

Universal Periodic Review INDIA Human Rights Council

Submission on Internet-related Human Rights Issues in India by Digital Empowerment Foundation¹ (DEF) and Association for Progressive Communication (APC)²

**DIGITAL
EMPOWERMENT
FOUNDATION**



<http://www.apc.org>

Contacts
Ritu Srivastava
Osama Manzar
Joy Liddicoat

28 November 2011

¹ Digital Empowerment Foundation contact: Ritu Srivastava ritu@defindia.net and Osama Manzar osamam@gmail.com; <http://defindia.net>

² Association for Progressive Communication (APC) contact: joy@apc.org

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF INDIA

Executive Summary

1. This submission is by the Digital Empowerment Foundation (DEF) and the Association for Progressive Communication. DEF is majorly concerned with the human rights, internet rights and making the internet an effective tool to access right to information in India. DEF believes that the internet plays a major role in accessing information and thus a tool for social and economic development. This submission outlines India's progress and specific areas of concern: information technology (IT) law and policies, the right to information and internet access and internet governance. Four recommendations are made for follow-up and implementation in the UPR cycle.

The Internet & Human Rights

2. Internet related human rights issues (including internet access for the right to information) were not included in the first UPR of India. Human rights and the internet are referred to in the founding documents on the United Nations World Summit of the Information Society,³ the Geneva Declaration of Principles⁴ and the Internet Governance Forum.⁵ But only during 2011 did it become clear that the UPR **must** include the promotion and protection of human rights and fundamental freedoms on the internet, particularly freedom of expression and freedom of association.⁶ In 2011 the Human Rights Committee noted that freedom of expression (including the right to information and access to information) includes internet based expression.⁷ Member States existing human rights obligations⁸ therefore extend to taking steps to ensure access to the internet and that limitations or restrictions on freedom of expression comply with agreed international standards, including women's human rights.⁹

Follow-up with the first UPR

3. India did not include any reference to the internet in the initial UPR review. However, it described the rights to equality and to speech and expression as major pillars of human rights and mentioned the right to information as an effective tool to bring accountability, transparency, and openness in the governmental process. The right to information was also highlighted:¹⁰

³ World Summit on the Information Society, United Nations, and International Telecommunication Union "WSIS Outcome Documents" (December 2005).

⁴ Article 19 of the UDHR is cited in paragraph 4 of the Geneva Declaration of Principles (2003).

⁵ <http://www.intgovforum.org>

⁶ Human Rights Committee, General Comment 34, Freedoms of Opinion and Expression, (21 July 2011, CCPR/C/GC/34).

⁷ Ibid, para 12.

⁸ The UPR monitors existing human rights obligations: Human Rights Council, Institution-building of the United Nations Human Rights Council (18 July 2007, A/HRC/RES/5/1, affirmed in Resolution A/HRC/RES/16/21).

⁹ Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27).

¹⁰ Universal Periodic Review Report of the Working Group on the Universal Periodic Review India, para 9 at page 4

Proceeding 10:

Under the Protection of Human Rights Act 1993, a powerful and independent National Human Rights Commission has been working with an exemplary record for over a decade. Another revolutionary change has been the enactment of the Right to Information Act. This enabled citizens to seek and demand the right to information about the governmental officials and decision making which has led to transparency, accountability and openness in the governmental process.

4. This submission addresses the right to information in the context of the internet.

The Right to Information and the Internet: India's Progress

5. India has more than 100 million internet users, with around 40 million accessing the internet via mobile phones.¹¹ Thus India boasts the third highest number of internet users in the world. Since independence, internet penetration in India is less than 10 percent below than the global standards and crossed 100 million mobile subscribers in April 2006. In India, the internet has marked its presence in every aspect of people's lives, including education, health, e-governance services, and policing. Specific areas of progress include:¹²
 - a) Recognizing that provision of world-class telecommunications infrastructure and information is the key to rapid growth and social development in the country, the first National Telecom Policy introduced in 1994, providing basic services as well as value added services like cellular mobile services, radio paging, VSAT services.¹³
 - b) Taking into account the increasing convergence between telecommunication and IT, a Communication Bill was drafted by the Government of India, followed by the Information Technology with the ambitious goal of establishing at least 100 million internet connections by setting up IT kiosks covering all of India.¹⁴
 - c) India became one of 135 countries to make education as a basic human right and introduced the Right to Education Act in 2004, providing for elementary and basic education free to all children.¹⁵
 - d) In 2004 the government introduced .IN Policy, by which the government opened the .IN domain name to public.
 - e) The Right to Information (RTI) Act in October 2005 which, together with the Constitution of India, affords Indian citizens both the right to privacy and freedom of speech and expression as fundamental rights (while providing that one right cannot override the other).¹⁶
6. The RTI Act was the culmination of the right to information campaign, which started as the Mazdoor Kisan Shakti Sangathan (MKSS) movement in the early 1990s that campaigned against rampant corruption. MKSS pushed for transparency in the

¹¹ www.trai.gov.in/WriteReadData/trai/upload/PressReleases/823/Press_Release_Mar-11.pdf

¹² See further: Ritu Sivastava and Osama Manzar "The role of the internet in the right to information in India" *Global Information Society Watch* (APC and Hivos, 2011).

¹³ <http://siteresources.worldbank.org/INTRANETTRADE/Resources/Singh.pdf>

¹⁴ <http://www.mit.gov.in/content/notification-it-act-2000>

¹⁵ http://www.ncpcr.gov.in/Acts/Fundamental_Right_to_Education_Dr_Niranjan_Aradhya_ArunaKashyap.pdf

¹⁶ <http://right2info.org/constitutional-protections-of-the-right-to>

implementation of minimum wages in the remotest part of Rajasthan, one of the largest states in India. The spirit of this movement inspired the citizens and administration in other regions of the country and became the rationale for the Right to Information Act.

7. Regarding the use of information and communications technologies (ICTs), the RTI Act provides:

Every public authority should provide as much information to the public through various means of communications so that the public has minimum need to use the Act to obtain information. The internet being one of the most effective means of communications, the information may be posted on a website.

8. Keeping the essence of the spirit which led to the RTI Act, the state government of Karnataka launched Bhoomi project that aimed to digitise land revenue records and digitised 20 million rural land records of 6.7 million landowners through 177 government-owned and internet-enabled kiosks in the state. This small initiative formed the foundation of nationwide project, Common Services Centres (CSCs) allowing citizens to access information.
9. Thus the right to information became a prominent pillar of National e-Governance Plan (NeGP) that calls for the internet to be used so that *"all information covering non-strategic areas [is placed] in the public domain to enable citizens to challenge the data and engage directly in governance reform."*¹⁷
10. Since independence, the RTI Act is probably one of the most influential laws making access to information a basic human right. This Act enables citizens to demand information not only from the government and public authorities, but also gives power to citizens to access information from anywhere in the world using the internet as a tool to access the information.
11. For these initiatives and areas of progress, the government of India is to be commended.

Areas of Concern

Access to the internet

12. Despite the evidence of progress and the impact of the internet in realising the right to information as a basic human right, areas of concern remain including a lack of infrastructure and inaccessibility of CSCs to ordinary citizens. In India 70% of the population lives in 638,365 villages, represented by 245,525 panchayat offices, mostly located in the remotest regions of the country.¹⁸
13. However, rural India is not able to access information due to a lack of infrastructure and means to do so. At the same time, many of them do not know that they have right to access information. Thus, it becomes more important to remove the constraints on accessing information, and push for universal access to ICT infrastructure and the availability of information on the internet.

¹⁷http://www.nisg.org/knowledgecenter_docs/A01000001.pdf

¹⁸censusindia.gov.in/Data_Products/Library/Post_Enumeration_link/No_of_Villages_link/no_villages.html

14. While freedom of speech and expression are widely available in India, it remains one of the few countries where most of the state and government information lies with governing bodies rather than being available publicly. India is far behind in bringing transparency and accountability in governance services, according to Transparency International's 2010 Index.¹⁹ It is therefore difficult for citizens to access information due to a lack of infrastructure or technological tools.
15. The right to information could be successfully implemented if it could be directly correlated with a level of commitment within the state and central governments of both the political and administrative bureaucrats.
16. In 2011 the Special Rapporteur on Freedom of Expression said:²⁰

Given that the Internet has become an indispensable tool to realize a range of human rights, combat inequality, and accelerate development and human progress, ensuring universal access to the Internet should be a priority for all States. Each State should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population.
17. Even though, the Right to Education Act introduced in 2004, the literacy rate in India is just 64.32% – with illiteracy most prevalent in rural areas, according to the 2011 census. Moreover, 35% of the population is still illiterate and only 15% of Indian students reach high school²¹. The internet could be a medium to access information in a way that they can understand at low cost, particularly in a Web2.0 era.
18. We **recommend** the Government adopt free and open models of knowledge creation that ensure protection against undue commercial influence over the free flow of information and knowledge.

Right to information and the internet

19. By January 2011 over 87,000 Common Service Centres (public “e-Kiosks”) have been established in collaboration with the private sector as part of the National E-Governance Plan 2006²² that comprises of 27 Mission Mode Project (MMPs).²³ Under its MMPs, the Government is also providing connectivity facilities to all 236,000 panchayats in the country across 31 states and Union Territories. However, the Special Rapporteur notes that the majority of the country’s population still remains without internet access.

¹⁹http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

²⁰Frank La Rue “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” (26 April 2011, A/HRC/17/27) at page 21.

²¹<http://news.bbc.co.uk/2/hi/business/7267315.stm>

²²“ICT Ministers meet tomorrow for Speeding-up Delivery of e-Services,” Press Information Bureau, Government of India, 26 October 2009; and “E-Governance Initiatives-Changing Lives for the better,” Press Information Bureau, Government of India, 24 January 2011, <http://pib.nic.in/newsite/erelease.aspx?relid=69324>.

²³<http://www.mit.gov.in/content/mission-mode-projects>

20. In order to promote the right to information and access to the internet we **recommend** that CSCs be used as RTI filing centres, are internet enabled and converted to Public Citizen Offices (PCOs) where citizens can easily file RTI requests and check their RTI applications.
21. Uniform implementation of the RTI Act will bring transparency to governing bodies and authorities, which is vital for the functioning of a vibrant democracy, creating an environment of minimal corruption where governments are accountable to the people. This can be possible only when governing bodies and authorities allow citizens to access their information from anywhere and anytime. We **recommend** implementing the RTI Act uniformly across the country.

Content blocking

22. On the one hand the government is making efforts towards ensuring transparency and accountability through policies such as the Right to Education, Right to Information and Access to e-Governance Services. On the other hand, new regulatory proposals aim to limit freedom of expression and suppress the right to information.
23. For example, the government has recently issued new rules on "Intermediary Due Diligence" under section 79 of the Information Technology Act 2000. These rules relate to liability of internet intermediaries²⁴ and will permit the government to control online content of websites and links to online businesses without disclosing this to the public. According to CIS India, the Department of Information Technology has already blocked 11 links. Moreover, the Section 69A of the IT gives the Central Government power to *"Direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource."*²⁵
24. These provisions clearly violate Constitutional guarantees of Citizens' Fundamental Right to Freedom of Speech and Expression because they are overly broad in their possible application. Existing international human rights obligations require limitations on freedom of expression to be very narrowly defined and to meet specific objectives. The breadth of these rules has been a surprise and caused deep concern for many in India. The laws and new rules are also contrary to India's obligations to take steps to secure internet access in order to uphold the right to information and freedom of expression.²⁶
25. We **recommend** the Government review these laws, in consultation with civil society and multi-stakeholder groups, and take steps to ensure limitations on freedom of expression comply with the recommendations of the 2011 annual report of the Special Rapporteur on Freedom of Expression.

²⁴Internet intermediaries include internet service providers and online platform providers (such as Facebook and YouTube).

²⁵<http://www.cis-india.org/internet-governance/blog/rti-response-dit-blocking>

²⁶Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27).

Women's human rights

26. Women's use of the internet shows that internet content is regulated by four factors: access and infrastructure, law and policy, markets and economic forces and culture and social norms.²⁷ Research on female use of the internet in India reveals that these four factors also affect women's access to and use of the internet and that the internet has significant implications for women's communication rights and sexuality rights in India.²⁸ Restrictions on access to the internet in public places, including cyber cafés, have particularly negative impacts on diverse groups of women.²⁹ The researchers concluded that "a rights based approach is absent from the current IT Act, as are the voices of users."³⁰ We **recommend** the government adopts a rights based approach to a review of the Information Technology Act.

Internet Governance

27. India has been an active participant in multi-lateral, bi-lateral and multi-stakeholder internet governance processes, including the Internet Governance Forum. When participating in these processes, and the Internet Governance Forum, India's obligations to promote and protect human rights remain.
28. Some civil society groups were therefore very concerned when the government of India joined with the governments of Brazil and South Africa in 2011 to issue a joint statement on proposals for internet governance when that statement included no reference to human rights.³¹ Leaving aside those particular proposals, the absence of explicit connection between internet governance and the obligations of India to promote and protect human rights remains a concern.
29. We therefore **recommend** that India affirm its commitment to promoting and protecting human rights and multi-stakeholder processes in relation to all internet related policy and regulatory activities as well as internet governance matters.

Recommendations

We **recommend** that the Government of India:

30. Remove the constraints on accessing information, and push for universal access to ICT infrastructure and the availability of information on the internet.

²⁷JacsmKee "Emerging threads and common gaps: A synthesis" in *EROTICS: Sex , Rights and the Internet* (Association for Progressive Communications 2010) at page 15

²⁸ManhimaBhattacharjya and Maya Indira Ganesh "Negotiating intimacy and harm: Female internet users in India" in *EROTICS: Sex , Rights and the Internet* (Association for Progressive Communications 2010) <http://www.apc.org/en/system/files/EROTICS.pdf>, at page 107.

²⁹ManhimaBhattacharjya and Maya Indira Ganesh "Negotiating intimacy and harm: Female internet users in India" in *EROTICS: Sex , Rights and the Internet* (Association for Progressive Communications 2010) <http://www.apc.org/en/system/files/EROTICS.pdf>.

³⁰Ibid, at page 107

³¹ "IBSA Multi-Stakeholder Meeting on Internet Governance – Recommendations" (Sept 1-2 2011, Rio de Janeiro, Brazil).

31. Adopt free and open models of knowledge creation that ensure protection against undue commercial influence over the free flow of information and knowledge.
32. Take steps to ensure that Common Services Centres can be used as RTI filing centres, are internet enabled and converted to Public Citizen Offices where citizens can easily file and check their RTI applications.
33. Implement the RTI Act uniformly across the country.
34. Review the "Intermediary Due Diligence" rules and the Information Technology Act, in consultation with civil society and multi-stakeholder groups, and take steps to ensure limitations on freedom of expression comply with the recommendations of the 2011 annual report of the Special Rapporteur on Freedom of Expression.
35. Adopt a rights based approach to a review of the Information Technology Act.
36. Affirm its commitment to promoting and protecting human rights and multi-stakeholder processes in relation to all internet related policy and regulatory activities as well as internet governance matters.