

FEARFUL SILENCE

THE CHILL ON INDIA'S PUBLIC SPHERE



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AUTHORS: Evan Rankin, Brendan de Caires

EDITORS: Samer Muscati, Emma Wadsworth-Jones,
Grace Westcott, Tasleem Thawar, Ann Harrison

BACKGROUND RESEARCH: Yolanda Song

DESIGN: Brett Evans Biedscheid

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PEN Canada
24 Ryerson Avenue, Suite 301
Toronto, Ontario
Canada M5T 2P3
pencanada.ca

International Human Rights Program (IHRP)
University of Toronto Faculty of Law
39 Queen's Park, Suite 106
Toronto, Ontario
Canada M5S 2C3
lhrp.law.utoronto.ca

PEN International
Unit A Koops Mill Mews
162-164 Abbey Street
London SE1 2AN
United Kingdom
www.pen-international.org

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FOREWORD

One of the quirks of public debate in India in 2015 was when writers and artists began returning honours from state academies, or the state itself, as a mark of protest against rising intolerance in the country. The anecdotal experience was sobering: Dr M.M. Kalburgi, an award-winning writer, and Govind Pansare, a left-leaning activist-author, were murdered; Tamil novelist Perumal Murugan was humiliated and forced to sign an undertaking that he would not write anymore (and he withdrew his books from circulation); when slogans critical of India were raised at a demonstration at the Jawaharlal Nehru University, student leaders were arrested, beaten up by lawyers, charged, and released, but now face disciplinary charges from their university; and the government was encouraged to consider new laws to stifle freedom of expression on the Internet even after the Supreme Court had ruled against a restrictive legal provision of the Information Technology Act.

Later, when Aamir Khan, a leading Bollywood actor, who happens to be Muslim, said at a public forum that his wife was concerned if it was safe for them to live in India, and when India's respected central bank governor Raghuram Rajan said that India's tradition of debate and an open spirit of inquiry are critical for economic progress, they were both condemned. Some ruling party supporters called for a boycott of Khan's films, and a concerted campaign began to remove the central banker from his position. (Rajan decided to leave his position when his term ended but he did not blame the campaign against him).

In each instance, the response of several politicians and supporters of the ruling Bharatiya Janata Party was unanimous – scorn towards the critics and the invocation of rabid nationalism, to portray the dissenters, be they writers, journalists, artists, or activists, as unpatriotic. In a comical turn of events, Anupam Kher, an actor who supports the government, led a march in Delhi to declare that India was a tolerant country; how dare critics call it intolerant. Irony died, as it often does at such times.

In this succinct update to *Imposing Silence: The Use of India's Laws to Suppress Free Speech* – a comprehensive report that PEN International, PEN Canada and the International Human Rights Program at the University of Toronto published over a year ago - the researchers focus on cases of censorship of cinema, intimidation of writers, arbitrary use of the law, and online harassment. This update is based on a two-week visit to Jaipur, Hubli and Delhi in January 2016 in which PEN researchers met with journalists, writers, film-makers, and lawyers. It makes a strong case for India to revoke specific laws and create a legislative framework and encourage a culture of tolerance so that public debate is possible, so that India can awake into that heaven of freedom that Rabindranath Tagore wrote about in his famous poem – where the mind is without fear and the head is held high.

The prognosis is mixed. Investigations to apprehend the killers of Kalburgi remain sluggish. The JNU students face disciplinary action from their university. It is not known, but far from impossible, that the government may reintroduce a bill to curb online freedom of expression.

The silver lining has been the judiciary. After the Central Board of Film Certification directed nearly 80 cuts from a controversial film, *Udta Punjab*, the Bombay High Court restored all but one scene. And the Madras High Court ruled recently that the state needed to do far more to protect the rights of Perumal Murugan.

A country with a democratic constitution and aspiring to be a tolerant and equitable society doesn't silence its writers; it doesn't ban its film-makers; it doesn't intimidate its dissidents. The Nobel Laureate Amartya Sen had celebrated the culture of debate in India, when he called Indians argumentative. India needs to rediscover those traditions – of dissent, debate, discussion, and dialogue – as it makes material progress. May the sound recommendations in this report be implemented, and may India live up to the aspiration Jawaharlal Nehru expressed at independence: 'Long years ago, we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance.'

Salil Tripathi

Chair, PEN International's Writers in Prison Committee

INTRODUCTION

A culture of intolerance has taken root in India and has grown more menacing since Narendra Modi became Prime Minister in May 2014. Dissent — whether political, religious, cultural, or social — now entails greater risks. A February 2016 *New York Times* editorial refers to a ‘lynch-mob mentality’¹ within the country, and a local filmmaker speaks of an atmosphere in which ‘vigilantism has been given an implicit go-ahead.’² Critics of the status quo are dismissed as ‘pseudo-secularist,’ ‘anti-national’ or ‘unpatriotic’ in order to make their viewpoints seem less relevant,³ and linguistic, religious and social minorities — which, given India’s size, often comprise tens of millions of people — face an increasingly hectoring public sphere. India’s political leadership, parliamentarians, and judiciary can no longer ignore the resulting chill on freedom of expression.

The pushback from civil society has taken different forms. Writers, journalists, artists and public intellectuals have done their best to call attention to the worsening climate for freedom of expression. Many have returned official awards as a protest against the ‘atmosphere of intolerance’⁴ that prompted the September 2015 lynching of a Muslim in Dadri,⁵ and the murders of rationalist M.M. Kalburgi⁶ and communist politician and scholar, Govind Pansare.⁷ Others have taken their concerns to the courts. In February 2015 the Indian civil liberties non-governmental organization People’s Union of Civil Liberties (PUCL) filed public interest litigation (PIL) in the Madras High Court aimed at protecting authors from vexatious accusations. Some politicians have also reacted: Congress MP Shashi Tharoor introduced a private member’s Bill to restrict s.124A (sedition) in December 2015,⁸ although this had made no progress by the time of this report’s publication. The Bill seems unlikely to succeed in the Bharatiya Janata Party (BJP) dominated Lok Sabha.

In May 2015, PEN International, PEN Canada and the International Human Rights Program at the University of Toronto’s Faculty of Law published a report on freedom of expression in India. *Imposing Silence: The Use of India’s Laws to Suppress Free Speech* detailed the ways in which intolerant individuals and groups have used vaguely worded laws, and a cumbersome legal system, to silence their opponents. Since that report, prominent abuses of such legislation as the Indian Penal Code’s (IPC) sedition provision have consistently made the headlines. In February 2016, for example, thousands of demonstrators rallied in support of a student leader who had been arrested for sedition and publicly assaulted by lawyers and a Member of Parliament while being escorted to court.⁹

In January 2016, PEN returned to India to assess how the state of freedom of expression had changed. Our researchers interviewed 17 authors, activists, journalists, and lawyers in Delhi, Hubli and Jaipur. Collectively their accounts suggest that the unchecked abuse of India’s vague and overbroad legislation, and its inefficient legal system, have helped to create a chill within Indian society and throughout its public sphere. As a result, a relatively small number of aggrieved citizens can successfully deter many others from speaking out on sensitive issues, thereby limiting the scope of India’s broad and pluralistic culture and endangering some of its key democratic freedoms. This update considers this troubling development, and examines some of its underlying causes.

IN FOCUS:

CENSORING CINEMA

On 13 June 2016 the Bombay High Court struck down a stay requested by the Central Board of Film Certification on the release of the crime drama *Udta Punjab* [Punjab Flying High].

Indian cinema doesn't have genuine freedom of expression — you can't just make the movies you want. Anyone can complain that something is 'derogatory' even without seeing the film in question, and use public interest litigation to take you to court. There have always been restrictions like this. Biopics, for example, can't be made without the complete approval of their subjects. I couldn't produce a film about Indira Gandhi, or anyone in her family, and assume it would be protected by my freedom of expression. Never. We learned that during the Emergency — a period that, in some ways, resembles what is happening now. Its censoriousness lasted into the 80s and 90s. Up to now, no one has made a film about the Gandhis, or any other public figure, unless it is a hagiography.

Sexuality, even kissing, used to be taboo. There was this attitude: 'Indians don't do this sort of stuff.' Onscreen kisses were banned. We grew up in a culture shaped by these attitudes. I remember when the actors kissed in *Dayavan* (1988), it caused a sensation. This changed, especially after satellite television arrived in the 90s and the government lost control over what people could watch. Kissing, and a certain amount of sexuality, became permissible, but sensitivity towards other topics remains.

Udta Punjab was a high profile film so we decided to fight the Central Board of Film Certification's (CBFC) request for 89 cuts. A similar issue had faced Shekhar Kapur's *Bandit Queen* in the early 90s. The High Court upheld a writ petition filed by a member of the Gujar community that the film should be banned.

Shekhar fought this and the Supreme Court overturned the High Court judgement and allowed the film to be screened without cuts. We figured that we had to put up a similar fight, to resist their highhandedness. My co-producer on *Udta Punjab*, Anurag Kashyap, faced similar trouble when he made *Black Friday* (2005) because it dealt with events related to a case that was *sub judice*¹⁰ and there was a public interest suit against him.

Foreign films are cut after their commercial release, but film festivals are left uncensored. This is strange. I'm not complaining, at all, just noting the double standard. A film at a festival can show anything, but if it is destined for a local theatre, then it must be censored. Hollywood films can get away with a certain number of swear words and nudity because, in the eyes of the censor, they are watched by upper middle class audiences in multiplexes. Those people have seen stuff like this before and are accustomed to it. But Hindi films play in small towns and villages, which must be protected. Such hypocrisy! Shouldn't all citizens be treated like adults?

A Tarantino film like *The Hateful Eight* (2015), for example, would be lightly censored for abusive language and frontal nudity. But if an Indian filmmaker made the same movie, there would be many, many more cuts — because its audience would be wider and more varied. There's always been a certain amount of moral policing but it's increased since the Modi government has come into power. Rightwing Hindu zealots stop kids from celebrating Valentine's Day, and protest against women who drink or visit nightclubs. We have tended to shrug them off as fringe elements. But now the fringe has become the government. They have taken moral policing to an extreme. We are being instructed about what can't be watched or listened to.



On a TV debate with Arnab Goswami¹¹ the Times Now anchor asked a censor board member why had he cut a kissing scene in a James Bond movie. The member replied that Bond was kissing a woman whose husband he'd just killed, therefore a 20-second kiss was inappropriate and should be shortened. It sounds ridiculous but he absolutely believed it. Last year the Censor Board Chief Pahlaj Nihalani produced a list of cuss words¹² that couldn't appear in a script. At a certain point you just cut these words because it makes your life easier. But with *Udta Punjab* they were trying say you can't even make a political film. They wanted us to remove references to Punjab, ministers, and police or government corruption. We thought that was dangerous because it wasn't coming from a moral standpoint, it was political. There were elections coming in Punjab and the government didn't do anything to affect them. That's why we fought and it's a good thing that we won, because now we've set a precedent. In the end, we didn't have to cut any of the abusive language or the sexuality and [it] has become a new point of reference.

It's hard to know whether the censor board genuinely believes this stuff or is using it as a smokescreen, but the government has come in on a strong mandate for public morality, for cleansing the society, for taking us back to how it used to be. There's a sense that we finally have a Hindu government after years of oppression and now we'll cleanse the society. That's the mentality. The VHP and the RSS have supported this government so there's also a religious overtone to the censorship. There is also a large online right-wing presence which trolls anyone with a different point of view.

Hansal Mehta faced this when the Shiv Sena felt that a line in *Dil Pe Mat Le Yaar!!*¹³ was derogatory. They vandalised his office, abused him and blackened his face. He recently made *Aligarh*, which is about a gay professor.¹⁴ There were issues with that too. But some of the cuts were so arbitrary. He wasn't allowed to show the professor looking bored in court because they considered that 'contempt of court'. When I made a film called *Udaan* the Board didn't ask for cuts but they advised me to cut 'jamadar' - a common word for 'sweeper' - because it might be seen as derogatory. They told me: 'You don't want a group of sweepers coming to complain about the movie.'

Indie filmmakers are rebellious and will probably continue to press for greater freedoms. Thankfully, after the *Udta Punjab* decision there is some confidence that the courts will support you. I can't speak for others, but our company, Phantom Films, still wants to make films that provoke. If it comes down to a fight with the censor board then we'll fight. And if we feel we're justified, then we'll fight it all the way. The *Udta Punjab* case has given us hope.

Vikramaditya Motwane is a director and screenwriter and was a co-producer of Udta Punjab.

SETTING THE TONE: QUASHING DISSENT IN THE NAME OF NATIONALISM

On 12 February 2016, police arrested Kanhaiya Kumar, president of Jawaharlal Nehru University (JNU) Student Union, on charges of sedition.¹⁵ The arrest came after 'anti-national slogans'¹⁶ were allegedly shouted at a JNU event commemorating the execution of Afzal Guru.¹⁷ Police arrested other students later that month.¹⁸ During protests held by thousands of students and faculty members, a JNU professor told Agence France-Presse that the government 'intended to send a message' with the arrest because the JNU was seen as an 'anti-establishment campus and ideologically opposed to the BJP.'¹⁹

Four days after his arrest, Kumar was assaulted while appearing at Delhi's Patiala House Court Complex. Journalists covering the event were also assaulted. A PEN Delhi statement reported that journalists, students and faculty members at the court complex 'were attacked by a mob of around 100 people, which included O.P. Sharma, a Member of Legislative Assembly belonging to this country's ruling party, the Bharatiya Janata Party (BJP), as well as several people in lawyers' garb.'²⁰ Pressed for a comment, Mr. Sharma, who had been filmed participating in the assault, said: 'I would have opened fire if I had a gun. If someone abuses our mother, won't I thrash him?'²¹ Sharma was arrested after police were accused of 'dragging their feet' despite video footage that indicated his involvement in the assault.²² When he was subsequently released on bail, Sharma said: 'If someone has to pay such a price for stopping someone who was raising pro-Pakistan slogans, then I have got nothing to say.'²³ The Police Commissioner of Delhi later dismissed the incident as a minor matter.

As noted in *Imposing Silence*, the IPC's sedition provision is so vague and overbroad that it contravenes the international right to freedom of expression. Its invocation in the case against the JNU students is merely the latest instance in a long history of opportunistic misuse by Indian authorities.²⁴ After the mayhem at the courthouse, Congress Party president Sonia Gandhi said that the Modi administration was 'hell-bent on destroying the spirit of inquiry, questioning, debate and dissent.'²⁵ A newspaper columnist also accused the government of 'using nationalism to crush constitutional patriotism, legal tyranny to crush dissent, political power to settle petty scores, and administrative power to destroy institutions.'²⁶

The arrest and subsequent violence raises concern that sedition has become an all-encompassing offence in India, used to distort 'public discourse of what is patriotic and what is anti-national',²⁷ and implicitly license violent reprisals. Commenting on the Kumar case in a New York Times op-ed, Nilanjana Roy concluded: 'The message is clear: Violence in the name of ultra-nationalism is acceptable. Not even the courts are safe spaces. Challenge the state, or the B.J.P., at your peril.'²⁸

FREEDOM OF EXPRESSION IN INTERNATIONAL LAW²⁹

For States to comply with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), restrictions on freedom of expression must not be overbroad or vague.³⁰ Any ambiguity in the law effectively gives discretion to the police to misapply the law. Violations of the right to freedom of expression also arise, more broadly, when existing laws are selectively interpreted or enforced by the State to crack down on specific forms of media content. Laws that are overbroad or lack adequate accountability mechanisms or protections against abuse are vulnerable to selective interpretation and enforcement.

Furthermore, according to General Comment 34 which provides an authoritative interpretation of Article 19 of the ICCPR, a law that validly restricts freedom of expression 'must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.'³¹

STATES' OBLIGATION TO PROTECT FREEDOM OF EXPRESSION

The obligation to protect authors and other artists from non-state actors is well established in the ICCPR, to which India is a State Party.³² The protection of Article 19 is coupled with Article 2(1), which states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...³³

Further, General Comment 34 states that Article 19, combined with Article 2(1)

requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.³⁴

By permitting unlawful vigilantism against authors and artists, or else failing to intervene to put an end to criminal harassment and threats, India violates its obligation under the ICCPR to uphold freedom of expression.

CAUTION, TIMIDITY AND CHILL

Essentially, a 'chill', in freedom of expression terms, is a social manifestation of fear. It describes the tendency to self-censor out of concern for what may happen if one speaks out. Overbroad laws that penalize innocent conduct can create a chill, but chill can also arise from the belief that authorities will not protect innocent people from retaliation if their opinions provoke violent reprisals.

A chill may extend well beyond the individual. Speaking about education, the US Supreme Court noted that:

*[The] unwarranted inhibition upon the free spirit of teachers affects not only those who, like the appellants, are immediately before the Court. It has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers.*³⁵

The line rings true for writers as well. An entire society suffers when 'caution and timidity' rule the creative class. The following case studies address some of the laws, and events, which are creating a chill in India today.

CASE STUDIES

PANKAJ BUTALIA, *TEXTURES OF LOSS*, AND THE VAGUE LAW OF SEDITION

In 2016, India's sedition provision in the IPC was repeatedly used to silence allegedly anti-nationalist sentiments, as in the Kanhaiya Kumar case, above. The provision's vague wording has allowed the authorities to use it against a wide range of citizens who are lawfully exercising their constitutionally guaranteed freedom of expression, even outside the context of criminal law.

Consider the experience of documentary filmmaker Pankaj Butalia. The Central Board of Film Certification (CBFC) deemed parts of *Textures of Loss*, his documentary on Kashmir, to be seditious due to comments made by some of the victims of violence that Butalia interviewed. The CBFC ordered him to delete a comment about the 'disproportionate' violence of paramilitaries in Kashmir, as well as a line spoken by a grieving father, who curses the Indian state and wished death upon the families of those responsible for killing his son.³⁶



Butalia appealed to the High Court of Delhi which ruled decisively in his favour in May 2015, finding that 'Damnation of the State in the context of the tragedy which visited the concerned person...could not be construed as an act of sedition.'³⁷ The Court also rejected the argument that such utterances would propagate anti-national sentiments.³⁸

In a rare move, the CBFC appealed the High Court's decision to the Division Bench. When asked about the decision, Butalia speculates that the CBFC may have chosen to retaliate:

*CBFC censors are arrogant and think of themselves as guardians of morality. They have a strong sense of who is important and who is not. In the hierarchy of filmmakers, a documentary filmmaker is of no consequence ... so they feel they have the right to say anything they want... They cannot stand it if you resist them.*³⁹

This perceived attitude is exacerbated by two problems that the government has done little to address: extremist Hindu nationalism and rising vigilantism.⁴⁰ Reports indicate that nationalist attitudes are not unusual within the CBFC.⁴¹ In fact, Pahlaj Nihalani, the head of the organization has been described as ‘going beyond the law dealing with certification.’⁴² In a newspaper interview, Nihalani describes himself as a ‘social worker,’ adding that ‘in the name of expression, you don’t barter your culture.’⁴³ His stance is no surprise. In *Imposing Silence*, PEN noted the sharp politicization of the CBFC over the past few years, particularly since the Modi government’s appointment of members who are seen to be loyalists.⁴⁴ Furthermore, since the government has sole power to appoint Board members, the institution can hardly be considered fully independent.⁴⁵

As nationalism becomes more strident, the use and application of the sedition provision has markedly increased. In 2013,⁴⁶ only two cases were filed; in the following year that number rose to five.⁴⁷ In 2015, the number ballooned to 14 sedition cases related to freedom of expression.⁴⁸ In the first three months of 2016 alone, 11 cases have been filed.⁴⁹

The routine misuse of the sedition provision is facilitated by its vague phrasing. Section 124A of the IPC states that:

*Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.*⁵⁰

As detailed in *Imposing Silence*, vague terms like ‘disaffection’ are ripe for abuse by opponents of free speech and incompatible with international law, which requires restrictions on expression to be clearly worded and strictly necessary.⁵¹ Absent such conditions, opponents of free speech can easily exploit vague laws to silence their critics.⁵²

Regrettably, although the Supreme Court narrowed the scope of the sedition provision in *Kedar Nath Singh v State of Bihar (Kedar Nath)*,⁵³ and subsequently created a proximity requirement for constitutional validity of restrictions on expression in *S. Rangarajan vs. P Jagjevan Ram and Ors (Rangarajan)*,⁵⁴ both the government and the courts have repeatedly ignored these directives in sedition cases.⁵⁵ In *Rangarajan*, the Supreme Court required that valid restrictions on speech under Article 19(2) of the Constitution must have a ‘proximate and direct nexus’ with an anticipated danger:

*The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a powder keg.’*⁵⁶

Films like *Textures of Loss* clearly fail to meet this standard. In fact, after the film gained notoriety as a result of the CBFC’s accusation that it contained seditious material, several television networks aired it without causing any riots.⁵⁷ This gap between the law and its application in practice is not unusual: legal scholar Gautam Bhatia notes there is often a gap between the law and the manner in which it is applied in lower courts.⁵⁸ Nevertheless, given the Supreme Court’s restrictive interpretation of the sedition provision and Article 19(2), why did the CBFC argue that the film was seditious?

Butalia believes the government aims to take advantage of some judges’ ignorance of the law: “[Judges] might not be aware that a particular law has been read down [narrowed] by higher courts. They go by whatever lawyers give to them.”⁵⁹ His opinion is supported by research that indicates that judicial incompetence remains a significant problem in India. Judges often defer to government lawyers, especially when they lack experience, and competency in English is insufficiently emphasized throughout the legal system.⁶⁰ This can affect judges’ abilities to give due weight to decisions like *Kedar Nath* or *Rangarajan*, and can help prosecutors to claim sedition where none has occurred.

The CBFC’s appeal against *Textures of Loss* was dismissed on 15 February 2016. Once again, the Court cited *Rangarajan*.⁶¹ Despite the dismissal, this case remains a troubling example of how easily an overbroad sedition law can be used to entangle filmmakers and journalists in cumbersome legal processes.

RECOMMENDATION

Amend section 124A of the IPC (sedition) to only limit speech where it is necessary to do so and consistent with the grounds articulated in Article 19(3) of the ICCPR.

IN FOCUS: AN ANATOMY OF HATE

What kind of person can cut a stranger to pieces, return home for dinner, make love to his wife, and go to work the following day as though nothing happened? The thought may appall us, but such people often lead lives quite similar to our own. Are we entirely blameless for the culture that gave rise to their violence? I've thought about questions like this for the last 18 months while investigating the 2002 Gujarat massacre through the eyes of three men who were part of the mob.

My working title, *The Anatomy Of Hate*, may sound distant but it sums up the project rather well. In Gujarat, Hindu mobs went on a killing spree that claimed 2,000 Muslim lives. The attacks were spread over hundreds of kilometers, and the mobs seemed disconnected, save for their common agenda to avenge 59 rightwing Hindu activists who had burned to death on a train. In district after district, the state deliberately stood back and let them 'do their thing' virtually unimpeded.

Much has been written about the crimes, the victims, and the gaping holes in cases that went to trial. Some reports have examined the state administration's complicity in the violence, including allegations that implicate the top man, Chief Minister Narendra Modi, India's current prime minister. Even so, precious little has been written about the perpetrators themselves.

Although I'm midway through my research, I haven't yet written a word. But as I've sought funding for the project I've encountered fear and silence within Indian institutions, and also some abroad. I've also learned that the government is checking up on me as I go about my work.

This could be because my book focuses on crimes that have given our current politics much of its heft. Any mention of the mobs in Gujarat affronts the present administration, and it specializes in harassing people like me. An army of troll-rats stalks me on Twitter and Facebook, calling me 'sickular' – a portmanteau word for sick and secular – and a 'presstitute' (a journalist for hire). These commonplace insults don't bother me, but they can affect the attitudes of potential funders and supporters, and here they cause real damage.

Between 2014-2015, an international NGO agreed to support me so that I could work on the book full-time. A year later it withheld further funding due to the fearful atmosphere created by the present administration. Many other international NGOs also shut up shop after the Ministry of Home Affairs froze their overseas accounts, ostensibly for promoting 'dissidence' – bureaucratic code for voicing opinions that the government dislikes.

Like Voldemort in the Harry Potter books, Gujarat's violence cannot be named. Every institution I approached, both in India and abroad, politely declined to fund me. I won't mention names because I can't be certain why they rejected me. But off-the-record knowledgeable sources told me that my topic was considered too controversial.

Gujarat's state intelligence bureau has been monitoring me. One day, they asked someone I'd spoken with earlier how they knew me and what had I been inquiring about? Irritated, my contact replied, rather aptly, 'Aren't you from the intelligence bureau? Then find out what she was doing, why should I do your job?' Another time, I was consulting a lawyer in a sessions court when she noticed someone watching us. Our eavesdropper hid behind a green cloth facade and then he ran away.

I've had phone calls from unknown numbers, with strange voices asking me to identify myself. (Apparently intelligence officials use this tactic to track their targets.) But neither my surveillance nor the declined funding add up to anything overt. Both remain plausibly deniable.

I haven't let this shadow boxing interfere with my work, mainly because my would-be censors have no ammunition against me. I haven't written anything, yet, so there's nothing to provoke a threat. But while ignoring the shadows I've also had to figure out how to raise funds. This has been the biggest fallout from the atmosphere in which I write. It's also an institutional problem since most writing bursaries are either tied to universities or institutions that give money to predetermined subjects. Money for independent research in this part of the world is very, very scarce.

After knocking on every door I knew, I decided to crowdfund.⁶² While searching for the book's protagonists I had avoided a public campaign, lest it scare people away. But that was happening anyway and I didn't want to exacerbate it. Once I'd found my subjects, however, and earned their trust, I decided to crowdfund the rest of the project. I used Wishberry, an Indian website, and the results were astonishing. I raised 25 percent more than my target – mostly from friends but also through a few big pledges from people I'd interviewed in the past, even some from remote acquaintances.

I had reached my target on day 14 of my 45-day campaign when the co-founder of Wishberry called. The site was being trolled by a pro-government acolyte who had copied Mr Modi and his deputy on their twitter handles and demanded to know why a site like Wishberry was backing a 'liar' like me. Had they checked the facts on my campaign page? Then she got a call from a top industrialist, one of the site's main supporters, asking why had they endorsed the campaign in the first place, and shouldn't it be taken down?

During heated exchanges with Wishberry, I pointed out that I had warned them that trolls and threats might come their way; that this is *de rigueur* given the kind of book I was writing, and it would be completely unfair, and a violation of their processes, if they threatened to scuttle my campaign one third of the way through. Things calmed down. They dropped the campaign from their Facebook and Twitter feeds but left the original funding page intact, adding however that if at some point they felt the campaign was 'hurting the sentiments of thousands of people' and they had to 'choose between the nation and me' they'd choose 'the nation.' They didn't give in but it soured the atmosphere for the rest of the campaign. We agreed, tacitly, to live and let live and since I had already crossed my target, I let things be.

At the end of the day, I have made enough to survive another year by which time I will hopefully have finished the research and writing of the book and we will have other conversations about getting the job done.

Revati Laul is an independent journalist who is writing a book about the 2002 riots in Gujarat.

RESURRECTING SECTION 66A: DIGITIZING OVERBROAD HATE SPEECH LAWS

The Supreme Court's decision to strike down s. 66A of the ITA in the *Shreya Singhal* case⁶³ was a victory for free speech in India. There are indications, however, that the provision could be resurrected in a new form. A report of the Parliamentary Standing Committee on Home Affairs dated 7 December 2015 recommended that the deleted section be replaced by a hate speech provision.⁶⁴ The report proposed that the new ITA provision import and amalgamate ss. 153A and 153B of the IPC.⁶⁵ These criminalize the promotion of disharmony and enmity between various groups, and expression that is 'prejudicial to the national-integration' respectively.

As indicated in *Imposing Silence*, both ss. 153A⁶⁶ and 153B⁶⁷ are vague and overbroad.⁶⁸ In the absence of a requirement that the impugned expression have a very close link with an imminent risk of discrimination, hostility or violence, there is a strong argument the proposed hate speech law does not comply with international law. Proposals to duplicate such laws within the online regulatory regime would simply extend and deepen the chilling effect. Further, because the IPC and ITA both apply to online expression, the duplication of ss. 153A and 153B would produce duplicative charging. This wastes judicial resources, and magnifies the chilling effect.

RECOMMENDATION

The government should not import the wording of ss. 153A and 153B into the ITA, and should eliminate provisions duplicative of existing IPC provisions such as s. 67 ('Punishment for publishing or transmitting obscene material in electronic form').

ONLINE HARASSMENT

Online harassment is a global phenomenon,⁶⁹ but it is especially aggressive in India, where complaints about online threats are frequently ignored by law enforcement.⁷⁰ The obvious consequence, as illustrated below, is that people are forced into silence by the online mob. This is the chilling effect in action.

Aggressive online trolls, hoping to silence their victims, have taken aim at political dissenters, sexual and religious minorities, women, and human rights defenders. There is also evidence that this harassment is condoned by those in government. On 1 July 2015 Prime Minister Modi stirred up controversy after meeting privately with ultra-nationalist social media activists accused of online abuse.⁷¹

Apar Gupta, a Delhi lawyer well-known for his work on freedom of expression cases, said the trolling is coordinated: 'People have these Twitter groups where you get draft tweets and hashtags dropped in, and you're told to tweet it out. And 50 to 60 people tweet it out.'⁷²

Nikhil Pahwa, a leading net neutrality advocate, stopped using Twitter for several days after receiving several harassing messages.⁷³ He has noticed an increase in this type of online harassment over the last two years:

I think the chilling effect is there to a greater degree. You can feel it more. At the same time, the fight back against it is also pretty strident. So there's a great degree of polarization because there are people who are saying that we won't be kept silent. And there are armies waiting to attack them.⁷⁴

Often harassers prevail through self-censorship. PEN spoke with a young female journalist based in Delhi who had written an article about the movement for the establishment of Khalistan (a separatist homeland proposed by Sikh nationalists that would occupy the Punjab region).⁷⁵ The article was published with an innocuous headline. When reproduced online, however, with a title that included the word 'terrorist,' she began to receive abusive messages via Facebook and email, including at least three threats. One read: 'We can find you, and we can hurt you.' Another said: 'I hope somebody rapes you.'⁷⁶ As a result, she deleted her Facebook account and asked her editor to change the headline. 'It makes me feel like I need to understand what could piss off the authorities that I haven't thought about,' she said. 'It has made me less likely to do, I think, as many of those stories.'⁷⁷

Women are especially vulnerable online,⁷⁸ and rape threats are commonplace.⁷⁹ While men face harassment for their views, women face threats of physical and sexual violence and are dismissed as 'sluts.'⁸⁰ This phenomenon may be increasing.⁸¹

Non-writers, merely expressing their thoughts online, also receive abuse. Shoikat Roy, a government employee in Rajasthan, received threats after publishing a Facebook post critical of extreme nationalist attitudes.⁸²

Roy described the chill this sort of harassment can inflict on young professionals:

There are lots of stray cases of random students and professors being beaten up here and there because of a tweet or [Facebook] post – often involving tacit police complicity. Chances of a job in government are also tied to your social media activity. Many people tend to tell me to keep quiet because of that – if you want to work within the corridors of power, don't write this, etc.⁸³

Some authors told PEN that they tend to avoid controversies because they do not believe the police will protect them from harm.⁸⁴ The result is self-censorship. This perception of police indifference to online threats and harassment can be easily exploited by would-be censors. Apar Gupta notes that:

If you go to the police here and you say that this person threatened to rape me, he will say, 'He just said it. He's not done it. He's just threatened you. What's wrong in it? And it's over the Internet. You shouldn't go on the Internet.'⁸⁵

This problem, and the general lack of legal knowledge among both police and victims, has been noted elsewhere.⁸⁶ Anja Kovacs, a scholar of digital expression rights, notes that 'With lack of faith in the police... emerged as one crucial factor in the decision [by women] to delay a police complaint as long as possible.'⁸⁷ One of Kovacs' case studies describes her experience with police after experiencing online harassment:

[The Deputy Superintendent's] first question to me was, 'Where is my husband?' I said, 'I have come alone and my husband is not with me. Can't I go to a police station on my own?' He then asked me why I put my photos on Facebook. I told him that it is not against the Indian Constitution to put pictures on Facebook. I insisted that I am a citizen and I have got all rights and that he should accept my complaint. Then he started complaining about how many such cases he has and how he is burdened by them. After sometime, he suddenly starts talking about [a popular regional actress] and he said something to the extent that my pictures are sexier than her pictures. I was shocked!⁸⁸

Teesta Setalvad, a noted journalist and human rights activist, has faced frequent online abuse and harassment.⁸⁹ She told PEN that she has periodically sent complaints to the police. 'Sometimes they have acted on it, sometimes they have not.'⁹⁰



Indian journalists light candles in memory of freelance journalist, Joginder Singh in New Delhi, India Friday, June 12, 2015.

Actress Shruti Seth, speaking to the BBC, stated that she had experienced something similar:

*[The police] say it's very difficult to track down the abusers, and it's not worth it. Then they tell you, be careful, don't get out of your house. Okay, then what are the cops there for, if I have to hide at home and look after myself?*⁹¹

Pavan Duggal, a cyber-law expert, told the BBC that the police are 'more comfortable with the traditional laws for the physical world.'⁹²

Reliable investigations of alleged online threats would encourage freer expression of a wider range of views. Although PEN opposes restrictions on disagreeable and even vitriolic speech online,⁹³ there is clearly a need for the Indian police to investigate criminal threats and harassment. In the absence of credible efforts to clamp down on such threats, writers and others will continue to steer clear of certain sensitive topics, fearful for their safety.

RECOMMENDATION

Launch a public awareness campaign to inform and educate citizens of their legal rights against online harassment, abuse, stalking, etc.

RECOMMENDATION

Train more police to recognize and investigate online threats and abuse that meet the threshold of criminality under international law and that can be prosecuted under existing provisions of the IPC, such as, for example, s.354D (stalking)⁹⁴ or s.507 (criminal intimidation by anonymous communication).⁹⁵ Provide adequate resources for police to pursue such claims to the fullest extent of the law.

JOURNALISTS IN DANGER

Since the publication of *Imposing Silence* a little more than a year ago, two more journalists have been murdered in retaliation for their work. On 8 June 2015, Jagendra Singh died from burns sustained after a police raid on his home in Uttar Pradesh.⁹⁶ Singh had accused a local politician, Ram Murti Singh Verma, of illegal mining and land grabs.⁹⁷ Before dying, Singh blamed Verma for the attack and accused a police officer of dousing him in gasoline and setting him ablaze.⁹⁸ When the Committee to Protect Journalists (CPJ) contacted the police for comment, Superintendent Babloo Kumar said that Singh's death was a suicide.⁹⁹

Karun Misra was murdered on 13 February 2016 in Sultanpur, Uttar Pradesh.¹⁰⁰ According to CPJ, "two mining contractors in the area were allegedly upset with Misra's coverage of illegal mining for his paper." They are alleged to have paid five locals approximately 100,000 rupees to kill Misra.¹⁰¹

IN FOCUS:

SILENCING THE ENEMY

Since its formation in November 2000, Chhattisgarh has endured a 'protracted low-intensity conflict' between CPI (Maoist), an insurgent group and government forces. Official documents describe 14 of its 27 districts in Chhattisgarh as 'Naxal affected.'¹⁰² Tucked away in the southern part of the landlocked state, Bastar, a thickly forested region of 40,000 sq kms – roughly the size of Kerala – has seen some of the conflict's worst violence. Over 50 percent of Bastar region's residents are Adivasis, with some districts recording over 80 percent Adivasi population (state average is 30.6 percent and national average is 8.6 percent of total population).

The Adivasis, the indigenous population, recorded officially as Scheduled Tribes, are some of India's most marginalized and dispossessed people who face constant challenges to their social, economic and cultural rights, including their claims to natural resources. A great deal of the conflict revolves around ownership over the rich natural resources, including minerals, precious stones, forests, land and water.

Since early 2015 I have covered a series of blatant human rights violations committed under the cover of 'wiping out the enemy' – the CPI (Maoist) party leaders/cadres/supporters.¹⁰³ I have been threatened, terrorised and attacked. Stones were even hurled at my house in the dead of night (rather early morning) all because I was exposing the state's excesses and unearthing unwelcome facts about the police.

Bastar used to be a single district but it was subdivided into seven districts, ostensibly to facilitate better governance, and for practical reasons such as better policing. The seven districts are run as 'police districts' which essentially means heightened and arbitrary use of police powers to control and mitigate anything that is deemed to be critical of the State or its policies. As we have learned during Indira Gandhi's infamous Emergency, and from other parts of Indian history, press freedom is usually the first casualty when a state tries to shield itself from criticism for not upholding its obligations to the Constitution and the rule of law. As a freelance contributor to *Scroll.in*, a digital daily of political and cultural news, I have observed the violations carried out in Bastar's 'undeclared emergency' at close quarters.

Reports on the current conflict are essentially press releases from the police announcing arrests/surrenders/death during encounters. There is no other news at all, certainly nothing about the large numbers of men, women and children who have encircled ('gheraoed') the local Thana (Police Station) in protest, questioning the truth of the police accounts. The people's voice is silenced and local reporters are either bought off or threatened into conforming to police accounts. Reporters who dispute the official version are labelled as Maoist sympathisers. Space for neutral coverage, particularly in local media, has been eliminated. Instead, coverage is forced into a binary opposition between 'us' (nationalists) and 'them' (Maoists/terrorists).

Once this narrative is established, a hate campaign is let loose by 'us' against 'them', and terrorize them with threats about the need to 'mend their ways' and fall in line. If this fails, more direct attacks can be made. One can rest assured that the state machinery will be willing to either look the other way and covertly, or overtly, join in.

To avoid a direct confrontation with me, the police allowed members of a local organization called Samajik Ekta Manch (Forum for Social Unity) to take action against me for 'tarnishing the image of the Bastar police.' When this didn't silence me, the Manch led a mob who burned effigies and chanted slogans against 'Naxal sympathisers' – a term that includes not only independent journalists but human rights lawyers, researchers and tribal activists. When cases were filed against members of the Manch, the police not only took no action, they threatened witnesses who stood by me and pressed my landlord to evict me and my family. They even picked up my domestic helper and detained her for hours late into the night, and interrogated her in the hope that she would incriminate me.

INSTITUTIONAL COMPLICITY WITH CENSORSHIP: THE CASE OF PERUMAL MURUGAN

In the end, mid-February, 2016, the Manch complicit with the police succeeded in hounding out 'nuisances'¹⁰⁴ such as me, as well as the lawyers from the Jagdalpur Legal aid group that offered pro-bono legal services to local Adivasis. Soon afterwards two local stringers were put behind bars on trumped-up charges. Somaru Nag and Santosh Yadav were arrested previously in July and September 2015, Prabhat Singh and Deepak Jaiswal in March 2016.¹⁰⁵ The latter are out on bail after three months. Somaru Nag was also released from the prison after a year on 21 July 2016 for lack of evidence; however, Santosh Yadav is still in prison.

If India takes pride in being one of the largest and most enduring democracies, freedom of the press should be one of its top priorities, especially in places such as Chhattisgarh and the nine other states designated as 'Left Wing Extremist'¹⁰⁶ zones (that includes 76 'LWE' affected districts). 'LWE' is the lesser known conflict zones in India, next to the separatist insurgencies in the North Eastern States of India. Encouraging free, unbiased and neutral reporting will be instrumental in finding a lasting political solution to the ongoing conflict.

Malini Subramaniam has been harassed by the police and the anti-Maoist group Samajik Ekta Manch for her human rights reportage in Chhattisgarh. Subramaniam is one among four recipients of the 2016 International Press Freedom award from the Committee to Protect Journalists.

The chilling effect caused by growing nationalist intolerance is fed by authorities' failure to protect authors' freedom of expression.

In January 2015, in the middle of a successful career, the novelist Perumal Murugan announced his own 'death' as a writer on Facebook. 'Perumal Murugan, the writer is dead,' he wrote. 'As an ordinary teacher, he will live as P Murugan. Leave him alone.'¹⁰⁷ The 'suicide' followed a strident campaign to censor *Mathorubagan*, a novel written by Murugan which mentions a religious ceremony that permits couples to conceive a child out of wedlock.¹⁰⁸ Members of the Kongu Vellala Gounder community¹⁰⁹ launched the original protests, but these were reportedly reinforced by the extremely nationalist Rashtriya Swayamsevak Sangh (RSS),¹¹⁰ which subsequently held a book burning in Tamil Nadu.¹¹¹ The protests were provoked by Murugan's perceived slight against 'the town, its temple and its women.'¹¹² In the face of angry protests by 'caste and fringe groups',¹¹³ police asked Murugan to leave his hometown of Thiruchengode.¹¹⁴ He was made to sign an undertaking drawn up by members of the community in which he agreed to withdraw the novel and to avoid controversial topics in the future.¹¹⁵

The meeting at which this deal was made was organized by a senior government official, the District Revenue Officer (DRO), and attended by police.¹¹⁶ The DRO explained that the meeting was held in order to put a 'full stop to the protests':

*We tried our best to convince the protesters to end their opposition. It was not just a few people from some groups who were protesting, a large cross-section of the local population was demanding that the book be banned.*¹¹⁷

A lawyer who accompanied Murugan to the meeting told PEN that the DRO refused to view the matter as a freedom of expression issue.

*[I] requested the DRO to see from the point of writer's freedom. She raised her voice and told me that I as an advocate could say anything and walk away. Perumal Murugan has to stay in Namakkal. When I told her not to raise her voice, she told me to leave the place if I wanted. The police did not support Perumal Murugan even a wee bit. The District Administration totally let him down. According to them it was a pure law and order issue. Literary freedom and Article 19(1)(a) of the Constitution were remote concerns.*¹¹⁸

An associate of Murugan who was present at the meeting also commented to PEN on the DRO's response:

*The response of DRO was one of disdain. To her, maintaining law and order appeared the sole agenda. If freedom of expression was to be sacrificed at the altar of law and order, so be it. Her brief was to end the impasse. She had no compunction in trodding [sic] underfoot artistic expression and sensibilities.*¹¹⁹

This associate also pointed out that the police had no 'motivation to rise in favour of Perumal Murugan,' but might have protected him if they had been given a 'strong directive from the administration or an order from the court.'¹²⁰ Nevertheless, '[t]he police viewed the issue only through the prism of law and order. The constitutional dimension of freedom of expression was wholly absent in their perspective.'¹²¹

Murugan's publisher, Kannan Sundaram, has regularly defended his author's right to explore sensitive material, but local politicians have been conspicuously silent on the matter.¹²²

Murugan's plight highlights a failure by the Indian authorities to protect artists' right to freedom of expression, and to shield them from an increasingly intolerant culture. Mr. Sundaram believes that part of the problem is a wider failure by the political establishment to grasp what freedom of expression really means:

Very few have clarity on the issue of freedom of expression. When they talk about freedom of expression, many think that it is the right of others to say what they agree with.

*In Perumal Murugan's case the local administration did not consider the fact that there is something called freedom of expression in this country - which is also their duty to defend. They only took care of one aspect. Order has to be maintained, peace has to be maintained. And therefore the writer must be asked to yield to the angry mob.*¹²³

The authorities' failure to defend Murugan's freedom of expression prompted the People's Union for Civil Liberties (PUCL) to initiate Public Interest Litigation (PIL). The PIL asked the Madras High Court to issue guidelines regarding police treatment of artists and complaints against artists.

The proposed guidelines included a reminder that the state has a responsibility to prevent non-state actors from unlawfully limiting speech, as well as a responsibility to protect authors and artists from threats and harassment. The guidelines recommended the creation of an Expert Body to review complaints against authors and artists. The guidelines suggested that complaints should only proceed to trial when the Expert Body agrees that a *prima facie* case has been established.

PUCL's proposed guidelines did not cite international law, but they nevertheless attempted to add flesh to India's existing international legal obligations to protect freedom of expression, as outlined in Article 2 of the ICCPR. Specifically, the guidelines oblige the state to protect expression from interference by the police, or other citizens, unless experts agree that an offence has been committed. This accords with General Comment 34, cited above.

On 5 July 2016, the Madras High Court delivered its ruling. In addition to dismissing the allegations against Murugan, the Court ordered that the PUCL's proposed guidelines be circulated to police and implemented:

*Insofar as the areas of concern expressed by us in the guidelines enumerated hereinabove are concerned, they should be adhered to and circulated by the State Government for the benefit of the Police and State Authorities, and the Expert Body as directed, should be constituted with independent experts from different fields after proper consultations, within a period of three months of the receipt of the order.*¹²⁴

Nevertheless, widespread media coverage of the Murugan affair has ensured that his 'suicide' will affect other well-established writers and likely chill expression among aspiring authors. PUCL's guidelines seek to restrain authorities from perpetuating this type of chill, but they will need the concerted support of Indian civil society if they are to succeed.

RECOMMENDATION

PEN recommends that national and state governments adopt screening mechanisms to protect artists from unwarranted, vexatious and groundless complaints, of the nature recommended by PUCL.

CONCLUSION

In 2015, PEN International drew attention to the ease with which India's 'vague, overbroad laws and a corrupt and inefficient justice system' have been used to censor unpopular opinions. *Imposing Silence: The Use of India's Laws to Suppress Free Speech* – a joint report by PEN International, PEN Canada and the International Human Rights Program (IHRP) at the University of Toronto's Faculty of Law – warned that the resulting chill most often affected 'marginal voices, or critics of incumbent politicians.' Since the publication of that report, well-publicized instances of such abuse, and of the harassment and threats that accompany it, have made the issue one of mounting national and international concern.¹²⁵

As the evidence gathered in this update suggests, there are few grounds for optimism. Shortly before this report went to press, in July 2016, a High Court of Madras decision by Chief Justice Sanjay Kishan Kaul and Justice Pushpa Sathyanarayana delivered a welcome rebuke to India's censors, while overturning a community ban on the Tamil novelist Perumal Murugan. 'The choice to read is always with the reader,' wrote the judges, 'If you do not like a book, throw it away.' The 134-page ruling included an extended consideration of 'guidelines as to how the State agencies or officials should respond and act in situations where extra-judicial organisations/ individuals threaten the exercise of free speech by individuals.' As was evident from the warmth of its reception, such full-throated defences of free speech have become increasingly rare in India.¹²⁶

Antiquated laws, like the sedition provision in the Indian Penal Code (IPC), continue to be used to silence discussion on matters of public interest. Writers and journalists who deal with sensitive issues frequently run a gauntlet of invective and implied and direct threats. Some face more immediate violence from the groups and individuals who wish to silence them. These censors are seldom reprimanded, much less prosecuted, for their actions. Many of the most strident are actually congratulated for their work by those whose interests they serve. This deteriorating climate for freedom of expression would be deeply troubling in any country; in the world's largest and most vibrant democracy it ought to be considered intolerable.

RECOMMENDATIONS

PEN makes the following urgent recommendations to the government of India:

1. Amend section 124A of the IPC (sedition) to only limit speech where it is necessary to do so and consistent with the grounds articulated in Article 19(3) of the ICCPR.
2. Launch a public education campaign to inform citizens of their legal rights in the face of online harassment and threats.
3. Train police and provide them with adequate resources to recognize and investigate online harassment and threats that meet the threshold of criminality in international law.
4. Refuse to import vague and overbroad provisions from the IPC into the ITA in the form of a new s.66A.
5. Institute a screening mechanism to review complaints against authors and artists before allowing complaints to proceed to prevent vexatious and groundless trials, as recommended by the People's Union for Civil Liberties.

ENDNOTES

1. 'India's Crackdown on Dissent' (22 February 2016), *The New York Times*, online: <http://www.nytimes.com/2016/02/23/opinion/indias-crackdown-on-dissent.html>. According to Amnesty International, 'Authorities clamped down on civil society organizations critical of official policies...Censorship and attacks on freedom of expression by hardline Hindu groups grew,' in Amnesty International, *Amnesty International Report 2015/16: The State of the World's Human Rights* (2016) at 181, online: http://www.amnesty.ca/sites/amnesty/files/Annual%20report%20book%2015_16_English.pdf.
2. Pankaj Butalia Interview (In Person Interview, Delhi, 26 January 2016) [Butalia Interview].
3. 'Fighting for justice is anti-national, fighting for minorities is anti-national, raising issues of inadequate jurisprudence by the Supreme Court is anti-national, so basically any questioning is anti-national,' in Teesta Setalvad Interview (Telephone, 24 February 2016) [Setalvad Interview]; Kannan Sundaram Interview (In Person Interview, Jaipur, 23 January 2016) [Sundaram Interview]; Dr. K Satchidanandan Interview (In Person Interview, Jaipur, 22 January 2016). See also: Satyabrata Pal, 'Where every human rights activist is labelled a Maoist: Chhatisgarh' (24 February 2016), Sabrang, online: <https://www.sabrangindia.in/article/where-every-human-rights-activist-labelled-maoist-chhatisgarh>. Kathleen Miles writes 'Less than two years into Narendra Modi's first term as Indian prime minister, an alarming brand of hyper-nationalism is rising. Ministers and right-wing followers of Modi's Hindu nationalist ruling party are labeling a growing number of student protesters, intellectuals and activists as 'anti-national' simply for criticizing the government,' in Kathleen Miles, 'Modi Follows a Menacing Neo-Nationalist Trend' (26 February 2016), *The Huffington Post*, online: www.huffingtonpost.com/kathleen-miles/weekend-roundup-106_b_9317548.html?utm_hp_ref=india.
4. Philip Sherwell, 'Top Indian artists and scientists return awards in protest at alleged 'climate of intolerance' under Narendra Modi' (29 October 2015), *The Telegraph*, online: <http://www.telegraph.co.uk/news/worldnews/asia/india/11963542/Top-Indian-artists-and-scientists-return-awards-in-protest-at-alleged-climate-of-intolerance-under-Narendra-Modi.html>.
5. 'Dadri: Outrage after mob lynches man for allegedly consuming beef' (25 December 2015) *The Indian Express*, online: <http://indianexpress.com/article/india/india-others/outrage-after-man-lynched-over-rumour-of-storing-beef-in-house/>.
6. Aravind S Kamal, 'Rationalist MM Kalburgi's cold blooded killing shocks Karnataka's literary capital' (31 August 2015), *FirstPost*, online: <http://www.firstpost.com/india/kalburgi-murder-rationalists-cold-blooded-killing-shocks-karnatakas-literary-capital-2413920.html>.
7. Evidence suggests these murders may even have been committed with the same weapon. See Hemanth Kashyap, 'Dabholkar, Pansare & Kalburgi were killed with same weapon' (18 December 2015), *Times of India*, online: www.timesofindia.indiatimes.com/city/mumbai/Dabholkar-Pansare-Kalburgi-were-killed-with-same-weapon/articleshow/50228758.cms.
8. Bill No 234 of 2015, *The Indian Penal Code (Amendment) Bill, 2015* (Introduced at the Lok Sabha on 18 December 2015), online: <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/2535LS.pdf>.
9. The student leader, Kanhaiya Kumar, told a Supreme Court-appointed panel 'I have said everything in detail. I don't know [if] they were lawyers or not but from what they were saying, I think they were highly politically-motivated persons,' in 'Kanhaiya Kumar to SC-appointed panel: I was on the ground, being kicked, punched' (28 February 2016), *The Indian Express*, online: <http://indianexpress.com/article/india/india-news-india/kanhaiya-kumar-to-sc-appointed-panel-i-was-on-the-ground-being-kicked-punched/>. According to Live Mint, 'As Kumar was brought to the Patiala House court, he was allegedly kicked and punched. He later told the judge he was assaulted and that one of the alleged attackers was present in the same court. The police made no attempt to restrain this person, who ran from the courtroom,' in 'Fresh violence in Patiala House, Kanhaiya Kumar assaulted' (18 February 2016), *Live Mint*, online: <http://www.livemint.com/Politics/uLX8WQkugNolzv1D0tjK/Kanhaiya-Kumar-sedition-case-SC-restricts-entry-to-Patiala.html>. See also 'Assault on Kanhaiya Kumar organised and pre-planned, says NHRC; indicts Delhi Police' (20 February 2016), *India TV News Desk*, online: www.indiatvnews.com/news/india/nhrc-report-kanhaiya-kumar-attack-pre-planned-delhi-police-57757.html; 'JNU student Kanhaiya Kumar assaulted inside Patiala House Court' (17 February 2016), *Business Standard*, online: http://www.business-standard.com/article/current-affairs/kanhaiya-kumar-assaulted-inside-patiala-house-court-116021700503_1.html.
10. The film's release was prevented 'because one of the accused in the trial successfully filed a case asking for an injunction against it, arguing that the film in re-enacting the police investigation would pre-judge him as guilty and would thus vitiate the trial that was still in process. It would therefore be a 'contempt of court' as it would 'interfere with the course of justice' and would also defame the accused pronouncing them guilty before a public audience before the court has actually done so,' in Anuj Bhuwania, *Black Friday Mediation and the Impossibility of Justice* (November 2012) Centre for the Study of Law and Governance, Jawaharlal Nehru University, at 1, online: [http://www.jnu.ac.in/cslg/workingPaper/17-Black%20\(Anuj\).pdf](http://www.jnu.ac.in/cslg/workingPaper/17-Black%20(Anuj).pdf). 'The subject was so sensitive, the film was almost like a trial. It dealt with real people, real names,' in Shoma Chaudhury, 'Catcher in the Rye' (7 October 2006), *Tehelka*, online: http://www.tehelka.com/story_main20.asp?filename=hub100706Catcher.asp.
11. The Newshour Debate, 'Arnab Interviews Pahlaj Nihalani | Sanskari James Bond | The Newshour Debate' (24 November 2015), video file, online: <https://www.youtube.com/watch?v=mHX63XwLscA>.
12. Himanshi Dhawan, 'Scrub cuss words, 'Bombay' from films: Censor board chief' (13 February 2015) *Times of India*, online: <http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Scrub-cuss-words-Bombay-from-films-Censor-board-chief/articleshow/46236369.cms>.
13. Hansal Mehta, 'With more repression comes greater expression' (12 March 2016), *The Hindu*, online: www.thehindu.com/opinion/columns/with-more-repression-comes-greater-expression-hansal-mehta/article8342566.ece.
14. 'Hansal Mehta: 'Aligarh' is a portrait of loneliness' (26 February 2016), *Times of India*, online: <http://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/Hansal-Mehta-Aligarh-is-a-portrait-of-loneliness/articleshow/51153840.cms>.
15. 'JNU student leader, arrested on sedition charge after Afzal Guru protest event, sent to 3-day police custody' (12 February 2016), *Times of India*, online: <http://timesofindia.indiatimes.com/india/JNU-student-leader-arrested-on-sedition-charge-after-Afzal-Guru-protest-event-sent-to-3-day-police-custody/articleshow/50963303.cms>.
16. *Ibid.*

17. Guru was convicted of attacking the Indian Parliament in December 2001 and hanged in February 2013. See Neha Thirani Bagri, 'Amid Protests, India Executes Man in '01 Parliament Attack' (9 February 2013), *New York Times*, online: <http://www.nytimes.com/2013/02/10/world/asia/india-executes-man-tied-to-2001-attack-on-parliament.html>.
18. 'JNU row: Umar Khalid, Anirban Bhattacharya's police custody extended by 2 more days' (27 February 2016), *The Indian Express*, online: <http://indianexpress.com/article/india/india-news-india/jnu-row-court-extends-police-custody-of-umar-khalid-anirban-bhattacharya-by-2-more-days/>.
19. Emily Ford, 'India divided as battle over sedition arrest turns ugly' (22 February 2016), *AFP*, online: <http://news.yahoo.com/india-divided-battle-over-sedition-arrest-turns-ugly-111740232.html>.
20. PEN Delhi, (16 February 2016), Facebook post, online: https://www.facebook.com/permalink.php?story_fbid=1152009551476347&id=672735306070443.
21. 'Main goli bhi maar deta agar bandook hoti. Koi hamari maa ko gaali dega to kya usey maaroge nahin (I would have opened fire if I had a gun. If someone abuses our mother, won't I thrash him),' in 'I was harassed for protesting against anti-nationals, says BJP MLA OP Sharma' (18 February 2016), *India Today*, online: <http://indiatoday.intoday.in/story/bjp-mla-op-sharma-gets-bail-disses-the-media/1/599704.html>.
22. 'BJP MLA OP Sharma arrested, out on bail in Patiala House assault case' (19 February 2016), *The Indian Express*, online: <http://indianexpress.com/article/india/india-news-india/op-sharma-bjp-mla-patiala-court-jnu-row/>.
23. *Ibid.*
24. PEN International et al., *Imposing Silence: The Use of India's Laws to Suppress Free Speech* (2015) at 20-23, online: <http://www.pen-international.org/wp-content/uploads/2015/05/Imposing-Silence-4-WEB.pdf> www.pen-international.org/wp-content/uploads/2015/05/Imposing-Silence-4-WEB.pdf.
25. 'Modi govt 'muzzling' voice of Opposition, civil society, students: Sonia Gandhi' (22 February 2016), *Z News*, online: http://zeenews.india.com/news/india/modi-govt-muzzling-voice-of-opposition-civil-society-students-sonia-gandhi_1858126.html.
26. Pratap Bhanu Mehta, 'An act of tyranny: 'Modi govt threatened democracy; that is the most anti-national of all acts' (16 February 2016), *The Indian Express*, online: <http://indianexpress.com/article/opinion/columns/jnu-sedition-case-kanhaiya-kumar-arrest-afzal-guru-event/>.
27. Setalvad Interview, *supra* note 3. See also Swati Deshpande, 'HC slams Maharashtra, stays police's sedition circular' (23 September 2015), *Times of India*, online: <http://timesofindia.indiatimes.com/city/mumbai/HC-slams-Maharashtra-stays-polices-sedition-circular/articleshow/49067241.cms> and Mohua Chatterjee, 'Will govt move on Tharoor sedition bill?' (28 February 2016), *Times of India*, online: <http://timesofindia.indiatimes.com/india/Will-govt-move-on-Tharoor-sedition-bill/articleshow/51173554.cms>.
28. Nilanjana Roy, 'What Passes for Sedition in India' (21 February 2016), *The New York Times*, online: <http://www.nytimes.com/2016/02/22/opinion/what-passes-for-sedition-in-india.html> www.nytimes.com/2016/02/22/opinion/what-passes-for-sedition-in-india.html.
29. PEN International et al., *Imposing Silence*, *supra* note 24 at 41.
30. UN Human Rights Committee, 102nd Sess, *General Comment No. 34, Article 19, Freedoms of Opinion and Expression* (12 September 2011) CCPR/C/GC/34 at para 34 [General Comment No. 34].
31. *Ibid* at para 25.
32. *International Covenant on Civil and Political Rights*, adopted 16 December 1966, General Assembly Resolution 2200A (XXI), entered into force 23 March 1976, acceded to by India on 10 April 1979, Article 2(1), online: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
33. *Ibid.*
34. *General Comment No. 34*, *supra* note 30 at para 7.
35. *Wieman v Updegraff*, 344 US 183 (1952) at 195.
36. The impugned line in the film is 'I beg Allah that this kind of an India be damned that the whole of this India be damned and of our Government here and all their families like they've ruined our whole family.' See *Central Board of Film Certification and Ors Vs. Pankaj Butalia and Ors.*, MANU/DE/0346/2016 at para 8 [CBFC vs. Butalia 2016].
37. *Pankaj Butalia vs. Central Board of Film Certification*, MANU/DE/1643/2015 at para 27.6 [Butalia vs. CBFC 2015].
38. *Ibid* at para 28.
39. Butalia Interview, *supra* note 2.
40. *Ibid*; Sundaram Interview, *supra* note 3; Setalvad Interview, *supra* note 3.
41. See for example Siddharth Vardarajan, 'The Politicisation of the Film Censor Board' (2015) *PEN International*, online: <http://www.pen-international.org/voices-siddharth-varadarajan-the-politicisation-of-the-film-censor-board/>; Amrita Nayak Dutta, 'Benegal panel's suggestion to allow CBFC to take last call on films on state security leaves scope for misuse: Filmmakers' (4 May 2016), *DNA India*, online: <http://www.dnaindia.com/india/report-benegal-panel-s-suggestion-to-allow-cbfc-to-take-last-call-on-films-on-state-security-leaves-scope-for-misuse-filmmakers-2208843>.
42. Anuradha Raman, 'Censor board members need some education in art and cinema' (15 April 2015), *The Hindu*, online: <http://www.thehindu.com/opinion/interview/interview-with-lalit-bhasin-of-fcat/article7102331.ece>.
43. Omar Rashid, 'I don't mind being called conservative: Pahlaj Nihalani' (26 January 2015), *The Hindu*, online: <http://www.thehindu.com/news/national/pahlaj-nihalani-censor-board-chief-interview/article6823559.ece>.
44. PEN International et al., *Imposing Silence*, *supra* note 24 at 26-27.
45. *Cinematograph Act*, 1952, s.3, online: http://cbfcindia.gov.in/html/cinematograph/cine_act1952.pdf.
46. Index on Censorship, 'Free speech in India: Uptick in defamation, attacks on media cause for concern' (19 December 2014), online: <https://www.indexoncensorship.org/2014/12/free-speech-india-uptick-defamation-attacks-media-cause-concern/>.
47. *Ibid.*
48. 'Free speech in India, 2015' (31 December 2015), *The Hoot*, online: <http://www.thehoot.org/research/special-reports/free-speech-in-india-2015-9091>.
49. Nandita Jha, 'Free speech: a dire three months' (5 April 2016), *The Hoot*, online: <http://www.thehoot.org/research/special-reports/free-speech-a-dire-three-months-9272>.

50. *Indian Penal Code*, s. 124A, online: <http://indiankanoon.org/doc/1641007/>. The provision has a number of Explanations attached to it:
- Explanation 1.—The expression ‘disaffection’ includes disloyalty and all feelings of enmity.
- Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
- Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
51. PEN International et al., *Imposing Silence*, *supra* note 24 at 41.
52. *General Comment 34*, *supra* note 30 at paras 22, 25.
53. *Kedar Nath Singh vs. State of Bihar*, 1962 AIR 955.
54. *S. Rangarajan vs. P Jagjivan Ram and Ors.* (1989) 1989 SCR (2) 204, 1989 SCC (2) 574.
55. Referring to sedition specifically, constitutional scholar Gautam Bhatia refers to the gap between the law and its practice as ‘yawning, almost insurmountable...created by a serious breakdown of the rule of law,’ in Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (New Delhi: Oxford University Press, 2016) at xxxviii. For an illustration of the gap between the law and practice of sedition, see *Sanskar Marathe vs. State of Maharashtra and Ors.* MANU/MH/0608/2015, which reviews the police’s application of the sedition provision, finding it contrary to the words of the provision. See also *Butalia vs. CBFC* 2015, *supra* note 37, the first of two decisions rebuking the CBFC for attempting to censor Butalia’s film, *Textures of Loss*. See also an incident in which peaceful protestors of a proposed nuclear project were inappropriately charged with sedition, prompting an urgent response by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, noted in PEN International et al., *Imposing Silence*, *supra* note 24 at 22.
56. *S. Rangarajan vs. P Jagjivan Ram and Ors.* (1989) 1989 SCR (2) 204, 1989 SCC (2) 574 at para 42.
57. Butalia Interview, *supra* note 2.
58. Gautam Bhatia Interview (In Person Interview, Delhi, 27 January 2016).
59. Butalia Interview, *supra* note 2.
60. Jayanth Krishnan et al., ‘Grappling at the Grassroots: Access to Justice in India’s Lower Tier’, (2014) 27 *Harvard Human Rights Journal* 151 at 169 [‘Grappling at the Grassroots’].
61. *CBFC vs. Butalia* 2016, *supra* note 36 at para 16.
62. ‘The Anatomy of Hate,’ Wishberry.in, <https://www.wishberry.in/campaign/the-anatomy-of-hate/#/campaign>.
63. *Shreya Singhal vs Union of India* (UOI), MANU/SC/0329/2015.
64. Parliament of India, Department-Related Parliamentary Standing Committee on Home Affairs, ‘One Hundred Eighty Ninth Report: Action Taken by the Government on the Recommendations/ Observations Contained in the 176th Report on the Functioning of Delhi Police’ (7 December 2015), online: <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Home%20Affairs/189.pdf>. [Standing Committee on Home Affairs Report].
65. The report proposes the following provision: ‘whoever, by means of a computer resource or a communication device sends or transmits any information (as defined under 2 (1) (v) of IT Act)
- a) which promotes or attempts to promote, on the ground of religion, race, sex, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between religious, racial, linguistic or regional groups or caste, or communities, or
- b) which carries imputations that any class of persons cannot, by reason of their being members of any religious, racial, linguistic or regional group or caste or community bear true faith and allegiance to constitution of India, as by law established or uphold the sovereignty or integrity of India, or
- c) which counsels advises or propagates that any class of persons shall or should be by reason of their being members of any religious, racial, language or religion group or caste or community or gender be denied or deprived of their rights as citizens of India, or
- d) carries assertion, appeal, counsel, plea concerning obligation of any class of persons, by reasons of their being members of any religion, racial, language or religion group or caste or community or gender and such assertion, appeal, counsel or plea causes or is likely to cause disharmony or feeling of enmity or hatred or ill-will between such members or other persons.’shall be punishable with’ in Standing Committee on Home Affairs Report, *supra* note 64.
66. Section 153A of the Indian Penal Code states:
- (1) Whoever—
- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or
- (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

67. Section 153B of the Indian Penal Code states: (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]
68. PEN International et al., Imposing Silence, *supra* note 24 at 45.
69. Adi Robertson, 'New report looks for patterns in Twitter harassment' (15 May 2015), *The Verge*, online: <http://www.theverge.com/2015/5/15/8611983/twitter-harassment-wam-report>.
70. Anja Kovacs et al. 'Don't Let it Stand!' (2013), *Internet Democracy Project* at 46, online: <https://internetdemocracy.in/wp-content/uploads/2013/12/Internet-Democracy-Project-Women-and-Online-Abuse.pdf>; Shelly Walia, 'The brutal, sexist harassment Bollywood actresses face on Twitter' (10 September 2015), *Quartz India*, online: <http://qz.com/498555/the-brutal-sexist-harassment-bollywood-actresses-face-on-twitter/>.
71. For example, PM Modi met with Tajinder Pal Bagga, leader of the Bhagat Singh Kranti Sena (BSKS), which rose to notoriety after its members violently assaulted a Supreme Court lawyer on film after he made controversial statements about Kashmir. See 'Twitter Trolls among #Super150 Invited by PM Modi' (6 July 2015), *The Quint*, online: <http://www.thequint.com/india/2015/07/06/twitter-trolls-among-super150-invited-by-pm-modi>.
72. Apar Gupta interview (In Person Interview, Delhi, 26 January 2016) [Gupta Interview].
73. Nikhil Pahwa Interview (In Person Interview, Delhi, 26 January 2016) [Pahwa Interview].
74. *Ibid*; Chinmayi Arun Interview (In Person Interview, Delhi, 27 January 2016).
75. The interviewee wished to remain anonymous.
76. Anonymous Interviewee (In Person Interview, Jaipur, 24 January 2016) [Anonymous Female Interview].
77. *Ibid*.
78. Pahwa Interview, *supra* note 73.
79. Kovacs et al. 'Don't Let it Stand!' *supra* note 70 at 23; Setalvad Interview, *supra* note 3.
80. Kovacs et al. 'Don't Let it Stand!' *supra* note 70 at 10; Walia, 'The brutal, sexist harassment Bollywood actresses face on Twitter,' *supra* note 70; Sonia Faleiro, 'Women in India Aren't Safe on Twitter Either' (19 June 2014), *Medium.com*, online: <https://medium.com/matter/no-safe-places-d59af0c3ba58#.web8y9pti>; Richa Kaul Padte, 'Section 66A, sexual harassment and women's rights' (10 December 2012), *Internet Democracy Project*, online: <https://internetdemocracy.in/2012/12/section-66a-sexual-harassment-and-womens-rights-2/>.
81. Niharika Pandit, 'Twitter trolls in India: Sexist abuse as a tool to muzzle women' (1 April 2014), *Index on Censorship*, online: <https://www.indexoncensorship.org/2014/04/twitter-trolls-india-sexist-abuse-tool-muzzle-women/>; Faleiro, 'Women in India Aren't Safe on Twitter Either,' *supra* note 80.
82. These included such abusive comments as: "F***** [expletive deleted] communist ... I don't know how this moron son of a bitch thinks he can rant and complain about the Indian army and thing [sic] he will not get abused... Block me quick or I will show you what a "bhakt" [devotee] does."
83. Shoikat Roy Interview (Email, 26 February 2016).
84. Setalvad Interview, *supra* note 3.
85. Gupta Interview, *supra* note 72.
86. See e.g. Kim Arora, 'Online abuse, offline battles' (21 July 2014), *Times of India*, online: <http://timesofindia.indiatimes.com/india/Online-abuse-offline-battles/articleshow/38777409.cms>; Prasanto K Roy, 'Why online harassment goes unpunished in India' (17 July 2015), *BBC*, online: <http://www.bbc.com/news/world-asia-india-33532706>; Amrita Madhukalya, 'Online harassment of women is on the rise' (29 July 2014) *DNA India*, online: <http://www.dnaindia.com/india/report-online-harassment-of-women-is-on-the-rise-2006090>; Richa Kaul Padte, 'Keeping women safe? Gender, online harassment and Indian law' (29 June 2013), *Internet Democracy Project*, online: <https://internetdemocracy.in/reports/keeping-women-safe-gender-online-harassment-and-indian-law/>; Vaishnavi Vittal, 'Why trolls have it so easy' (27 July 2013), *IndiaTogether.org*, online: <http://indiatogether.org/internet-women>; Kovacs et al. 'Don't Let it Stand!' *supra* note 70 at 46.
87. Kovacs et al. 'Don't Let it Stand!' *supra* note 70 at 46.
88. *Ibid*.
89. Setalvad Interview, *supra* note 3.
90. *Ibid*.
91. Roy, 'Why online harassment goes unpunished in India,' *supra* note 86.
92. *Ibid*.
93. PEN International's Declaration on Digital Freedom, Article 2. (b) In exceptional circumstances, any limitations on the content of digital media must adhere to international laws and standards that govern the limits of freedom of expression, such as incitement to violence. (c) Governments should not block access to or restrict the use of digital media, even during periods of unrest or crisis. Controlling access to digital media, especially on a broad scale, inherently violates the right to freedom of expression. (The full text of the Declaration is available at: www.pen-international.org/pen-declaration-on-digital-freedom/declaration-on-digital-freedom-english/). See also Setalvad Interview, *supra* note 3.

94. Section 354D of the IPC states:
(1) Any man who—

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.
95. Section 507 of the IPC states: Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.
96. 'Jagendra Singh,' Committee to Protect Journalists, CPJ.org, <https://cpj.org/killed/2015/jagendra-singh.php>.
97. *Ibid.*
98. *Ibid.*
99. *Ibid.*
100. 'Karun Misra,' Committee to Project Journalists, CPJ.org, <https://cpj.org/killed/2016/karun-misra.php>.
101. *Ibid.*
102. Naxalite is the term used in regular parlance to refer to the party/group adhering to Maoism. The peasant uprising of 1967 stemmed from Naxalbari – a small town in West Bengal. Though the current movement has little or none to do with the place, Naxalbari, other than its historical origin, it continues to be referred to as Naxalism and Naxalites to those associated with the movement.
103. 'Malini Subramaniam' Scroll.in, <http://scroll.in/authors/1202>.
104. Referred to by the Sukma District Superintendent of Police, in a sting operation by NDTV, Delhi.
105. Amnesty International, *Blackout in Bastar: Human Rights Defenders Under Threat* (2016) at 4, 6, 9, 17.
106. Ministry of Home Affairs, Government of India, 'Left Wing Extremism Division,' MHA.nic.in, online: http://mha.nic.in/naxal_new.
107. Soutik Biswas, 'Why Indian author Perumal Murugan quit writing' (15 January 2015), *BBC News*, online: <http://www.bbc.com/news/world-asia-india-30808747>.
108. Sundaram Interview, *supra* note 3.
109. The Kongu Vellala Gounder community is identified by *The Indian Express* as an 'influential intermediate caste dominant in western Tamil Nadu,' in Amrith Lal, 'Tamil author Perumal Murugan announces his 'death' on Facebook over lack of freedom of speech' (15 January 2015), *The Indian Express*, online: <http://indianexpress.com/article/india/india-others/forced-to-withdraw-novel-tamil-author-announces-his-death/>.
110. Kannan Sundaram, 'It started with Perumal' (25 November 2015), *The Indian Express*, online: <http://indianexpress.com/article/opinion/columns/it-started-with-perumal/>; Sundaram Interview, *supra* note 3.
111. Mridula Chari, 'Writers condemn RSS burning of Tamil author Perumal Murugan's book' (28 December 2014), *Scroll.in*, online: <http://scroll.in/article/697505/writers-condemn-rss-burning-of-tamil-author-perumal-murugans-book>.
112. Samiha Nettikkara, 'Who 'killed' Indian author Perumal Murugan?' (14 January 2015), *BBC News*, online: <http://www.bbc.com/news/blogs-trending-30785930>.
113. A Subramani, 'I believe in my obituary, says Perumal Murugan' (25 February 2015), *The Times of India*, online: <http://timesofindia.indiatimes.com/india/i-believe-in-my-obituariesays-Perumal-Murugan/articleshow/46362518.cms>.
114. AR Venkatachalapathy, 'In defence of the chronicler of Kongu' (12 January 2015), *The Hindu*, online: <http://www.thehindu.com/opinion/op-ed/in-defence-of-the-chronicler-of-kongu/article6778031.ece>.
115. G Sampath, 'The importance of being Perumal Murugan' (20 March 2015), *LiveMint.com*, online: <http://www.livemint.com/Opinion/jGHIWMroXL1b7hs9ZY4VcK/The-importance-of-being-Perumal-Murugan.html>.
116. "Perumal Murugan was asked to exile himself by police" [Statement by GR Swaminathan] (15 January 2015), *The Hindu*, online: <http://www.thehindu.com/news/national/tamil-nadu/perumal-murugan-was-asked-to-exile-himself-by-police/article6792161.ece>.
117. Amrith Lal, 'Tamil author Perumal Murugan announces his 'death' on Facebook over lack of freedom of speech' (15 January 2015), *The Indian Express*, online: <http://indianexpress.com/article/india/india-others/forced-to-withdraw-novel-tamil-author-announces-his-death/>.
118. "Perumal Murugan was asked to exile himself by police" [Statement by GR Swaminathan], *supra* note 116.
119. Anonymous Interview (Email, 4 May 2016).
120. *Ibid.*
121. *Ibid.*
122. Sruthisagar Yamunan, 'What is behind Dravidian parties' silence in Perumal Murugan issue?' (14 January 2015), *The Hindu*, online: <http://www.thehindu.com/news/national/tamil-nadu/what-is-behind-dravidian-parties-silence-in-perumal-murugan-issue/article6787696.ece>.
123. Sundaram Interview, *supra* note 5.
124. *Writ Petition Nos 1215 and 20372 of 2015 and Criminal Original Petition Nos 7086 and 7153 of 2015* (2015), at para 124.
125. See e.g. Gautam Bhatia, *Offend, Shock, or Disturb*, *supra* note 55; Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India* (2016), online: https://www.hrw.org/sites/default/files/report_pdf/india0516.pdf.
126. A Subramani, 'In a league of his own: Judge whose verdicts broke new ground' (9 July 2016), *Times of India*, online: <http://timesofindia.indiatimes.com/City/Chennai/In-a-league-of-his-own-Judge-whose-verdicts-broke-new-ground/articleshow/53122947.cms>.

