swati-chaturvedis-plea-for-quashing-defamation-proceedings/>



society. Regional language media reaches many more readers, and its influence dwarfs that of English media. Local politicians are often more concerned about their image in regional media.

In June 2018, Himanta Biswa Sarma, a cabinet minister from the northeastern state of Assam, filed a one billion rupee (approximately US\$ 13.8 million) criminal defamation suit against a national Hindi news channel which ran a story about him alleging links with a controversial power broker.<sup>43</sup>

Sarma tweeted: “I am outraged by a @abpnewstv news report linking me to a person whom I have never met or known in my life. [The] @abpnewstv news report has defamed me in public light. I have filed a Rs 100 crore defamation suit against ABP News before the civil judge, Sr division, Kamrup district, Guwahati.”<sup>44</sup>

The case is ongoing. Many such cases go unnoticed in the English-language media, unless the criminal defamation case is filed for absurdly large amounts of money.

### Public remedies for private wrongs

A colonial legacy, the criminal defamation law has been in existence in India for nearly two centuries. As noted in the previous chapter, in May 2016 the Supreme Court of India had a chance to get rid of it when senior politicians across party lines - Subramanian Swamy, Rahul Gandhi and Arvind Kejriwal - filed petitions challenging the law relating to criminal defamation (more under the essay titled ‘Law and Free Expression in Today’s India’).

But the court decided to retain the law stating, “The right to freedom of speech and expression is not an absolute right...A person’s right to freedom of speech has to be balanced with the other person’s right to reputation”.<sup>45</sup>

The court’s ruling sidesteps a question that many legal observers have asked: whether there should be a criminal remedy for a civil wrong. Is an individual’s reputation a matter of public interest? Should the State’s resources be used in pursuing such cases?

The state presses criminal charges to fight crime. It is meant to prevent societal harm. But should a criminal charge be pressed against a writer when the harm is suffered by an individual (reputational damage, for example) and not societal harm? Whether states should get involved in pressing criminal charges in defamation suits remains a crucial issue. And what happens when the journalist is acting for the public good?

Writing in the newspaper *The Indian Express*, former Harvard professor and now the vice-chancellor of India’s leading private university, Ashoka University, Pratap Bhanu Mehta blamed India’s weak democratic institutions for supporting a law which clearly hinders free speech. “In the evolution of law, the trend is usually towards decriminalisation of more crimes and the institution of civil remedies. India seems to be moving in an opposite direction. More and more crimes, from trademark violations to drinking and eating, are becoming criminal violations. We prefer penal over civil remedies. Why is this?” he asks. “Underlying these punitive responses is the large fact of institutional decay and incapacity,” he adds.<sup>46</sup>

It is the media’s job to challenge weakened institutions by holding them to account. But laws, and tools sanctioned by the law, are affecting the future of freedom of speech and prospects of a vibrant democracy look rather bleak.

# Surviving in a world of ‘virtual’ abusers

By Raksha Kumar

The world, they say, became flatter with the introduction of the internet. However, some people with louder voices and harsher language get the better of many others. Whether each opinion has an online platform or not, it seems like there is no dearth of avenues for abuse.

In the initial years of social media, name-calling, use of cuss words, repeated threats and shaming were considered “trolling”, which is defined as an act of “making random unsolicited and/or controversial comments”. The difference between what happened in the real world and in the virtual world was this – if such abusive comments were made to a person’s face, the person at the receiving end of the abuse could lodge a police complaint and could seek psychological help to overcome the feelings of indignation, anger and shame. In the real world, if such comments were made by the abuser in his home, the receiver would never know about it.

The Internet changed that – the person at the receiving end not only heard or saw what was said, but kept receiving it many times over, as other abusers might join in.

For that’s what those who troll actually are – abusers. Worldwide, trolling is now being recognised as a serious form of online abuse.

Such incessant abuse online pushes some journalists and writers into a shell, making them nervous about sharing their opinions which may sometimes be controversial. Not only that, with surveillance and voluntary sharing (sometimes excessively so) of personal information online, there is a very thin line between online abuse and offline harm.

Online abuse has become an effective tool to shut down unfavourable opinions, especially by those who cannot counter-argue with facts or logical arguments.

### Unique characteristics of online abuse in India

While online abuse is a world-wide phenomenon, in India it has a few unique characteristics.

The ruling party, BJP, is sensitive about certain issues. These include religion and its symbols, such as the cow, an animal considered holy by many Hindus; nationalism, such as the Indian army’s prowess; and an electronic identification mechanism called AADHAR – a unique identity number that Indian residents are required to have, based on their biometric and demographic data.

Anyone questioning policy on the above issues attracts abuse by the government’s supporters. The party has the support of an army of “internet warriors” who abuse those whose opinions they disagree with, and criticise news articles and research that go against their beliefs.

The media did not comment on this pattern of abuse much until the party proposed to make it their official policy.

Earlier this year, the BJP-led central government proposed to employ a “social media analytical tool”, which would create “digital profiles” of social media users. In a document released by the Ministry of Information and Broadcasting, the government admitted to the use of “digital profiles” to “neutralise negative sentiments about government schemes”. After the story broke on a news site,<sup>47</sup> government representatives came on record to say that the proposal was withdrawn. However, a leading news channel, NDTV, reported that there were six more such proposals and it was not clear if all of them were withdrawn.<sup>48</sup>

What the government cannot do officially, its supporters are doing at an unofficial level. A group, calling itself “India Against Biased Media” began a hashtag #IABM and called for volunteers to join in their war against “biased or fake news”. What it doesn’t say explicitly is that it would abuse the detractors, dissenting voices and any questioning of government policies.

43 <https://scroll.in/latest/883587/assam-minister-himanta-biswa-sarma-files-defamation-suit-against-hindi-news-channel>

44 <https://twitter.com/himantabiswa/status/1009750259080278016>

45 Subramanian Swamy vs Union of India, Ministry of Law and ORs, full judgement: [http://supremecourtindia.nic.in/FileServer/2016-05-13\\_1463126071.pdf](http://supremecourtindia.nic.in/FileServer/2016-05-13_1463126071.pdf), p 62

46 <https://indianexpress.com/article/opinion/columns/supreme-court-criminal-defamation-law-subramanian-swamy-2805867/>

47 <https://scroll.in/article/879833/government-plans-to-monitor-individual-social-media-users-to-gauge-opinion-about-official-policies>

48 <https://www.ndtv.com/video/shows/reality-check/centre-s-snooping-scheme-4-years-7-attempts-491440>

And that is exactly what happened.

IABM called many journalists names for tweeting information after the Jawaharlal Nehru University (JNU) student Umar Khalid was allegedly shot at in New Delhi in August 2018. Khalid, a post-doctoral student from JNU, has been a sharp critic of the present government. He was reportedly shot at near the Constitution Club in Delhi in August.<sup>49</sup> Pro-government websites questioned whether the attack had even taken place.<sup>50</sup> Some individuals on Twitter cheered the attackers and some claimed the attack was staged by the government's opponents to make the government look bad.

IABM has also filed police complaints against journalists for "tweeting irresponsibly".<sup>51</sup> One tweet critical of journalists said: "If some media kingpin thinks #IABM is shooting the Messenger. Yes we are shooting the messenger but people know we are shooting the "One" who spread lies & fears so deserve this treatment only" - the tweet read.<sup>52</sup>

As journalist Swati Chaturvedi has noted in her book, *I Am a Troll: Inside the secret world of the BJP's digital army*, many of the abusive trolls are followed on Twitter by the Prime Minister and other senior politicians. The trolls proudly mention that fact in their Twitter profile, and despite this being pointed out, neither the Prime Minister nor other ministers appear to have stopped following these abusive handles on Twitter.

In fact, the Prime Minister has met some of his enthusiastic supporters on Twitter, and spoken encouragingly of the spirit of the young generation and their unusual methods of using communication.<sup>53</sup>

In the past couple of years in India, habitual abusers online have given up the cloak of anonymity. On the contrary, their Twitter bios proudly proclaim that they are followed by the Prime Minister of the country, suggesting their confidence that they can act with impunity.

In May 2018, senior journalist and NDTV anchor Ravish Kumar said that he had been receiving threats from right-wing extremists.<sup>54</sup> He released two videos he had received on his phone. In one, a former member of the army had threatened to shoot Kumar in his office. In the other, a member of Bajrang Dal, a right-wing Hindu nationalist youth group revealed Kumar's home address and the

usual route he takes to go to work. The video ended with a threat to rape the women in his family before killing him.

In fact, rape threats to women are not uncommon on Twitter. They are even more common for women who voice their opinions on controversial issues.

### Online abuse and women

In 2016, *Feminism In India*, a news and opinions website, published a report titled 'Violence Online in India: Cybercrimes Against Women and Minorities on Social Media'.<sup>55</sup>

The report said "the rise of the BJP, which came to power in the 2014 general election and espouses Hindu nationalism, has been accompanied by an increase in online abuse against a range of targets, from 'liberal and secular' journalists to activists and women from historically marginalised caste groups."<sup>56</sup>

With over 400 million internet users and a growing section of citizens using smartphones, India has one of the largest populations online. Such easy access to social media has encouraged many traditionally-silenced Indian women to speak up in the online sphere. It also makes the outspoken woman visible and a target of personal abuse.

Historically, abuse has meant something different for women than for men. It is no different when the abuse is on social media. Slut-shaming, commenting on body parts and genitalia, and questioning their credibility and character are often used primarily against women.

In one egregious example, in April 2018, a Twitter account that parodies the pro-government TV network Republic TV which is funded by a BJP Member of Parliament, quoted a fake tweet and ascribed it to journalist Rana Ayyub, an award-winning journalist who has written critically against Modi and the BJP. The tweet read: "Minor child rapists are also human, do they have no human rights. This Hindutva Government is bringing ordinance for death to child rapists just to hang Muslims in larger numbers. Muslims aren't safe in India anymore."<sup>57</sup>

Ayyub had made no such comment.

Ayyub is known for her self-published book titled *Gujarat Files: Anatomy of a Cover Up*, on the excesses of the

BJP government during the 2002 Gujarat riots, in which nearly 1,000 people were killed by official count, of whom two-thirds were Muslims. The violence lasted several weeks. Ayyub's book was an investigation into what went wrong and who was responsible.

Almost immediately after the fake tweet surfaced, Ayyub was targeted on social media.<sup>58</sup> There were calls for her to be gang-raped and killed. One abuser posted a pornographic video with her face digitally superimposed over the face of an actress.

For weeks after that, Ayyub was constantly harassed online and offline. Some argue that parody accounts should not be taken seriously, and that the original quote was meant as a joke. However, many social media users took the tweet seriously and found nothing funny in it. More importantly, the online abuse moved offline, and Ayyub began getting threats at both her Mumbai and New Delhi homes.

She filed a complaint in New Delhi. There has been no progress in the case so far.

Like Ayyub, Barkha Dutt, a senior journalist, went public with her experience of battling online abuse. In a series of tweets in July 2018, she said she "received chilling veiled threats and messages from powerful people in the Establishment".<sup>59</sup>

"I never thought the day would come when in my own country, I would be told to hire private security & get my house debugged. I suppose i (sic) should be ready for phone taps, IT cases, ED raids, death threats" another tweet on the same thread read.<sup>60</sup>

Last year, she had written about her phone number being circulated on certain right-wing WhatsApp groups with people being encouraged to send her abusive messages<sup>61</sup>. Like many other women journalists in India, Dutt was one of the first to be called a "presstitute," a play on the word prostitute, which is used by pro-government trolls, and, according to reports, echoed by certain ministers.

Female journalists are trolled for their controversial opinions, but some female journalists are trolled simply because they speak up. In August 2017, Dhanya Rajendran, editor-in-chief of the South India-focused news website, The NewsMinute, was mentioned more than 30,000 times on Twitter, each tweet more abusive than the other. She was subjected to the abuse because she had compared a blockbuster film of a famous Tamil

film star to a flop Bollywood film. For 48-hours, fans of the Tamil actor, Vijay, hurled abuse at Rajendran. Ironically, Rajendran had said Vijay's film, *Sura*, was better than the other film. #PublicityBeepDhanya was the hashtag that began trending.<sup>62</sup>

Rajendran filed a police complaint in Chennai and attached screenshots of the abusive tweets. One person was eventually arrested. Twitter India blacklisted the hashtag but not before it was too late. At public events after that, Rajendran spoke bravely about the abuse she faced, her voice quivering only when she mentioned the tension her family faced through those days.

In another incident, the Malayalam-language news channel anchor, Sindhu Suryakumar, hosted a TV debate in which references were made to a Hindu female deity. Within no time of the programme's airing, her phone number was posted on several WhatsApp groups and she received more than 2,000 insulting phone calls and messages.<sup>63</sup>

India does not have a law to deal with online abuse specifically. However, a few sections of the Indian Penal Code (IPC) and Information Technology (Amendment) Act (IT Act) make "trolling" a criminal act. In several cases (such as Rajendran's) these provisions have proven to be woefully insufficient.

In 2017, Amnesty International polled 4,000 women in eight countries<sup>64</sup> and found that 76% of women who had been abused or harassed online changed how they used social media, including by self-censoring. This is the most concerning aspect of online abuse.

As the world is increasingly moving to a new dimension with a distant server and virtual connections, fearless voices emerge from unexpected places. So do harsher voices that attempt to suppress them.

49 <https://thewire.in/rights/umar-khalid-constitution-club-shooting>

50 <https://www.altnews.in/opindia-mynation-postcard-news-declare-umar-khalid-not-attacked-based-on-a-false-testimony/>

51 <https://mumbaimirror.indiatimes.com/mumbai/cover-story/citys-ex-pilot-behind-group-aiming-to-bully-media-into-submission/article-show/65417667.cms>

52 <https://twitter.com/saxenavipul64/status/1031475099273031682>

53 <https://www.thequint.com/tech-and-auto/tech-news/twitter-trolls-among-super150-invited-by-pm-modi>; <https://twitter.com/narendramodi/status/1012961121039417344?lang=en>; <https://twitter.com/narendramodi/status/1012961124248104960>

54 <https://www.thehindu.com/news/national/ntdvs-ravish-kumar-says-death-threats-have-increased/article23989047.ece>; <https://www.ndtv.com/video/news/left-right-centre/death-threats-to-ravish-kumar-how-journalists-are-hounded-485754>

55 <https://feminisminindia.com/2016/11/15/cyber-violence-against-women-india-report/>

56 "Violence" Online In India: Cybercrimes Against Women & Minorities on Social Media, p2.

57 <https://thewire.in/media/rana-ayyub-fake-news>

58 <https://pen-international.org/news/india-vilification-and-threats-against-writer-and-journalist-rana-ayyub>

59 <https://twitter.com/bdutt/status/1004609085533122561?lang=en>

60 <https://twitter.com/bdutt/status/1004614266547105793?lang=en>

61 <https://www.hindustantimes.com/india-news/let-s-talk-about-trolls-trolling-is-a-weapon-to-silence-women-barkha-dutt/story-A9X3fAuRwZiwV-rhYQnKbYL.html>

62 <https://www.dailyo.in/variety/dhanya-rajendran-twitter-trolls-sura-vijay-tamil-cinema-sexism/story/1/18827.html>

63 [https://www.huffingtonpost.in/2016/03/01/sindhu-sooryakumar\\_n\\_9352454.html](https://www.huffingtonpost.in/2016/03/01/sindhu-sooryakumar_n_9352454.html)

64 <https://www.amnesty.org/en/latest/news/2017/11/amnesty-reveals-alarming-impact-of-online-abuse-against-women/>

# Censorship and Universities

By Apoorvanand

Since the advent of modernity, universities have been thought to be an inalienable part of societies. To imagine a democracy without universities is impossible. Universities are places where knowledge is transferred to younger generations. But more than that a university is a site where new knowledge is created.

Academic freedom means that teachers, students and academic institutions in all their aspects, including governance and financing, should be left free by powers of all kinds, including the government, the society and the market. Restrictions on academic freedom lead to poorer outcomes that harm society in the long run.

Freedom is an essential precondition for the creation and acquisition of new knowledge. Experimentation is another prerequisite. Universities were conceived as spaces where teachers and students would be left free to experiment in ideas. A university has been seen as a laboratory of ideas, a safe zone, a refuge of sorts.

In a world where right-wing nationalism is raising its head and 'strong' leaders seek to legitimise their ideology by referring to their championing of the 'popular will', the role of the universities as "counter-majoritarian institutions"<sup>65</sup> becomes vital.

Academic freedom has been a topic of fevered discussion in India, especially for the last four years after the BJP came to power at the national level. It was the first time a single political party obtained a majority in Indian elections since 1984, and the first time since independence that a party that has vigorously pursued an anti-minority agenda came to power on its own, making 2014 a watershed election in more than a generation.

65 Professor Michael Ignatieff, President, Central European University: <https://www.timeshighereducation.com/news/ceu-head-academic-freedom-must-be-seen-good-wider-society>

66 In this India is not unique. **Turkey**, for example, has jailed hundreds of teachers and students, with armoured vehicles entering the campus of the prestigious Bogazici University in Istanbul. Libraries have been raided and dozens of students and professors have been arrested. In **China**, universities are to be closely scrutinised, professors will be evaluated and the ruling Communist Party will punish those lacking ideological firmness, as Xinhua has reported. The Cambridge University Press withdrew 315 articles and reviews that dealt with controversial topics from its journal *China Quarterly* under pressure from the government of China. In the **United States**, the attack on the twin towers on 11 September, 2001 led to demands of banning 'un-American' activities on the campus.

67 <https://thewire.in/education/professor-assaulted-motihari-mahatma-gandhi-central-university>

## Sedition and the campus

Intolerance and reports of incidents of violence on university campuses are threatening academic freedom:

- On 9 February 2016, a small student organisation decided to organise an event to mark the anniversary of the execution<sup>68</sup> of Afzal Guru, who was sentenced to death in 2012 for his alleged role in the attack on the Indian Parliament. While many of the critics were opposed to capital punishment *per se*, some objected to the execution on procedural grounds, and still others objected to the fact that the hanging took place before the family was informed. Kashmiri separatism is a sensitive issue among most sections of the Indian society. And Guru was a popular separatist leader.
- In February 2017, students and teachers of the Ramjas College, Delhi University, were attacked by members of the ABVP.<sup>74</sup> The College had invited JNU scholar Umar Khalid to speak at a literary festival. Khalid is among three young scholars – the other two being Kanhaiya Kumar and Shehla Rashid – who have borne the brunt of attacks from nationalists and the right-wing in India in recent years. The three are left-leaning and have spoken out against the Indian government and its handling of many issues, including the bitter conflict in Kashmir. On the eve of India's Independence Day this year, when Khalid was to speak at an event promoting communal amity at the Constitution Club in New Delhi, he was attacked and a shot was reportedly fired.<sup>75</sup>

The university authorities withdrew permission for the programme at the last minute. But the organisers went ahead with it anyway. Members of the Akhil Bharatiya Vidyarthi Parishad (ABVP) – the student wing of the Rashtriya Swayamsevak Sangh (RSS), which is also the parent body of the ruling BJP – protested and violence broke out.<sup>69</sup> Popular news channel Zee News repeatedly broadcast a tampered video of the protest, which purported to show students raising slogans in support of Kashmiri separatism.

The Minister of Home Affairs of India claimed that the students involved in it had support from terrorists in Pakistan without offering any evidence.<sup>70</sup> It led to a series of attacks on the student activists, resulting in the arrest of Kanhaiya Kumar, the President of the JNU Students Union, research scholars Anirban, Rama Naga and Umar Khalid.<sup>71</sup> While being brought to court for a hearing, Kumar was physically assaulted by the lawyers.<sup>72</sup> The Supreme Court, despite taking notice of this blatant attack, refrained from taking action against the lawyers.<sup>73</sup>

Since then the members and leaders of the present central Government, with the help of a particularly vociferous and dominant section of the broadcast media, have been involved in a systematic smear campaign against these students.<sup>76</sup>

The attack on Umar Khalid followed a consistent campaign of vilification which painted him as an 'anti-national' person. Several networks refer to the students of JNU with contrarian views as the 'tukde tukde gang,' an erroneous depiction of the students – as though they are advocating dismemberment of India (tukde tukde means broken pieces) – even though there is no evidence that any of the students ever raised a slogan calling for the break-up of India.

68 India retains the death penalty in 'the rarest of rare cases,' according to the Supreme Court. See: <https://www.thequint.com/news/india/why-law-commission-says-end-death-penalty-in-all-but-terror-cases>.

69 <https://indianexpress.com/article/cities/delhi/jnu-students-clash-over-event-on-afzal-guru/>

70 <https://timesofindia.indiatimes.com/india/JNUs-Afzal-Guru-event-had-Hafiz-Saeeds-backing-Rajnath-Singh-says/articleshow/50982914.cms>

71 <https://thewire.in/education/arrest-anti-india-elements-says-rajnath-so-police-pin-sedition-on-jnusu-head>

72 <https://www.thequint.com/news/hot-news/lawyers-assault-kanhaiya-kumar-rough-up-reporters-again>

73 <https://thewire.in/law/sc-turns-plea-order-probe-2016-attack-kanhaiya-kumar>

74 <https://scroll.in/article/830126/no-talking-in-the-hindu-rashtra-lessons-from-the-disruptions-at-delhis-ramjas-college>

75 <https://thewire.in/rights/umar-khalid-constitution-club-shooting>

76 <https://indianexpress.com/article/india/india-news-india/jnu-row-umar-khalid-kanhaiya-kumar-anti-nationalism-tv-debates/>; <https://thewire.in/media/times-news-first-denies-airing-doctored-video-then-concedes-it-did>; <https://www.thequint.com/news/hot-news/jnu-doctored-videos-govt-orders-legal-action-against-tv-channels>

- Prior to the attack on JNU, the Central University of Hyderabad was caught in a controversy when a young Dalit student called Rohit Vemula committed suicide after his fellowship funds were withheld from him by the University. Vemula had protested the execution of Yakub Memon, who was convicted for his involvement in the 1993 bombings in Bombay. The ABVP had carried out a sustained campaign against Vemula and his colleagues at the Ambedkar Students' Association.<sup>77</sup> Would Vemula's fellowship funds have been withheld if he had not been politically active and expressing views critical of the government?

With the JNU and the Ramjas College incidents, the floodgates opened. Many other academics were stopped from speaking on campuses in other parts of the country:

- Dr. Audrey Truschke, a Sanskrit and Persian scholar and a medieval India specialist who teaches at Rutgers University in the United States, was invited to speak at Krishnakriti Foundation in the city of Hyderabad, but the invitation was then rescinded<sup>78</sup> after the organisers faced pressure from members of the nationalist forces, who claimed that the author was painting India in bad light. Her book on Aurangzeb – the sixth ruler of the Mughal Empire – has faced attack previously by many right-wing forces.
- Snehsata Manav, a teacher at the Department of English in the Central University of Haryana faced violent agitation from ABVP and had to face enquiry by university authorities for having staged a play which critiqued the excesses of the security forces in the tribal areas of India.<sup>79</sup>
- Rajshri Ranawat of the Jodhpur University faced police action and suspension from her job.<sup>80</sup> She was charged with organising an “anti-national” seminar for having invited speakers such as Prof Nivedita Menon of JNU. Prof Menon, a feminist, was also implicated in the Ranawat case. She has a history of being vilified as “anti-national”, as she professed views that didn't agree with the government.<sup>81</sup> Leading intellectuals have challenged networks for running a campaign questioning how people like Menon could be allowed to misuse university spaces to propagate their ‘seditious’ views.

These are only some of the known and high-profile cases. The last four years have seen several other instances of cancellation of talks, seminars, film screenings, suspension of students and teachers for “indulging in political or anti national acts.” Universities have been asked to erect “walls of valour” on campuses to help students and teachers imbibe patriotism,<sup>82</sup> hoist the national flag at a particular height, celebrate days as directed by the government and submit documentary proof of compliance to the ministry.

An atmosphere of open and free discussion in the society fosters academic freedoms on campuses, yet free scholarship has become difficult in India. Extreme caution while talking or writing about certain historical periods or personalities is exercised.

Free exchange of ideas across national boundaries is essential in the context. Bars on people from certain countries like Pakistan restricts such academic dialogue.

### Direct government control on universities

Academic freedom is also related to the matters of governance within the university and regulation of it from outside. The recent move by the central government of India to abolish the University Grants Commission (UGC) and replace it with a new apex body to regulate the field of higher education<sup>83</sup> is seen as part of the design to take away autonomy and freedom from educational institutions. The model seeks to determine even the grades of students. The new body has been made totally subservient to the central government in its selection process and composition.

The appointment of persons with questionable academic credentials, simply on the basis of their affiliation to the ruling party as chiefs of research bodies and institutions, have a bearing on the research climate. While such appointments in the past were also political, the appointees often had credentials from established universities.

Today, scientific institutions are being forced to take up projects to validate the ideological stance of the government. For example, Indian Institutes of Technology (IIT) are being forced to promote ideas like SVAROP, which is acronym for Scientific Validation And Research On ‘Panchgavya’ – a concoction of cow dung, cow urine, milk, curd and ghee. IIT Delhi is being encouraged to house and support such proposals. The cow is considered holy by certain sections of Hindus and they believe that cow

urine has medicinal value. The present apex regulatory body, the UGC, is even prescribing uniform academic courses to be adopted by all universities.

Publishers are now getting their books vetted by their legal team to avoid mention of or reference to anything which might offend the ruling party. This has had an adverse impact on scholarly publishing in India.

Alarming, universities have surrendered to such demands without even a word of protest. It is a sad reflection on the internal culture of the universities. Any discussion on academic freedom becomes irrelevant in a society where universities are made dysfunctional by depriving them of funds and faculty.

Indian higher education is facing many challenges, the lack of resources being a prominent one, which is a global trend. Privatisation and commercialisation have increased, making it harder for poorer students to access education. Academic freedom is enhanced on campuses that are truly inclusive. Publicly-funded universities play that role. Many Indian public universities are facing serious funding cuts, are understaffed and under-resourced. Many teaching posts are vacant. In addition, infrastructure facilities of the university like libraries or laboratories are also in an impoverished state.

### The University as a microcosm of the society

A university has to be a free space. A spirit of inquiry can often conflict with belief systems, which support and are in turn patronised by the powers that be. Universities have been imagined and organised as structures free from influence of the state. The faculty, though funded by governments, should have the freedom to express their views and judgment, which can go against the supreme power of the day.

Academics are expected to talk to the public at large, apart from those who attend their classes or participate in their research work. This is intrinsic to the work of the university and not something extraneous. That is why they write opinion pieces, appear on TV and use other media to keep people informed using their own knowledge.

This is one of the vital reasons for the state to support all kinds of research because it is research, which augments and improves knowledge. Correct information, rigorous application of methods evolved and conclusions examined and seconded by peers is how the business of knowledge is conducted.

For democracy to thrive, the ability of people to discriminate between falsehood and truth must be cultivated. The community of knowledge has a role and duty here. In order to perform this duty in a fair manner, it has to remain autonomous of the interests of the state, and, nowadays, also independent of the demands of the market which asks universities to produce only “employable” people. It results in disciplines like philosophy or literature being marginalised. This community cannot become an approver and advocate of state power and its decisions, rather it has to primarily act as a critique. This is the main reason for not treating university teachers as government servants bound by a code of conduct which prohibits them from differing with the state.

Communities of knowledge are also supposed to act as communities of judgment. This work is done through framing of curriculum, syllabi, organisation of classroom and also extra-mural activities. It is not only that their privilege to have and air an opinion needs to be safeguarded, but they also have a responsibility towards their peers, students and their area of knowledge. They have to expose their students to contrarian view points, give them tools which would help them make their own analysis of the problems under consideration and evolve their own judgment.

Autonomy of teachers and universities is an essential condition of academic freedom but is not sufficient. Adequate funding and support for research, regular enrichment of libraries and other resources and enlarging the university space making it open to all sections of the society alone can make the practice of intellection truly democratic: each one of these is essential if we want universities to be academically free spaces.

Societies which have an aspiration to evolve as intelligent and efficient communities have restrained themselves from the temptation to tame universities. Those who have acted otherwise have failed. Stalin, Hitler, Mao, Khomeini, and McCarthy, among many, in their attempt to make universities servile ended up impoverishing them and forcing talent and intellect out of the system. The State became stronger but societies became weaker.

77 <https://thewire.in/caste/two-years-later-rohith-vemulas-soul-still-haunts-us-failing>

78 <https://thewire.in/communalism/silencing-scholarly-voices-audrey-truschke>

79 <https://pen-international.org/news/pen-delhi-condemns-the-harassment-of-members-of-the-central-university-of-haryana-for-staging-a-play>

80 <https://www.ndtv.com/india-news/jodhpur-university-professor-suspended-over-anti-national-talks-at-conference-gets-court-relief-1666877>

81 <https://scroll.in/latest/805176/full-text-139-academics-condemn-vicious-media-campaign-against-jnu-professor-nivedita-menon>

82 <https://www.hindustantimes.com/india-news/wall-of-heroes-at-universities-to-display-portraits-of-warriors/story-MI9lNWJE19sKtcqhoTJfLL.html>

83 <https://www.livemint.com/Education/RBe6UjxyNEkAwEzeEcN1H/Centre-to-scrap-UGC-bring-in-Higher-Education-Commission-of.html>

# Writing in clamour and silence

By Nilanjana Roy

Born in the 1970s, I have trace memories of queues at the ration shop, queues at banks if you wanted to withdraw money, queues at the gas agency to book a cylinder, and another queue to persuade the agency to deliver the gas cylinder.

The feature of those queues, now less common in many parts of India, was uncertainty. Citizens never knew what their portion would be, or when their turn would finally arrive. But they understood the underlying message: your fate was not in your control. Someone else would determine how much rice, wheat, sugar, money, cooking fuel you could have, the basics that allowed you to live.

There are no queues for freedom, no ration shop where half a kilo of speech is weighed and handed over to writers, but there might as well be. It doesn't matter whether you are an English-speaking metropolitan writer, or a writer working in one of India's many languages who lives in a small village.

It doesn't matter what you write about: the law, Mughal history, fiction, crony capitalism, the environment, politics, even poetry. Your portion of freedom, safety, the space to write without fear: these are all rationed, and the allotment changes week to week. No one knows when the supplies will finally run out.

## Normalising silence

People adapt so swiftly to a changing environment. What was a worrying portent in 2013, or an unimaginable act even in the first few months after the elections of 2014 that brought Prime Minister Narendra Modi's government to power, has become part of everyday life, for writers (and others).

The names of writers, scholars and rationalist thinkers appear on a right-wing hit-list - Damodar Mauzo, the Goan writer, Girish Karnad, the great Kannada writer and actor, Professor KS Bhagawan, the rationalist scholar, among others. This is terrifying; but it is, after the planned, cold-blooded murders of Maleshappa Kalburgi, Narendra Dabholkar, and Gauri Lankesh, also normal.

In Kerala, the Malayalam writer S Hareesh withdraws his novel, *Meesha*, after members of the far-right decide that he has insulted Hindus. They threaten him, his wife and mother receive rape threats, they disrupt and vandalise a book exhibition where copies of *Meesha* were on sale. Threats, even death threats, are part of the new normal too.

The American historian Audrey Truschke, hated by the right-wing for her insistence on shedding light on the history of Mughal emperors such as Aurangzeb, delivers lectures across India, but cannot speak in Hyderabad after the organisers of her talk received threats. The disruption of talks, the silencing of speakers; this is so normal it's almost unremarkable.

The articulate student leader, Umar Khalid, survives an attack by a gunman as he's walking into the Constitution Club in Delhi, a kilometre from the Indian Parliament. The lives of writers, scholars, activists at risk: normal. Punitive lawsuits filed against journalists and writers who attempt to investigate corporate corruption, especially on the environmental beat, or who write exposés of the business empires built by godmen such as Baba Ramdev: all normal.

There is little outrage in the media, for two reasons. Many Indian media companies, especially television channels and radio shows, are run like propaganda machines. Other media companies that aren't encouraging hate speech or whose anchors are not targeting a wide assortment of Indians for being "anti-national," are run by corporate owners who instruct editors not to run anything too controversial, anything that might upset powerful interests - politicians, the new breed of billionaires who fund India's massive elections.

And the other reason is that there's an abundance of terror. A steady, everyday drip of it. Lynchings; mob attacks; a rising storm of aggression, killings, a generation coached to hate. Against that backdrop, what happens to writers, how they breathe this poisoned air, whether they survive these times unscathed or not - that is not much of a priority, for the state or for the media.

"I think it's quite clear that writers have been identified as the enemy," the novelist and publisher Anuradha Roy writes when I mail her. "I know that mobs have been anarchic and violent before; we all remember the vandalising of the Bhandarkar Oriental Research Institute in Pune (the city where the PEN Congress is meeting) because of some lines about Shivaji in a scholarly book, for example, and the hounding of Taslima Nasreen. But I think earlier these cases felt like exceptions. Now that we know writers can be killed for what they have said or written and that there won't be much more than a perfunctory response to such killings from the state, it feels both isolating and dangerous to be a writer."

Her email arrives as I'm leaving for an evening commemorating the life of Gauri Lankesh (More on her killing in the essay titled "... and then they came for the journalists"). The space, a small café in South Delhi, is familiar, the plates of biscuits and snacks that every publisher offers at every book launch - unthinkable to not feed your guests. Stacks of books piled up on a table, comfortable chairs, people crowding in to listen to Chidanand Rajghatta (who was once married to Gauri and has written a book about her life and the situation today) and Manoj Mitta talk about the Gauri they knew.

Posters of Gauri behind their chairs. Just weeks earlier, at the Press Club, photographs of the Kashmiri editor Shujaat Bukhari, assassinated on the last day of Ramzan (as Ramadan is known in South Asia) as he was coming out of his office. As the bad news has piled up, most of us have learned to save our tears. But something about the ordinariness of this - the publishing house issuing another order to get a standee made, the small task of choosing a photograph of the deceased - clutches at my heart.

We leave at the end of the talk. I turn to wave goodbye to a film-maker friend, and at the far end of the room, I catch Gauri's light-filled smile, in black-and-white.

This will not be the end of it. I don't know how often we'll have to meet in the future to mourn our friends, our mentors, our colleagues; how often, if the country goes all the way down its present track, someone will have to commission another memorial photograph for another murdered writer.

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The times take a heavy toll. For writers caught in the net of lawsuits - thanks to draconian criminal defamation laws and the laws that make it an offence to offend religious sentiments - or facing wave after wave of abuse and threats on social media, the struggle can be lonely. After the initial wave of support, people turn back to their own lives.

In the absence of organisations such as the American Civil Liberties Union (ACLU), with nascent and underfunded writers' bodies, writers have little in the way of structured support, even from their publishers. Many mainstream publishers now practise an unofficial censorship, pre-screening manuscripts, the firm's lawyers performing a kind of stringent baggage check rather than fight it out in the courts or risk political displeasure.

Independent publishing houses are often far more courageous, but lack the resources to fight expensive, long-drawn legal cases, and lack the clout to put pressure on local administrations and politicians. Many writers, especially those who write about history - a battlefield in modern India - or political or corporate corruption have learned to pre-censor themselves, or have fallen silent.

Writers around me respond in varied ways. Some turn away from the political arena entirely. Others see their own writing consumed and set to one side as they take on the hard work of reporting assaults, battle ideological takeovers of institutions, organise protests, and send out petition after petition, offering support to those under fire. Though many silence themselves, a certain kind of courage emerges, among editors of online magazines, investigative reporters, fact-checking websites, novelists and translators transmuted into firebrand speakers. As the 2019 elections approach, that brand of courage is required so often that it becomes almost unremarkable, even though the consequences are real.

The dilemma for writers, Anuradha Roy suggested, was inescapable: "Since most serious writing is in some way political, you know that you are certainly in someone's crosshairs. You may not always know who they are. But you know they can find you."

There are also more subtle issues - Vivek Shanbhag, the celebrated author who writes and edits in Kannada and Konkani, is troubled by the loss of trust. "I wanted to write about the loss of it in general, (between communities, institutions and so on) and how it is making writing louder, less subtle," he explains. "A gesture is enough if there is trust between the two people."

This is not a trivial point - the breakdown of trust, the atmosphere of suspicion has spilled over into all arenas. With the spread of fake news through the Internet, used with considerable effectiveness as a political weapon by the BJP around 2014 (as well as by some other parties since), people either trust doctored images, fraudulent history and manufactured quotes too dangerously, or trust nothing they see or hear, even if it is true.

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It is a time, also, of intimate betrayals, as friends and family discover that their political or ideological rifts break down possibilities of communication or understanding. A family whose members cannot hear one another erupting in anger: extend that to entire communities, and you begin to see how bad the air has become, how polluted the atmosphere is. We are choking on dangerous ideologies.

In a conversation with the writer Arundhati Roy last year, soon after she published a novel after a gap of 20 years, she raised this point. “I think we should firstly get away from the fact that the threat or the attack is only from the Hindu right. It can be from anywhere, at any time. You can be shut down by anyone, anything, any time. That’s the atmosphere in which you’re writing. The state has of course outsourced censorship. It can arise from any *galli* (street), from anywhere, from the top, from the side, from the bottom, from anywhere. ... You live in a place, and you’re negotiating with that space all the time, with the powers, the powerless. It’s a dance.”

Writers have found themselves under attack by all sorts of groups, some jockeying to be noticed, some turning to the offence laws to shut down or ban books they find uncomfortable. Hansda Sowvendra Shekhar, who has collected Santhali oral narratives for years and written short stories and novels drawn from that experience, was caught in a politically-charged battle last year, accused of depicting Adivasi women in a bad light.

His publisher stood by him, and in time, the controversy died down, but for the writer caught in the crossfire, the scars run deep. “There is a creative spark for some time in a day during which I write,” Hansda Sowvendra mails back. But his attention is also consumed, by events in his own life, by all that is happening around. “I would say that being a writer today can be a mix of uncertainty and sadness. That is all I can say for now.”

Another author, a person who displayed tremendous dignity and courage when his works came under attack recently, shares a story, but asks that his name be kept private. He returned to writing slowly, he tells me. He did not want to become an exile from his work. But for many weeks and months, he could not stop himself from turning to look behind, as he sat at his table. He could not shake the feeling that someone watched him as he wrote, that there was always a watcher behind his back.

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I worked on a novel in fits and starts for most of the year, stumbling along and uncertain why it was taking so long – it was not an overtly political novel. It took me some months to see that while I hadn’t consciously censored myself, I had internalised the silence around me.

The silence that fell at gatherings, people uneasy about speaking their mind, not sure who might be listening and what your opinions might cost you. The silence behind the incessant noise of breaking news, the changing headlines covering up the many sore areas that the media was too afraid to explore.

The *Hindustan Times* ran a Hate Tracker for a while in the newspaper, cataloguing the hate crimes and lynchings beginning to spread like a rogue virus across the country. The editor left; then the Hate Tracker was taken down, as if by not seeing or acknowledging what was happening, you could blank out the murderous rage of mobs who carefully filmed their killings, and took selfies with the mostly Muslim victims. (Since then, a web-based publication, *India Spend*, has been tracking hate crimes in India.)

Behind the silence was a fear that I shared. In other countries, the rise of hate between communities and the breakdown of trust – often fuelled for political reasons – has had brutal consequences. Many commentators kept a nervous eye out for arrests or show trials, and it is possible that we will witness more disappearances, more sudden murders by what are called “fringe elements”, versions of what writers and journalists in Mexico, Turkey, Egypt and Bangladesh have faced.

In 2015, economist Sergei Guriev and political scientist Daniel Treisman wrote a warning op-ed in the *New York Times*, on the rise of the new autocrats. “Above all, the new autocrats use violence sparingly. This is their key innovation,” they wrote. “Today’s dictators carefully deny complicity when opposition activists or journalists are murdered.... Instead, the new authoritarians immobilise political rivals with endless court proceedings, interrogations and other legal formalities. No need to create martyrs when one can defeat opponents by wasting their time.”

That is the future we are rushing towards. I draw strength from the writers around me, not only the ones at the protests, but the ones who continue to steadily set down one word after another, doing the work of creation even as the known world, the familiar contours of life, crumbles into rubble. We might yet swerve in time, but the abyss is no longer ahead – we are in it, trying to find a way out.

# Recommendations

## To the Indian Government:

### Safety of journalists

- Ensure prompt, independent, impartial and effective investigations into the killings of journalists to ensure the perpetrators are brought to justice, including those who commissioned said crimes;
- Ensure prompt, independent, impartial and effective investigations by district magistrates and local administrative officials into threats against journalists and writers and ensure the perpetrators are brought to justice;
- Train police and provide them with adequate resources to recognise and investigate online harassment and threats that meet the threshold of criminality in international law;
- Launch a public education campaign to inform citizens of their legal rights in the face of online harassment and threats.

### Legislative restrictions on freedom of expression

- Amend Article 19(2) of the Constitution to remove restrictions on freedom of expression not provided for under international law;
- Repeal laws that unnecessarily restrict freedom of expression:
  - s. 153B of the IPC (assertions prejudicial to national-integration);
  - s. 295A of the IPC (blasphemy);
  - s. 499 of the IPC (criminal defamation);
  - s. 124A of the IPC (sedition)
  - s. 505 of the IPC (statements conducing public mischief);
- Enact legislation to combat Strategic Lawsuits Against Public Participation (SLAPP) and limit individuals to filing a civil case in only one state jurisdiction.
- Ensure that defendants in freedom of expression lawsuits who lack the means to afford a lawyer receive adequate legal aid and are fully informed of their rights, particularly in defamation and sedition cases.

### Surveillance

- Harmonise the legal framework which regulates communications surveillance in India to ensure that the law is accessible and clear, and meets India’s international human rights obligations with regards to the rights to freedom of expression and privacy;
- Establish an independent and effective oversight mechanism with a mandate to monitor all stages of interceptions of communications;
- Enact a law limiting internet shut-downs to declared Emergencies, removing the discretion that presently vests in Executive authorities to declare arbitrary internet shutdowns.

### To the judiciary

- Introduce education programmes for all magistrates and judges to ensure that they are fully aware of the limitations imposed by the Supreme Court on laws restricting freedom of expression.
- Pending repeal or amendment of section 124A of the penal code (sedition), prosecutors should be specifically informed that, under applicable Supreme Court decisions:
  - The sedition law is only applicable to speech that has the tendency or intention of creating public disorder.
  - Mere criticism of the government or government policies cannot be the basis of prosecution under IPC section 124A.
  - Speech or expression perceived as disrespectful of India or its national symbols cannot, alone, be the basis of a prosecution for sedition.
- Institute a screening mechanism at national and state level to review complaints against authors and artists before allowing complaints to proceed to prevent vexatious and groundless trials

### To the literary community:

- Publishers should consider banding together to file a class action suit challenging criminal defamation and religious offence laws, and should also consider creating legal resources and public funds for writers under attack. They should also stop the practice of pre-censoring manuscripts, however informally conducted, and be prepared to fight for writers who face political or legal pressures and threats.

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