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The Academic Freedom Clinic was mandated by Scholars at Risk (SAR) to create a draft Universal Periodic Review (UPR) report on academic freedom for the upcoming UN UPR review of India. The UPR process is conducted by the UN Human Rights Council to review the human rights practices of all UN member states.¹ The process includes recommendations from other UN member states as well as from non-governmental organizations (NGOs), such as SAR.

SAR is an NGO based in New York City that protects and advocates for the rights and freedoms of scholars and academic institutions through an international network of higher education partners. Through participating in the UPR process, they advocate for academic freedom at the global international level.²

¹ See Rochelle Terman & Erik Voeten, “The relational politics of shame: Evidence from the universal periodic review” (2018) 13:1 *Review of International Organizations* 1 at 3.

² See Scholars at Risk Network, “Get Help” (2009–2021) *Scholars at Risk Network, New York University*, online < <https://www.scholarsatrisk.org/get-help/> >.

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Academic Freedom in India: A Report Prepared for Scholars at Risk

INTRODUCTION

India has a rich history of higher education, with some of the world's oldest institutions of learning. India's oldest universities, established in the ancient world, operated as institutions of Brahminical and Buddhist learning. Buddhist institutions were nominally secular, incorporating the learning of many subjects beyond religion, such as medicine, language, and logic.³ Over time, universities separated from religious institutions and became inherently secular, eventually evolving to develop a Western form of education influenced by British Colonial Rule. As far back as the ancient universities of the Vedic period (c. 1500 - c. 500 BCE) and through the Bronze and Iron Ages, the Medieval and Early Modern periods, the British-Colonial and post-Colonial Eras and until today, universities in India have consistently remained sites of social change, upheaval, and development.⁴ Academic freedom—the freedom to think, question, and share ideas within the context of scholarship⁵—is critical to the university's engagement with social change. This freedom is essential to research, teach, and communicate knowledge, and pursue and disseminate truth.⁶ To maintain academic freedom, universities must maintain a certain degree of autonomy, establishing freedom from the influence of government and other powerful institutions, and pursuing and disseminating knowledge without fear of rebuke. This report explores academic freedom under India's current government, examining the ways the State of India poses a threat to

³ See Sujit Kumar Choudhary, "High Education in India: A Socio-Historical Journey from Ancient Period to 2006-07" (2009) 8:1 J Educational Enquiry 50.

⁴ See *ibid.*

⁵ See "About," online: *Scholars at Risk Network* <<https://www.scholarsatrisk.org/about/>>.

⁶ See "Statement on Academic Freedom" (2011), online: *Universities Canada* <<https://www.univcan.ca/media-room/media-releases/statement-on-academic-freedom/>>.

the freedoms of expression, research, teaching, and information dissemination within the academic context.

Since the installation of Narendra Modi's conservative government in 2014, India has seen a significant increase in attacks on academic freedom throughout the country, across education levels and institutions. Scholars, students, and higher education institutions face significant pressures, which threaten individual academic freedom and the ability of higher education spaces to function autonomously and independently. The current government was elected partly for its alignment with Hindutva, a form of Hindu nationalism.⁷ Since the election, various political officials have developed close ties with the RSS and used rhetoric that advances a Hindu nationalist ideology. The government has political interest in gaining control over academic spaces in order to advance its ideology across the nation.

This report explores three mechanisms through which the state has recently imposed limitations on academic freedom. First, India has seen a number of recorded cases of targeted and direct violence against professors and higher education institutions. These attacks have been met with inadequate investigations and insufficient resources from government actors, who have repeatedly refused to take effective action to protect academic actors from this violence. These recorded cases also include direct and targeted violence on students and student groups. An accompaniment to faculty freedom, student freedom is an element of academic freedom in the larger sense and attacks on student freedom can be understood as limitations on academic freedom.

Second, the government has imposed limitations on research and teaching. The Ministry of Education has consolidated previously independent bodies that provide funding to academic

⁷ See Nitasha Kaul, "Rise of the political right in India: Hindutva-development mix, Modi myth, and dualities" (2017) 20:4 Journal of Labor and Society, online: < https://brill.com/view/journals/jlso/20/4/article-p523_7.xml?rskey=ihzFoz&result=1>.

institutions and placed government members at the helm of these bodies, thereby strengthening state control over research. State officials have gained influence within large universities, cutting budgets to particular departments and enforcing curriculum changes. Furthermore, the state introduced the National Education Policy 2020, which overhauled the country's existing education systems and redefined education according to new state standards.

Third, throughout the COVID-19 pandemic, the government-imposed internet shutdowns, which limited education access and research resources. The shutdowns occurred primarily in Jammu and Kashmir, predominantly Muslim regions. Internet shutdowns disproportionately affect women academics, whose domestic duties were exacerbated by children unable to attend school due to COVID-19. These shutdowns have been implemented in a manner that meets the Special Rapporteur's criteria for violations of freedom of expression. Such state-sanctioned acts—from violence against academics to restricting research and controlling internet access—erode academic freedom, communicating to individual victims and to university communities nationwide that certain ideas will not be tolerated.

INTERNATIONAL AND DOMESTIC LEGAL CONTEXT

India's obligation to protect academic freedom is confirmed in several international treaties. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees protection for freedom of expression, including "freedom to seek, receive and impart information regardless of frontier [...] through any media". Academic freedom, referring to specific discourses, debates and conversation held in institutions of learning by professors, researchers and students, are particularly concerned by these articles. Article 21 and 22 of the same Covenant guarantee the

rights to free assembly (Article 21) and to free association (Article 22), thereby encompassing academic conferences.⁸

India has also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 13 recognizes individuals' right to education as an essential element to the "full development of the human personality and the sense of its dignity, [which] shall strengthen the respect for human rights and fundamental freedoms." Article 15(b) of the Covenant guarantees the right "enjoy the benefits of scientific progress and its application" and binds States party to the Covenant to "respect the freedom indispensable for scientific research and creative activity."⁹

India is a Member-State of UNESCO, which issued the Recommendation concerning the Status of Higher Education Teaching Personnel (RecSHETP) in 1997. Among the listed priorities are Article 20 (protection of institutional autonomy), Article 26 (civil rights of higher education teaching personnel), and Article 27 (right to teach, to discuss and to conduct research "without constriction by prescribed doctrine").

The UNESCO Recommendation highlights the essential nature of institutional autonomy to further academic freedom, which requires "self-governance, collegiality and appropriate academic leadership." UNESCO Member-States are obliged to "protect higher education institutions from threats to their autonomy coming from any sources."¹⁰ The document holds normative force in creating international standards to protect academic freedom.

India is a dualist country in relation to its engagement with international law. While the allocation of the power of assumption of international obligations rests with the Executive, its

⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 arts 19—22 (entered into force 23 March 1976, accession by India 10 April 1979) [ICCPR]

⁹ *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, 993 UNTS 3 arts 13—15 (entered into force 3 January 1976, accession by India 10 April 1979) [ICESCR]

¹⁰ UNESCO, *Recommendations concerning the Status of Higher Education Teaching Personnel*, 1997.

domestic implementation requires Parliamentary sanction. Indian domestic law provides some protection for academic freedom. The Constitution of India recognizes certain fundamental rights for every citizen of India that are relevant to academic freedom, including rights to freedom of speech and expression and educational rights. Article 19(1)(a) guarantees to all citizens “freedom of speech and expression.”¹¹ Article 19(1)(g) ensures “the right to practise any profession, or to carry on any occupation, trade or business.”¹² However, article 19(2) allows the State to impose “reasonable restrictions” on the exercise of the rights “in the interests of the sovereignty and integrity of India, the security of the state, [...] public order, decency or morality”¹³ The broad wording of these exceptions “gives the state extensive powers to justify curtailments and to unduly restrict freedom of expression,” typically in the name of public order, decency, or morality.¹⁴ Moreover, the Constitution includes national emergency provisions which may suspend fundamental rights. A national emergency can be declared if there is a threat to the security of India or a part of India. If approved by Parliament, all fundamental rights under the Constitution (except the rights to life and personal liberty) are automatically suspended.¹⁵

In addition, India’s Penal Code contains important sections relating to academic freedom. Section 124A of the Indian Penal Code allows for the charge of sedition to be brought against “dissenting citizens.”¹⁶ However, in a recent case¹⁷ the Supreme Court of India suspended the use of this law by central and state governments while the law is under review and stayed all existing

¹¹ *The Constitution of India*, 1950, s 19(1)(a).

¹² *Ibid*, s 19(1)(g).

¹³ *Ibid*, s 19(2).

¹⁴ Amit Singh, “Conflict between Freedom of Expression and Religion in India—a Case Study” (2018) 7:7 Soc Sci at 3.

¹⁵ See Mofidul Islam, “Position of Fundamental Rights During Emergency in India” (2020) 11:0 Intl J Management 729 at 730.

¹⁶ See Nandini Sundar & Gowhar Fazili, “TIF- Academic Freedom in India” (2020), online (pdf): *The India Forum* < <https://www.theindiaforum.in/sites/default/files/pdf/2020/09/04/academic-freedom-in-india.pdf> >.

¹⁷ *S G Vombatkere vs Union of India*, [2022] Supreme Court Journal (India).

proceedings under the law. Section 295A allows the police to ban books on the grounds of hurting religious sentiments; section 153 pertains to the provocation riot offence; section 153A prohibits inciting enmity on grounds of religion, race, and caste; and section 505 bans the publication of reports causing fear and alarm or promoting the “hatred and ill-will” between communities.¹⁸ All of these sections of Penal Code have been extensively used by the police over the past decade to bring charges against students and faculty members.¹⁹

ATTACKS ON ACADEMIC INSTITUTIONS AND INDIVIDUALS

In early 2021, the Ministry of Higher Education issued a memorandum that requires all Indian scholars and institutions to first obtain approval from the Ministry of External Affairs if they want to convene any online or virtual international conferences or seminars, on any topic related to what the current establishment likes to call “India’s internal matters.” The order, which was later revoked, nevertheless served the purpose of intimidating universities and academics.²⁰ National political tensions in India have manifested in numerous incidents on campus, some of which have turned violent resulting in injuries to students and personnel. Some scholars and students have suffered academic retaliation for expressing dissent. With protection from local police, Akhil Bharatiya Vidyarthi Parishad (ABVP), a student organization supported by the BJP (Bharatiya Janata Party), has regularly mobilized student members to intimidate faculty who supposedly damage the reputation of the country.

¹⁸ *Indian Penal Code*, 1960, s 295A, 153, 153A, & 505.

¹⁹ Supriya Chaudhari, “Thought-crimes: dissent, disaffection and intellectual labour in contemporary India” (2021) 24:1 *Postcolonial Studies* 16 at 19.

²⁰ Sruti Bala, “Anti-Nationalism: The Spectre Haunting Indian Higher Education,” *New Internationalist* (13 January 2022) online: < <https://newint.org/features/2022/01/13/anti-nationalism-spectre-haunting-indian-higher-education>>.

On August 23, 2021, the VBU administration suspended three postgraduate students from campus for a period of three years for allegedly participating in a protest against the university's Vice Chancellor. On January 9, 2021, the three students allegedly participated in an on-campus protest against the university's Vice Chancellor (VC), Bidyut Chakrabarty, for using his authority to advance Hindu-nationalist views and policies since he assumed the VC role in 2018.²¹ Since VBU is a public central university set up by *Visva Bharati Act*, and is funded by the central government, these actions can be considered direct acts by the state violating freedom of expression on campus and academic freedom.

On May 17, 2021, the CUK suspended Gilbert Sebastian, an assistant professor in the Department of International Relations, for remarks critical of the RSS (Rashtriya Swayamsevak Sangh). On April 19, during a virtual session of his class on "fascism and Nazism," Sebastian allegedly said that the RSS and the BJP could be considered a "proto-fascist organization." Following the lecture, members of the ABVP complained to CUK Vice Chancellor. Vinod Karuvarakund, a member of the National Monitoring Committee on Education under the Union Ministry of Human Resource Development complained to the university that Sebastian was "indoctrinating" students by "spewing hatred and poison against the Narendra Modi government."²² Regardless of whether Karuvarandkund made this comment in his capacity as a state representative, such complaints have a chilling effect on academics.

On October 29, 2021, JNU'S administration ordered the cancellation of a webinar on Kashmir organized by the university's Centre for Women's Studies (CWS), apparently based on political considerations. The webinar, titled "Gender resistance and fresh challenges in post-2019 Kashmir," featured Ather Zia, an activist and political anthropologist. JNU Vice-Chancellor

²¹ <https://www.scholarsatrisk.org/report/2021-03-08-delhi-university/>

²² <https://www.scholarsatrisk.org/report/2021-05-17-central-university-of-kerala/>

Jagadesh Kumar published a statement calling the topic of the webinar “a highly objectionable and provocative subject, which questions the sovereignty and territorial integrity of our country.” In addition, the ABVP filed a complaint against the webinar organizers with the Delhi Police for being unconstitutional. They also symbolically burned the webinar flyer during a protest against the event.²³ JNU is a central public university set up by an act of Parliament in 1969. It is funded by the central government. Hence, these actions are direct violations by the State.

In 2021, Dr. Hari Singh withdrew from an international seminar on “Cultural and Linguistic Hurdles in the Achievement of Scientific Temper” due to intimidation by the ABVP. The ABVP threatened it with disruption and legal action since there were names in the list of speakers who were deemed “anti-nationals” by the organization. The local police issued a letter to the University at the behest of the ABVP stating that it had “references to anti-national mentality and caste-related statements of the speakers attending the webinar” and that the university might face action under section 505 of the Indian Penal Code if something went wrong as the webinar was being “perceived as targeting a particular caste or community.”²⁴ Academics often are invited to participate in seminars, public speeches, and similar event to provide their opinion in a variety of fields outside the classroom and the campus. While the engagement with non-academics or the extra-mural activities of scholars brings academic freedom closer to freedom of expression, “to the extent that education is as much about increasing democracy as it is about increasing ‘scientific knowledge’, extra-mural and intra-mural activities are deeply intertwined.” Therefore, arguably, this incident also concerns academic freedom.²⁵

²³ <https://www.scholarsatrisk.org/report/2021-10-29-jawaharlal-nehru-university/>

²⁴ See Gauhar Raza Apoorvanand, “The bully that is destroying India’s academic culture,” *The Indian Express* (6 August 2021) online: *Indian Express* < <https://indianexpress.com/article/opinion/columns/the-bully-that-is-destroying-indias-academic-culture-abvp-7440441/>>.

²⁵ See Nandini Sundar & Gowhar Fazili, *supra* note 9.

On September 14, 2021, police in Bengaluru baton charged students participating in a protest against the government's National Education Policy. While the marches had blocked traffic at different points, the protest were peaceful. On Campus Front of India, hundreds of students from the group rallied and marched to the state legislature, and police on the scene began beating student protestors with batons.²⁶

To sum up, attacks on academic freedom in India has manifested in several ways: Protests on university campuses have triggered violence by and between students and off-campus groups; university officials in India have retaliated against scholars and students for the content of their academic or political expression through disciplinary measures, including suspension and expulsion; and restrictions have been imposed on participation in seminars and public speeches.

GOVERNMENT RESTRICTIONS ON RESEARCH AND TEACHING

Critical to academic freedom is the autonomy of scholars to pursue research interests and determine curricula. Without the autonomy to pursue knowledge and build a curriculum, faculty begin to lose control over the teaching and learning aspects of higher education.²⁷ In most nations, including India, the state has some control over education, including funding and national curriculum development. Such standard setting may improve the resources of higher learning institutions and increase the quality and equity of education nationwide.²⁸ However, certain forms of state intervention, including the consolidation of funding resources and limitations on research and teaching materials, can restrict faculties' ability to develop and disseminate knowledge.

²⁶ <https://www.scholarsatrisk.org/report/2021-09-14-various-institutions/>

²⁷ See Sheila Slaughter, "Academic Freedom and the State" (1988) 59:3 *The Journal of Higher Education* 241-262.

²⁸ *Ibid.*

In 2020, the government of India overhauled the existing education system with the introduction of the National Education Policy of India 2020 (NEP 2020).²⁹ This policy was passed by Cabinet without any discussions in Parliament.³⁰ The policy is precise and extensive, and divided into four parts: 1) School Education; 2) Higher Education; 3) Other Key Areas of Focus (including professional, adult, cultural, technological, and digital education); and 4) Making It Happen (focusing on implementation of the policy). The policy's introduction cites Goal 4 of the 2030 Agenda for Sustainable Development as its principal aim: to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" by 2030.³¹ The introduction further emphasizes the policy's necessity due to rapid changes in science and technology, evolving social needs related to climate change, growing emergence of epidemics and pandemics, and a critical shift in global education focus from content-based learning to critical-thinking-based learning.³² The policy's writers emphasize that bringing India's education system into the 21st century requires "the revision and revamping of all aspects of the education structure, including its regulation and governance."³³ In summary, the new policy focuses on modernizing the educational system at every level, implying a positive development towards equalizing and raising the standard for education nationwide.

Yet while the NEP 2020 emphasizes innovations in research and teaching, it also redesigns educational regulation in a manner that suggests limitations on academic freedom. Other nations have seen similar patterns; although higher standards for students and stricter national regulations

²⁹ See Government of India, Ministry of Human Resource Development, "National Education Policy 2020" (2020), online: <https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf>.

³⁰ See Anisha Kumari, "UGC Directs Universities To Conduct Webinars, Awareness Campaign On New Education Policy" (1 Aug 2020) online: *NDTV Education* <<https://www.ndtv.com/education/new-education-policy-2020-ugc-directs-universities-conduct-webinars-awareness-campaign-on-nep>>.

³¹ See Government of India, *supra* note 28 at 3.

³² See *ibid.*

³³ *Ibid.*

may indicate improved teaching and learning, such standards may also inhibit faculty autonomy in determining what materials to research, publish, and teach.³⁴ Indeed, the NEP's increased governance over the educational system indicates a consolidation of control over research and teaching. For instance, the policy confirms a single commission, the Higher Education Commission of India (HECI), to act as an umbrella body for higher education, which oversees regulation, accreditation, funding, and academic standard setting. The policy claims that each of these functions will be accomplished independently and with transparency.³⁵ Yet transferring all higher education governance to a single government body indicates an overall concentration of government control over higher education.

Implementation of the policy remains in its early days; it will be important to observe in the following years whether the HECI governs higher education in a way that aligns with the government's apparent aims of advancing Hindutva. Importantly, since its installation, the Modi government has placed BJP members and RSS affiliates in high-level positions throughout organizations whose mandates have become to implement the NEP 2020.³⁶ This restructuring of power within the educational system began prior to the drafting of the NEP 2020; the policy confirmed the government's concentration of control over education. At the same time, universities have seen cuts to historical and scientific research, conference cancellations, and revised curricula, particularly in the fields of English, History, Political Science, and Sociology.³⁷

³⁴ See Slaughter, *supra* note 24.

³⁵ See Government of India, *supra* note 28 at 47.

³⁶ See Kavitha Iyer, "Coming soon from Modi sarkar: RSS takeover of top research, cultural bodies" (4 July 2014) online: First Post <<https://www.firstpost.com/politics/righting-india-modi-will-post-rss-men-lead-top-research-cultural-bodies-1602761.html>>.

³⁷ See Rudrashish Chakraborty, "Modi govt's National Education Policy, steamrolled without discussion, encouraging politics of exclusion" (3 Sep 2021) online: National Herald India <<https://www.nationalheraldindia.com/opinion/modi-govts-national-education-policy-steamrolled-without-discussion-encouraging-politics-of-exclusion>>.

The following incidents provide examples of limitations to research and teaching, beginning with the installation of Modi's government until today.

From 2014-2017, Yellapragada Sudershan Rao served as chairperson of the Indian Council of Historical Research (ICHR). The ICHR operates under the Ministry of Education and provides funding to historians. Rao has argued throughout his career that stories from the Ramayana and the Mahabharata (Sanskrit epics of ancient India) are historical fact and has argued for the reinstatement of the Indian caste system.³⁸ UN human rights experts have stated that caste systems amount to systemic discrimination and violate the human rights of millions.³⁹ Under Rao's leadership, the ICHR disbanded its journal advisory committee, composed of eminent historians, and appointed new Council members who had ties with the conservative government and little research or teaching credentials.⁴⁰ Rao's appointment was highly criticized by the academic community, who feared an erosion of the freedom of historians to independently examine the history of India.⁴¹

India's Cultural Ministry has a budget of about \$400 million per year and is a major funder of historical research.⁴² In 2016, the Cultural Minister, Mahesh Sharma (a member of the RSS) created a committee of scholars to rewrite the history of India with proof that Hindus are descended

³⁸ See Iyer, *supra* note 17; Divya, "Yellapragada Sudershan Rao: Chairperson, Indian Council for Historical Research" (13 Jul 2015) online: *The Hindu Business Line* <<https://www.thehindubusinessline.com/blink/know/yellapragada-sudershan-rao-chairperson-indian-council-for-historical-research/article7485483.ece>>.

³⁹ United Nations, "Caste systems violate human rights of millions worldwide – new UN expert report" (2016), online: <<https://news.un.org/en/story/2016/03/525012-caste-systems-violate-human-rights-millions-worldwide-new-un-expert-report>>.

⁴⁰ Ritika Chopra, "I wouldn't have 80% of current ICHR members, says dissenter Gopinath Ravindran" (2015) *The Economic Times*, online: <<https://economictimes.indiatimes.com/news/politics-and-nation/i-wouldnt-have-80-of-current-ichr-members-says-dissenter-gopinath-ravindran/articleshow/47793155.cms>>.

⁴¹ T.K. Rajalakshmi, "A quiet invasion" (2017) *Frontline: India's National Magazine*, online: <<https://frontline.thehindu.com/cover-story/a-quiet-invasion/article9748263.ece>>.

⁴² See Rupam Jain & Tom Lasseter, "By rewriting history, Hindu nationalists aim to assert their dominance over India" (6 March 2018) online: *Reuters* <<https://www.reuters.com/investigates/special-report/india-modi-culture/>>.

from India's first inhabitants and that Hindu scriptures are factual accounts of history.⁴³ Under Sharma's leadership, the Cultural Ministry organized hundreds of workshops and seminars across India with the aim of presenting a version of history in which India is fundamentally Hindu. Sharma has said he expects his committee's conclusions on India's Hindu history to appear in school textbooks and academic research; this claim is significant because the Cultural Ministry is a significant source of federal funding for historical research.⁴⁴

In 2016, the University Grants Commission placed a cap on the number of graduate students a professor could supervise. As a result, many universities reduced graduate admissions. For example, in 2017, MPhil and PhD seats were cut at Jawaharlal Nehru University by 80%.⁴⁵ These cuts occurred in mainly in the social sciences.⁴⁶ While these cuts are not themselves a violation of academic freedom, the manner in which they target certain subjects implies a pattern of limiting academic research capacity in fields over which the conservative government may want to control. By placing conservative leaders at high levels of funding bodies such as the Cultural Ministry, and simultaneously limiting enrollment and supervisory capacity in particular subjects, the state may gain influence over narratives in subjects such as history and culture.

In 2017, thousands of scientists in 34 cities across India protested budget cuts for scientific research in the "India March for Science."⁴⁷ The same year, the once-publicly-funded Council of Scientific and Industrial Research declared a financial emergency after falling short in fundraising

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ See Chenoy, *supra* note 24.

⁴⁶ See Ranjit Devraj, "Court challenge to drastic PhD programme cuts at JNU" (2017) *University World News*, online: <<https://www.universityworldnews.com/post.php?story=20170505133956610>>.

⁴⁷ See Kamal Mitra Chenoy, "By cutting funds for research, government is failing education sector" (12 Apr 2017) online: *Daily O* <<https://www.dailyo.in/politics/ugc-jnu-seat-cut-mphil-phd-research-universities-funds-education/story/1/16644.html>>.

50% of their annual budget, which the Modi government had insisted upon.⁴⁸ For the 2021-2022 fiscal year, the government decreased the Ministry of Science and Technology's budget by 3.9%.⁴⁹ Research capacity is strictly tied to budget. Without funding, scholars lose research capacity. Similar to redefining enrollment and supervisory caps, budget cuts may be an insidious way for the government to restrict academic freedom insofar as it limits research opportunities.

In July 2019, Delhi University's Academic Council held a meeting to discuss syllabus revisions. During this meeting, affiliates of the right-wing student organization ABVP-RSS stormed the office and held the members of the Council to ransom. In response, the university formed an Oversight Committee of academics to review university syllabi each semester and revise curricula in accordance with the demands of the ABVP-RSS.⁵⁰ In August 2021, the Academic Council approved revised syllabi within the English, History, Political Science and Sociology departments without consulting department members. Revisions were recommended by the Oversight Committee. Revisions included insertions and deletions that promote upper-caste learning and removed the works of Dalit and Tamil feminist authors from an English syllabus, replacing them with upper-caste writers.⁵¹

In 2021, the state announced that government institutions, including publicly-funded universities, must obtain government approval to hold online conferences on sensitive subjects, including security (especially regarding India's borders, Jammu and Kashmir), politics, science,

⁴⁸ See IANS, "Two Years After Centre's Funding Directive, CSIR Chief Says It's Almost Broke" (5 Jun 2017) online: *The Wire* <<https://thewire.in/science/csir-budget-national-interests-self-finance>>.

⁴⁹ See "Amid budget cut, PM Modi says science is universal but technology should be local" (2 Mar 2022) online: *India Today* <<https://www.indiatoday.in/science/story/amid-budget-cut-pm-modi-says-science-is-universal-but-technology-should-be-local-1919637-2022-03-02>>.

⁵⁰ See Chakraborty, *supra* note 18.

⁵¹ See Aranya Shankar, "Dalit Authors, Mahasweta Devi removed from English syllabus, DU comes under fire" (26 Aug 2021) online: *Indian Express* <<https://indianexpress.com/article/cities/delhi/du-committee-mahasweta-devi-two-dalit-authors-english-syllabus-faces-flak-7470324/>; https://peoplesdemocracy.in/2021/0905_pd/syllabus-revision-du-assault-academic-autonomy>.

and technology. Conference hosts were required to share conference links with the foreign ministry. This order was a clear act of State intervention into academic discourse, and was ultimately withdrawn due to protest.⁵²

Powerful RSS-affiliated organizations such as the Shiksha Sanskriti Utthan Nyas have influenced the censorship of history textbooks. The influence of this organization is responsible for Delhi University banning A.K. Ramanujan's essay "Three Hundred Ramayanas" from history syllabi.⁵³ SSUN also sent the National Council for Education and Research training an extensive list of recommendations for history textbooks including removing critiques of the caste system and positive descriptions of Mughal rulers.⁵⁴

These incidents display a pattern of limiting the independence of universities, demonstrating government encroachment into university space, and impacting faculties' abilities to research and teach. Government bodies such as the Higher Education Commission of India have tremendous power in allocating funding and both selecting and suppressing documents for publication. Since the installation of the Modi Government, universities have seen budget cuts, enrollment caps, and curriculum recommendations that reflect state interests in advancing conservative Hindu narratives of Indian history and culture. Such changes threaten academic freedom by manipulating what knowledge may be pursued, published, and taught.

⁵² See Basant Kumar Mohanty, "Webinars on internal matters can only be conducted with govt's nod" (1 Feb 2021) online: *Telegraph India* <<https://www.telegraphindia.com/india/webinars-on-internal-matters-can-only-be-conducted-with-the-govts-approval/cid/1805304>>.

⁵³ See Shakuntala Banaji, "Vigilante Publics: Orientalism, Modernity and Hindutva Fascism in India" (2018) 25:4 *Journal of the European Institute for COmmunication and Culture* 333-350.

⁵⁴ See *ibid.*

ACADEMIC FREEDOM AND COVID-19

Despite Narendra Modi making internet access a platform point during his 2014 campaign for Prime Minister, India experiences a disproportionate number of government-initiated internet shutdowns each year, with the highest rates of any democracy.⁵⁵ Between 2012 and February 28, 2022, there have been 557 total shutdowns, 321 of which have been in Jammu and Kashmir. 2018 had the highest number of shutdowns at 134 and the number of shutdowns has generally decreased, though 2020 saw 129. This is concerning given the necessity of the internet on academic freedom during COVID-19.

“Preventative shutdowns” are used by the Indian state to shut down the internet at periods of political unrest.⁵⁶ The majority of these punitive shutdowns have occurred in Jammu and Kashmir,⁵⁷ which is a Muslim-majority region of India.⁵⁸ According to Articles 2(1) and 2(2) of both the ICCPR and the ICESCR, guarantees to rights must be exercised without discrimination based on religion or social origin.⁵⁹ In January 2020, a shutdown of the internet in Jammu and Kashmir was deemed illegal by India’s Supreme Court. At 552 days, it was the longest shutdown and occurred as Article 370 of the Constitution, which acknowledged the autonomy of Jammu and Kashmir, was abrogated.⁶⁰

⁵⁵ See Shadab Nazmi, “Why India shuts down the internet more than any other democracy”, *BBC News Delhi* (19 December 2019), online: <<https://www.bbc.com/news/world-asia-india-50819905>>; Madanjit Singh et al, “Indian government E-learning initiatives in response to COVID-19 crisis: A case study on online learning in Indian higher education system” (2021) 26:6 *Education and Information Technologies* 7569 at 7580, 7600 [Madanjit Singh et al].

⁵⁶ See “India”, online: *Internet Shutdowns* <<https://internetshutdowns.in/>>.

⁵⁷ See Ankita Chakravarti, “India saw highest number of internet shutdowns in the world in 2020”, *India Today* (4 March 2021), online: <<https://www.indiatoday.in/technology/news/story/india-saw-highest-number-of-internet-shutdowns-in-the-world-in-2020-1775608-2021-03-04>>.

⁵⁸ See “India’s Supreme Court declares internet shutdown in Kashmir illegal”, *CBC News* (10 January 2020), online: <<https://www.cbc.ca/news/world/india-kashmir-internet-ruling-1.5422243>>.

⁵⁹ *International Covenant on Civil and Political Rights*, 16 December 1966 at Article 2 para 1, 2, (entered into force 23 March 1976), online: <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966 at Article 2 para 1, 2, (entered into force 3 January 1976), online: <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>.

⁶⁰ See “India”, online: *Internet Shutdowns* <<https://internetshutdowns.in/>>.

In addition to impacting freedom of expression, these shutdowns impact academic freedom as secondary and post-secondary education has been forced to move online in response to COVID-19 health restrictions.⁶¹ Conferences, which are essential spaces for academics to exchange ideas and engage with new research, have largely moved online. Government internet shutdowns thus impact the development of academic thought in all subjects, but also risks disproportionately impacting academics in India, who may be barred from conference participation if they are under internet shutdown, or barred from participation based on the content of the conference.⁶² Beyond constructive engagement with academic communities through classes and conferences, the wealth of research and information available online means that academics located in India who do not have reliable access to the internet face heightened barriers to research and learning compared to colleagues internationally with consistent internet access.⁶³

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that human rights standards exist to guide determinations of when restrictions can be placed on freedom of expression.⁶⁴ The Special Rapporteur has outlined a three-part cumulative test to determine whether freedom of expression may be limited, which is as follows:

⁶¹ See Madanjit Singh et al at 7580, 7600.

⁶² See Sudheendra Kulkarni, “Modi govt has mounted biggest attack yet on academic freedom with its diktat on international webinars” *The Indian Express* (11 February 2021), online < <https://indianexpress.com/article/opinion/narendra-modi-academic-freedom-universities-webinars-7184744/> >; Shuriah Niazi, “New ministry rules set curbs on academic freedom online” *University World News* (3 February 2021), < <https://www.universityworldnews.com/post.php?story=20210203072713445> >.

⁶³ Gaurav Vivek Bhatnagar, “MEA Restrictions on Online Events Reflect 'New Level of Paranoia on the Part of Indian State'” *The Wire* (13 February 2021), online: < <https://thewire.in/education/mea-guidelines-approval-international-conferences-academic-censorship> >.

⁶⁴ See UNHRC, General Assembly Agenda Item 3, 17th Sess, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue” (16 May 2011), 1 at para 23 online: < https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf > [UNHRC, General Assembly Agenda Item 3, 17th Sess]; *International Covenant on Civil and Political Rights*, 16 December 1966 at Article 19 para 3, (entered into force 23 March 1976), online: < <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> > [*International Covenant on Civil and Political Rights*].

- (a) [A restriction] must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); and
- (b) It must pursue one of the purposes set out in article 19, paragraph 3, of the Covenant, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and
- (c) It must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality).⁶⁵

The above-mentioned “preventative shutdowns” in targeted areas of India *prima facie* fail the first and third parts of the test established by the Special Rapporteur for limiting freedom of expression.⁶⁶ Additional safeguards against abuse must therefore be established and restrictive legislation cannot be applied arbitrarily nor with political influence.⁶⁷ These measures, even when justified, are often disproportionate to the issues to which they respond.⁶⁸

Notably, even when cyber-attacks are committed by third-parties, States have a positive obligation to protect individuals from this interference.⁶⁹ State acts that are indirect and unintentional can constitute violations of human rights and should be cause for state concern.⁷⁰

Though access to the internet is not a formal human right in India, the circumstances of COVID-19 have made internet access essential for established human rights, such as freedom of

⁶⁵ See UNHRC, General Assembly Agenda Item 3, 17th Sess at paras 23–24.

⁶⁶ See UNHRC, General Assembly Agenda Item 3, 17th Sess at paras 23–24; *International Covenant on Civil and Political Rights* at Article 19 para 3.

⁶⁷ See UNHRC, General Assembly Agenda Item 3, 17th Sess at paras 24, 31.

⁶⁸ See UNHRC, General Assembly Agenda Item 3, 17th Sess at para 31.

⁶⁹ See UNHRC, General Assembly Agenda Item 3, 17th Sess at para 52.

⁷⁰ See UNHRC, General Comment No 34: Article 19 (Freedom of Opinion and Expression), 102 Sess, adopted 11–29 July 2011, UN Doc 11-45331 at paras 7–8, online: < <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> >.

expression, and opinion, to be actualized.⁷¹ Freedom of opinion and expression have been recognized by the UN as rights that “enable” other rights – including freedom of association and assembly, education, and taking part in cultural life and enjoying the benefits of scientific progress.⁷²

Notably, lack of internet access has not been evenly distributed and groups and individuals identified by the UN as particularly socially and economically vulnerable have been disproportionately impacted by the lack of resources.⁷³ Of the 70% of children globally who have had their educations interrupted by the pandemic, 300 million of the 1.26 billion impacted children are from India.⁷⁴ The connections between these issues appearing in secondary and post-secondary schools should not be overlooked as when, for example, girls do not have access to secondary-level education, they cannot pursue higher education, thus limiting women’s contributions to academia and research. Per, UNHRC General Comment No 28: Article 3 (The Equality of Rights Between Men and Women), member states have an obligation to report on measures meant to ensure that girls have equal treatment to boys regarding education, indicating that the current disparity should be concerning to India.⁷⁵ Thus, in addition to considering what the government of

⁷¹ See UNHRC, General Assembly Agenda Item 3, 32nd Sess (30 June 2016), 1 at 2, 3–4 online: <https://www.article19.org/data/files/Internet_Statement_Adopted.pdf>; Shazia Rashid & Sunishtha Singh Yadav, “Impact of Covid-19 Pandemic on Higher Education and Research” (2020) 14:2 *Indian Journal of Human Development* 340 at 341, 342 [Rashid & Yadav].

⁷² See UNHRC, General Assembly Agenda Item 3, 17th Sess, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue” (16 May 2011), 1 at para 22 online: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf>.

⁷³ See Irene George & Moly Kuruvilla, “From Conventional Classrooms to Online Platforms: Experiences of Women Students and Faculties in Indian Higher Education During COVID-19 Pandemic” in Irene George & Moly Kuruvilla, ed, *Gendered Experiences of COVID-19 in India*, (Switzerland: Palgrave Macmillan, 2021) 167 at 170, 171 [George & Kuruvilla]; Rashid & Yadav at 341; Tanusree Saha, Partha Pratim Das & Riya Singh, “Challenges in higher education during and after COVID-19 pandemic in India” (2021) 1797:1 *Journal of Physics: Conference Series* 1 at 2 [Saha, Das & Singh].

⁷⁴ See Saha, Das & Singh at 2.

⁷⁵ See UNHRC, General Comment No 28: Article 3 (The Equality of Rights Between Men and Women), 68 Sess, adopted 29 March 2000 (1834th meeting), CCPR/C/21/Rev.1/Add.10 at para 28, online: <<https://www.ohchr.org/en/resources/educators/human-rights-education-training/b-general-comment-no-28-equality-rights-between-men-and-women-article-3-2000>> [UNHRC, General Comment No 28: Article 3].

India is actively doing to prevent academic freedom, it is crucial to consider how a lack of government action to address educational inequities impacts academic freedom in the long-term.

Government commitment to professional development programs to assist educators in adapting to online teaching modalities has been identified as an important means to ensuring that higher education research and learning can continue in an effective manner through COVID-19.⁷⁶ Though the government of India has put emphasis on information and communication technologies for teaching,⁷⁷ these programs have been undermined by lack of access to the online platforms due to government created internet shutdowns. Free internet has been identified as the most significant suggestion to come from student communities as well as from women working in academia.⁷⁸ Though the impact on academic freedom is an indirect result of the actions of the states, the government of India has a positive obligation to ensure the “effective and equal empowerment of women” in all areas and should thus address internet access and childcare as important barriers to women and girl’s academic engagement and freedom.⁷⁹

A lack of centralized resources being used to support working women with families has a direct impact on the work that women in academia can produce.⁸⁰ Women academics who have children have had to adjust to the disruption of children taking their own classes from home.⁸¹ There has been a general trend of men in academia producing more work during the pandemic, in part because they are more likely to have a stay-at-home partner who takes care of domestic duties

⁷⁶ See Rashid & Yadav at 341.

⁷⁷ See Lokanath Mishra, Tushar Gupta & Abha Shree, “Online teaching-learning in higher education during lockdown period of COVID-19 pandemic” (2020) 1 International Journal of Educational Research Open 1 at 2 [Mishra, Gupta & Shree].

⁷⁸ See George & Kuruvilla at 173, 185; Mishra, Gupta & Shree at 6; Saumen Chattopadhyay, “Higher Education in the Post-Covid Era” 337 at 343 in Rajib Bhattacharyya, Ananya Ghosh Dastidar & Soumyen Sikdar, eds, *The COVID-19 Pandemic, India and the World: Economic and Social Policy Perspectives* (Routledge: Oxon & NY, 2021).

⁷⁹ UNHRC, General Comment No 28: Article 3 at para 3.

⁸⁰ See George & Kuruvilla at 176, 181.

⁸¹ See George & Kuruvilla at 181.

whereas women in academia are more likely to be the partner taking care of children and domestic duties.⁸² Though these gendered roles are not directly impacted by government actions, a lack of centralized resources being used to support working women with families has a direct impact on the work that women in academia have been able to produce.⁸³ The Human Rights Council called upon States to actively address this gendered digital disparity “to promote the empowerment of all women and girls”.⁸⁴ Pressure should therefore be exerted over the government of India to ensure that funding is adequately available to a diverse range of projects and that academics who have had their careers trajectories impacted have financial support to be able to continue their work.⁸⁵

CONCLUSION

As demonstrated through this report, academic freedom in India is a highly contextual issue that requires attending to the multiple ways that it can be compromised. This report examined how the state has recently imposed limitations on academic freedom through targeted and direct attacks on professors and higher education institutions, limits on research and curricula, and responses to COVID-19 (specifically regarding the heightened need for access to the internet during that pandemic). International advocacy is an important tool to address these issues, though it is not a perfect solution. The limits of international advocacy are explored in our reflective report on the subject.

RECOMMENDATIONS

National authorities should

⁸² See George & Kuruvilla at 179–180, 181.

⁸³ See George & Kuruvilla at 181.

⁸⁴ See UNHRC, General Assembly Agenda Item 3, 32nd Sess (30 June 2016), 1 at para 6 online: <https://www.article19.org/data/files/Internet_Statement_Adopted.pdf>.

⁸⁵ See Rashid & Yadav at 342.

- A. abstain from direct or indirect violations of academic freedom or attacks on higher education of any type, including by encroachments upon university autonomy, through violent or coercive means, legislative or administrative actions, allocation of funding, censorship of academic curricula, or targeted political internet shutdowns;
- B. conduct effective and transparent investigations of attacks on higher education communities, take all reasonable efforts to hold perpetrators accountable; and introduce strong legislation prohibiting attacks, including cyber attacks, against scholars, students, and higher education institutions.
- C. contribute to efforts aimed at reinforcing principles of academic freedom and institutional autonomy, including by reaffirming their commitment in public statements, policies, and practices to the principles that ideas are not crimes, and that critical discourse is not disloyalty;
- D. work with universities and government educational bodies to build recognition of the importance of academic freedom, freedom of expression, and freedom of association on university campuses;
- E. apply recommendation 161.143 of Canada from the 3rd Universal Periodic Review to guarantee freedom of expression, association, and peaceful assembly for all individuals, including scholars, students, and other academic and research actors;⁸⁶

⁸⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement> at pp 19

- F. establish safeguards and intermediaries against internet shutdown abuse and refrain from applying restrictive legislations arbitrarily or with political influence;⁸⁷ and

- G. provide adequate infrastructure, such as high-speed internet and computers, equitably across states in India.

⁸⁷ See UNHRC, General Assembly Agenda Item 3, 17th Sess, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue” (16 May 2011), 1 at para 24, 31, 76–77, online: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf>.