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## Contours of Media Control in India

By: Sevanti Ninan

*The Bharatiya Janata Party-led government continues to aim for narrative control of the media. Since print and television news have already been co-opted and no longer pose a problem, the effort now is focused on controlling the feisty digital media through various formal and informal instruments.*

The international furore over tweets and videos related to the January 2023 BBC documentary on Prime Minister Narendra Modi being blocked in India drew attention once again to a process that has unfolded steadily over two tenures of the Bharatiya Janata Party (BJP)-led government: the state closing in on the news media's freedom to function. A chief minister who regretted his own inadequate media handling back in 2002 can now, as prime minister, tell himself that the fourth estate in what is touted to be the world's largest democracy is being taught every day to know its place.

The first tenure of the Modi government began a [process of delegitimisation and co-option of the mainstream media](#). It was denied access to government sources for primary news gathering, while the prime minister and his ministers used the state-owned media and social media to communicate with the citizenry.

The second term is consolidating an earlier, incipient trend of narrative control. Print and television news have been co-opted and no longer provoke the government in a major way. The effort to control is now focused on the digital media, including social media.

This takes the form of codes of conduct for online media, including intermediaries, news sites, and over-the-top (OTT) entertainment, restrictions on foreign direct investment permissible in digital media, and frequent internet shutdowns which affect access to online media. India had the [highest number of internet shutdowns](#) in the world in 2022. Criminalising tweets and Facebook posts has also landed journalists in jail over the past couple of years.

Government agencies are now deployed against media outlets which do not fall in line, and a range of laws is used by the police to intimidate individual journalists.

Broader efforts at narrative control across all forms of media include imposing content obligations on television news, and deploying government officials as fact checkers for news and information hosted on intermediaries and TV news channels. There is also increasing intimidation of journalists and media establishments.

Government agencies are now deployed against media outlets that do not fall in line. A range of laws is used by the police to intimidate individual journalists. There is trolling of commentators by party-controlled internet 'armies' and there are increasing restrictions on media access to sources of news such as to the central hall of Parliament. There is also an officer on special duty in the Prime Minister's Office to ensure that top-level displeasure, when incurred, is communicated to the offending media establishments.

If the quote at the beginning of this analysis is indicative of how the prime minister views the media, the [first speech he delivered after his election](#) as leader of the winning coalition in 2019 in the central hall of Parliament was even more telling. He dwelt for several minutes on why the newly elected members of parliament (MPs) should steer clear of cameras and reporters and avoid succumbing to the lure of publicity. He mimicked the questions reporters would ask. It was clear that for him the media was a nuisance to be contained, rather than an institution with a positive role to play in the polity.

### Tweaking laws, expanding rules

From 2018 onwards, the government has been switching between the ministries of information and broadcasting and that of electronics and information technology to give itself more powers over the functioning of online media. It has been tireless in the last five years in its attempts to enhance its own legal and regulatory powers in this domain, using laws brought in by previous governments.

The internet came to India in 1995. The history of blocking media on the internet dates back to 2003 when an earlier BJP government issued two gazette notifications expanding the Information Technology Act, 2000. One created the Indian Computer Emergency Response Team, Cert-In, as the "single authority" to issue instructions for blocking websites. The second notification specified

categories of websites that could be blocked. News sites were not among them.

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In 2009, the United Progressive Alliance (UPA) government issued a notification enabling the blocking of content hosted by intermediaries or individuals. These were the Information and Technology (Procedures and Safeguards for Blocking of Access to Information by Public) Rules 2009, and derived from section 69A of the Information Technology Act of 2000. This is the section which enabled blocking the BBC documentary.

The current government has been the first to attempt both registration and regulation of digital media outlets. It is a process of regulatory overreach that began in 2018. Smriti Irani, as minister for information and broadcasting, [floated the idea of regulation for the online media](#) in the first quarter of that year.

Until then, there were no rules or codes of conduct that governed media on the internet. The minister constituted a committee to suggest a framework for this category of media, including news aggregators. The move was met with consternation and the government cried off. Shortly after, in May that year, Irani was moved from the ministry.

Where law and policy are concerned, the pattern is that the Modi government drafts legislation and rules, invites public response, and when its efforts are opposed, retreats and tries a different tack to achieve the same objective.

The minister who replaced Irani went on to attempt print media reform instead, by introducing the [Registration of Press and Periodicals Bill, 2019](#) to replace the colonial-era Press and Registration of Books Act, 1867. The bill sought to centralise the process of registration of newspapers and put in a clause on “simple registration of e-papers” using a law ostensibly meant for the print media.

When this bill was not passed even two years down the line, the government changed track. It switched the effort to control digital news media to the ministry for electronics and information technology, and came up with a new set of rules to the Information Technology Act, 2000.

In February 2021, the government announced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which sought to kill three birds with one stone. It announced guidelines for social media intermediaries with a time-bound grievance redressal mechanism, and a “code of ethics” for digital media, both news and entertainment.

Under it, a three-tier grievance redressal mechanism became applicable for OTT platforms such as Netflix, Amazon Prime Video, and Disney+ Hotstar. These promised to end the free run that OTT content providers had had till then, without a censor board or a complaints council to rein in sex, violence, and nudity on one hand, and liberties taken with fictional characters resembling mythological figures on the other, as was the case with the web series "Tandav".

|| The elaborate new rules of 2021 put the ministry of information and broadcasting in charge of oversight. So now you had a government ministry seeking to assert itself over constitutional freedoms.

In July that year, powerful internet intermediaries began filing “compliance reports”, caving in to pressure from the government. But pushbacks came from news organisations seeking to challenge the IT Act rules, which sought to govern them. According to the Internet Freedom Foundation, [more than 17 challenges have been filed in high courts](#) against these rules since 2021.

The [elaborate new rules also opened the door wide](#) for harassment and censorship via complaints, while putting the ministry of information and broadcasting in charge of oversight. The ministry now sought to assert itself over constitutional freedoms.

When there is a pushback, the Modi government changes tack. It did so before when Irani’s effort to register digital news media created an uproar. It did it again by reviving the Registration of the Press and Periodicals Bill, which had fallen by the wayside.

The new version of the bill was listed during the monsoon session of Parliament in 2022, but was not tabled. A newspaper reported that it included a clause that requires publishers of news on digital media to register with the Registrar of Newspapers of India but the information and broadcasting minister [denied](#) that, and it is now in a limbo.

The IT rules were amended again in 2022 and 2023 and the blocking of Twitter URLs under these rules gathered steam. According to statistics put out by the Commonwealth Human Rights Initiative based on responses to Right to Information applications, [the number of orders to block Twitter rose](#) to 1,122 in the first six months of 2022 from eight in 2014 when the BJP-led government came to power. There was a quantum jump from the year 2019 onwards. The number of Twitter URLs blocked during 2022 was 20% higher than the figure for 2021.

|| The blocking of links to the BBC documentary used emergency powers under the Information Technology Rules, 2021 and the Information Technology Act, 2000. Does ‘propaganda reflecting a colonial mindset’ qualify as an emergency?

What is more, the government’s committee appointed to issue directions to block public access to content on Twitter and other social and digital media platforms met 39 times in 2021 and 53 times in 2022. This committee functions under a confidentiality clause, so transparency is a casualty. Paranoia is growing.

In the BBC case, due process has been a casualty. The Internet Freedom Foundation and others have pointed out that in the case of some 50 tweets about this documentary, which were directed to be taken down by Twitter, no show-cause notice was given, and no reasons were recorded. The text of blocking orders was not given to the authors of the tweets and no press release was issued.

The blocking of links to the BBC documentary used emergency powers under the IT rules 2021 and Section 69A of the IT Act, 2000. Does “propaganda reflecting a colonial mindset,” to quote the official reason given for blocking the BBC programme, qualify as an emergency?

The year 2023 will see more legislative initiatives. Last week, Rajeev Chandrasekhar, the information technology minister, announced that the government will introduce [The Digital India Act, 2023](#) which will be a broad overhaul of the Information Technology Act, 2000. Some safe harbour provisions are set to go.

## Narrative control

One aspect of narrative control is telling the media what content they should carry. In November 2022 the information and broadcasting ministry [amended the existing guidelines for uplinking and downlinking of satellite TV channels](#) by making it obligatory for TV channels to carry public service content for at least 30 minutes a day. This proposal figured in recommendations published by the Telecom Authority of India (TRAI) back in 2008, which had suggested that the government impose a public service obligation on every broadcaster.

The amendment lists socially relevant themes that would qualify. Broadcasters are also required to keep a record of the content telecast for 90 days. These norms were to become applicable by 1 March 2023. But news broadcasters bucked, asserting that they were already telecasting programming that is in consonance with the guidelines.

In January 2023, a proposed amendment to the IT rules of 2021 said all intermediaries, including social media platforms, will need to ensure that any news article identified as “fake or false” by the fact check unit of the Press Information Bureau (PIB) is not allowed on their platform. Even as the media bristled, the ministry of electronics and information technology said the proposal was intended to strengthen due diligence by the intermediaries, and public feedback had been invited on it.

|| A third dimension of control is changing policy on funding. With print and television having mostly fallen in line, it is digital outlets doing free and feisty reporting that are now in the firing line.

Internet watchdog groups asserted that the PIB and other authorised government entities, which were not currently statutorily empowered to take down online content or news, could not be empowered via rules notified by the executive. This requires parliamentary intervention. Another regulatory excess may be stalled by a pushback.

Meanwhile, the Kashmir Media Policy of 2020 gave officials of the Jammu and Kashmir department of information and public relations the power to determine fake news or anti-national activities. In other words, a government body was to have the power to control the news to be published. Robust background checks were to be conducted before granting accreditations to journalists.

The policy said that any media that violated this objective would be banned from receiving any advertisements from the government, and would have to face legal proceedings. After the policy was announced, the work of many journalists and reporters was [found to have been scrubbed off the websites they were published on](#).

A third dimension of control is changing policy on funding. With print and television having mostly fallen in line, it is digital outlets doing free and feisty reporting that are now in the firing line. In October 2020, the central government introduced a foreign direct investment (FDI) cap for digital news media.

Entities engaged in uploading or streaming of news and current affairs through digital media platforms would be permitted to receive FDI up to 26% under the government approval route. Earlier, there was no cap. This restriction was also stretched to cover news agencies and news aggregators. [Some media sites shut down](#) as a result.

## Mobilising many laws

If you want to report in today's India, you have to battle an enlarged canvas of legal harassment, and not just from the central government.

The onset of Covid-19 led to the government putting hitherto under-used laws to work, such as the Disaster Management Act and the Epidemic Diseases Act. These have been used in tandem with sections of the Indian Penal Code (IPC) to criminalise reporting of the government's response to the pandemic, as well of the outcomes of its handling, such as the migrant exodus.

Panicky administrations across the country used no less than 14 sections of the IPC and sections of the IT Act (including one that was struck down), the Disaster Management Act, the Unlawful Activities (Prevention) Act, the Motor Vehicles Act, and the provisions of the Scheduled Castes and Tribes (Prevention of Atrocities) Act to issue show cause notices, lodge first information reports (FIRs) against reporters, and arrest, confine, and torture them.

[The Rights & Risks Analysis Group found](#) that during Covid-19 the laws described earlier were deployed in Bihar, West Bengal, Maharashtra, Uttar Pradesh (UP), Madhya Pradesh, Kerala, and numerous other states. UP led the list with 11 such cases. There were cases of torture in Punjab, Odisha, Maharashtra, and Jammu and Kashmir. Several of these had non-BJP governments. Media harassment by the government did not begin with the BJP, nor is it confined to it. But the BJP-led central government has taken it to new heights.

|| The prime minister's view of journalism being a nuisance is shared by administrators and state governments across the country.

Multiple reports from across the country on administrative failures in responding to the problems of migrant labour have led to multiple FIRs filed under multiple acts across states. In Baddi in Himachal Pradesh, a reporter for *Divya Himachal* did a Facebook live on hungry migrant workers and was rewarded for his pains with an FIR under Section 54 (punishment for false warning) of the Disaster Management Act and four sections of the IPC. He earned two other FIRs for two other stories and had his curfew pass confiscated so that he could not file any more stories.

Headlines are made when notices are sent to journalists at news sites such as *The Wire* or *Scroll.in*. But not when the founder of a news portal is arrested in Coimbatore for reporting that doctors are facing a shortage of food and personal protective equipment at the Coimbatore Medical College Hospital. A corporation official then files a case against the portal and its owner at the local police station.

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## Policing Media

State governments in recent years have sought the registration of WhatsApp groups. In 2018, for instance, UP's Lalitpur district authorities [ordered journalists in the district to register their WhatsApp groups](#) with the state's information department, which was then headed by Chief Minister Yogi Adityanath. They were told that those who failed to comply would face legal action under the IT Act. The process required furnishing Aadhaar cards and other details of all members of the group.

Meanwhile, the Kashmir state government had made WhatsApp registration mandatory in 2016. Again, in 2018, the proposal of the ministry of information and broadcasting to create a Social Media Communication Hub, which would monitor online conversations by the citizenry, was rapped by the Supreme Court when Trinamool Congress MP Mahua Moitra filed a petition on the subject. The court said [it would be like creating a surveillance state](#).

When the state signals that journalists are no longer a protected species, news gatherers become very vulnerable. A reporter for *The Hindu*, who had been detained in a Lucknow police station during the Citizenship Amendment Act protests, tried to plead that he was a journalist doing his job. [He was threatened with gratuitous violence](#) and told, memorably, “You can keep your journalism to yourself.” There are arrests and detentions of journalists every year. Eleven media persons were arrested in 2022, and 24 in 2021.

Agencies are deployed to incriminate journalists, on flimsy evidence. The Prevention of Money Laundering Act (PMLA) is used by the Enforcement Directorate but those arrested are released on bail for lack of enough evidence. In the case of Siddique Kappan, the Allahabad High Court granted bail 26 months after his arrest, saying there was no money trail. The central agency had claimed that Kappan and three others had received money from the now-banned Popular Front of India to “incite riots.” In the case of another journalist booked under the PMLA, Rajeev Sharma, the Delhi High Court gave bail after six months.

While hearing Siddique Kappan’s bail plea in the Supreme Court, Justice U.U. Lalit is reported to have asked the Uttar Pradesh government how seeking justice for the Hathras victim was a crime.

Kappan’s 850-day incarceration in UP [created something of a record](#). He was first [booked in October 2020 on his way](#) to report on the Hathras rape and murder under the Unlawful Activities (Prevention) Act (UAPA) and for sedition. In February 2021 came the PMLA chargesheet. And then in April 2021 the police filed a chargesheet in court against Kappan and seven others claiming that they had conspired to incite “caste violence” in Hathras. Incrimination in stages.

When he walked out of a Lucknow jail in February 2023 on bail he and his lawyers had still not been given a copy of the 5,000-page chargesheet filed by the National Investigation Agency. While hearing his bail plea in the Supreme Court, Justice U.U. Lalit is reported to have asked the UP government how seeking justice for the Hathras girl was a crime.

Then there is the [frequent jailing of Manipur journalist Kishorechandra Wangkhem](#), who has been jailed three times in almost three years, including a preventive detention stint under the National Security Act, for Facebook posts criticising the state government.

[Journalism in Kashmir is also under pressure](#) in many different ways. Since 22 November 2022 the homes of at least 17 journalists have been raided in the state. Three are currently in prison: one accused of “harbouring militancy” in Kashmir and two others booked under the Public Safety Act and the UAPA. Several others charged with the UAPA are out on bail.

More than 40 Kashmiri journalists are on the temporary “No Fly List” (Exit Control List) that exists for Kashmiri citizens and is reviewed and updated from time to time. They have been prevented from travelling abroad to receive awards, attend training programmes or take up jobs.

### Income tax ‘surveys’

Since the Constitution guarantees free speech, the attack is not always against an editor or journalist, but the company. Central government agencies such as the enforcement directorate or the income tax department are deployed to look for financial misdemeanours committed by the publisher or owner. The use of agencies is an old tactic. The Vajpayee government used tax officials in 2001 to go after the publishers of *Outlook* and *Tehelka* after the Operation West End sting operation.

Weeks after the government reacted to the BBC documentary on Narendra Modi telecast outside India by blocking tweets and YouTube links, the [BBC office in Delhi was visited by taxmen](#) carrying out a survey. These are carried out under various provisions of the Income-Tax Act, 1961, such as Section 133A, which gives the income tax department the power to carry out “surveys” to collect hidden information. The department said it was specifically looking into the “manipulation of prices for unauthorised benefits, including tax advantages”.

Well before the 2019 poll took place, direct pressure on newsrooms in the country had begun to grow.

The income tax survey at the BBC followed a survey in September 2022 at the Bangalore office of a foundation which funds digital media start-ups, the [Independent and Public Spirited Media Foundation](#). Two earlier surveys at media establishments occurred in 2021 at the offices of [Newslaundry](#) and [Newslick](#), feisty news websites which carry stories critical of the establishment. Among other investigations, [Newslick](#) had put the business operations of [Gautam Adani relentlessly under the scanner](#) for at least three and a half years in the run up to the survey in 2021.

[Newslaundry](#) was “surveyed” in June and September, [Newslick](#) in September. The operation aimed to verify tax payment details and remittances made by the organisations, tax officials told news agency PTI.

### **Mobilising in response**

The response to the increasing pressure on digital journalism has been a mobilising of legal assistance by journalist associations, free speech groups, and lawyers over the last two years. In September 2021, the same year that the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules were brought into effect in February, the Internet Freedom Foundation set up its [Digital Patrakar Defence Clinic](#) to provide pro bono legal aid and assistance to journalists in trouble.

There is a weekly Zoom clinic which dispenses legal advice. Direct legal representation has also been provided in 12 cases so far, and legal literacy guides on different aspects of media practice are published.

The same year, digital media organisations set up the [Digipub News India Foundation](#) as a platform to represent digital news media organisations, media commentators, and independent journalists active in the digital news space. It provides legal guidance, among other kinds of support.

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Last month, the [Committee to Protect Journalists](#) came up with a [Know Your Rights Guide for Journalists in India](#) on their rights in collaboration with a Delhi law firm. It said it was responding to the needs of journalists in India as they learn to navigate an increasingly hostile environment for the press. What is missing so far is any organised assistance for the vast offline community of rural journalists, including stringers, who are highly vulnerable.

### **Run up To 2024**

Given the record of this government in the run up to the 2019 election, there is apprehension that pressure on media houses and individual journalists will only increase as the 2024 election approaches. Well before the 2019 poll took place, direct pressure on newsrooms in the country had begun to grow. Phone calls from either cabinet ministers or from the PMO would at times go to the proprietor.

Today there is a point man for media and communications in the PMO, an officer on special duty for communications and information technology called Hiren Joshi. He is an engineer who has worked closely with Modi since 2008 managing the Prime Minister’s digital presence. [He now manages much more than that](#), according to media reports.

[NDTV’s acquisition by an industrialist](#) close to the prime minister is also being viewed by many as a move towards the larger objective of narrative control in the countdown to 2024. The irony is that the government and its leader who profess the media’s irrelevance for their voter outreach are increasingly paranoid about the news media and its foot soldiers as re-election draws near. And they are intent on keeping it in check.

Or is the paranoia part of the larger distrust of civil society institutions that this government demonstrates every day?

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