

PRESSING CHARGES

A Study of Criminal
Cases Against Journalists
Across States in India



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TABLE OF CONTENTS

Executive Summary	2
Glossary	5
Introduction	8
Methodology	13
The Indian News & Media Landscape and Implications for the Protection of Journalists	16
Charges Faced by Journalists	31
The Lifecycle of a Case: Process as Punishment	97
Voices of the Press: Personal Experiences and Perspectives	135
Conclusions	153
Annex A: Additional Information-Methodology	159
Annex B: List of Laws with Abbreviations	164
Annex C: Categories of Offences	166
Annex D: Basis for Charge-Categories and Methodology	176
Annex E: Additional Information: Regulatory Landscape	182

EXECUTIVE SUMMARY

This report, based on analysis of a novel dataset consisting of information on 423 criminal cases registered against 427 journalists across the States and Union Territories of India, seeks to shed light on the offences most used against journalists, the reporting that led to the cases, and the journalists' experience of the criminal justice system.

In India, freedom of the press is guaranteed under the Constitution, and the Indian Supreme Court has stressed the importance of journalists being able to do their jobs without the threat of reprisal. Yet, our data shows that the criminal law is routinely used against journalists in precisely that way—with journalists most often facing charges for reporting on public officials, a core part of any journalist's job. This has profound implications for the journalists themselves, and press freedom in general.

The report covers a total of 624 incidents of criminalization of journalists in relation to their work from 2012-2022. As part of this project, 48 journalists were also interviewed, reflecting a representative cross-section of the journalists in the broader dataset. Based on these interviews, the report looks at how these criminal cases impact journalists, their families and the profession of journalism in India.

The picture the data presents is dispiriting. At least forty percent of the journalists in our dataset were arrested. The journalists most impacted were those from small cities and towns, or those who reported for local publications, in Hindi or other local languages, whose cases often did not receive national or international media attention. While many of the most-commonly-charged offences entailed a potential sentence of less than five years in prison, the wording of these laws is so vague and broad that they can be readily instrumentalized against the press, enmeshing journalists in the criminal justice system.

Importantly, almost every case in the dataset invoked multiple offences. In fact, close to 90% of the incidents in the dataset included more than one offence, indicating that the authorities concerned do not generally carefully consider the offence to be applied to the allegedly 'criminal' activity of the journalist, but rather slap a wide range of offences against them, creating a further chilling effect. Further, the allegations against the journalists were often in relation to their conduct while reporting, in addition to the content of the speech—a tactic witnessed in over 100 incidents in the dataset. And the data suggests that the authorities may not differentiate between coverage of a protest, and participation in it.

Moreover, the apparent legal harassment found in the dataset was not only widespread, but deep. Of the 427 journalists who faced criminal action, 60 had more than one case filed against them, with 36 journalists facing multiple cases for the same incident.

The report finds that there are significant delays at each stage of a case, with the result that the ‘process is the punishment’ for journalists across Indian states. Out of 244 cases for which we had data on the status of the case, more than 65% had not been completed as of October 30, 2023; in fact, the police had not even completed their investigation in 40% of the cases for which we had relevant data. And only 16 cases (6%) saw a concluded trial—ending in conviction or acquittal.

Yet, the registration of the case itself had harsh impacts on journalists and their loved ones—the possibility of arrest, intimidation by the police or politicians, as well as social stigma. Journalists reported losing career opportunities and being trolled and ostracized by those around them. One journalist said, “My daughter faced severe bullying in school. For nearly 2 years, they would mock and humiliate her.”

Cases against journalists in India do not, however, always take the same course. For instance, while defamation charges, which are prosecuted privately rather than by government authorities, were more common against journalists in larger cities and against investigative journalism, offences against public servants were more common in smaller towns and were invoked in relation to journalists’ on-ground news-gathering activities. Further, offences geared at limiting disruptions to public order were used against national-level journalists, as well as against digital media or speech on social media, presumably because of their larger audiences and the concern that what they said might ‘go viral.’

Journalists’ experience of the justice system also differed based on their location and status. While journalists in major metropolises were arrested in 24% of the total incidents recorded in such cities, this figure increased to 58% for journalists in small cities/towns. This, in turn, was linked to journalists’ access to justice. In 65% of the incidents involving journalists from major metropolises, they secured interim protection from arrest, while the corresponding figure for small-town journalists was a mere 3%. This can potentially be explained by the fact that this relief was most often granted by the Supreme Court, which has a single seat in Delhi. Journalists working in Hindi and other regional languages suffered from a similarly adverse ratio in relation to counterparts working in English. That is, our data suggests that while the process is the punishment, the pain it inflicts may be proportional to the accused’s distance from the national capital.

These cases have profound ramifications for journalists’ ability to continue to do their crucial work: 58 percent of the journalists we interviewed reported experiencing financial hardship; 56 percent reported feelings of fear or anxiety as a result of the case(s) against them; 73 percent identified an impact on their personal lives; and 56 percent said the case(s) had negatively affected their careers. One journalist told us, “My family was deeply harrowed by my absence [following their arrest], especially my little children who were so worried. Cases like these don’t just target individuals; they tear families apart. Ultimately, they make you beg on your knees.”

While institutional support was extremely important in mitigating some of these consequences of criminalization, and in some well-known cases has been key in securing relief, it was not always

available. One journalist, for instance, highlighted the lack of support they had received and lamented: “This is, unfortunately, the norm in Indian journalism. Organizations do not stand up for journalists facing criminal charges.”

While the focus of this project was cases related to journalists’ reporting or the conduct of their work as a journalist, in several instances, cases against journalists were ostensibly unrelated to their work but the journalist or others claimed that the case was retaliatory. These 140 incidents were documented and analyzed in a separate dataset termed the “backlash dataset.” This data suggests that journalists from smaller towns and those reporting for state- or local-level publications were more likely to face these cases, and these cases were more likely to lead to arrests.

Many of the provisions most frequently invoked against journalists, whether in the primary or backlash dataset, remain unchanged in the new penal code introduced in 2024, the Bharatiya Nyaya Sanhita, 2023. This means that the threats to journalism identified in this report remain acute; but it also provides an opportunity for a fresh look at whether the application of these broad provisions to journalists can and should be curtailed.

GLOSSARY

ANTICIPATORY BAIL: A court order secured in anticipation of an arrest for grave offences which directs release of a person on bail when the arrest is eventually effected.

BACKLASH CASE: A criminal case that appears unrelated to a journalist's professional work on the surface but is believed—by the journalist or others—to be a form of retaliation for their reporting. These cases were recorded in a separate dataset and were not included in the Primary Dataset.

BASIS FOR CHARGE: The underlying reason or allegation cited in the FIR or criminal complaint for initiating legal action against a journalist. See Annex D for details.

BHARATIYA NYAYA SANHITA, 2023 (BNS): The new criminal code that replaced the Indian Penal Code, 1860 (IPC).

CATEGORY OF OFFENCES: The offences invoked in the dataset were bucketed into categories, established by analysing the definition clause of each legal provision, the categories of offences set forth in the Indian Penal Code, 1860 and the statements of objects and reasons in special legislation. See Annex C for details

CHARGED/CHARGES: Formal accusation of criminal activity as in the FIR or criminal complaint. This does not refer to the stage of 'framing of charges' under Indian criminal procedure, unless specified otherwise.

CLOSURE REPORT: A report filed by the police when they conclude their investigation, indicating that no evidence was found to support the charges, often leading to the closure of a case.

COGNIZABLE OFFENCE: Offences for which the police are legally empowered to register a case and arrest the accused without prior approval from a magistrate.

CRIMINAL CASES: In the context of this report, means legal proceedings initiated through either First Information Reports (FIRs) registered by the police or criminal complaints filed directly before magistrates. This definition excludes instances of assault, unlawful detention, intimidation, or harassment of journalists by state or non-state actors unless these incidents resulted in formal criminal cases.

CRIMINAL COMPLAINT: A formal accusation submitted directly to a magistrate by an individual, usually concerning non-cognizable offences or when police refuse to file an FIR.

DATASET: By this we mean our "**Primary Dataset**," which comprises a list of 423 criminal cases registered against 427 journalists across 28 States and Union Territories of India, with a total of 624 incidents of criminalization.

DIGITAL MEDIA: If the predominant medium of the news organization the journalist was reporting for or worked in was an online news platform, whether website or social media.

DROPPED: Charges dropped, closure report filed by police (due to lack of evidence), cognizance not taken by the court or complaint withdrawn.

EDITOR: Journalists with the designation of Editor or Editor-in-Chief.

FIRST INFORMATION REPORT (FIR): A written document prepared by the police when they receive information about the commission of a cognizable offence. It marks the official beginning of a criminal investigation.

FRAMING OF CHARGES: The formal process in which a court officially specifies the charges against an accused person based on the evidence provided by the prosecution, marking the beginning of the trial.

FREELANCERS: Journalists who are not employed with or affiliated with a particular news organization.

FINAL REPORT (CHARGESHEET): A document submitted by the police after completing their investigation, detailing the evidence, charges, and conclusions regarding the accused. It is used to formally initiate criminal proceedings in court.

INCIDENT/INCIDENT OF CRIMINALIZATION: Some cases in the dataset implicated multiple journalists, while some journalists were implicated in multiple cases—therefore each time a journalist faced a criminal case was recorded as a separate “incident.”

INTERIM BAIL: Bail granted by a court for a limited duration, often for medical or personal reasons or until a final decision on regular bail or suspension of sentence is made.

INTERIM PROTECTION FROM ARREST: Court order to not arrest the accused which may be granted as an interim relief in a petition for bail or for quashing of a case.

INVESTIGATIVE JOURNALISM: A form of journalism that involves in-depth research and reporting to uncover hidden truths, often exposing corruption, abuse of power, or systemic injustice.

JOURNALIST: Reliance was placed on the definition of a “working journalist” provided in the Working Journalists & Other Newspaper Employees Act of 1955 and includes editors, lead writers, news editors, sub-editors, feature writers, copy-testers, reporters, correspondents, cartoonists, news photographers and proof-readers working in print, television or digital news media or paper, either independently or as part of an organization. We also relied on whether individuals were described as ‘journalists’ in public sources. In this report “**local journalists**” means those working in small cities & towns or those working for publications with a local reach (see below).

MAJOR METROPOLISES: Tier I or Tier X cities as per Government of India classification – including New Delhi, Mumbai, Bengaluru, Kolkata, Hyderabad, Chennai.

NEWS REPORTING: The process of collecting and presenting factual, timely information about recent events or developments, typically in a neutral and objective manner.

NON-COGNIZABLE OFFENCES: Less serious criminal offences for which the police cannot arrest the accused or begin an investigation without prior approval from a magistrate.

OWNER: An individual or entity that holds ownership of a media organization, often responsible for its overall operations and editorial direction.

OTHER MAJOR CITIES: Tier II or Tier Y cities as per Government of India classification – including Agra, Aurangabad, Bhopal, Bhubaneswar, Guwahati, Kochi, Kanpur, Srinagar, Vijayawada.

PRIMARY OFFENCE(S): The offence(s) within a FIR or criminal complaint that carry the highest potential punishment under the law. For some cases, two or three offences in the FIR/complaint had the same highest punishment. In such cases, both offences were included for purposes of tabulating the most frequent ‘primary offences.’

PRESS COUNCIL OF INDIA: India’s primary news regulatory body, established as a quasi-independent statutory organization. It is responsible for preserving the freedom of the press, and maintaining and improving the standards of newspapers and news agencies.

PRE-TRIAL: The stage of legal proceedings before framing of charges by the court against the accused person.

REGULAR BAIL: The release of an arrested person from custody for the entire duration of the trial, often dependent on the meeting of certain conditions.

SENIOR COUNSEL/ADVOCATE: A designation conferred by Supreme Court or High Courts to lawyers who possess “ability, standing at the Bar or specialised knowledge or experience in law” (Section 16, Advocates Act, 1961).

SMALL CITIES & TOWNS: Tier III or Tier Z cities as per Government of India classification – cities and towns that are not the Tier I or Tier II cities.

SOCIAL MEDIA: Cases registered based on content shared or uploaded on social media platforms—most prominently Twitter, Facebook, WhatsApp, and YouTube.

STAY OF PROCEEDINGS: A court order that halts further proceedings (investigation or trial) in the case as an interim measure.

TRIAL ONGOING: A stage in legal proceedings where the trial has commenced but has not yet reached a conclusion, with the presentation of evidence and arguments still in progress.

QUASHING OF CRIMINAL PROCEEDINGS: A court’s decision to annul or set aside the FIR, chargesheet, or consequent proceedings against an accused person, typically due to lack of merit, jurisdiction, or legal basis, effectively terminating the case.

UA: Data unavailable.

INTRODUCTION

Global Context

Journalists around the world are under increasing threat.¹ The Committee to Protect Journalists, for instance, has reported that “[t]he number of journalists jailed worldwide reached a near all-time high in 2024.”² Reporters Without Borders has concluded that these threats increasingly come from political authorities.³ One form this takes is spurious criminal prosecutions. These could be launched by national or sub-national authorities, by government officials in their individual capacity, or by private parties with the support or acquiescence of the authorities or the court system.⁴ As two commentators have recently explained, “[t]he legal tactics used to ensnare and cripple journalists are many and varied.”⁵

While in some jurisdictions, criminal defamation laws are being repealed, or courts are striking them down,⁶

1 To be sure, it is not only journalists who face these threats. Others, including whistleblowers and ‘citizen journalists,’ who speak truth to power may face these risks.

2 Committee to Protect Journalists (CPJ), Journalist Jailings Near Record High in 2024 as Crackdown on Press Freedom Grows, Jan. 16, 2025, available at <https://cpj.org/2025/01/journalist-jailings-near-record-high-in-2024-as-crackdown-on-press-freedom-grows>

3 Reporters Without Borders, 2024 World Press Freedom Index – Journalism Under Political Pressure, https://rsf.org/en/2024-world-press-freedom-index-journalism-under-political-pressure?year=2024&data_type=general (finding in its 2024 report that “of the five indicators used to compile the ranking, it is the political indicator that has fallen most, registering a global average fall of 7.6 points.”).

4 For instance, in some jurisdictions, criminal defamation can be prosecuted either privately or by the public prosecutor upon receipt of a complaint.

5 Antonio Zappulla & Joel Simon, Op-ed: Weaponizing the Law Against Journalists Is Killing our Democracies, Columbia Journalism Review, May 3, 2023, available at https://www.cjr.org/tow_center/op-ed-weaponizing-the-law-against-journalists-is-killing-our-democracies.php.

6 United Nations Educational, Scientific and Cultural Organization (UNESCO), The ‘Misuse’ of the Judicial System to Attack Freedom of Expression: Trends, Challenges and Responses, Dec. 2022, available at <https://unesdoc.unesco.org/ark:/48223/pf0000383832> (discussing New Zealand (1992), Sri Lanka (2002), Niue (2007), Timor-Leste (2009), Kyrgyzstan (2015), and the Maldives (2018), all of which abolished criminal defamation.); International Press Institute, Zimbabwe Court Rules Criminal Defamation Unconstitutional, Feb. 4, 2016, available at <http://legaldb.freemedia.at/2016/02/04/zimbabwe-court-rules-criminal-defamation-unconstitutional/>; High Court of Kenya, Jacqueline Okuta & Anor v. AG & Others, Decision, Feb. 6, 2017, available at <http://kenyalaw.org/caselaw/cases/view/130781/?platform=hootsuite>; CPJ, Lesotho Constitutional Court Declares Criminal Defamation Unconstitutional, May 22, 2018, available at <https://cpj.org/2018/05/lesotho-constitutional-court-declares-criminal-def/>; IFEX, President George Weah Signs New Press Freedom Act Which Repeals Libel, Mar. 5, 2019, available at <https://ifex.org/president-george-weah-signs-new-press-freedom-act-which-repeals-libel/>.

in other places, such laws, along with related ‘insult’ laws,⁷ continue to expose journalists to the threat of imprisonment.⁸ In some of these countries, defamation has also been reclassified as a cyber-crime where the speech at issue occurs online.⁹ This is all despite the UN Human Rights Committee’s admonition that states should consider decriminalizing defamation and its clear holding that imprisonment is never an appropriate penalty.¹⁰

In other jurisdictions, colonial-era laws, such as the Official Secrets Act¹¹ or sedition,¹² continue to be invoked against journalists. Again, this flouts jurisprudence from human rights courts finding that laws like sedition are inconsistent with international and regional standards.¹³

In yet other places, financial crimes are increasingly charged against the press¹⁴—a trend that has been brought to the attention of the Financial Action Task Force in the context of discussion of countering the financing of terrorism.¹⁵

⁷ See, e.g., Clooney Foundation for Justice (CFJ), Statement on the Release of the Report on the Trial of Omar Radi in Morocco, Sept. 19, 2020, available at <https://cfj.org/news/statement-on-the-release-of-the-report-on-the-trial-of-omar-radi-in-morocco/>; CFJ, Clooney Foundation for Justice Statement on the Conviction of Veysel Ok in Turkey, Sept. 12, 2019, available at <https://cfj.org/news/clooney-foundation-for-justice-statement-on-the-conviction-of-veysel-ok-in-turkey/>.

⁸ See, e.g., CFJ, TrialWatch Report Underlines Need for More Robust Anti-SLAPP Protections in Thailand, Sept. 17, 2024, available at <https://cfj.org/news/trialwatch-report-underlines-need-for-more-robust-anti-slapp-protections-in-thailand/>; CFJ, Peru Court Faces Crucial Free Speech Decision, May 27, 2022, available at <https://cfj.org/news/peru-court-faces-crucial-free-speech-decision/>.

⁹ The ‘Misuse’ of the Judicial System to Attack Freedom of Expression, *supra* (“Libel, defamation, and insult provisions and their application have been strengthened, including through their integration in new legislation on cybersecurity.”).

¹⁰ United Nations Human Rights Committee (UNHRC), General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

¹¹ CFJ, TrialWatch Will Monitor Bangladeshi Investigative Journalist’s Case, June 7, 2023, available at <https://cfj.org/news/trialwatch-will-monitor-bangladeshi-investigative-journalists-case/>.

¹² CFJ, The Crime of Sedition: What Comes Next for an Archaic Law?, Feb. 2024, available at <https://cfj.org/wp-content/uploads/2024/02/Sedition-Report-February-2024-Update.pdf>.

¹³ See, e.g., East African Court of Justice (EACJ), Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania, Reference No. 2 of 2017, Mar. 28, 2019, para. 99; ECOWAS Court, Federation of African Journalists and Ors. v. The Gambia, ECW/CCJ/JUD/04/18, Mar. 13, 2018, pg. 40.

¹⁴ See, e.g., CFJ, Trial of Award Winning Journalist José Rubén Zamora ‘Marred by Severe Fair Trial Violations’, Feb. 5, 2024, available at <https://cfj.org/news/cambodias-incitement-law-is-inconsistent-with-international-human-rights-standards-un-working-group-finds/>.

¹⁵ Amnesty International, Turkey: Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society, 2021, available at <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf> (“The promulgation of Law No. 7262 [in Turkey] is an ‘unintended consequence’ of FATF policy and practice . . . [that is part of a] toolbox of counterterrorism measures that [Turkey] has weaponized and wielded against political opponents, journalists, human rights defenders, and civil society organizations.”).

One common feature of many of these laws is that they are vague and overbroad. This includes incitement laws that seek to punish speech that allegedly creates a risk of disorder,¹⁶ laws criminalizing ‘fake news’¹⁷ or laws criminalizing statements that undermine confidence in the authorities,¹⁸ and laws criminalizing ‘offensive communication.’¹⁹

Objectives of the Report

While there has been important recent research on global trends,²⁰ there is a dearth of data on the specific laws used against journalists in particular jurisdictions. And in India, the police are under the control of state governments making the governments at the state/provincial level the more relevant stakeholders. This, too, is currently largely missing from the discussion.

This project aims to bridge this gap by documenting the offences that are most frequently being invoked against journalists, journalists’ experience of the Indian criminal justice system, and how these differ based on the work-profiles of the journalists. While some state governments in India have passed or proposed laws to protect journalists from violence and harassment,²¹ institutional protections for journalists from criminal cases are lacking.

This report does not aim to provide an exhaustive legal analysis of the offences or procedural issues identified, but rather interrogates the data to identify trends, and points to relevant domestic, comparative

¹⁶ CFJ, Cambodia’s ‘Incitement’ Law is Inconsistent with International Human Rights Standards, UN Working Group Finds, Feb. 8, 2022, available at <https://cfj.org/news/cambodias-incitement-law-is-inconsistent-with-international-human-rights-standards-un-working-group-finds/>. For instance, South Africa’s Constitutional Court has read down the country’s ‘incitement’ law on the grounds of overbreadth. Constitutional Court of South Africa, *Economic Freedom Fighters and Others v. Minister of Justice and Correctional Services and Others*, Case CCT 201/19, Nov. 27, 2020, para. 51, available at <https://www.saflii.org/za/cases/ZACC/2020/25.pdf>.

¹⁷ In March 2024, the Constitutional Court of Indonesia struck down provisions criminalizing the dissemination of “false news or information” or “uncertain or exaggerated or incomplete information” that causes or is likely to cause “disruption among the public.” Constitutional Court of the Republic of Indonesia, Decision No. 78/PUU-XXI/2023, Mar. 6, 2024. The Court held that the lack of definition of these terms “caused a disparity of interpretation in court proceedings,” and there would be “multiple interpretations” for whether a “situation of ‘disruption’ was the result of ‘news’ being disseminated by a person.” *Id.* at para. 3.18.

¹⁸ Cf. Supreme Court of Zimbabwe, *Chimakure and Others v. Attorney General of Zimbabwe*, Judgment No. SC 14/2013, Application No. SC 247/09, Oct. 30, 2013 (striking down such a law in Zimbabwe.).

¹⁹ See, e.g., *Shreya Singhal v. Union of India* [(2015) 5 SCC 1]; cf. Communications and Multimedia Act 1998 (Malaysia), Sec. 233, available at https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Act588bi_3.pdf. Malaysia has recently amended the CMA to criminalize only “grossly offensive” speech, although this too is vague. Cf. New Sin Yew, *Self-Defeating Amendments to Section 233 of CMA*, AmerBon Advocates, Dec. 13, 2024, available at <https://www.amerbon.com/blawg/self-defeating-amendments-to-section-233-of-cma>.

²⁰ Joel Simon, et al, *Weaponising the Law: Attacks on Media Freedom*, Thomson Reuters Foundation, Apr. 2023, available at <https://medialegalattacks.com/#get-the-report>.

²¹ Maharashtra: Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2017; Chhattisgarh: Protection of Media Persons Act, 2023; Goa: Journalist Protection Bill, 2022; Bihar: Draft Journalist Protection Bill, 2020; Uttarakhand: Journalist Protection Bill, 2021

or international legal standards on the issue. This report draws upon the International Covenant on Civil and Political Rights (“ICCPR”) to which India acceded in 1979, jurisprudence from the United Nations Human Rights Committee (“HRC”), tasked with monitoring implementation of the ICCPR, and jurisprudence from the European Court of Human Rights, which the HRC has deemed relevant for interpreting the provisions of the ICCPR²² as well as other regional human rights courts and treaty bodies.

Due to limitations in availability of data, this report is not conclusive or exhaustive on this issue. The main findings of this report—the use of overbroad criminal laws to target speech, the disconnect between court rulings (and evolving precedent) and law enforcement practices, the disproportionate impact of criminal law on those without access to superior courts/quality legal representation, and the pendency of cases within the system—have been previously documented.²³ This report, however, brings these issues into focus for journalists facing criminal cases in India. This is especially critical given that journalists fulfil a constitutional duty to propagate citizens’ ideas.²⁴ As the Editor’s Guild of India has said, “[t]he members of the press have a duty to inform the citizenry and the press acts in the capacity of a trustee or surrogate of the public, as the ‘eyes and ears of the citizenry.’”²⁵ The widespread entanglement of journalists in the criminal process, as shown by the data, severely compromises their ability to fulfil this role.

22 For example, when interpreting the provisions of the International Covenant on Civil and Political Rights (ICCPR) through its General Comments, the HRC has relied on decisions made by the European Court of Human Rights. See, e.g., UNHRC, General Comment No. 37, UN Doc. CCPR/C/GC/37, July 23, 2020, fns. 15, 18, 28, 52, 61, 65, 73-75, 99, 118, 122, 132; UN Human Rights Committee, General Comment No. 36, UN Doc. CCPR/C/GC/36, Sept. 3, 2019, fns. 5, 6, 32, 64, 86, 88, 92, 104, 126, 128, 129, 131, 136, 164, 215, 217.

23 Amit Anand Choudhary, Process is the Punishment in Our Criminal Justice System, CJI, Times of India, July 17, 2022 (quoting CJI) (“In our criminal justice system, the process is the punishment. From hasty indiscriminate arrests, to difficulty in obtaining bail, the process leading to the prolonged incarceration of undertrials needs urgent attention.”), available at <https://timesofindia.indiatimes.com/india/process-is-the-punishment-in-our-criminal-justice-system-cji/articleshow/92928964.cms>; Jayanth K. Krishnan et al., Grappling at the Grassroots: Access to Justice in India’s Lower Tier, 27 Harv. H.R. J., 501, available at <https://content.sph.harvard.edu/wwwhsph/sites/134/2019/06/Grappling-at-the-Grassroots-Access-to-Justice-in-Indias-Lower-Tier.pdf>; Nikita Bansal, India’s Spiralling Sedition Crisis & Why A Dilution Of The Law Will Not Prevent Its Misuse, Article 14, Dec. 2, 2021, available at <https://www.article-14.com/post/india-s-spiralling-sedition-crisis-why-a-dilution-of-the-law-will-not-prevent-its-misuse-61a83b9694436>; Siddharth Narrain, Hate Speech, Hurt Sentiment, and the (Im)Possibility of Free Speech, 51 Economic and Political Weekly 119, 119 (2016); Human Rights Watch, Stifling Dissent: The Criminalization of Peaceful Expression in India, May 24, 2016, available at <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>; National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2022, Statistics Volume I, available at https://images.assettype.com/barandbench/2023-12/dc0ba053-a1f0-4e6a-a5f8-e7668ddd2249/NCRB_STATS.pdf.

24 Sakal Papers (P) Ltd., & Ors v. Union of India, 1962 AIR 305 (“The right to propagate one’s ideas is inherent in the conception of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to circulate them. He is entitled to do so either by word of mouth or by writing.”).

25 Letter from Editors Guild of India to Shri Amit Shah, July 29, 2024, available at <https://sabrangindia.in/editors-guild-of-india-warns-of-rising-threats-to-journalists-under-new-criminal-laws-in-letter-addressed-to-home-minister-amit-shah/>.

India has recently adopted a new penal code and criminal procedure code, the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, which came into effect in July 2024. The first cases have been registered against journalists under this new law,²⁶ including at least one case based on criticism of state government.²⁷ The time is thus right to assess these questions for India: to understand who is being charged with what, what course these cases usually take, and what impact the cases have on the journalists themselves.²⁸ The hope is that this report—at this moment in time—can inform a critical public debate surrounding how to ensure journalists are protected against legal harassment, and supported when it occurs, in the context of new penal legislation, while contributing to the ongoing global discussion of the criminalization of journalists.

Structure of the Report

This report proceeds as follows. We provide background to the project and outline its methodology. Chapter 1 sketches the Indian media environment and the laws that regulate the press, with a focus on understanding the context in which journalists work and why those who are aggrieved by journalists' work so often resort to the criminal justice system. Chapter 2 describes the dataset in more detail and identifies and analyzes the most-commonly-charged categories of offence, and the profiles of the journalists charged with these offences. Chapter 3 then goes on to offer data tracing journalists' experiences through the stages of the criminal process—from the registration of a case to the trial, including on pre-trial detention—and how those experiences varied based on the journalist's profile. Finally, Chapter 4 qualitatively describes journalists' experience of these legal cases based on interviews conducted with them. The report concludes with a summary of issues for stakeholders to consider in light of the report's findings.

²⁶ Free Speech Collective, The First FIRs Against Journalists Under the Bharatiya Nyaya Sanhita, July 12, 2024, available at <https://freespeechcollective.in/the-first-firs-against-journalists-under-the-bharatiya-nyaya-sanhita/>.

²⁷ The Times of India, Row After FIR Against Woman over 'Power' Tweet, June 20, 2024, available at <https://timesofindia.indiatimes.com/city/hyderabad/row-after-fir-against-woman-over-power-tweet/articleshow/111123296.cms>; Index on Censorship, Human Rights Organisations Condemn Criminal Complaint Lodged Against Award-Winning Journalist Mohammed Zubair, Dec. 9, 2024, available at <https://www.indexoncensorship.org/2024/12/human-rights-organisations-condemn-criminal-complaint-lodged-against-award-winning-journalist-mohammed-zubair/>; Telangana Today, Senior Journalist Arrest: Invoking Section 111 of BNS Unjustified, Rules Hyderabad Court, Mar. 17, 2025, available at <https://telanganatoday.com/senior-journalist-arrest-invoking-section-111-of-bns-unjustified-rules-hyderabad-court>;

²⁸ While the report covers cases brought under the Indian Penal Code (along with other legislation), rather than the Bharatiya Nyaya Sanhita, 2023 many of the offences are in substance the same in both.

METHODOLOGY

This project entailed gathering information on criminal cases²⁹ registered against journalists³⁰ in relation to their professional work between 2012 and 2022. This information was collected through an all-sources approach, including review of reports by civil society organizations, Boolean Google searches, searches of legal databases, and review of the underlying legal documents where available. In some cases, journalists were directly contacted for relevant information or sharing of documents. This produced a list of 423 criminal cases registered against 427 journalists across 28 States and Union Territories of India, with a total of 624 incidents of criminalization (“**Primary Dataset/Dataset**”).³¹

Criminal cases against journalists on the basis of conduct seemingly unrelated to their work as a journalist (for e.g., allegations of violating foreign donation laws or being a member of a banned organization), but where they or others alleged the case to have been retaliation for their reporting,³² were categorized as “backlash cases.”³³ These cases were not included in the Primary Dataset; rather, a separate database was maintained for this list of 128 cases against 77 journalists, with a total of 140 incidents of criminalization (“**Backlash Dataset**”). These have been analyzed separately.

In the course of gathering our data, we came across numerous instances where cases were registered against journalists for their activities on social media, often for expressing their opinion or resharing of posts. Cases registered based on content shared or uploaded on social media platforms—most prominently Twitter, Facebook, WhatsApp, and YouTube were classified as “social media”. While these

²⁹ “Criminal cases” as used in this report, refer to First Information Reports (FIRs) registered by the police and criminal complaints filed before Magistrates. Instances involving assault, unlawful detention, intimidation, or harassment of journalists by state or non-state actors fall outside the scope of this report.

³⁰ We placed reliance on the definition of a “working journalist” provided in the Working Journalists & Other Newspaper Employees Act of 1955. It was agreed that for the purposes of our report, journalists would include editors, lead writers, news editors, sub-editors, feature writers, copy-testers, reporters, correspondents, cartoonists, news photographers and proof-readers working in print, television or digital news media or paper, either independently or as part of an organization. We also relied on how individuals were described by other public sources.

³¹ These different numbers are due to the following factors: (1) a single First Information Report (FIR) may name one or multiple journalists as accused, and (2) an individual journalist may face multiple charges in different cases.

³² To ensure objectivity, we relied on the suggestion of ulterior motivation in newspaper reports and court orders.

³³ The Primary Dataset contains all cases where the allegations were related to the content of journalist’s speech, or their conduct while reporting (even if the cases allegedly mischaracterized the journalist’s conduct). The backlash dataset contains cases where the incident or activity criminalized is not related to their work as a journalist, and the only link to their journalism is the allegation that the case was in retaliation for the same.

“social media” cases form part of the Primary Dataset, they have also been analyzed separately in sections of this report.

The datasets include both information related to the cases and the journalist’s work profile: The former category includes the stage of the case, whether the accused was arrested, court granting relief etc., and the latter category includes the nature of the accused’s reporting (e.g., investigative journalism versus opinion), medium of work (e.g., broadcast or digital versus print), location, language, role within their organization (e.g., editor versus reporter), and gender. For some entries, details of the work profile were inferred from review of court orders. The case-related data for each journalist was updated and finalized on October 31, 2023. Additional information on the nature of data collected and methodology adopted can be found in **Annex A**.

Because the Primary and Backlash datasets encompass cases involving 252 unique offences across over 54 legislations, the offences with which journalists were charged were bucketed into categories. These categories were established by analysing the definition clause of each legal provision, the categories of offences set forth in the Indian Penal Code, 1860 and the statements of objects and reasons in special legislation. The list of legislations along with abbreviations are listed in **Annex B** and specific offenses included in each of the 35 categories are listed in **Annex C**.

Most FIR/criminal complaints consist of several offences. As a default, the analysis in this report is based on all offences in each FIR/complaint. To facilitate further analysis, the offence(s) carrying the highest potential punishment were identified and characterized as the “primary offence(s).” As the most serious offence, the primary offence usually dictates the course a case will take—which court can try the case, grant bail, the likelihood of arrest, and so on. Therefore, in some instances additional analysis was conducted based on the “primary offence(s)” of the case and is indicated as such. This analysis was only done for the Primary Dataset.

We also sought to identify the underlying reason for the charges, or the allegation levelled against the journalist, based on publicly available sources.³⁴ This has been described as the “basis for charge(s).” The list of categories for “basis for charge” and the methodology adopted for arriving at these is in **Annex D**.

As part of the report, we also conducted in-depth interviews with 48 journalists, on condition of anonymity. These 48 journalists were selected from a larger group with a view to ensuring a representative sample. Among the 48 journalists interviewed:

- 18 hail from major metropolises, seven from other major cities, and 23 from small cities and towns;

³⁴ In some instances, the sources described the content of the reporting or the journalist’s social media activity that led to the case against the journalist and in others, the sources only described the allegation against the journalist. This analysis was only conducted for the Primary Dataset.

- 18 report in English, 21 in Hindi, two in both languages and the remaining seven report in regional languages;
- 17 are print journalists, 10 are broadcast and 21 are digital media journalists;
- 36 are (or were) affiliated with news organizations and 12 are (or were) freelancers; and
- 43 are male while five are female.

The primary objective of these interviews was to gain insight into the unique experiences of each journalist as they navigated the multifaceted challenges that arose once they were accused in a criminal case.

These interviews produced answers along seven dimensions,³⁵ which we then coded. We have also relied on the interviews throughout this report to ground our quantitative data in journalists' lived experience.

Limitations

Despite diversifying our sources, there is recency bias involved in online searches, as a result of which more than 60% of the incidents are from the last three years. Therefore, the data, for the most part, has not been analyzed by mapping it across years. Further, given the lack of information on caste and religion of the journalists from available sources (legal databases, news reports, civil society reports) and difficulty in inferring this information, the report does not include this data.

Since the researchers were proficient in certain languages (English, Hindi, Kannada, Bengali, and Marathi) there were limitations in collecting comprehensive data across all states, hence the report does not provide state-wise data.

Further, while the police are required to upload all FIRs on the website of the State Police department following Supreme Court directives in 2016,³⁶ FIRs prior to 2016 may be unavailable, and even for FIRs registered after 2016, we encountered the following challenges (i) certain FIRs are marked as sensitive and not available for download; and (ii) certain police websites were either broken or had other barriers to access.

³⁵ Although these interviews were not conducted with a uniform questionnaire, most journalists interviewed spoke about the following themes: the extent to which the case created fear, the impact of the case(s) on the journalist's personal and/or professional life, or the case(s)'s financial impact, their access to legal counsel, the support they did or did not receive, and how they perceived their work profile to have impacted their experience with the criminal justice system.

³⁶ Youth Bar Association of India v. Union of India [(2016) SCC OnLine SC 1703].



THE INDIAN NEWS & MEDIA LANDSCAPE AND IMPLICATIONS FOR THE PROTECTION OF JOURNALISTS

The context in which journalists work in India is growing ever more precarious, especially for local journalists, freelancers and stringers. Media outlets' increasing dependence on government advertising as well as the laws regulating print, broadcast and digital media, offer various vectors of potential government control, and compound journalists' vulnerability.

At the same time, there are few avenues for redress for those aggrieved by reporting.

Taken together, these trends could explain why outlets may be reluctant to fully support journalists when they face criminal cases for pieces critical of the authorities, and why so many cases find their way into the criminal justice system in the first place.

A. Overview of the Indian Media Landscape

“[T]here is fear of losing government advertising, fear of losing advertising from corporates, fear of government going after [the parent organization’s] interests outside of the media and fear of government agencies being used against them unjustifiably.”

– Journalist interviewed

The Indian media landscape is vast and varied: as per government figures, over 20,000 newspapers are circulated on a daily and weekly basis in the country, with a readership of over 390 million.³⁷ Over 10,000 of these are published in Hindi, 1,299 in English and the remaining in regional languages.³⁸ India has close to 400 news channels³⁹ and was at one point, home to the “largest concentration of 24-hour television news networks in the world.”⁴⁰ Since 2010, social media and online news have dominated the media landscape—as of January 2024, India had 462 million social media users (32.2% of the population) and 751 million internet users (52.4% percent of the population).⁴¹ India is the second-largest online news consuming country globally, with 287 million unique visitors each month.⁴²

A report published in 2018 found that Hindi media dominated the Hindi-speaking states in the northern and central regions of India, while “regional languages take precedence as one goes to the western, northern, eastern and southern parts of the country.”⁴³ The trend was

³⁷ Registrar of Newspapers for India, 1 The Press in India, 2021–22, s. 2.1.2 and 4.1 available at http://rni.nic.in/all_page/PIN2021_22.html.

³⁸ *Id.* at Chapter 3: Publication Which Filed Annual Statement for 2021-2022, available at http://rni.nic.in/pdf_file/pin2021_22/Chapter%203.pdf.

³⁹ Government of India, Ministry of Information & Broadcasting, Lok Sabha Unstarred Question No, 857 (To be Answered on 05.02.2021), available at <https://sansad.in/getFile/loksabhaquestions/annex/175/AU857.pdf?source=pqals#%253A~%253Atext%253DThere%2520are%25%252020388%2520News%2520and%252Fwebpage%252DUser%252Dtvchannels.%2526text%253D%2528c%2529%2520Since%25201.1>.

⁴⁰ Nalin Mehta, Introduction, *in* Television in India: Satellites, Politics and Cultural Change, pg.7 Routledge, 2008.

⁴¹ Simon Kemp, Digital 2024: India, DataReportal, Feb. 21, 2024, available at <https://datareportal.com/reports/digital-2024-india>.

⁴² Nimish Sawant, Digital-First Upstarts in Indian Newsrooms, Goethe-Institut, Sept. 2020, available at <https://www.goethe.de/ins/in/en/kul/fmd/btl/21982958.html>.

⁴³ Media Ownership Monitor, India 2018: Is Regional the New National?, available at <https://india.mom-gmr.org/en/findings/nationalandregionalmedia/>.

reflected in newspapers as well—three regional-language papers featured in the top 10 dailies of the country.⁴⁴

Despite this diversity, the various elements of the Indian media ecosystem share two key trends: consolidation of media entities across print, TV, and digital and an increasingly important role played by advertising, in particular government advertising, in media financing.⁴⁵ Taken together, these create pressure on the journalists at the lowest part of the pyramid—local journalists, freelancers, and stringers—especially where their reporting is seen as critical of the authorities.

Media Consolidation

There has been significant consolidation of media entities in recent years.⁴⁶ For instance, the Times Group, which runs a host of influential papers,⁴⁷ has expanded its media portfolio to include several news channels, and entities covering entertainment, fashion and education.⁴⁸ And Anand Bazaar Patrika, a

⁴⁴ *Id.* (“Daily Thanthi of Tamil is fifth in the list with 23 million readers and another newspaper – Malayala Manorama of Malayalam is eighth in the list with 15.9 million readers, and Telugu daily, Eenadu is at the ninth position with 15.8 million readers.”).

⁴⁵ A possible exception lies in the rise of new, independent, digital-only media organizations that emerged in the 2010s. Platforms like *The Wire*, *Newslandry*, *The News Minute*, and *East Mojo* have sought to distinguish themselves from legacy media by adopting subscriber-funded or contribution-based models. Nimish Sawant, Digital-First Upstarts in Indian Newsrooms, Goethe-Institut, Sept. 2020, available at <https://www.goethe.de/ins/in/en/kul/fmd/btl/21982958.html>. While these outlets have gained popularity among urban audiences in major cities and have managed to break significant stories with marginal resources, some journalists argue that they still cannot rival legacy media due to their limited reach in rural India. *Id.*

⁴⁶ This trend holds true for both Hindi and regional media, as well as national outlets. According to one study, “[f]our outlets – Dainik Jagran, Hindustan, Amar Ujala, and Dainik Bhaskar – [account for] three out of [every] four readers,” capturing 76.45% of the national Hindi-language market share. Media Ownership Monitor, India 2018: Is Regional the New National?, available at <https://india.mom-gmr.org/en/findings/nationalandregionalmedia/>. In the northeastern state of Assam, for instance, a major news channel is owned by the wife of the sitting chief minister. In Odisha, an eastern Indian state, Odisha TV is owned by a member of a prominent political party. Meanwhile, Tamil and Telugu media have long been marked by rival channels and newspapers aligned with competing political parties. Media Ownership Monitor, India 2018: A Delicate Handshake, available at <https://india.mom-gmr.org/en/findings/politicalaffiliations/>.

⁴⁷ This includes the *Times of India* (India’s highest selling English newspaper) and *Economic Times*.

⁴⁸ Times Now, Times Channel Packs, available at <https://www.timesnownews.com/info/timesnetwork-trai-value-package>. Most recently, there has reportedly been a split of control between the print and broadcast and radio arms. See Viveat Susan Pinto & Alokanda Chakraborty, Times Group Split: Samir Jain Takes print; Vineet Gets Broadcast, Radio Biz, Financial Express, May 21, 2023, available at <https://www.financialexpress.com/business/brandwagon-times-group-split-samir-jain-takes-print-vineet-gets-broadcast-radio-biz-3095789/>.

Bengali-language newspaper that began publishing in 1922, is owned by the ABP group, which today runs a number of news channels, in multiple languages.⁴⁹

Media companies have also come under the control of large conglomerates with business interests in various sectors- as per media expert Pamela Philipose, “Indian corporate bodies, some of them with deep political connections and ambitions, also began to invest directly in the media businesses to promote their business interests and influence policy making.”⁵⁰ In 2012, Reliance Industries—one of India’s largest conglomerates with business in energy, petrochemicals, natural gas, retail, telecommunications, and entertainment—bought controlling stakes in Network18 and ETV’s non-English channels, covering over 25 channels across the country.⁵¹ And in 2022, Indian billionaire Gautam Adani acquired a prominent news media company, NDTV, in a takeover.⁵²

As a result, there are concerns that competing political interests, or business interests outside of media, may be impacting news coverage and creating pressures on journalists. As per the independent journalist and former newspaper editor Samrat Choudhry, legacy news houses “lack the will” to investigate important news stories, because “[t]he pressure on editors is to maintain the status quo and avoid annoying those in power.”⁵³ Another senior journalist has commented that **“[t]he concentration of media in the hands of business conglomerates not only restricts a diversity of views, it also tailors the priorities of media, ensuring commercial gains for the conglomerate that owns it. In effect, the media business is not just driven by the profits and losses it makes, but also the impact it could have on the other businesses owned by the conglomerate.”**⁵⁴

⁴⁹ Snigdhendru Bhattacharya, With Atideb Sarkar, ABP Group Gives India her Youngest Media Baron, NewsLaundry, July 31, 2021, available at <https://www.newslaundry.com/2021/07/31/with-atideb-sarkar-abp-group-gives-india-her-youngest-media-baron>.

⁵⁰ Pamela Philipose et al., Media’s Shifting Terrain: Five Years that Transformed the Way India Communicates, pg. 3 Orient BlackSwan, 2019.

⁵¹ In 2016, The Caravan, a Delhi-based magazine, reported that five of India’s largest news channels—NDTV, News Nation, India TV, News24 and Network18—were either indebted to Mukesh Ambani, the owner of Reliance Industries, or to his close associates. Krishn Kaushik, The Big Five: The Media Companies That the Modi Government Must Scrutinise to Fulfill Its Promise of Ending Crony Capitalism, The Caravan, Jan. 19, 2016, available at <https://caravanmagazine.in/vantage/the-big-five-the-media-companies-that-the-modi-government-must-scrutinise-to-fulfill-its-promise-of-ending-crony-capitalism>.

⁵² Reuters, Billionaire Adani to Control Nearly 65% of NDTV as Founders Sell Stake, Dec. 23, 2022, available at <https://www.reuters.com/business/media-telecom/indias-ndtv-founders-transfer-most-their-stake-adani-2022-12-23/>.

⁵³ Nimish Sawant, Digital-First Upstarts in Indian Newsrooms, Goethe-Institut, Sept. 2020, available at <https://www.goethe.de/ins/in/en/kul/fmd/btl/21982958.html>.

⁵⁴ Hartosh Singh Bal, Private Interest Journalism: How Conglomerates Corrupt the Indian Media Landscape, The Caravan, available at <https://caravanmagazine.in/media/big-media-corrupts-journalism>.

Dependence on Advertising Revenue

In parallel with this consolidation, media entities are increasingly reliant on advertisement revenue. According to a recent report, “[s]ome 30 years ago, 55-77% of the total revenue of an average media outlet would come from its readers directly through subscriptions or copy sales; today it is the advertisers who sustain the media. In case of television channels it has been up to 70-80% by now.”⁵⁵ In 2012, Vineet Jain, the Managing Director of the Times Group, famously told the *New Yorker* in an interview, **“If ninety per cent of your revenues come from advertising, you’re in the advertising business,”** explaining that since newspapers were cheap and generated little circulation revenue, they primarily depended on ad revenue.⁵⁶

One of the primary sources of ad revenue in India is government ads.⁵⁷ Government figures state that between 2014 and 2022, the government spent ₹3,260.79 crore on advertising in electronic media, and ₹3,230.77 crore in print media⁵⁸—close to 390 million USD and 387 million USD, respectively. As per one news report, 15% of the Times’ Group’s advertising revenue comes from government ads.⁵⁹ These sources of income are especially important for smaller, local or regional papers, which do not enjoy the influx of ads from cash-rich, national brands.

As one journalist told us, **“State governments are far more coercive, they monitor media far more closely, and dependence on local papers and TV channels for government advertising is far more than it is in the national case, that money is used very selectively.”**

⁵⁵ “Media Ownership Monitor, India 2018: Big, Ever Bigger Business, available at <https://india.mom-gmr.org/en/findings/corporateownership/>.

⁵⁶ Ken Auletta, Citizens Jain, The New Yorker, Oct. 1, 2012, available at <https://www.newyorker.com/magazine/2012/10/08/citizens-jain>.

⁵⁷ The Times of India, Govt’s Pre-Election Ad Spends, Corporate Branding to Boost Print Media Revenues by 15% in FY24, July 11, 2023, available at <https://timesofindia.indiatimes.com/india/govts-pre-election-ad-spends-corporate-branding-to-boost-print-media-revenues-by-15-in-fy24/articleshow/101664255.cms>. A government official recently told the press that it spends sixty percent of its ad budget on television media and the rest on print and outdoor advertising. Kanchan Srivastava, TV Gets 60% of Govt’s Ad Budget, Followed by Print & Outdoor: MIB Secretary Sanjay Jaju, Exchange4media, Feb. 29, 2024, available at <https://www.exchange4media.com/advertising-news/tv-gets-60-of-govts-ad-budget-followed-by-print-outdoor-mib-secretary-sanjay-jaju-132828.html>.

⁵⁸ Anish Yande, ₹6,491 Cr Spent on Advertisements in Media in Eight Years: I&B Ministry, Hindustan Times, Dec. 14, 2022, available at <https://www.hindustantimes.com/india-news/6491cr-spent-on-advertisements-in-media-in-eight-years-i-b-ministry-101670957676039.html>.

⁵⁹ Devjyot Ghoshal, Modi Government Freezes Ads Placed in Three Indian Newspaper Groups, Reuters, June 28, 2019, available at <https://www.reuters.com/article/business/modi-government-freezes-ads-placed-in-three-indian-newspaper-groups-idUSKCN1TT1R5/>.

Further, the risk may not only be the withholding of government advertising: At a time when outlets are depending on advertising revenue writ large, if private advertisements are not forthcoming, the need to obtain government advertisement could potentially sway coverage.

As a result, there are significant concerns that government advertising can be used as a tool to influence news reporting and to clamp down on unfavourable coverage.⁶⁰ Some of India's largest media houses have specifically raised concerns that the Government has cut off advertisements to them, starving them of "millions of rupees,"⁶¹ with officials from the media houses saying it was likely in retaliation for unfavourable reports.⁶²

Impact on Journalists: Contract Employment, Rise of Freelancers, Lack of Job Security

"During the time the organization I was working for didn't send their reporters to cover [an important and controversial] story – instead, they sent me, who was a freelancer to do it so that if something happens, they won't be liable."

– Journalist interviewed

⁶⁰ See, e.g., Minato Kazuki, Media Control through Government Advertisements in an Indian State, Bihar, Institute of Developing Economies, Mar. 2020, available at <https://www.ide.go.jp/English/Publish/Reports/Rb/2019/2019140001.html>; Muhammad Raafi, Govt's Ad Ban on Kashmir Dailies Seen as yet Another Attempt at Media Coercion, The Wire, Mar. 10, 2019, available at <https://thewire.in/media/kashmir-media-ad-ban-blank-front-pages>. There is a long history of such tactics in India. In 1975, Prime Minister Indira Gandhi imposed a state of "Emergency," suspending constitutionally protected freedoms and imposing pre-publication censorship. V. Krishna Ananth, Predicament of the Press During the Emergency, The Leaflet, July 12, 2022, available at <https://theleaflet.in/predicament-of-the-press-during-the-emergency/>. Newspaper owners who defied restrictions "ended up paying the price, being denied government advertisements and thus [were] deprived of the revenue to keep their businesses going." *Id.*

⁶¹ The Wire, Government Ads Have Shifted Away From Newspapers, Broadcasters: Report, May 11, 2023, available at <https://thewire.in/media/government-ads-have-shifted-away-from-newspapers-broadcasters-report>.

⁶² Devjyot Ghoshal, Modi Govt Freezes Ads Placed in Times of India, The Hindu and The Telegraph, The Wire, June 28, 2019, available at <https://thewire.in/media/modi-govt-freezes-ads-times-of-india-hindu-the-telegraph>. In 2015, a petition was filed before the Supreme Court of India seeking guidelines on government advertising to prevent its misuse for furthering political objectives. The Supreme Court acknowledged that the government's power to selectively award advertisements to certain media outlets raised concerns about press freedom and held that such advertisements must be awarded to all media houses on an equal basis. *Common Cause v. Union of India* [(2015) 7 SCC 1], paras. 15, 32.

Corporate consolidation and the advertising model have had a massive impact on the working lives of journalists. Most journalists in India, even among the largest media corporations, work on a contract basis. Print journalists in India enjoyed protections under acts such as the Working Journalists Act, 1955, which mandated fixed hours, wages, benefits and job security. The rise of television and online media, however, was not similarly regulated. In exchange for higher pay, conglomerates pioneered practices of offering journalists contracts that often lacked these protections.⁶³ Some contracts do not include even basic benefits like paid leave, health insurance or retirement funds. The government of India has constituted several wage boards to regulate the working conditions and pay of journalists, but these have not been implemented, and have been challenged in courts by corporate media houses.⁶⁴ Working on a contract basis makes journalists in India particularly vulnerable, including to cost-cutting measures such as layoffs.⁶⁵

The greatest vulnerability is among the journalists at the bottom of the news pyramid: freelancers and “stringers”—local journalists, who report from the ground, capturing local stories and events, often on a per story basis.⁶⁶ Freelancers may not, for instance, receive media accreditation.⁶⁷ And in some cases,

⁶³ Hartosh Singh Bal, Freedom From Repression: Although Most Don't Know it, Print Journalists Have a Powerful Tool to Protect their Editorial Integrity and their Job-the Law, The Caravan, Nov. 30, 2014, available at <https://caravanmagazine.in/perspectives/freedom-repression>.

⁶⁴ Government of India, Ministry of Labour and Employment, Wage Board for Working Journalists, available at <https://labour.gov.in/sites/default/files/Wage%20Board%20for%20Working%20Journalists.pdf>.

⁶⁵ The past decade has witnessed a wave of layoffs in the Indian media industry, impacting both print and electronic media. The COVID-19 pandemic had a massive impact, with the accompanying economic slowdown prompting media owners to shut down smaller bureaus or supplements and lay off journalists, despite arguments from journalists' unions that such measures were illegal. In many cases, the journalists were reportedly forced to resign without formal communication from their employers. See, e.g., Sravasta Dasgupta, 80% Journalists Laid off During Covid-19 'Forced to Resign', Finds Press Council Panel Report, The Wire, Sept. 4, 2024, available at https://thewire.in/media/80-journalists-laid-off-during-covid-19-forced-to-resign-finds-press-council-panel-report/?mid_related_new. While exact figures are difficult to determine, estimates suggest that nearly 1,000 journalists lost their jobs across the country in late 2022 alone. Ayush Tiwari, 'I've Been Forced to Resign': A Tight-Lipped HT Media Lays off Over 100 Employees, Newslaundry, May 30, 2020, available at <https://www.newslaundry.com/2020/05/30/ive-been-forced-to-resign-a-tight-lipped-ht-media-lays-off-over-100-employees>; Sreedevi Jayarajan, Times of India Lays off Many Journalists in Kerala, TN and Other States, Cites Losses, The News Minute, Mar. 3, 2021, available at <https://www.thenewsminute.com/kerala/times-india-lays-many-journalists-kerala-tn-and-other-states-cites-losses-144540>; Sumedha Mittal, 'Your Name Is on a List': Times Internet Lays off 120 Employees in 3 Days, Newslaundry, Dec. 16, 2023, available at <https://www.newslaundry.com/2023/12/16/your-name-is-on-a-list-times-internet-lays-off-120-employees-in-3-days>.

⁶⁶ Babu P Remesh, News Hunters or Ad-Getters? The Insecure World of Rural Stringers in Media, ThePrint, Apr. 19, 2021, available at <https://theprint.in/opinion/news-hunters-or-ad-getters-the-insecure-world-of-rural-stringers-in-media/641284/>.

⁶⁷ Neha Dixit (@nehadixit123), “While ethics, freedom of speech, rude politicians are an issue. Let's not forget that a lot of these debates do not account for independent journalists. We have to talk about the inequality of access between full time employed journalists & independent journalists.” X, June 7, 2024, 1:53 a.m., available at <https://x.com/nehadixit123/status/1799001709961937394>.

“stringers are also responsible for generating revenue by procuring local advertisements and boosting circulation, along with taking on informal work.”⁶⁸ In turn, stringers often become scapegoats if local strongmen or governments take issue with the reporting carried by their papers, and do not enjoy even the notional legal security that comes with being an editorial staffer.⁶⁹

⁶⁸ Nimmagadda Bhargav, *Stringers and the Journalistic Field: Marginalities and Precarious News Labour in Small-Town India*, Routledge India, 1st Edition, Feb. 27, 2023, pg. 2 available at <https://www.taylorfrancis.com/books/mono/10.4324/b23313/stringers-journalistic-field-nimmagadda-bhargav>.

⁶⁹ *Id.*

B. Regulatory Landscape: Laws and Regulations Governing Indian Media

India's laws governing print, broadcast and more recently digital media also allow for significant government oversight over the media,⁷⁰ which, alongside the power of advertising funding, may explain why media houses are reluctant to antagonize the authorities or support journalists when they do. And, the lack of effective redress mechanisms in these laws means that the first stop for those aggrieved by a news report is often the local police station, instead of a specialised mechanism established by these laws.

The extent of media regulation differs by medium—with broadcast being most regulated, followed by print and digital media. Recent attempts to regulate digital news media have been criticised for giving the Central Government “unbridled censorship powers”⁷¹ and have also been challenged before the courts. Further, while there are various bodies for each medium that provide some form of complaint redressal mechanism, their effectiveness is unclear.⁷²

Print Media

Until 2023, the colonial-era Press and Registration of Books Act (PRBA), 1867 (as amended from time to time) governed the registration and operation of newspapers in India. In 2023, the Parliament passed the Press and Registration of Periodicals Act, 2023. One of the main vectors of government control of print media under these laws (and specific state laws⁷³) is through the need to register a newspaper or periodical: The Press Registrar General controls whether an outlet can be registered, but the law does

⁷⁰ As per the federal division of powers in the Indian Constitution, newspapers and printing can be regulated both by Central and State Governments, while broadcasting is solely within the domain of the Central Government.

⁷¹ Tejas Panjiar & Prateek Waghre, Internet Freedom Foundation, Dear MIB, Kill the Bill and #LetUsChill: Our Comments on the Broadcasting Bill, 2023, Dec. 7, 2023, available at <https://internetfreedom.in/comments-on-the-broadcasting-bill-2023/>

⁷² Media regulation in India is overseen by a range of bodies, including government-controlled bodies under the Ministry of Information and Broadcasting, the quasi-judicial Press Council of India, and self-regulatory associations such as the News Broadcasters & Digital Association.

not specify potential bases for refusal of registration, granting them wide discretion,⁷⁴ and they have the further powers to revise, suspend or cancel certificates of registration.⁷⁵ Persons convicted of terrorist acts, unlawful activities or those who have been convicted for “having done anything against the security of the State” are also precluded from publishing periodicals,⁷⁶ with the Editors Guild of India expressing “deep concern” about these legal provisions “and the way they can be misused to deny the right to bring out news publications to persons who are critical of governments.”⁷⁷

The Press Council of India, India's primary news regulatory body, is a quasi-independent statutory body, responsible for preserving the freedom of the press, maintaining and improving the standards of newspapers and news agencies, helping newspapers and news agencies maintain their independence, etc.⁷⁸ The Press Council has issued Norms of Journalistic Conduct⁷⁹ (“PCI Norms”) that lay down, *inter alia*, guidelines for journalism on a range of issues, such as accuracy and fairness, references to caste, religion and community, reporting on court proceedings, criticism of public figures and defamatory writings, paid news, photojournalism etc.

The Press Council has the power to conduct inquiries into complaints against newspapers, news agencies, editors or journalists for offending the standards of journalistic ethics and for professional misconduct.⁸⁰ However, the Council can only issue warnings and admonish the newspaper, news agency, editor or journalist if they believe misconduct has occurred.⁸¹ This is perhaps one of the reasons that complaints against news reports or journalists are not usually filed before the Press Council.

⁷³ Several states also have laws to regulate newspapers. Laws in Assam and Punjab grant pre- and post-publication censorship powers to the state government. Punjab Special Powers (Press) Act 1956, s 2(1); Assam Special Powers (Press) Act 1960 s 2(2). In Jammu and Kashmir, the law allows for the provisional attachment of a printing press if the Magistrate thinks that the newspaper contains any incitement to murder or violence. Jammu and Kashmir State Newspapers (Incitements to Offences) Act 1914, s 3.

⁷⁴ Press and Registration of Periodicals Act 2023, s 7.

⁷⁵ *Id.* at s. 11.

⁷⁶ *Id.* at ss 4, 11(4).

⁷⁷ See Editors Guild of India, Recent Statements Issued: EGI Statement on Press and Registration of Periodicals Bill, Aug. 6 2023, available at <https://editorsguild.in/statements-issued>. On the other hand, the most recent version of the law replaces jail terms with financial penalties. Under the previous law, penalties included up to six months’ imprisonment for offences such as operating a press without declaration, making false statements, and violating printing or publishing requirements.

⁷⁸ Press Council Act 1978, s 13.

⁷⁹ Press Council of India, Norms of Journalistic Conduct, 2022, available at <https://presscouncil.nic.in/WriteReadData/Pdf/Norms2022.pdf>.

⁸⁰ Press Council Act 1978, s 14.

⁸¹ *Id.* at s 15.

Broadcast

The Central Government has exclusive powers to regulate broadcasting. Unlike newspapers, news channels are granted registration only for a fixed period.⁸² The Ministry of Home Affairs must also give a security clearance.⁸³ The Government also has the power to suspend the permission of a channel for a specified period or cancel its permission.⁸⁴

Unlike the press, content in broadcast media is extensively and specifically regulated. The law prohibits transmitting (or re-transmitting) any program unless it conforms with the Programme Code,⁸⁵ which in turn has extremely vague proscriptions—it prohibits, for instance, programmes that are against good taste or decency, contain “criticism of friendly countries” or “false and suggestive innuendos and half-truths,” or are likely to “encourage or incite violence or contain anything against maintenance of law and order or which promote anti-national attitudes.”⁸⁶ Unlike the PCI Norms, compliance with the Programme Code is a condition for grant (and renewal) of permission for uplinking and downlinking of channels.⁸⁷

⁸² The issue of refusal to renew the license of news channels came up before the Supreme Court in 2023. The Ministry of Information and Broadcasting refused to renew MediaOne TV's transmission license citing national security concerns, barring them from continuing operations. Umang Poddar, Explainer: How the Centre Exercises Stringent Control over Indian Television News Channels, Scroll.in, Feb. 2, 2022, available at <https://scroll.in/article/1016439/explainer-how-the-centre-exercises-stringent-control-over-indian-television-news-channels>. In a significant judgment, the Supreme Court quashed the order, ruling that a channel's critical views on government policies cannot be deemed anti-establishment. The Court further held that the Central Government cannot invoke vague or unsubstantiated 'national security concerns' to justify infringements on press freedom and freedom of speech. *Madhayamam Broadcasting Limited v. Union of India*, Civil Appeal No. 8129 of 2022, Supreme Court of India.

⁸³ Policy Guidelines for Uplinking and Downlinking of TV Channels from India 2022, cl 7(1), 11(1).

⁸⁴ Cable Television Network Act 1995, s. 20; Policy Guidelines for Uplinking and Downlinking of TV Channels from India 2022, cl 26 (2). For instance, in 2020, the Central Government imposed a 48-hour ban on two news channels in Kerala for their coverage of the riots that took place in Delhi in February 2020. CPJ, India Temporarily Bans 2 News Channels Over Coverage of Delhi Riots, Mar. 6, 2020, available at <https://cpj.org/2020/03/india-temporarily-bans-2-news-channels-over-coverage/>. The orders issued by the Ministry of Information and Broadcasting accused the news channels of “siding with one community” and improperly alleging that the government/police did not act to control the riots. *Id.*

⁸⁵ Cable Television Networks (Regulation Rules) 1994, Rule 6, available at https://traai.gov.in/sites/default/files/2024-10/CableTelevisionNetworksRules1994_0.pdf. Television channels must also adhere to the Advertisement Code, which is similarly vague.

⁸⁶ *Id.*

⁸⁷ Policy Guidelines for Uplinking and Downlinking of Satellite Television Channels in India 2022, cl 11(3)(c).

The Ministry of Information and Broadcasting set up a range of mechanisms to monitor compliance with the Programme Code,⁸⁸ but the public was not widely aware of them.⁸⁹ This prompted the Supreme Court to advise the government to institute a formal complaint redressal mechanism.⁹⁰

In 2021, the Government introduced a three-tier complaint redressal mechanism to address violations of the Codes involving: (1) a complaint redressal mechanism to be established and registered by broadcasters; (2) self-regulating bodies of broadcasters like the News Broadcasters & Digital Association⁹¹; and (3) an oversight mechanism by the Central Government.⁹² Concerns have been raised that an unfettered oversight mechanism within the Central Government would give the government too much power over media.⁹³ The similar system for regulating digital media, also introduced in 2021 by the Government, has been challenged before the Kerala High Court, as will be discussed below.

While there are more robust mechanisms for complaints regarding broadcast than print, their multiplicity and current uncertain status is also unlikely to make them a favored forum. At the same time, as with print, the government has significant power over the broadcasting entities themselves, in particular in regard to the need to renew registrations.

88 This included an interministerial committee, State-level Monitoring Committees and District-level Monitoring Committees, and an Electronic Media Monitoring Centre (EMMC). See Rajya Sabha, Parliamentary Debates, Vol 239 No. 7, pg. 174 available at <https://cms.rajyasabha.nic.in/UploadedFiles/Debates/OfficialDebatesDatewise/Floor/239/F03.05.2016.pdf>; Ministry of Information and Broadcasting, Order No. F-1203/1/2007-BC.II, Feb. 19, 2008, available at https://mib.gov.in/sites/default/files/2024-02/Advisory_Order%20dated%2019.02.2008%20regarding%20Monitoring%20Committee%20for%20Private%20TV%20Channels%20at%20the%20State%20and%20District%20Level.pdf; Ministry of Information and Broadcasting, No. F. 6/13/201 1 BC-IV/I, July 22, 2014, available at http://mib.gov.in/sites/default/files/2024-02/Advisory_Letter%20reg%20Facilitation%20of%20Monitoring%20of%20TV%20Channels%20by%20EMMC%201%20dated%2022.07.2014.pdf.

89 See *Common Cause v. Union of India*, [(2018) 13 SCC 440].

90 *Id.*

91 The News Broadcasters & Digital Association (formerly News Broadcasters Association) is one of the most prominent self-regulatory bodies. It has devised a Code of Ethics and Broadcasting Standards to regulate television content and has set up the News Broadcasting & Digital Standards Authority, which is empowered to adjudicate complaints and warn, admonish, censure, express disapproval, and fine a broadcaster up to Rs. 1 lakh for violation of the Code.

92 Cable Television Networks (Amendment) Rules, 2021.

93 The Economic Times, India IT Rules: No Coercive Action Against News Broadcasters Association Members, Kerala High Court Tells Centre, July 9, 2021, available at <https://economictimes.indiatimes.com/tech/tech-bytes/india-it-rules-no-coercive-action-against-news-broadcasters-association-members-kerala-high-court-tells-centre/articleshow/84265408.cms?from=mdr>.

Digital Media

Finally, with respect to digital news media outlets, the government requires strict due diligence and has robust notice and take down powers for all platforms,⁹⁴ with social media intermediaries with more than five million users being subject to additional diligence requirements.⁹⁵ There are also special provisions for digital news media outlets, which subject them to a Code of Ethics, and which in turn references the PCI Norms and the Programme Code.⁹⁶

Like broadcasters, publishers of digital news media are required to establish a grievance procedure, establish a self-regulatory body, register the self-regulatory body with the Ministry and comply with decisions of the Government's "Oversight Mechanism."⁹⁷ The News Broadcasters Association, as well as a legal news website, LiveLaw, have challenged these Rules including on the ground that the Oversight Mechanism gives the "[e]xecutive unfettered, unbridled and excessive powers to regulate content of digital news media"⁹⁸ and "makes the executive both the complainant and the judge on vital free speech questions involving blocking and take down of online material."⁹⁹ The Kerala High Court has passed an interim order effectively staying these provisions.¹⁰⁰ These rules have also been criticised by UN Experts

⁹⁴ Rule 3 (b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule 2021, requires intermediaries to prominently display user policies, make reasonable efforts to ensure users do not upload, modify, publish, or transmit information that is "obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, ... or promoting enmity between different groups." Intermediaries are also obligated to remove such content upon notice, maintain an effective grievance redressal mechanism, and provide information to government agencies upon request.

⁹⁵ Additional requirements include appointment of a compliance officer, resident grievance officer, publishing periodic compliance reports, and furnishing information to the Ministry of Electronics and Information Technology upon request. *See Id.* at Rule 4.

⁹⁶ *Id.* at Appendix.

⁹⁷ *Id.* at Chapter 4.

⁹⁸ Press Release, News Broadcasters Association, July 9, 2021, available at https://www.nbdanewdelhi.com/assets/uploads/pdf/97_PRESS_RELEASE_9_7_21.pdf.

⁹⁹ High Court of Kerala at Ernakulam, *Live Law Media Private Limited and Others v. Union of India and Another*, W.p. (Civil) No. 6272 of 2021, available at https://www.livelaw.in/pdf_upload/wpc-live-law-media-pvt-ltd-vs-union-of-india-kerhc-390340.pdf.

¹⁰⁰ Press Release, News Broadcasters Association, July 9, 2021, available at https://www.nbdanewdelhi.com/assets/uploads/pdf/97_PRESS_RELEASE_9_7_21.pdf. Currently, the Delhi High Court is considering a batch of petitions challenging these rules, after having them referred by the Supreme Court of India. Gayatri Malhotra, *Constitutional Challenge to the IT Rules, 2021: Delhi HC Directs Completion of Pleadings*, Internet Freedom Foundation, Nov. 12, 2024, available at <https://internetfreedom.in/delhihc-it-rules-2021-november/#:~:text=Delhi%20High%20Court%20has%20commenced,by%20the%20Union%20of%20India>.

for not conforming to “international human rights norms” and carrying the risk of “jeopardiz[ing] the independence of India’s digital news media.”¹⁰¹

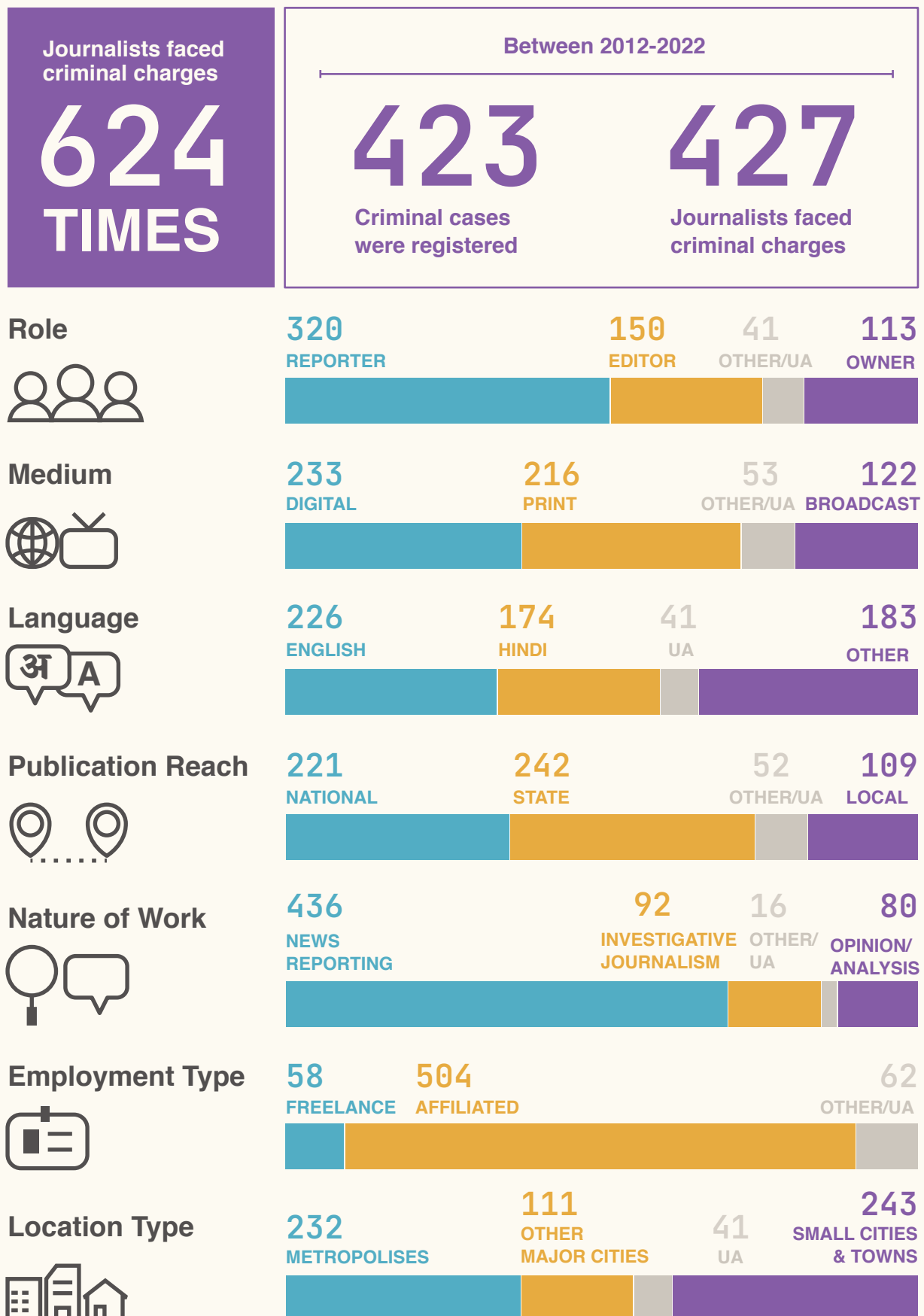
Further details of the regulatory landscape of the media in India, particularly digital media are provided in **Annex E**.

C. Conclusion

As described in this Chapter, due to consolidation and economic conditions, journalists, particularly those at the bottom of the news pyramid, are deeply vulnerable. This vulnerability is likely exacerbated by the government’s many levers of control over news media of all sorts, which have increased following recent amendments to the relevant laws. At the same time, the lack of effective self-regulatory grievance mechanisms means that those aggrieved by the news are more likely than not to approach a police station in the first instance. This sets the stage for the data described in the Chapter that follows.

¹⁰¹ Office of the High Commissioner for Human Rights (OHCHR), Mandates of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on the Right to Privacy, June 11, 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26385>.

Fig 1. Overview





CHARGES FACED BY JOURNALISTS

"If you silence a common man, that would not have a major impact on other people.

If you silence someone in such a position, you can make an example out of it. Instill fear."

- Journalist interviewed

Our data reveals that the charges most frequently invoked against journalists fall into six broad categories: (1) offences against public tranquility (2) criminal intimidation and insult, (3) promoting enmity, (4) defamation, (5) offences against public servants, and (6) offences relating to religion. Offences in the categories of offences against public tranquility, criminal intimidation and insult and promoting enmity were most common (each featured more than 180 times out of 624 incidents).

These are not the most ‘serious’ offences in the Indian Penal Code (IPC). Indeed, the potential penalty for the most common offence in each of the categories is 2-3 years imprisonment.¹⁰² Rather, the features these offences share are that: (1) they are generally quite broadly and vaguely worded (as discussed in greater detail below); (2) they turn on actual or potential feelings, whether of a group or an individual.

Some of the most commonly-invoked offences have a colonial legacy,¹⁰³ and were meant to supposedly diminish the chance of inter-communal conflict and maintain public order. Others, such as defamation and criminal intimidation and insult, are designed to protect individuals. Indeed, reporting on public officials was the most common reason journalists faced cases, being the basis for charges in 147 incidents. FIRs were also commonly filed against journalists reporting on religion or protests.

Importantly, almost every case in the dataset invoked multiple offences—close to 90% of the incidents in the dataset included more than one offence. Several of the most common offences were clubbed together, or with other offences. This indicates that the authorities concerned do not generally narrow down (or likely carefully consider) the offence to be applied to the allegedly ‘criminal’ activity of the journalist, but rather slap a wide range of offences against them, creating a further chilling effect.

At the same time, the use of these charges was not evenly distributed: offences against public servants were disproportionately used against journalists reporting at the state or local-level, or those based in small cities and towns, while defamation was used more against big city journalists, and those reporting in English. A potential explanation could be that offences such as disobeying or obstructing public servants were charged in relation to journalists covering local events on the ground, while defamation, which is prosecuted privately, was pursued by complainants with greater resources. Further, offences geared at limiting disruptions to public order (such as offences against public tranquility and promoting

¹⁰² Sections 504, 153A, 153B(1) 500, 353, and 295A IPC. Only Section 153B(2) is punishable with 5 years imprisonment.

¹⁰³ Siddharth Narrain, Hate Speech, Hurt Sentiment, and the (Im)Possibility of Free Speech, Vol. 51 No. 17 Economic and Political Weekly, Apr. 23, 2016, pg. 120 (“The debate around what we term hate speech today has its history in the policy of colonial rulers, and the belief that Indians were susceptible to religious excitement.”) (discussing Sections 153A, 153B, 295A, 298, and 505 of the IPC); Rajeev Dhavan, Harassing Husain: Uses and Abuses of the Law of Hate Speech, Vol. 35 No. 1/2 Social Scientist, Jan.–Feb. 2007, pgs. 42 (“The offenses that we are concerned with are a legacy of the British.”) (discussing the promulgation of Sections 153A and 295A).

enmity) were used against national-level journalists, as well as against digital media or speech on social media—where the concern was presumably that the message could ‘go viral.’ These differential experiences are explored in this Chapter.

Taken together, our findings suggest that journalists are being prosecuted for core journalistic activity (such as reporting alleged misconduct by public officials), under general, vague laws geared at either preserving public order or vindicating private rights. This is despite the fact that reporting is meant to expose uncomfortable truths, and may indeed have the salutary result of creating widespread concern. Instead, the cases appear to reify established power dynamics.

"[M]y report[ing] . . . wasn't false news or malicious. . . . They tried to bully us but since we didn't budge our back down and refused to take down news articles, they foisted false cases against us. We nevertheless continued what we were doing. Our reporting didn't stop even when I was in custody."

- Journalist interviewed

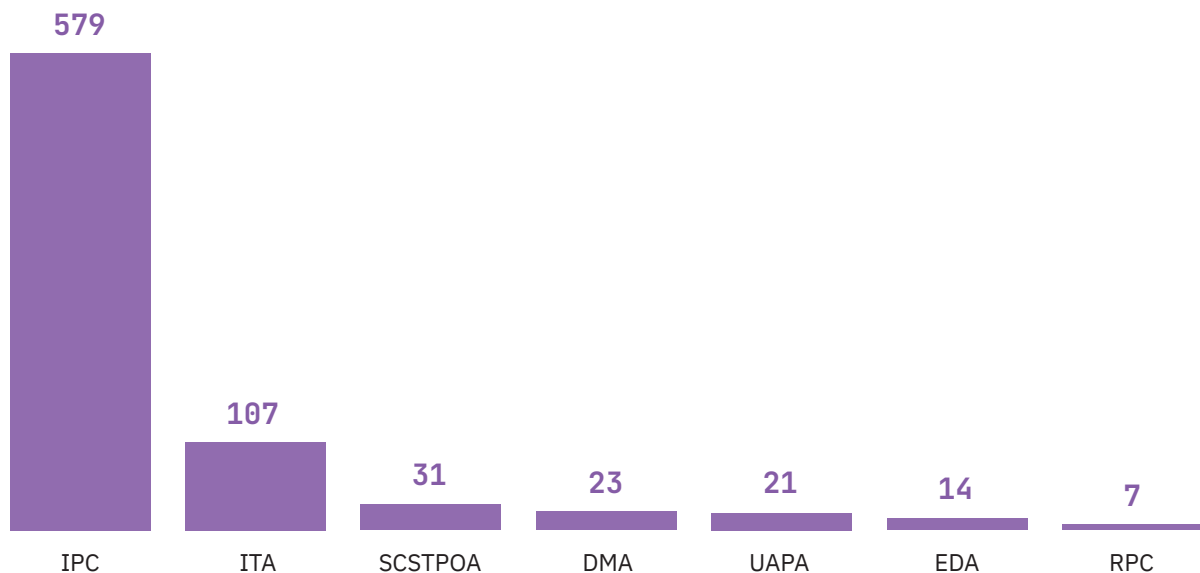
A. Overview

Laws

The vast majority of charges in the dataset involved alleged violation of the Indian Penal Code (a total of 579 out of 624 incidents, or 93%), but a significant minority involved other legislation (290 out of 624, or 46%).

The seven most common laws in the dataset are¹⁰⁴:

Fig 2. Legislations Invoked



Source: Primary Dataset

In many cases, journalists were charged with violating multiple different laws: Over 100 incidents in the dataset involved allegations of breach both of the Indian Penal Code (IPC) and the Information Technology Act, 2000 (ITA), which deals with cybercrimes, while the second most common individual overlap was between the IPC and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCSTPOA), which were charged together a total of 29 times. Other laws were charged less frequently.¹⁰⁵ Importantly, only two cases in the dataset alleged violation of specific media laws— one case was registered under Section 16 of the Cable Television Network Act and one was under Section 4 of the Press and Registration of Books Act. These sections were invoked alongside provisions of the Indian Penal Code.

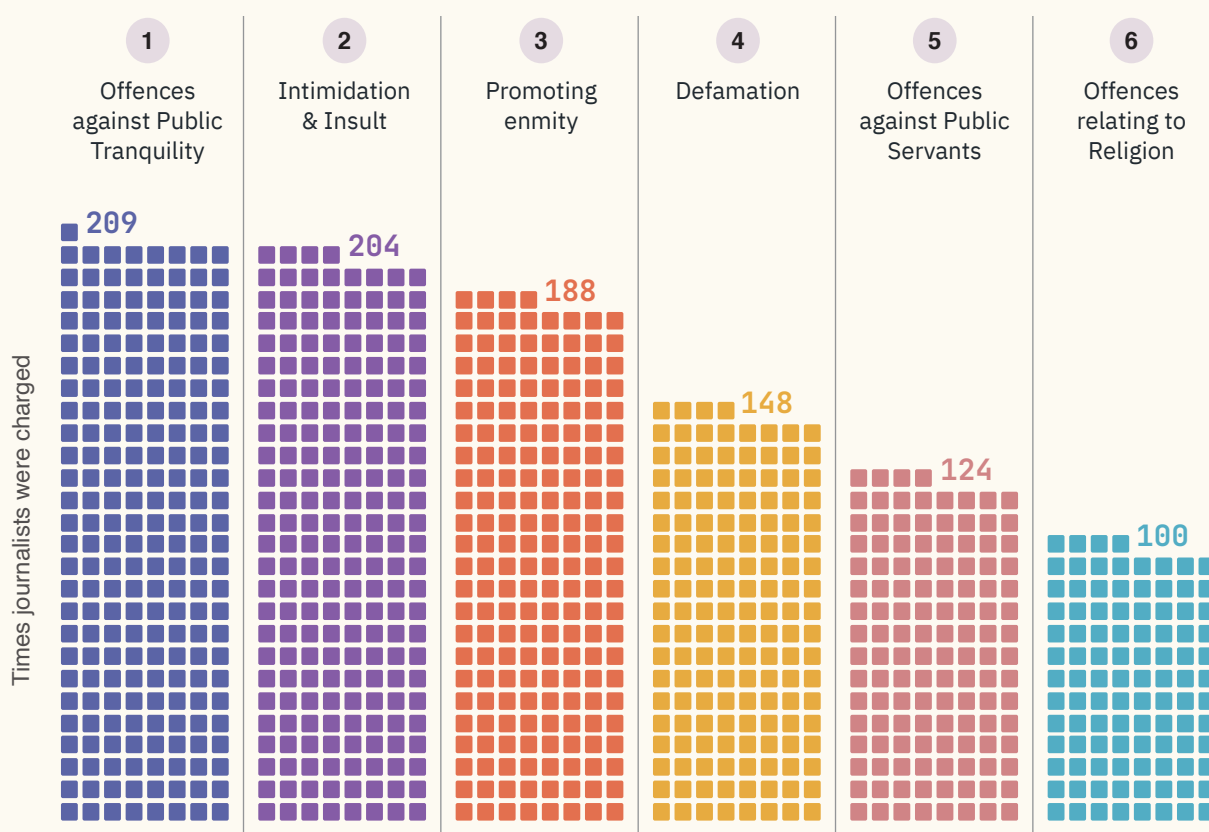
¹⁰⁴ See Annex B for the abbreviations used for each of the laws in the dataset.

¹⁰⁵ The dataset includes a total of over 50 laws, including 19 state laws.

Categories of Offences

As discussed above, journalists were most frequently charged with the following six broad categories of offences:

Fig 3. Categories of Offense



Source: Primary Dataset

The same analysis obtains when the 423 individual criminal cases (FIRs/complaints) are considered.¹⁰⁶

¹⁰⁶ As mentioned above, in several instances, a single FIR or complaint was filed against multiple journalists. Additionally, because most FIRs contained multiple offences, we conducted a “primary offence” analysis to ensure that the most common charges were not simply minor offences added to support more serious allegations. The “primary offence” was identified as the charge carrying the highest potential punishment in each case. This analysis showed that the most frequently invoked primary offences fell into the categories of (1) promoting enmity, (2) offences against public tranquility, (3) offences relating to religion and (4) defamation. This indicates that the pursuit of these charges was the primary basis for filing the FIRs. (Note that in most instances, the “primary offence” was a single offence—the offence with highest punishment. However, in instances where two or more offences carried the same maximum punishment, all such offences were counted when tabulating the most frequent ‘primary offences.’)

As noted above, multiple offence categories applied to almost every incident in the dataset. However, analysis of the offence categories against the journalist profiles reveals some indicative trends, explored in detail below. In broad strokes, promoting enmity was most likely to be charged against journalists in large cities, while criminal intimidation and insult, and offences against public servants, were proportionally the most likely to be charged against journalists in smaller cities and publishing in languages other than English.

ACCUSATIONS against national and local journalists



In one well-known set of cases, six prominent national-level journalists faced FIRs across five different states for reporting and sharing tweets about the death of a protestor during the farmer protests that took place in Delhi on India's Republic Day¹⁰⁷ in 2021.¹⁰⁸ As per reports, the FIRs allege that the journalists had "misreported" and spread "disharmony" by sharing accounts that the protestor had died due to police violence.¹⁰⁹ All ten FIRs registered included offences under the "promoting enmity" cluster.¹¹⁰

In contrast, a local journalist reporting from a village in the State of Madhya Pradesh faced an FIR for covering a protest by the villagers against land acquisition.¹¹¹ As per news reports, the journalist was asking villagers if their demands had been met, whereupon he was interrupted, allegedly manhandled by supporters of local officials and subsequently, an FIR was registered against him and his brother.¹¹² The FIR included charges of assaulting a public servant, obstructing a public servant in discharge of public functions and criminal intimidation.

¹⁰⁷ Republic Day is a national holiday in India commemorating the adoption of the Constitution of India, and the country's transition to a republic, on January 26, 1950.

¹⁰⁸ Journalists Paresh Nath, Rajdeep Sardesai, Mrinal Pande, Vinod Jose, Anant Nath, Zafar Agha and former Minister Shashi Tharoor were implicated in FIRs filed across five different states—Delhi, Haryana, Uttar Pradesh, Madhya Pradesh and Karnataka. The Indian Express, R-Day Violence, Shashi Tharoor, Rajdeep Sardesai Move SC Over FIRs on 'Misleading' Tweets, Feb. 4, 2021, available at <https://indianexpress.com/article/india/r-day-violence-shashi-tharoor-rajdeep-sardesai-move-sc-over-firs-on-misleading-tweets-7172496/>. The report hereafter refers to these as the "Republic Day protest cases."

¹⁰⁹ Alok Pandey & Anurag Dwary, Shashi Tharoor, 6 Journalists Face Sedition for Farmers' Protest Posts, NDTV, Jan. 29, 2021, available at <https://www.ndtv.com/india-news/shashi-tharoor-6-journalists-face-sedition-for-farmers-protest-posts-2359711>.

¹¹⁰ As will be discussed further below, sedition was the primary offence for six of the 10 FIRs, and in three FIRs promoting enmity offences were the primary ones.

¹¹¹ Vishnukant Tiwari, Journalist Covering Local Protest in MP's Singrauli Thrashed, Booked, The Quint, Jan. 21, 2022, available at <https://www.thequint.com/news/india/journalist-shubham-pathak-covering-protest-in-mp-singrauli-thrashed-slapped-with-an-fir#read-more>.

¹¹² *Id.*

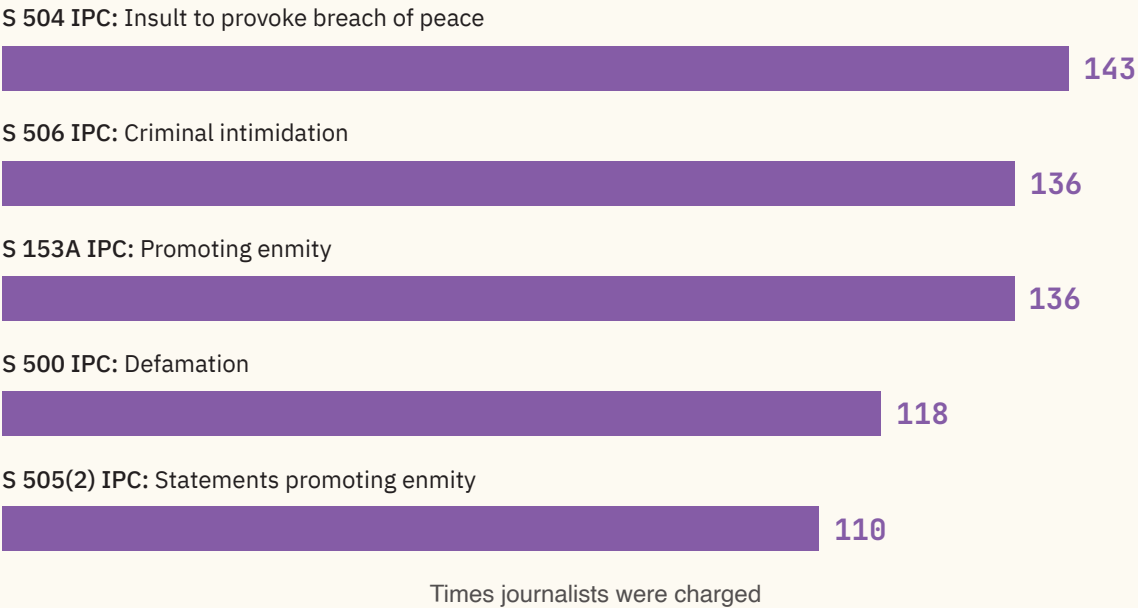
Specific Offences

The five most common specific offences charged (all of them charged more than 100 times in the dataset) were:

- 1 **Insult with intent to provoke breach of peace** under Section 504 of the IPC (part of the ‘intimidation and insult’ cluster);
- 2 **Criminal intimidation** under Sections 503 and 506 of the IPC;
- 3 **Promoting enmity** under Section 153A of the IPC;
- 4 **Criminal defamation** under Sections 499/500 of the IPC; and
- 5 **Statements creating or promoting enmity**, hatred or ill-will between classes under Section 505(2) of the IPC.¹¹³

Further, several other individual offences were frequently invoked, for example sedition, which was invoked 53 times.

Fig 4. Specific Offenses



Source: Primary Dataset

¹¹³ This analysis focuses on substantive offences; provisions such as criminal conspiracy (Section 120B IPC) and criminal acts done with common intention (Section 34 IPC) are separately addressed in the section on “Modes of Liability” below.

Many of these offences are explicitly meant either to protect public order or personal rights. Section 153A, for instance, is an offshoot of the colonial law of sedition.¹¹⁴ And the Indian Supreme Court has explained that “[i]t is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order.”¹¹⁵

By contrast, Sections 504, 503/506, and defamation, are grounded in personal injury. For instance, Sections 503, 504 and 506 are classified as “offences relating to private interests”¹¹⁶ and Section 503 has been described as based in part on ‘intangible threats’ to a person,¹¹⁷ which may not have consequences for public order.

In most cases, the FIR/complaint included more than one offence, and offences mentioned above were frequently clubbed together in the same case. Analysis reveals that Section 153A was frequently clubbed with Section 295A (outraging religious beliefs) and Section 153B (statements prejudicial to national integration), all of which concern public order.¹¹⁸ By contrast, Section 504 was most frequently invoked alongside Section 506, both of which protect private interests.

¹¹⁴ See Siddharth Narain, ‘Disaffection’ and the Law: The Chilling Effect of Sedition Laws in India, Vol. 46 No. 8 Economic and Political Weekly, Feb. 19–25, 2011, pg. 34 (discussing amendments in the British Parliament following the sedition trial of Tilak that “brought in Sections 153-A and 505 of the IPC.”). Indeed, in other jurisdictions, the colonial law of sedition criminalized creating tension between communities. Cf. Sedition Act, 1948, s 3(1)(e) (Malaysia) (defining a seditious tendency to include “promot[ing] feelings of ill will and hostility between different races or classes of the population of Malaysia.”); see also Siddharth Narain, ‘Disaffection’ and the Law: The Chilling Effect of Sedition Laws in India, Vol. 46 No. 8 Economic and Political Weekly, Feb. 19–25, 2011, pg 33 (“The common law of seditious libel governed both actions and words that pertained to citizens and the government, *as well as between communities of persons.*”) (emphasis added). In India, what had been deemed seditious libel was bifurcated between Section 124A and Section 153A.

¹¹⁵ Kedar Nath Singh v. State of Bihar [(1962) Supp (2) SCR (769)]; see also National Law University Delhi, Hate Speech Laws in India, Apr. 2018, s. 3.1.7.2 (“[T]he Court expressly located the constitutionality of Section 505 in the listed exceptions of Article 19(2), that of security of the state and public order.”), available at <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>.

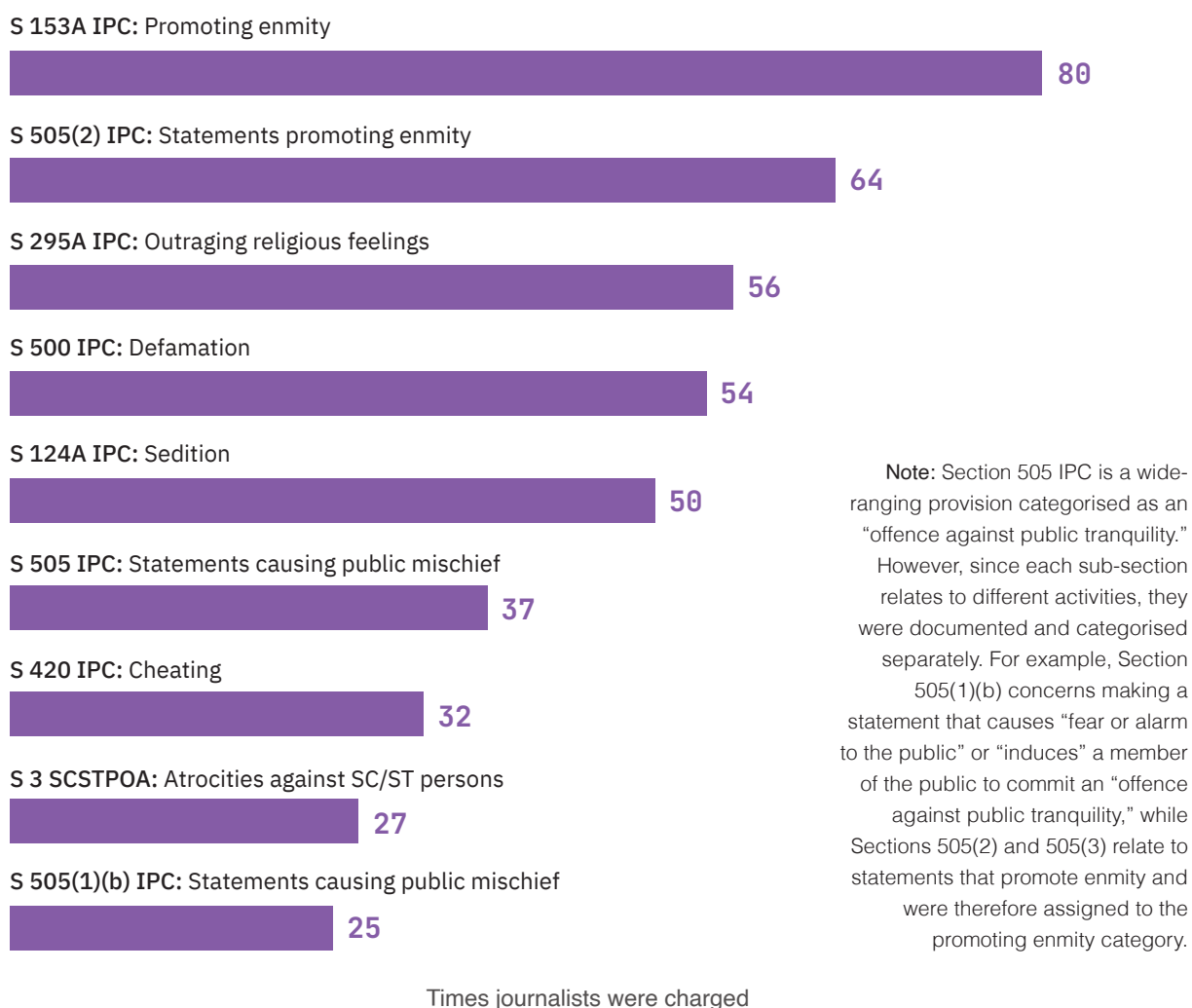
¹¹⁶ Wing-Cheong Chan et al., eds., Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform pg.109, n. 42.

¹¹⁷ Niharika Mukhrjee, The Offense of Criminal Intimidation in the IPC: A Critical Analysis, The Society for Advancement of Criminal Justice (SAJC), Dec. 13, 2022, available at <https://www.nuissacj.com/post/the-offense-of-criminal-intimidation-in-the-ipc-a-critical-analysis> (“The rationale for the criminalization of such an act has been associated with the State’s motive to protect individuals from the ‘fear and disruption’ arising from the communication of threats to cause the mentioned types of injury, and not necessarily to protect individuals from the possibility of the threat actually being realized.”).

¹¹⁸ Section 295A was enacted in response to outrage about a satirical tract regarding the Prophet Mohammed. Siddharth Narain, ‘Disaffection’ and the Law: The Chilling Effect of Sedition Laws in India, Vol. 46 No. 8 Economic and Political Weekly, Feb. 19–25, 2011, pg. 120. Section 153B was added to the IPC in 1972 “to address acts prejudicial to the maintenance of communal harmony and national integrity.” National Law University Delhi, Hate Speech Laws in India, 2018, s. 3.1.3, available at <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>.

An analysis of the most common offences was also conducted by taking only the “primary offence” for each case, i.e., the offence with the highest potential punishment. As described above, the most serious offence i.e. the primary offence, usually dictates the course a case will take—which court can try the case, grant bail, the likelihood of arrest, and so on. The results of this analysis confirm that these offences are indeed the most common ones.¹¹⁹

Fig 5. Specific Offences (Primary Offense)



Source: Primary Dataset

¹¹⁹ Two additional trends of note emerge from this analysis: (1) there is a significant use of a non-speech offence, i.e., Section 420 IPC (cheating); and (2) charges under Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are common, though they are often based on the reporters’ alleged casteist conduct rather than the content of their reporting (as per the sources available). Both of these trends—the use of non-speech offences and allegations predicated upon the reporters’ conduct—are discussed in greater detail below.

As discussed above, these most-frequently-charged offences share certain similarities: In particular, they generally turn on the reaction or alleged impact on a group or a person of the accused's statements. Thus, for instance, five of the top six most frequently charged categories of offences¹²⁰ generally concern *how a reasonable person would react, or the feelings of an individual or group*.

What these offences also have in common is the vagueness of their terminology. Thus, for instance some of the most commonly charged offences use terms such as 'disharmony,' 'ill will,' 'alarm,' 'insult,' and 'provocation.' This makes them prone to misuse.

ACCUSATION against journalist



In 2020, a journalist faced charges for criticising the Prime Minister and the Government's response to the COVID-19 pandemic on his YouTube show. The FIR invoked several provisions of the Indian Penal Code including Section 124A—sedition defined as “exciting disaffection towards the Government”—and Section 505 IPC, which criminalizes publishing or circulating a “statement, rumour or report,” with the intent to cause, or that is likely to cause, “fear or alarm to the public” or “feelings of enmity, hatred or ill-will” between different groups. The Supreme Court ultimately quashed the FIR on the ground that no offence had been made out.¹²¹

Around the world, courts are increasingly striking down vague laws on freedom of expression grounds. The UN Human Rights Committee has stressed that legislation that applies to speech must be formulated “with sufficient precision to enable an individual to regulate his or her conduct accordingly ... A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”¹²² And the same principle has been applied by regional human rights courts.¹²³

¹²⁰ Defamation, Intimidation and Insult, Offences Against Public Tranquillity, Offences Against Religion, Promoting Enmity.

¹²¹ Vinod Dua v. Union of India and Ors., Supreme Court of India, Judgment dated 3 June 2021, in Writ Petition (Crl. No. 154/2020).

¹²² UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 25.

¹²³ See, e.g., EACJ, Media Council of Tanzania v. The Attorney General of the United Republic of Tanzania, Reference No. 2 of 2017, Mar. 28, 2019 ; ECtHR, Akçam v. Turkey, App. No. 27520/07, Oct. 25, 2011, para. 87.

📍 SOUTH AFRICA

At the national level, likewise, the South African Constitutional Court struck down a law forbidding the broadcast of “any material which is indecent or obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of a population or likely to prejudice the safety of the State or the public order or relations between sections of the population” on the ground that “[t]he prohibition [on materials likely to prejudice relations between sections of the population] is so widely-phrased and so far-reaching that it would be difficult to know beforehand what is really prohibited or permitted.”¹²⁴

📍 INDONESIA

The Constitutional Court in Indonesia has recently struck down provisions criminalizing the dissemination of “false news or information” or “uncertain or exaggerated or incomplete information” that causes or is likely to cause “disruption among the public,” finding that the absence of definition of these terms “caused a disparity of interpretation in court proceedings,” and there would be “multiple interpretations” for whether a situation of “disruption” was the result of the news being disseminated.¹²⁵

📍 KENYA

Similarly, in Kenya, a High Court struck down a law that criminalized “send[ing] a message or other matter that is grossly offensive or of an indecent, obscene or menacing character” or “send[ing] a message that [a person] knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person.” The Court noted that “there is no definition in the Act of the words used. Thus, the question arises: what amounts to a message that is ‘grossly offensive’, ‘indecent’ obscene’ or ‘menacing character’? Since no definition is offered in the Act, the meaning of these words is left to the subjective interpretation of the Court, which means that the words are so wide and vague that their meaning will depend on the subjective interpretation of each judicial officer seized of a matter.”¹²⁶

¹²⁴ Constitutional Court of South Africa, *Islamic Unity Convention v. Independent Broadcasting Authority and Others* (CCT36/01) [2002] ZACC 3; 2002 (4) SA 294; 2002 (5) BCLR 433, Apr. 11, 2002, para. 42, available at <https://www.saflii.org/za/cases/ZACC/2002/3.html>.

¹²⁵ Constitutional Court of the Republic of Indonesia, Decision No. 78/PUU-XXI/2023, Mar. 6, 2024, para. 3.18.

¹²⁶ High Court of Kenya at Nairobi, *Andare v. Attorney General et al.*, Judgment, Apr. 19, 2016, para. 77.

INDIA

The Indian Supreme Court has previously struck down laws that turn on unclear wording.¹²⁷ At the same time, despite their vagueness in wording, the Supreme Court of India has also upheld some of these laws, including colonial provisions like Section 295A of the IPC¹²⁸ (outraging religious feelings or insulting religious beliefs). Likewise, the Supreme Court has upheld the constitutionality of criminal defamation,¹²⁹ despite the fact that the UN Human Rights Committee has recommended decriminalization of defamation, and the Committee and regional human rights courts have stressed that imprisonment is never an appropriate penalty.

Other laws are, however, still due to be considered by the Supreme Court. While the Supreme Court has previously upheld the sedition law, that judgment is due to be reconsidered,¹³⁰ and a petition challenging numerous sections of the IPC, including Sections 153A, 295A and 505, on freedom of expression grounds is pending before the Court.¹³¹

¹²⁷ Section 66A of the IT Act purported to criminalize “offensive communication,” which was defined as “(a) any information that is grossly offensive or has menacing character; or (b) any information which [the sender] knows to be false, but [is transmitted] for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages.” In 2015, the Supreme Court struck down Section 66A on vagueness grounds. *Shreya Singhal v. Union of India*, [AIR (2015) SC 1523]. The Court found that Section 66A used “completely open ended, undefined and vague language.” Notably, though, it held that provisions of the IPC that used some of the same terms, such as ‘annoyance,’ were in more “narrowly and closely defined contours of offences.” Further, despite this decision, six journalists in our dataset faced charges under Section 66A—even after the law had been struck down. This issue was taken to the Supreme Court under a contempt of court petition, and the Court issued directions to ensure strict compliance with its earlier decision, including forbidding registering any cases alleging violation of Section 66A. Cf. *People’s Union for Civil Liberties v. Union of India*, [(2022) LiveLaw SC 846].

¹²⁸ *Ramji Lal Modi v. State of U.P.*, [(1957) SCR 860].

¹²⁹ *Subramaniam Swamy v. Union of India*, [(2016) 7 SCC 221].

¹³⁰ The Supreme Court has in recent years indicated that “the rigours of Section 124-A IPC are not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime.” *S.G. Vombatkere v. Union of India* [(2022) 7 SCC 433].

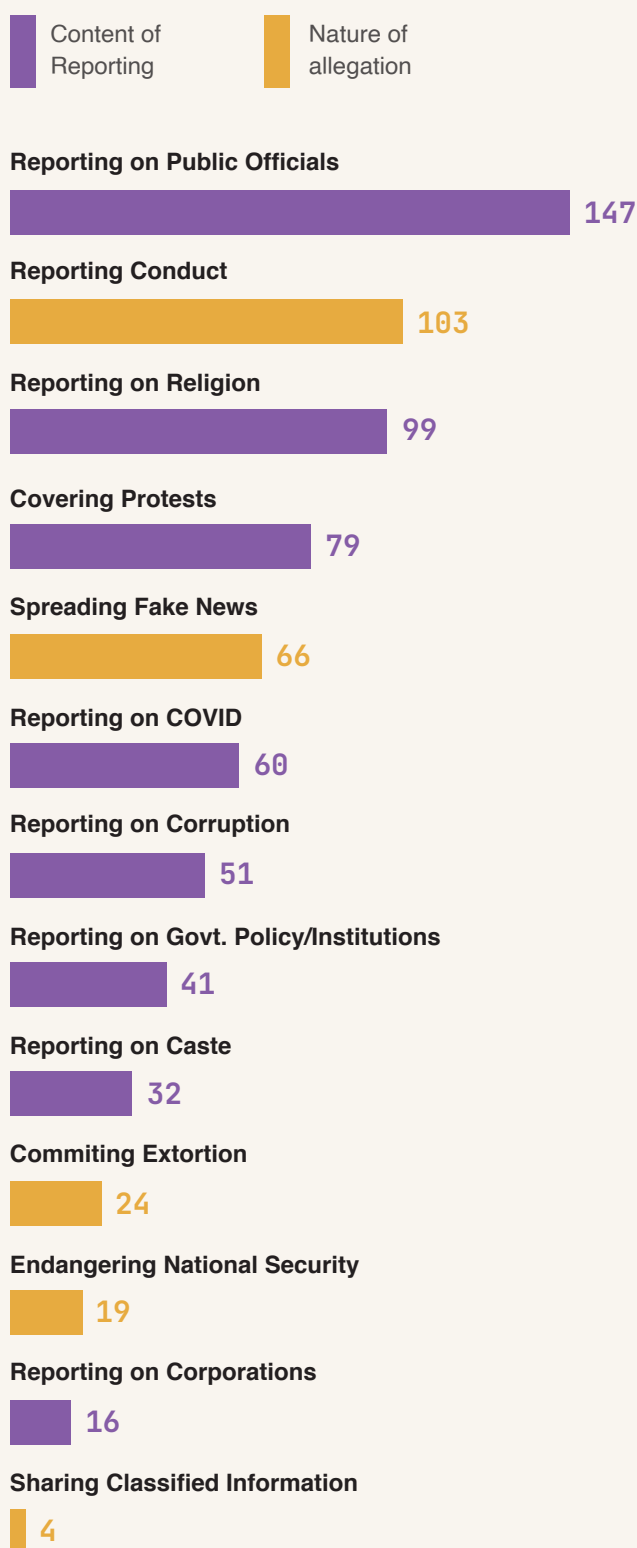
¹³¹ See *Subramanian Swamy v. Union of India*, [W.P. (CrI.) No. 69 of 2015 (SC)]; see also Apoorva Mandhani, *Subrahmanyian Swamy Challenges the Validity of Half Dozen Sections of IPC as They Violate Right to Free Speech and Expression; Justice Lalit Recuses Himself*, Live Law, May 21, 2015, available at <https://www.livelaw.in/subrahmanyian-swamy-challenges-the-validity-of-half-dozen-sections-of-ipc-as-they-violate-right-to-free-speech-and-expression-justice-lalit-recuses-himself>.

Basis for Charges

Our dataset revealed that reporting on public officials was the most common reason journalists faced charges, the basis for charges in 147 incidents. The second most common reason was for reporting on religious matters (99 times), while the third most common was reporting on protests (79 times). Significantly, in over 100 incidents, the charges related to the reporters' alleged conduct while reporting, instead of what they were reporting on. Due to a multiplicity of charges, often cases fell into more than one category.

The underlying conduct/allegations fell into the following categories:

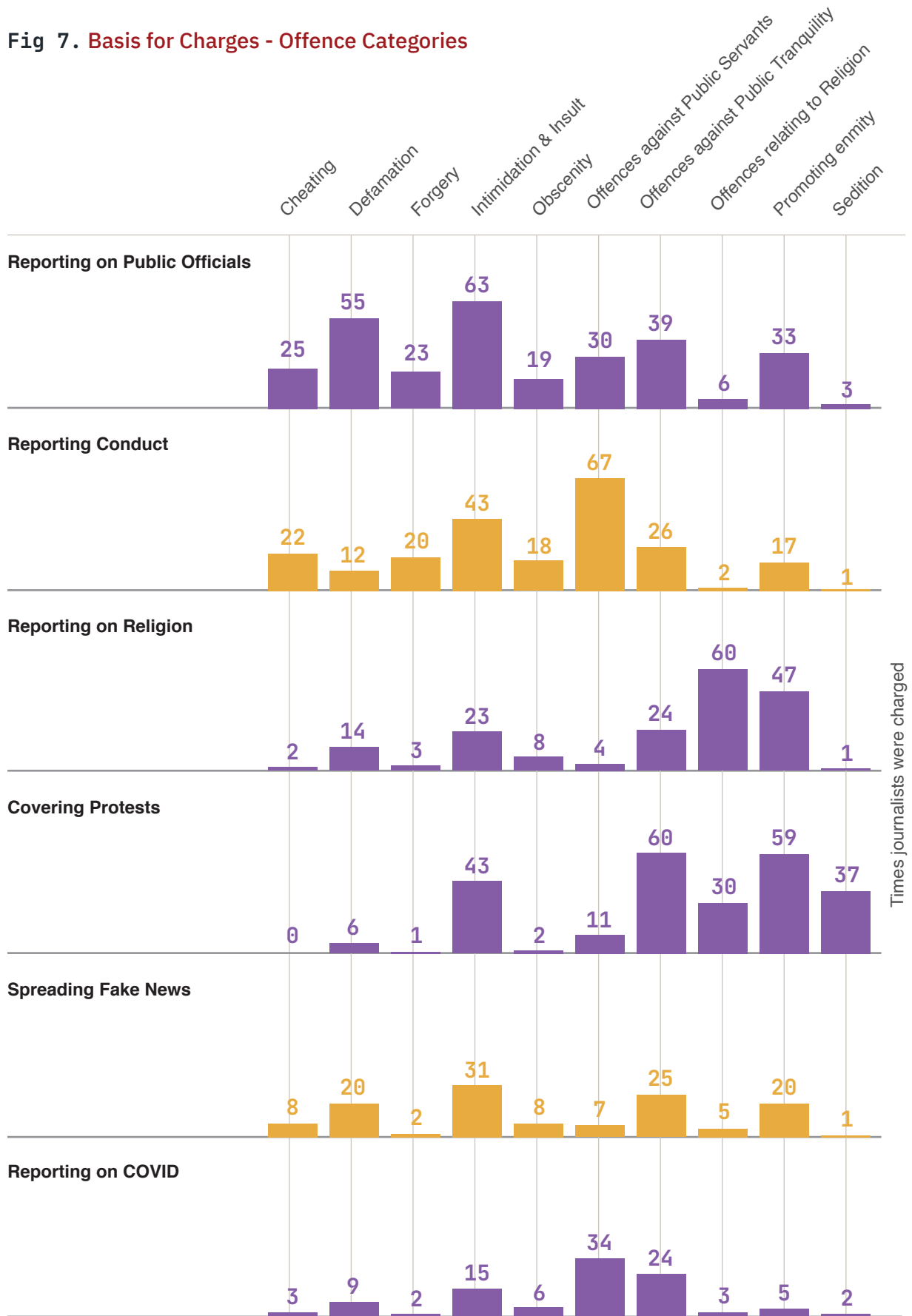
Fig 6. Basis for Charges



Times journalists were charged

Source: Primary Dataset

Fig 7. Basis for Charges - Offence Categories



Source: Primary Dataset

Interestingly, reporting on public officials most commonly attracted intimidation and insult charges, while reporting on religious issues attracted charges in the offences relating to religion category and reporting on protests attracted charges relating to promoting enmity, offences against public tranquility, and in some cases sedition.¹³²

These patterns reveal that these cases protect individuals and institutions in power—the reputation of public officials is protected to avoid challenge to existing power structures, while reporting on religion or on protests is discouraged because of the supposed risks of creating inter-communal or citizen-government conflict.

Reporting on COVID generally yielded charges in the offences against public tranquility and offences against public servants clusters. Importantly, journalists in small cities and towns were disproportionately charged for their reporting on COVID, as compared to journalists in larger cities.

ALLEGATION against journalist in rural district



A journalist from a rural district in the State of Chhattisgarh faced an FIR for reporting on alleged police corruption during the COVID-19 lockdown.¹³³ Some migrant workers had alleged that they bribed local police officials to evade the lockdown restrictions on movement. As per reports, while the journalist was trying to record a video of the workers, police officials on the spot assaulted him and confiscated his phone and an FIR was registered against him.¹³⁴ The FIR invokes offences such as Sections 186 (obstructing a public servant in discharge of public functions), 353 (assaulting a public servant), 294 (obscene acts) and 506 (criminal intimidation) against the journalist, alleging that the journalist refused to obey social distancing orders and assaulted and abused the police officers when he was told to do so.¹³⁵

¹³² These trends only reflect the most frequent charges for each kind of reporting; it is not exhaustive.

¹³³ Shiv Kuar Chaurasia, Threats, Intimidation, Ransom Demands and Arrest of Journalists Shiv Kumar Chaurasia Under Fabricated Charges by Chhattisgarh Police, Human Rights Defenders' Alert India, available at <https://hrdaindia.org/threats-intimidation-ransom-demands-and-arrest-of-journalist-shiv-kumar-chaurasia-under-fabricated-charges-by-chhattisgarh-police>.

¹³⁴ *Id.*

¹³⁵ FIR No. 0042 of 2020, PS Basantpur, dated 21 April 2020.

B. Offences Against Public Tranquility

The ‘offences against public tranquility’ cluster was invoked a total of 209 times, 33% of the total in our dataset. The most common offence in this cluster is Section 153B—making statements “prejudicial to national integration.”¹³⁶ Other common offences in this category are those concerning riots and unlawful assemblies, including Section 153 (giving provocation with the intent to cause riot),¹³⁷ Section 149 (membership of unlawful assembly),¹³⁸ and Section 147

136 The Indian Penal Code, Act No. 45 of 1860, Section 153B: “(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise, — (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India, or (c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both. (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.” While Section 153B does involve inciting hatred, ill-will, or hostility between different groups, it is specifically titled “Imputations, assertions prejudicial to national integration,” and the objective is to prevent undermining national unity, rather than protecting the groups themselves. This is why it has been categorized as an ‘offence against public tranquillity’ rather than part of the ‘promoting enmity’ cluster.

137 *Id.* at Section 153: “Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

138 Section 149 makes every member of an unlawful assembly liable for an offence that may be committed by any member in furtherance of the common object of that assembly. See *Bharat Soni v. State of Chhattisgarh*, [(2012) 12 SCC 657], para. 14; *Manjit Singh v. State of Punjab*, [(2019) 8 SCC 529], para. 14.2. Section 141 of the IPC defines an ‘unlawful assembly’ as a gathering of five or more persons having a common unlawful object—a list of ‘unlawful objects’ is included in the Section: “To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or Second.—To resist the execution of any law, or of any legal process; or Third.—To commit any mischief or criminal trespass, or other offence; or Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

(rioting)¹³⁹ of the IPC. Section 505¹⁴⁰ of the IPC, and specifically sub-section 505(1)(b) (statements against public tranquility), was also charged frequently. Offences under this category that were invoked during the COVID-19 pandemic, such as those under the Disaster Management Act, are discussed in a separate section below.

These offences were invoked against journalists of all profiles. However, a higher proportion of the accused were journalists based in metropolises, reporting in publications with a national reach and reporting in English. Further these offences were more common for reporting in the online/digital space, as compared to print or broadcast.

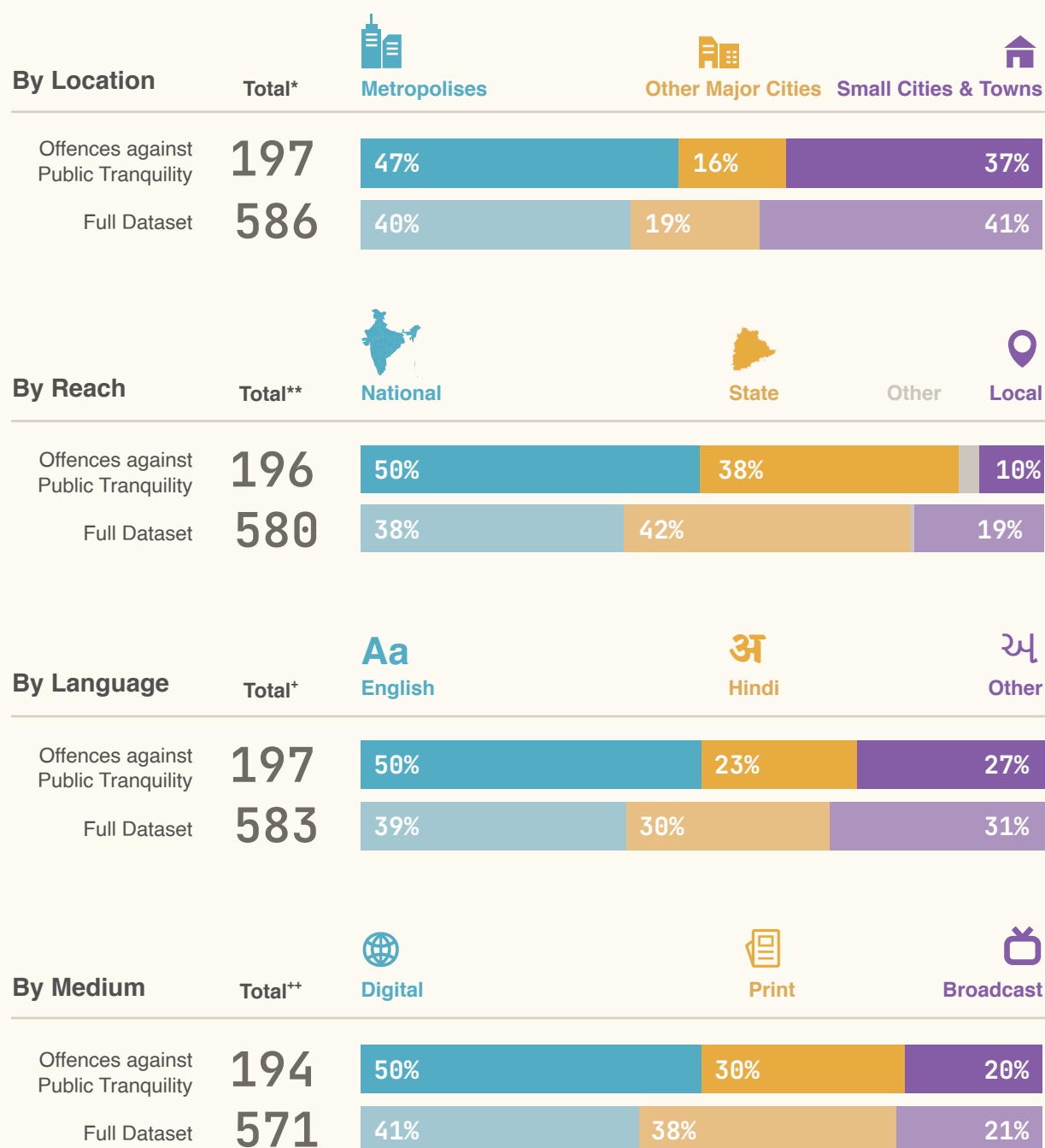
One potential explanation for this is that these offences are among those geared at limiting disruptions to public order. That is, the authorities may pursue journalists with national-level audiences, or those reporting online, with a view to minimizing the perceived consequences of their reporting. Indeed, Section 153B was added to the IPC in 1972 “to address acts prejudicial to the maintenance of communal harmony and national integrity.”¹⁴¹

The fact that these offences were used out of concern for “public disorder” is borne by the data—75% of times where journalists were reporting on protests, charges under this cluster were invoked.

¹³⁹ Section 146 defines rioting as the use of force or violence by any member of an unlawful assembly in pursuance of its common object. See *Lakshman Singh v. State of Bihar*, [(2021) 9 SCC 191], para. 14. Section 147 extends the punishment up to a term of two years.

¹⁴⁰ The Indian Penal Code, Act No. 45 of 1860, Section 505: “(1) Whoever makes, publishes or circulates any statement, rumour or report, — (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. (2) Statements creating or promoting enmity, hatred or ill-will between classes.— Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both. (3) Offence under sub-section (2) committed in place of worship, etc.— Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine. (Exception)— It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.”

¹⁴¹ National Law University Delhi, *Hate Speech Laws in India*, Apr. 2018, s. 3.1.3.

Fig 8. Offences against Public Tranquility

*Total incidents with known location type

**Total incidents with known reach

*Total incidents with known language

**Total incidents with known medium

Source: Primary Dataset

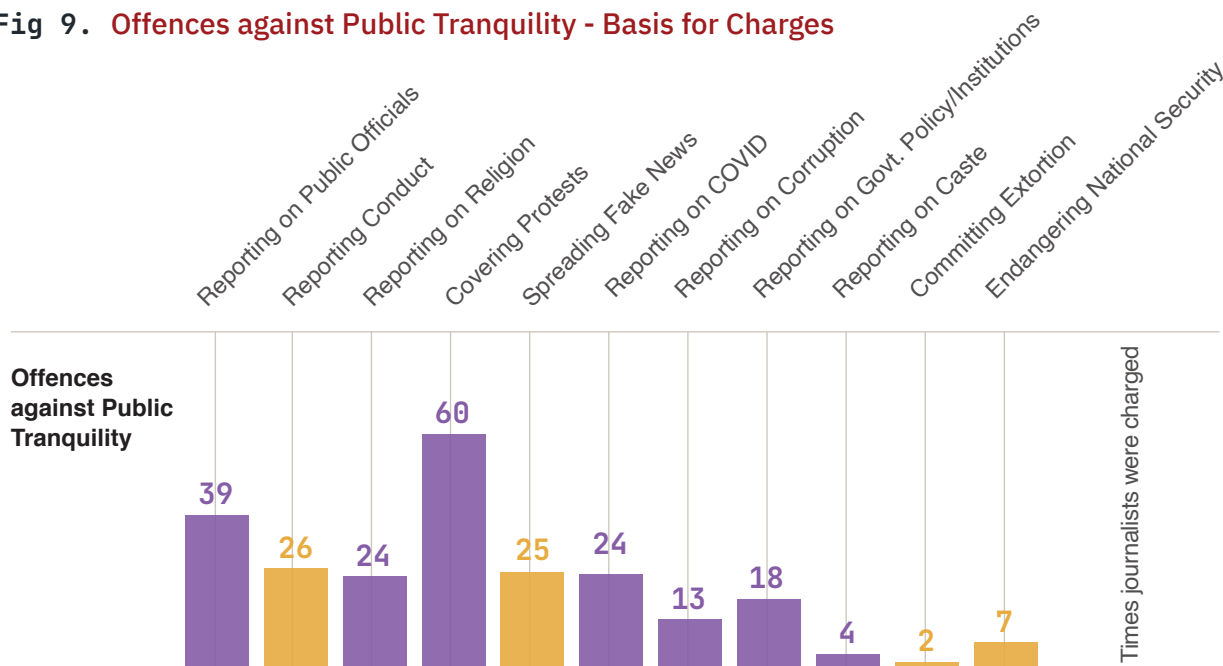
ALLEGATION against four journalists



For instance, four journalists in Uttar Pradesh faced charges of “inciting a violent mob” protesting against the Citizenship Amendment Act, India’s controversial citizenship law, in 2019.¹⁴² The offences invoked against them included Sections 147, 148 and 149 IPC, along with other offences against public servants.¹⁴³ The journalists filed a petition seeking quashing of the FIR on the ground that they were merely covering the incident and had been falsely implicated by the police.¹⁴⁴ The High Court declined the relief, stating the allegations would have to be tested at trial.

These offences were also invoked for reporting on public officials, for journalists’ conduct while reporting and COVID-19-related reporting. The underlying reporting or allegations that led to “offences against public tranquility” is as under:

Fig 9. Offences against Public Tranquility - Basis for Charges



Source: Primary Dataset

¹⁴² Akshita Saxena, [Anti-CAA Protests] Allahabad HC Dismisses Plea to Quash FIR Against 4 Journalists Booked For Inciting Violent Mob [Read Order], Live Law, Mar. 8, 2020, available at <https://www.livelaw.in/news-updates/anti-caa-protests-allahabad-hc-dismisses-plea-to-quash-fir-against-4-journalists-booked-for-inciting-violent-mob-read-order-153602>.

¹⁴³ Afzal Quraishi and 3 Ors. v. State of U.P. and 3 Ors, Allahabad High Court, Order dated 06 March 2020 in Criminal Misc. Writ Petition No. 4245/2020.

¹⁴⁴ *Id.*

This wide-range of activities demonstrates that police invoke these offences against journalists in a wide variety of circumstances—the only consistent trend being the use against those covering protests/local clashes.

ALLEGATION against journalist



A journalist from the state of Telangana, who as per reports was critical of the then-ruling party, was reportedly arrested/abducted by masked men in plain-clothes when he stepped out to buy groceries in June 2021.¹⁴⁵ His arrest was pursuant to an FIR registered in February 2021 pertaining to clashes between a local tribe and the police that he was covering for the local broadcaster that he worked for at the time.¹⁴⁶ The FIR was registered under Sections 143, 144, 147, 148, 149 (among others) and alleged that the journalist participated in the clashes.¹⁴⁷

The use of Sections 143-149 against journalists suggests that the police may often make no difference between those covering and participating in protests or allegedly unlawful assemblies.

Under international law, even if there are sporadic acts of violence at a protest, participants who remained peaceful should not be held responsible for violence committed by others at a protest.¹⁴⁸ It is only when

¹⁴⁵ Nitin B., Tolivelugu Journalist Raghu Arrested from Hyderabad, Congress and BJP Condemn Move, The News Minute, June 3, 2021, available at <https://www.thenewsminute.com/telangana/tolivelugu-journalist-raghu-arrested-hyderabad-congress-and-bjp-condemn-move-150020>; CPJ, Indian Journalist Ganji Raghu Arrested for Alleged Rioting, June 9, 2021, available at <https://cpj.org/2021/06/indian-journalist-ganji-raghu-arrested-for-alleged-rioting/>.

¹⁴⁶ CPJ, Indian Journalist Ganji Raghu Arrested for Alleged Rioting, June 9, 2021, available at <https://cpj.org/2021/06/indian-journalist-ganji-raghu-arrested-for-alleged-rioting/>.

¹⁴⁷ FIR No. 20 of 2021, dated 7 February 2021.

¹⁴⁸ UNHRC, General Comment No. 37 on the Right of Peaceful Assembly, UN Doc. CCPR/C/GC/37, Sept. 17, 2020, para. 17 (“Moreover, isolated acts of violence by some participants should not be attributed to others, to the organizers or to the assembly as such. Thus, some participants in an assembly may be covered by article 21, while others in the same assembly are not.”); see also European Court of Human Rights (ECtHR), *Frumkin v. Russia*, App. No. 74568/12, Jan. 5, 2016, para. 99 (“[A]n individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.”); compare Inter-American Court of Human Rights (IACtHR), *Women Victims of Sexual Torture in Atenco v. Mexico*, Nov. 28, 2018, para. 169 (“[N]o information or evidence has been provided that any of them [the 11 women targeted by the police] were committing violent acts, resisting authority in any way, or carrying weapons.”), with *Id.* para. 175 (“In this case, although it is true that some protesters resorted to violence, the seven women referred to above were carrying out peaceful activities. In this regard, the right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature.”).

violence is “*manifestly widespread* within the assembly, participation in the gathering as such is no longer protected” under the ICCPR.¹⁴⁹ The European Court of Human Rights has also held that newsgathering by a journalist during a protest/demonstration is protected under the right to freedom of expression and that prosecution of a journalist for such activities must be subject to “strict scrutiny.”¹⁵⁰

Even as per the Indian Supreme Court, determination of the common object of an unlawful assembly is a question of fact that has to be assessed keeping in view various factors including the nature of the assembly, the arms carried by the members, if any, and the behavior of the members at or near the scene.¹⁵¹ Mere presence at a protest would not justify imposing criminal charges. Yet, journalists reporting on protests faced criminal charges in close to 80 incidents in the dataset, with most of them including at least one offence from this cluster.

Section 153B, which relates to statements that can spread “disharmony or feelings of enmity or hatred or ill-will” among “members of any religious, racial, language or regional group or caste or community,” also fails to conform to the requirements of international law. The Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred, issued by the UN, requires that states “consider including robust definitions of key terms such as hatred, discrimination, violence, hostility, among others” so as to avoid opening the door to prosecutions based on criticism, insult, and inappropriate words.¹⁵² Yet, Section 153B uses vague undefined terms, and turns on audience feelings, making it prone to misuse by those who feel offended by a journalist’s work. Further, contrary to international standards, it does not articulate a clear “harm standard”, as will be discussed in the section on “promoting enmity” below.

Despite these concerns, many of the offences in this cluster have been incorporated into the BNS without change.

IPC → BNS

Section 197 of the BNS incorporates Section 153B IPC without any changes. Clauses (1), (2), (3), (4) and (5) of Section 189 of the BNS accommodate and verbatim reproduce Sections 141, 142 & 143, 145, 144 and 151 of the IPC, respectively, while Section 149 is replicated in Section 190, BNS. Finally, Section 353(1)(b) of the BNS corresponds to Section 505(1)(b) with two changes that include publication/circulation of “false information” as well as publication/circulation through electronic means.

¹⁴⁹ UNHRC, General Comment No. 37 on the Right of Peaceful Assembly, UN Doc. CCPR/C/GC/37, Sept. 17, 2020, para. 19 (emphasis added).

¹⁵⁰ ECtHR, Butkevich v. Russia, App. No. 5865/07, Feb. 13, 2018.

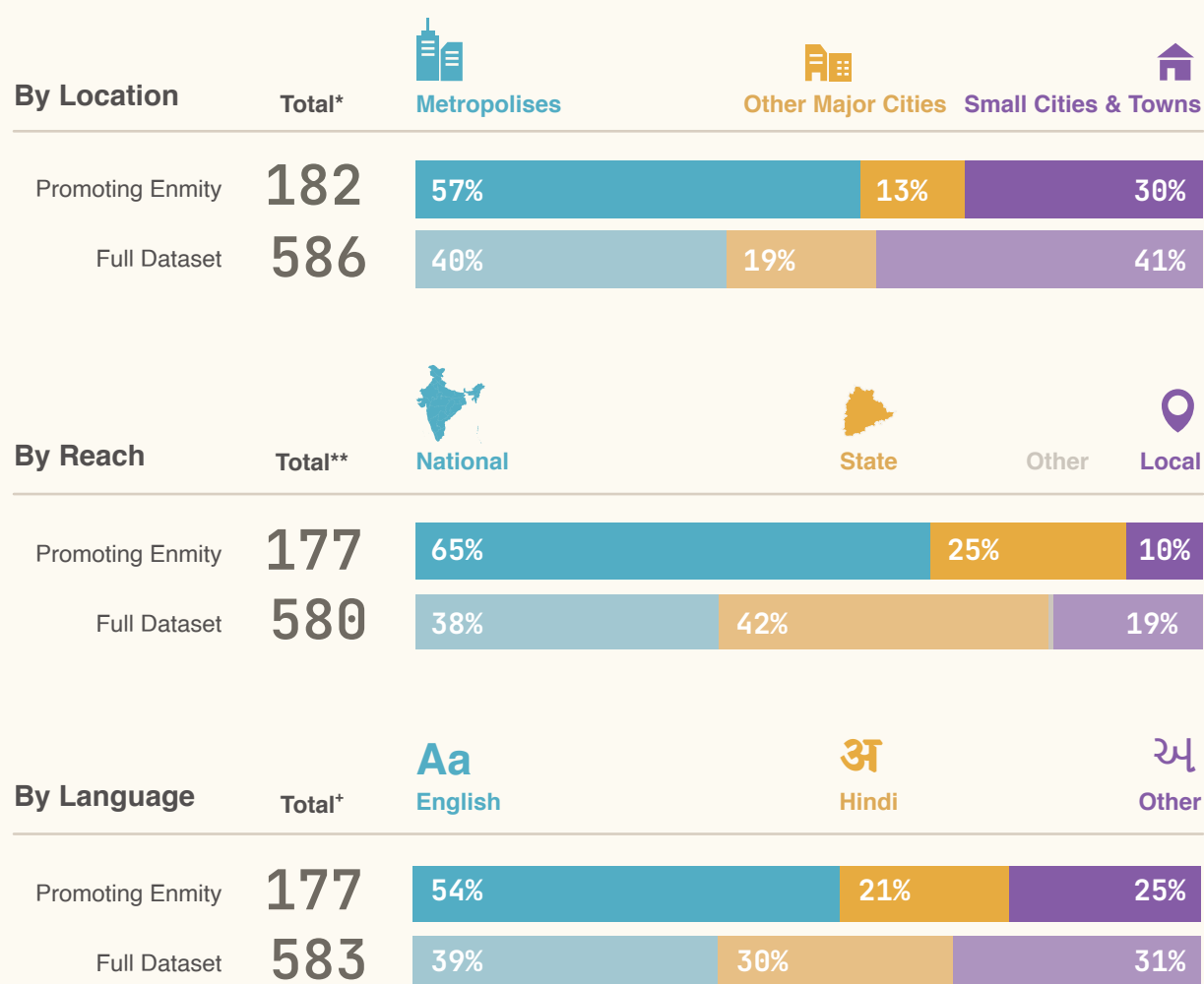
¹⁵¹ Bharat Soni v. State of Chhattisgarh [(2012) 12 SCC 657].

¹⁵² See OHCHR, The Rabat Plan of Action, Oct. 5, 2012, para. 21, available at <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>; UN Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/22/17/Add.4, Jan. 11, 2013, available at https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

C. Promoting Enmity

The promoting enmity cluster was charged a total of 188 times, almost 30% of the total in our dataset.

Fig 10. Promoting Enmity



*Total incidents with known location type

*Total incidents with known language

**Total incidents with known reach

Source: Primary Dataset

Within the cluster, Sections 153A,¹⁵³ 505(2)¹⁵⁴ and 505(1)(c)¹⁵⁵ were charged most frequently.

Promoting enmity offences were charged significantly more frequently against journalists based in major metropolises, and against those writing for publications with a national reach and in English. They were also charged most frequently against journalists in the digital space.

As evident in Fig. 10, while journalists reporting in English or in publications with a national reach featured about 40% in the overall dataset, they featured 55-65% in the incidents involving promoting enmity charges. One potential explanation for this trend is these charges targeted speech with wide reach. For instance, “controversial remarks” made by journalists with a *national* audience led to cases being registered across many states—as in the Republic Day protest cases mentioned above (10 FIRs were registered across five states against six journalists). Other national-level journalists also faced multiple FIRs across different states under “promoting enmity charges.”¹⁵⁶

Similar to offences against public tranquility, these offences, which have a colonial legacy,¹⁵⁷ are meant

153 The Indian Penal Code, Act No. 45 of 1860, Section 153A: Whoever “by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial [sic], language or regional groups or castes or communities” or “commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility [sic]” may be punished with up to three years’ imprisonment, fine, or both.

154 *Id.* at Section 505(2): “Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

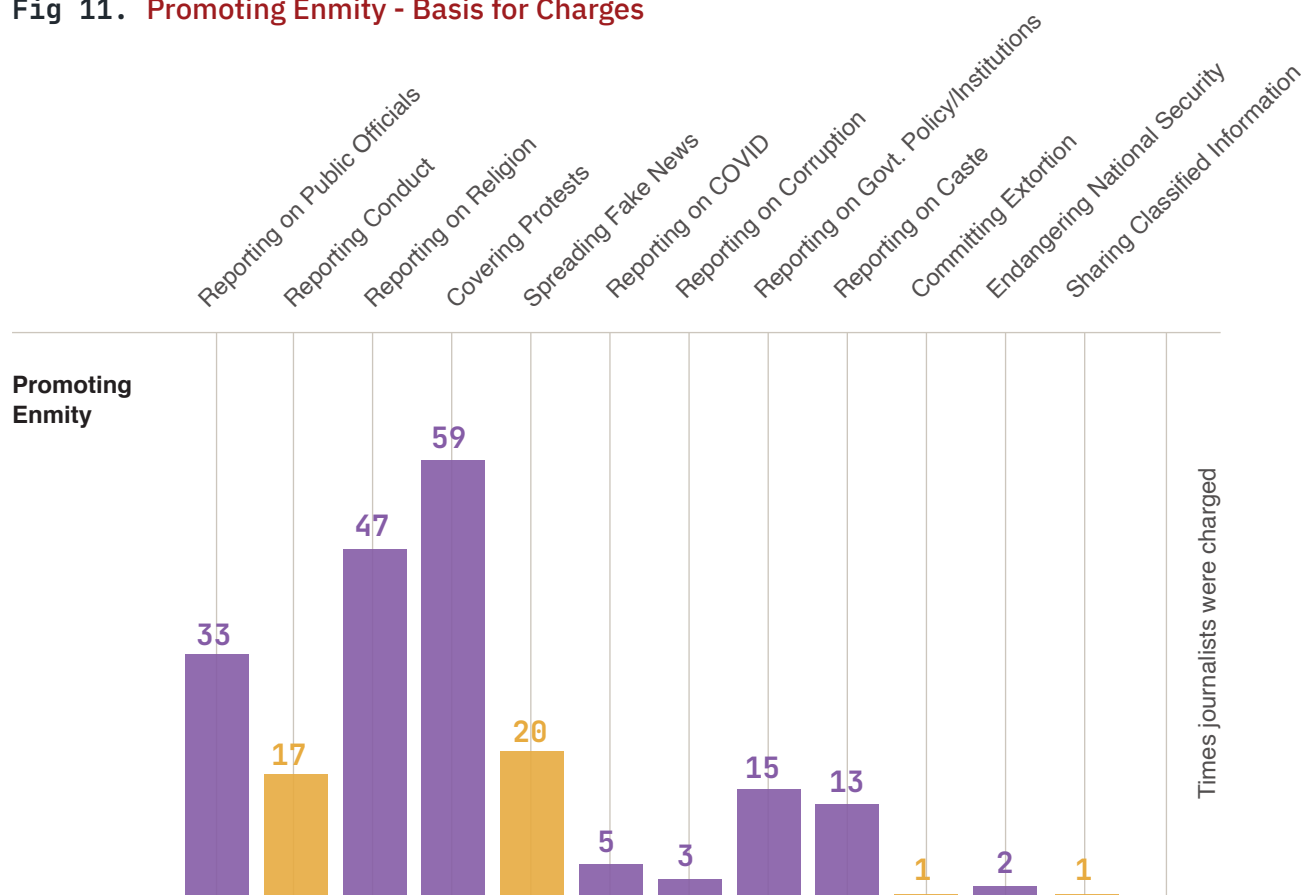
155 *Id.* at Section 505(1)(c): “Whoever makes, publishes or circulates any statement, rumour or report . . . (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

156 See Arnab Ranjan Goswami v. Union of India, Supreme Court of India, Judgment dated 19 May 2020; The Hindu, Prophet Remark Row: Supreme Court Transfers FIRs Against Navika Kuar to Delhi Police, Sept. 24, 2022, available at <https://www.thehindu.com/news/national/prophet-row-sc-transfers-firs-against-journalist-navika-kumar-to-delhi-police/article65925761.ece>; Kavitha Iyer, A Fact Checker Faces Threats, Criminal Cases For Drawing Attention To Hate Speech By Hindu Extremists, Article 14, June 10, 2022, available at <https://article-14.com/post/a-fact-checker-faces-threats-criminal-cases-for-drawing-attention-to-hate-speech-by-hindu-extremists-62a2abc1e66e0>.

157 As mentioned above, Section 153A was an offshoot of the colonial-era sedition law. See *supra* note 114; see also *supra* note 104 (“The debate around what we term hate speech today has its history in the policy of colonial rulers, and the belief that Indians were susceptible to religious excitement.”) (discussing Sections 153A, 153B, 295A, 298, and 505 of the IPC); Rajeev Dhavan, Harassing Husain: Uses and Abuses of the Law of Hate Speech, Vol. 35 No. 1/2 Social Scientist, Jan.–Feb. 2007, pg. 42 (“The offenses that we are concerned with are a legacy of the British.”) (discussing the promulgation of Sections 153A and 295A).

to diminish the chance of inter-communal conflict, with a view to keeping public order. This is reflected in the data—these offences were most commonly invoked against reporting on protests or religious issues.

Fig 11. Promoting Enmity - Basis for Charges



Source: Primary Dataset

Both Section 153A and Section 505(2) IPC ostensibly seek to prevent promotion of “feelings of enmity, hatred or ill will” between different communities.¹⁵⁸ While the Indian Supreme Court has held that the effect of the words has to be judged by the standards of a reasonable person¹⁵⁹ and that mere passive delivery of facts and opinions would not amount to ‘promotion,’¹⁶⁰ both specifically turn on audience feelings. This makes these provisions prone to misuse by those who feel offended by a journalist’s work.

¹⁵⁸ The main distinction between Section 153A and Section 505(2) is that while publication is not necessary in Section 153A(b), it is required under Section 505(2).

¹⁵⁹ Ramesh v. Union of India, [(1988) 1 SCC 668], para. 13.

¹⁶⁰ Amish Devgan v. Union of India, [(2021) 1 SCC 1], para. 67. There must instead be an intent to incite violence or disorder. Balwant Singh v. State of Punjab, [(1995) 3 SCC 214], para. 9; Manzar Sayeed Khan v. State of Maharashtra, [(2007) 5 SCC 1]; Bilal Ahmed Kaloo v. State of A.P., [(1997) 7 SCC 431], para. 11.

The Supreme Court has further held that the term “likely,” used in both Sections, means that the chance of the event occurring should be real, and not fanciful or remote.¹⁶¹ In fact, the Indian Supreme Court has articulated an increasingly tight test for speech limitations—that speech must be akin to setting alight a ‘powder keg,’ that is, there must an “‘inseparable’ connection” between the speech and the harm, which as scholar Gautam Bhatia says has “come full distance” from “a ‘tendency’ to disturb public order.”¹⁶² Yet, the laws have not been amended to include this standard, allowing prosecution for “offensive speech” even when not accompanied by any showing of a real likelihood of violence.¹⁶³

Section 505(1)(c), by contrast to Sections 153A and 505(2), is an incitement offence. Indian courts have expressed that the law requires the likelihood of inciting “real classes and real communities and not to purely imaginary people.”¹⁶⁴ Yet, the Constitutional Court of South Africa has read down laws similar to Section 505(1)(c) on the ground that incitement to ‘any offence’ is too wide an ambit.¹⁶⁵

The cases in the dataset reveal these dangers: these offences are invoked against journalists for forwarding messages on WhatsApp,¹⁶⁶ news reports that covered religiously charged issues¹⁶⁷ and so on.

In fact, there has been a near six-fold increase in cases registered under Section 153A from 2014-2022— with a conviction rate of only 20%.¹⁶⁸

¹⁶¹ *Amish Devgan v. Union of India* [(2021) 1 SCC 1], para. 67.

¹⁶² Compare *Ramji Lal Modi v. State of U.P.* [(1957) SCR 860] with *S. Rangarajan v. P. Jagjivan Ram*, [(1989) SCR (2) 204]. In fact, as Gautam Bhatia has put it, on the Court’s more recent logic, “all the statutes under consideration [including Section 153A] are overbroad[] [because] [i]t should be obvious, beyond cavil, that disharmony between classes, or offensive speech, or insult and intimidation, are all undesirable things, but they do not have a ‘spark-in-the-powder-keg’ relationship with public order.” See Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution*, pg. 75 Oxford Academy (2016).

¹⁶³ Abhinav Sekhri, *Pursuing Unity Through Lathis: The Pitfalls Of Arming The State To Secure Social Harmony*, Article 14, June 16, 2022, available at <https://www.article-14.com/post/pursuing-unity-through-lathis-the-pitfalls-of-arming-the-state-to-secure-social-harmony-62aa949a6f4ca>.

¹⁶⁴ National Law University Delhi, *Hate Speech Laws in India*, Apr. 2018, s. 3.1.7.1, available at <https://www.latestlaws.com/wp-content/uploads/2018/05/NLUD-Report-on-Hate-Speech-Laws-in-India.pdf>

¹⁶⁵ Constitutional Court of South Africa, *Economic Freedom Fighters and Others v. Minister of Justice and Correctional Services and Others*, Case CCT 201/19, Nov. 27, 2020, para 61, available at <https://www.saflii.org/za/cases/ZACC/2020/25.pdf>.

¹⁶⁶ The News Minute, *AP Journalists’ Union, Oppn Leaders Condemn Journalist’s Arrest Over WhatsApp Message*, Sept. 23, 2022, available at <https://www.thenewsminute.com/andhra-pradesh/ap-journalists-union-oppn-leaders-condemn-journalist-s-arrest-over-whatsapp-message-168207>; *Rajneshwar Jha v. State of Bihar*, Order dated January 16, 2017 in Criminal Misc. Petition No. 1403/2017.

¹⁶⁷ NDTV, *Rajasthan Police Team in Noida to Arrest TV Journalist Aman Chopra*. May 8, 2022, available at <https://www.ndtv.com/india-news/rajasthan-police-team-in-noida-to-arrest-tv-journalist-aman-chopra-2956545>.

¹⁶⁸ The Hindu, *Data: Section 153A: Cases Jump Six-Fold, Only 1 in 5 Convicted*, June 24, 2022, available at <https://www.thehindu.com/data/data-section-153a-cases-jump-six-fold-only-1-in-5-convicted/article65459996.ece>.

These laws—both in the form of ‘promotion of feelings of enmity’ and incitement—do not conform to the requirements of the Rabat Plan of Action.¹⁶⁹ As discussed above, the Rabat Plan recommended that states include precise definitions, which are lacking in Sections 153A and 505(2). Further, the Rabat Plan suggests that speech must have “a reasonable probability . . . [of] inciting actual action against the target group, recognizing that such causation should be rather direct,” rather than simply arousing ‘feelings’ or criminalizing incitement to an offence, no matter how indirect the connection. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has likewise suggested that Singapore’s parallel to Section 153A should be reviewed to be brought into compliance with international standards.¹⁷⁰ Finally, the East African Court of Justice has held that a provision of Tanzanian law that purported to criminalize publications “likely to cause fear and alarm to the public”—bearing some similarity to Section 505(2)—was unlawfully vague.¹⁷¹

And yet these provisions persist, nearly verbatim, in the BNS.

IPC → BNS

Section 153A of the Indian Penal Code (IPC) is incorporated into the BNS in Section 196, with the text adopted directly from the IPC without alterations. Similarly, Section 505(2) is retained as Section 353 in the BNS. The text of Section 353 has been adapted from the IPC with minor modifications to encompass the dissemination of false information and to address the use of electronic means for the commission of the offence. The new law does not address the vagueness of the provisions, nor articulate a ‘harm’ standard.

¹⁶⁹ OHCHR, The Rabat Plan of Action, Oct. 5, 2012, para. 21, available at <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>; UN Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/22/17/Add.4, Jan. 11, 2013, available at https://www.ohchr.org/sites/default/files/Rabat_draft_outcome.pdf.

¹⁷⁰ Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Githy Muigai, UN Doc. A/HRC/17/40/Add.2, Mar. 25, 2011, available at <https://documents.un.org/doc/undoc/gen/g11/123/13/pdf/g1112313.pdf>.

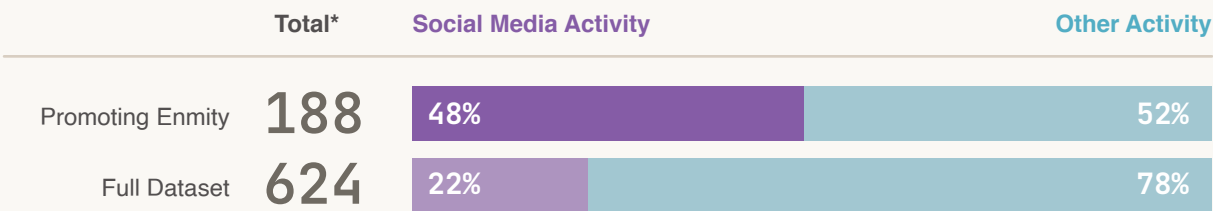
¹⁷¹ EACJ, Media Council of Tanzania and Ors. V. Attorney General of the United Republic of Tanzania (Reference 2 of 2017) [2019] EACJ 2, Mar 28, 2019 (First Instance Division), available at <https://africanlii.org/akn/aa-au/judgment/eacj/2019/2/eng@2019-03-28> (see also case cited therein).

SOCIAL MEDIA

Of the total 624 incidents, in 136 incidents (82 unique cases), 63 journalists faced charges for their activities on social media (“social media cases”). In general, the most common charges in social media cases were also the most prevalent in the overall dataset. This suggests that the authorities treat social media activities similarly to other activities in terms of legal ramifications.

The promoting enmity cluster was most commonly invoked in social media cases; in fact, nearly half of the promoting enmity entries in the dataset were based on social media activity.

Fig 12. Promoting Enmity - Social Media Activity

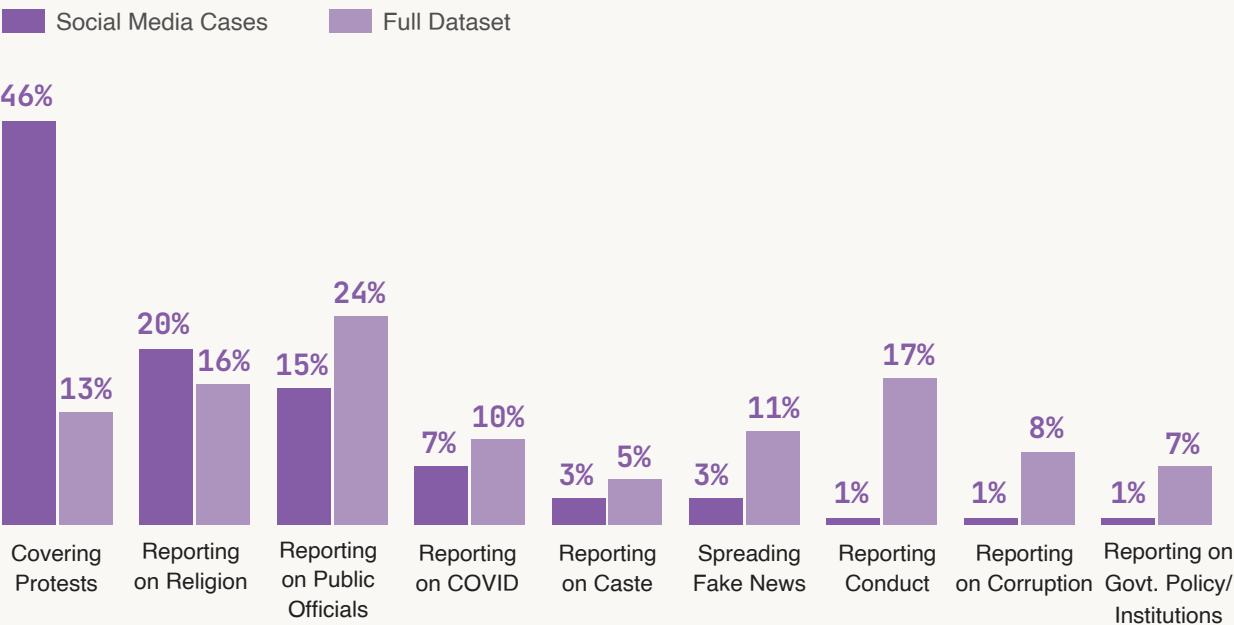


*Total incidents with known social media activity

Source: Primary Dataset

In terms of why these cases were brought, reporting on protests was the most likely reason, followed by reporting on religious issues.

Fig 13. Social Media - Basis for Charges



Source: Primary Dataset

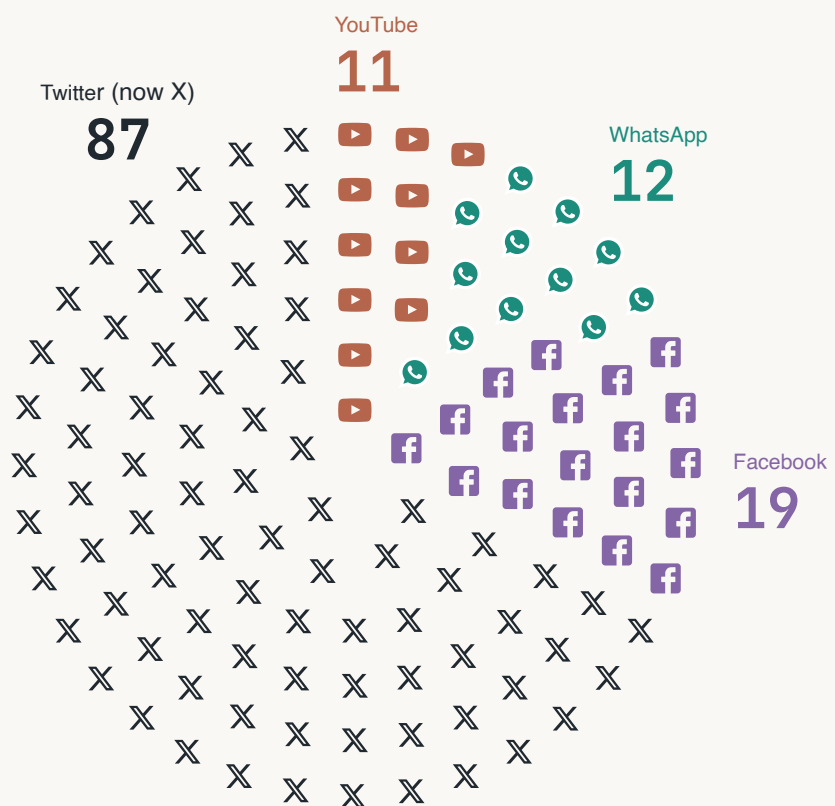
ALLEGATION against journalist and human rights defender

In one case, a journalist and human rights defender was charged with violating Section 153 and Section 505(1)(b) IPC for tweeting about the George Floyd protests in the U.S., urging similar action in India.¹⁷² As per news reports, the police in Bangalore registered the FIR *suo motu* upon seeing the journalist's tweet, where he posted video clips about the protests relating to the death of George Floyd in the U.S. and urged Muslims, Dalit, Adivasis and women in India to protest in a similar way.

Fig 14. Social Media Cases - By Platform

Within the social media cases cluster, Twitter (now X) disproportionately emerged as the predominant source for actions taken against journalists.

This data is broadly consistent with the hypothesis that the promoting enmity and public tranquility clusters were used against speech with wide reach, including over social media.



Source: Primary Dataset

In a recent judgment, the Supreme Court noted that the mere fact that a social media post received “several responses, some in favour, some against” does not imply that it caused “social disharmony amongst people” as required by the promoting enmity offences.¹⁷³

¹⁷² Scroll.in, Ex-Amnesty India Head Aakar Patel Faces FIR for Allegedly Urging Indians to Emulate US Protests, June 5, 2020, available at <https://scroll.in/latest/963874/activist-aakar-patel-faces-fir-for-allegedly-urging-indians-to-emulate-us-protests>.

¹⁷³ Imran Pratapgadhi v. State of Gujarat, Criminal Appeal No. 1545/2025, Supreme Court of India, Judgment dated 28 March 2025, para 6.

D. Offences Against Religion

The ‘offences against religion’ cluster was invoked a total of 100 times, 16% of the total in our dataset. Within the cluster, Sections 295A¹⁷⁴ and 298¹⁷⁵ of the IPC were charged most frequently.

As mentioned above, these sections were often clubbed with offences relating to promoting enmity. For example, Section 295A and Section 298 were invoked in nearly all of the Republic Day protest FIRs mentioned above—although the tweets related to the farmers’ protest and had no relation to religion. This again points to the apparently arbitrary manner in which the police slap a multitude of offences in FIRs, irrespective of their relation to the content in question. As a result, several trends—such as the use of these offences against journalists based in major metropolises, reporting in publications with a national reach or in English—were also evident with this cluster of offences.

One striking trend, is that this cluster was most frequently used against editors, rather than reporters and owners. While editors featured in 25% of the overall dataset, 45% of the incidents in this cluster were against editors. This trend is explained by the fact that several high-profile journalists, with the designation of editors, faced multiple cases across different states, as in the Republic Day protest cases and the example below.

ALLEGATION against four journalists



Five FIRs were filed in different parts of Maharashtra under Section 295A against the editors, owners and publishers of an Urdu newspaper that reproduced the cover of the French magazine Charlie Hebdo that had a controversial representation of the Prophet Mohammad.¹⁷⁶ The newspaper was forced to shut down, the editor of the newspaper was arrested in one of the cases, and remained in hiding even upon getting bail due to threats against her.¹⁷⁷ Four years after the incident, the police closed the cases on the ground that no offence was made out.¹⁷⁸

¹⁷⁴ Section 295A IPC is colonial-era legislation that criminalizes the act of insulting or attempting to insult religious beliefs. Violating Section 295A is punishable with up to three years imprisonment.

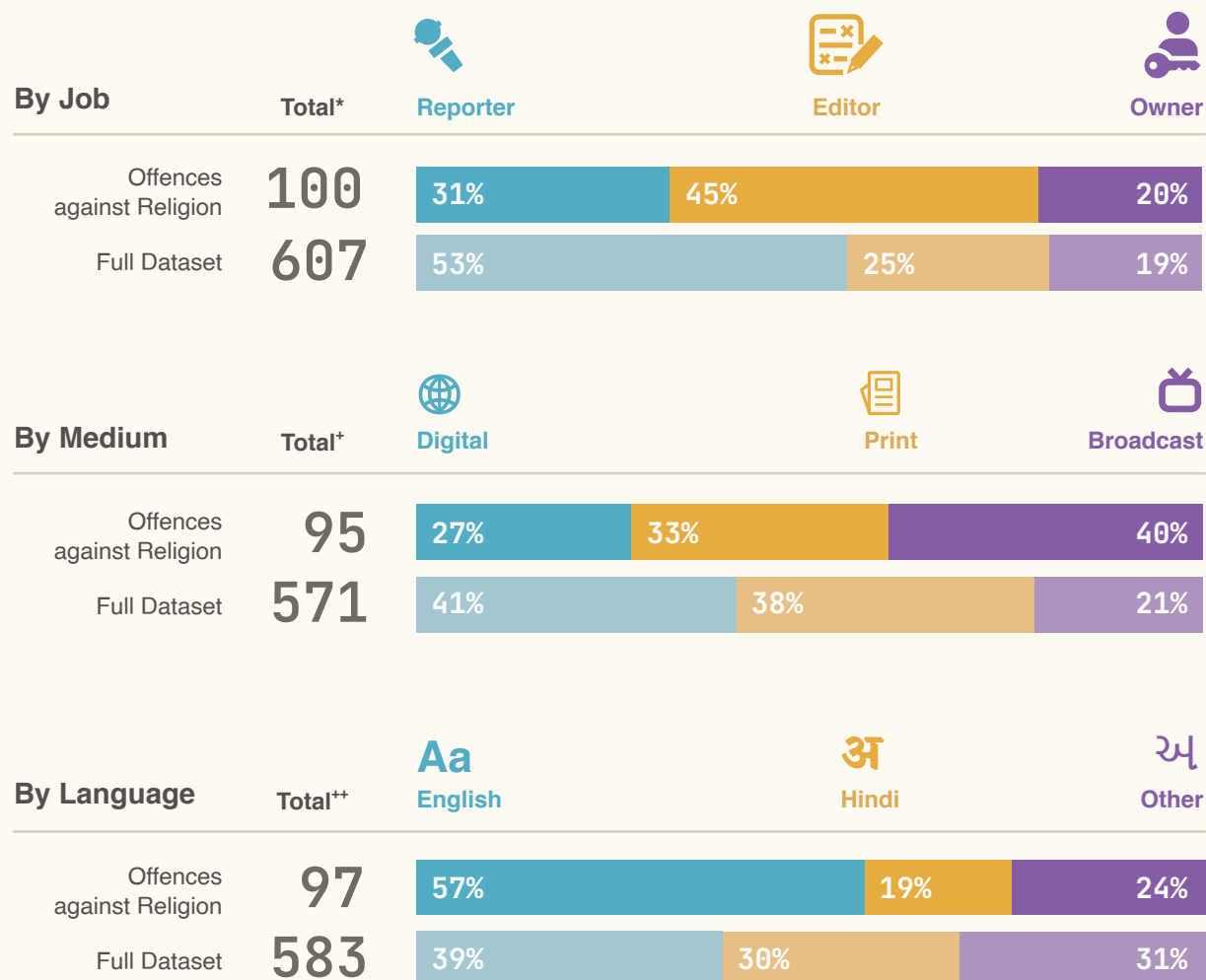
¹⁷⁵ Section 298 IPC criminalizes “Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that persons or places any object in the sight of that person.” Violations of Section 298 are punishable by up to one year of imprisonment.

¹⁷⁶ Sumit Galhotra, In India, Laws that Back the Offended Force Editor into Hiding, CPJ, Feb. 9, 2015, available at <https://cpj.org/2015/02/in-india-laws-that-back-the-offended-force-editor/>; Geeta Seshu, Should the Freedom to React Be Absolute?, The Hoot, Jan. 30, 2015, available at <http://asu.thehoot.org/free-speech/censorship/should-the-freedom-to-react-be-absolute-8748>.

¹⁷⁷ Sumit Galhotra, In India, Laws that Back the Offended Force Editor into Hiding, CPJ, Feb. 9, 2015, available at <https://cpj.org/2015/02/in-india-laws-that-back-the-offended-force-editor/>.

¹⁷⁸ Geeta Seshu, Case Against Shirin Dalvi Disposed but the Process Is Still the Punishment, Free Speech Collective, Apr. 1, 2019, available at <https://freespeechcollective.in/case-against-shirin-dalvi-ends-but-the-process-is-still-the-punishment/>; Bombay High Court, Shirin Dalvi v. State of Maharashtra, Order dated March 27, 2019, in Writ Petition No. 450/2015.

Fig 15. Offences against Religion



*Total incidents with known job description **Total incidents with known language

*Total incidents with known medium

Source: Primary Dataset

As with offences within the offences against public tranquillity and promoting enmity clusters, this cluster is predicated on the need to protect “hurt sentiments,”¹⁷⁹ making them prone to misuse against journalists. Indeed, courts have repeatedly held that truth is no defense to Section 295A, as even a true statement may outrage religious feelings.¹⁸⁰

¹⁷⁹ Mayank Yadav Shrutika, The Executive Seems More Fragile Than Hurt Sentiment, The Hindu, May 25, 2022, available at <https://www.thehindu.com/opinion/op-ed/the-executive-seems-more-fragile-than-hurt-sentiment/article65457762.ece>.

¹⁸⁰ Khalil Ahmad v. State, [(1960) SCC OnLine All 77], para. 32; State of Mysore v. Henry Rodrigues [(1961) SCC OnLine Kar 138], para. 5.

The focus of this provision is ostensibly on “deliberate or malicious intention to outrage religious feelings,” with the Supreme Court having clarified that unwitting or careless insults cannot be criminalized,¹⁸¹ yet our data shows that such strictures are not observed by the police while registering FIRs.

ARREST of journalists



Five journalists were arrested in Andhra Pradesh under Section 295A for “falsely propagating news” that corrosion-related damage to a temple was due to a communal attack.¹⁸²

Journalists also faced charges for social media posts that allegedly hurt religious sentiments of Hindus.¹⁸³

While the constitutional validity of Section 295A was upheld by the Supreme Court as being a reasonable restriction on freedom of speech in 1957,¹⁸⁴ both Sections 295A and 298 are problematic under international standards. The UN Human Rights Committee has made clear that “[p]rohibition of displays of lack of respect for a religion or other belief system” are not compliant with the right to freedom of expression¹⁸⁵ except where the speech constitutes “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Likewise, the UN Special Rapporteur on Freedom of Religion or Belief has emphasized that restrictions on speech concerning religion must be narrow, regardless of “subjective feelings of offensiveness.”¹⁸⁶

Despite their vague formulation, and colonial legacy, the sections are replicated in the BNS.

¹⁸¹ Ramji Lal Modi v. State of UP [(1957) 1 SCR 860].

¹⁸² Ians, Andhra Journos Who Spread ‘False’ News on a Temple Attack Jailed for a Day, The News Minute, Jan. 8, 2021, available at <https://www.thenewsminute.com/andhra-pradesh/andhra-journos-who-spread-false-news-temple-attack-jailed-day-141138>.

¹⁸³ BBC, Mohammed Zubair: Indian Police Arrest Journalist Over Tweets, June 28, 2022, available at <https://www.bbc.com/news/world-asia-india-61956108>

¹⁸⁴ Ramji Lal Modi v. State of UP [(1957) 1 SCR 860].

¹⁸⁵ UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 48.

¹⁸⁶ UN Human Rights Council, Report of the Special Rapporteur on Freedom of Religion or Belief, UN Doc. A/HRC/31/18, Dec. 23, 2015, para. 61. Cf. Amal Clooney & David Neuberger, Freedom of Speech in International Law, Introduction, s. 3.2.2 (2024) (discussing the approach of the European Court of Human Rights and contrasting it with that of the HRC).

IPC → BNS

Section 299 of the BNS adopts the provisions of Section 295A of the IPC with a minor modification to explicitly include acts committed by electronic means. Additionally, Section 302 of the BNS is a verbatim incorporation of Section 298 of the IPC.

SEDITION

Section 124A (sedition)¹⁸⁷ is categorized as an “offence against the state” under Chapter VI of the Indian Penal Code, and unlike other offences mentioned above, is punishable with life imprisonment. Yet, it is closely related to both the promoting enmity and offences against tranquillity clusters; as discussed above, in some jurisdictions the offences described in Sections 124A (sedition) and Section 153A (promoting enmity) are both considered sedition.¹⁸⁸

Sedition is among the ten most frequently charged individual offences in our dataset, invoked a total of 53 times.

Sedition also merits special attention due to the fact that the law is a colonial relic, which has been used oppressively in numerous jurisdictions around the world,¹⁸⁹ and which the Indian Supreme Court has recently indicated may be constitutionally infirm.¹⁹⁰ (In this regard, the Constitutional Court of Uganda has previously struck down their similar sedition law on the ground that “the way impugned sections were worded have an endless catchment area.”)¹⁹¹ Research has also shown that strictures previously imposed by the Indian Supreme Court, limiting the law to speech that had the “tendency or intention of creating public disorder or disturbance of law and order” have not been observed.¹⁹²

This is also borne by the data in this report—70% of the total sedition charges were against journalists who were reporting on protests—many of these were the Republic Day protest cases, where sedition charges were invoked in multiple FIRs for twitter posts.¹⁹³ The Supreme Court granted protection from

¹⁸⁷ The Indian Penal Code, Act No. 45 of 1860, Section 124A: “Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India.” Sedition is punishable with up to life imprisonment.

¹⁸⁸ *Supra* note 114.

¹⁸⁹ CFJ, The Crime of Sedition: What Comes Next for an Archaic Law?, Feb. 2024, available at <https://cfj.org/wp-content/uploads/2024/02/Sedition-Report-February-2024-Update.pdf>.

¹⁹⁰ In recent years, the Supreme Court has indicated that “the rigours of Section 124-A IPC are not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime” S.G. Vombatkere v. Union of India, [(2022) 7 SCC 433]. The Supreme Court had previously upheld the offence’s constitutionality, although it read the law down. Kedar Nath Singh v. State of Bihar [(1962) Supp (2) SCR (769)].

¹⁹¹ Mwenda & Ors v. Attorney General [2010] UGCC 5, Aug. 25, 2010, pg. 25.

¹⁹² Kedar Nath Singh v. State of Bihar, [(1962) Supp (2) SCR (769)]; cf. Media Council of Tanzania and Ors. v Attorney General of the United Republic of Tanzania (Reference 2 of 2017) [2019] EACJ, Mar. 28, 2019 (First Instance Division). For an extensive understanding of the manner in which sedition has been used in India, see A Decade of Darkness: The Story of Sedition in India, available at <https://sedition.article-14.com>.

¹⁹³ See Indian Express, R-day Violence: Shashi Tharoor, Rajdeep Sardesai Move SC Over FIRs on ‘Misleading’ Tweets, Feb. 4, 2021, available at <https://indianexpress.com/article/india/r-day-violence-shashi-tharoor-rajdeep-sardesai-move-sc-over-firs-on-misleading-tweets-7172496/>; see also CFJ, The Crime of Sedition: What Comes Next for an Archaic Law?, Feb. 2024, available at <https://cfj.org/wp-content/uploads/2024/02/Sedition-Report-February-2024-Update.pdf>.

arrest to all journalists on the first date of hearing the petition for quashing the FIRs¹⁹⁴. Moreover, a significant minority of sedition cases related to reporting on public officials, COVID-19 measures, and political commentary.

ARREST of journalist



A journalist was arrested under sedition charges in November 2018 for posting a video criticising the Chief Minister of Manipur and calling him a “puppet to the Prime Minister of India” and expressing frustration with the ruling party.¹⁹⁵ The local court granted him bail six days after his arrest, reportedly on the grounds that his speech was a “mere expression of opinion against the Prime Minister of India and Chief Minister of Manipur, which cannot be equated with an attack to invite people to violence.” Despite being granted bail, he was placed under preventive detention thereafter and was finally released in April 2019.¹⁹⁶ He was arrested again in September 2020, on charges that included sedition, for commenting on an Instagram spat between two wives of a local politician – he was released on bail after three months of pretrial detention.¹⁹⁷ This journalist is one among many petitioners in the challenge to the sedition law that is currently pending before the Supreme Court.

While there is no crime of ‘sedition’ in the BNS, Section 152 of the BNS punishes ‘acts endangering sovereignty, unity and integrity of India,’ specifically criminalizing exciting or attempting to excite “secession, armed rebellion or subversive activities, or encouraging feelings of separatist activities that endanger the sovereignty or unity and integrity of India.”¹⁹⁸ The section does not define any of these terms. Further, the modes of commission have been expanded to include ‘electronic communication’ and

¹⁹⁴ Shashi Tharoor v. Union of India, W.P. (CrI). No. 73/2021, Supreme Court of India, Order dated 09 February 2021,

¹⁹⁵ Global Freedom of Expression Columbia University, Kishorchandra Wangkhem v. District Magistrate, Imphal West, available at <https://globalfreedomofexpression.columbia.edu/cases/kishorchandra-wangkhem-v-district-magistrate-imphal-west/>.

¹⁹⁶ *Id.*; Samrat, Every Media House Is Directly or Indirectly Under the Govt, Article 14, Dec. 11, 2020, available at <https://tribe.article-14.com/post/every-media-house-is-directly-or-indirectly-under-the-govt>.

¹⁹⁷ Samrat, Every Media House Is Directly or Indirectly Under the Govt, Article 14, Dec. 11, 2020, available at <https://tribe.article-14.com/post/every-media-house-is-directly-or-indirectly-under-the-govt>.

¹⁹⁸ The Bharatiya Nyaya Sanhita, 2023, Section 152: “Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine. Explanation. —Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.”

‘financial means.’ There are concerns that this new provision could functionally replace the sedition law;¹⁹⁹ and indeed some experts have called this new law ‘more fearsome’ than Section 124-A.²⁰⁰

It bears noting that ‘subversion’ has been deemed too vague an offence by the UN and national courts. Thus, for instance, UN mandate holders have found that “the term subversion is problematic given the requirement of legal certainty.”²⁰¹ Likewise, the UN Working Group on Arbitrary Detention has held that “sufficient precision” “appears to be clearly lacking” in Hong Kong’s definition of this crime.²⁰² At the national level, a High Court in Kenya recently struck down the offence of subversion, identifying a “confusing definition of ‘subversion.’”²⁰³

199 The P39A Criminal Law Blog, Criminal Law Bills 2023 Decoded #8: Sedition, Recast – Implications of Clause 150 of the BNS 2023, Sept. 29, 2023, available at <https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-8-sedition-recast-implications-of-clause-150-of-the-bns-2023/>; Sravasti Dasgupta, Modi Govt Unveils Controversial New Criminal Bills: ‘Sedition’ Law to Change But in Name Only, The Wire, Aug. 11, 2023, available at <https://thewire.in/government/sedition-law-repealed-three-new-bills-tabled-in-parliament-to-replace-criminal-laws>; Apurva Vishwanath, Sedition Law Repealed or Strengthened in a New Form? What the New IPC Bill Says, Indian Express, Aug. 13, 2023, available at <https://indianexpress.com/article/explained/explained-law/sedition-law-repealed-or-strengthened-in-a-new-form-ipc-bill-8887864>.

200 Lubhyathi Rangarajan, Home Minister Amit Shah Says Sedition Is Dead. But Its Replacement Is More Fearsome Than the Colonial Law Ever Was, Article 14, Aug. 14, 2023, available at <https://article-14.com/post/home-minister-amit-shah-says-sedition-is-dead-but-its-replacement-is-more-fearsome-than-the-colonial-law-ever-was-64d99ff8dc0d8>.

201 Letter from the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism et al., Sept. 1, 2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>.

202 UN Working Group on Arbitrary Detention, Opinion No. 30/2023 Concerning Ms. Hang Tung Chow (Hong Kong, China), UN Doc. A/HRC/WGAD/2023/30, May 1, 2023, para. 83. The Working Group has reached a similar conclusion with respect to China’s offence of ‘subversion,’ which is defined to include “subverting the state’s political power.” UN Working Group on Arbitrary Detention, Opinion No. 11/2020 Concerning Cheng Yuan et al. (China), UN Doc. A/HRC/WGAD/2020/11, June 5, 2020, para. 43.

203 Katiba Institute et al., Director of Public Prosecutions et al., Petition E016 of 2023, High Court of Kenya at Nakuru, Judgment, Mar. 18, 2024, para. 137.

E. Intimidation and Insult

"In one case," where the journalist says they reported on changes to the police story, "I used [an] impolite word I was charged under S 506. Such words do not even merit criminal action."

- Journalist interviewed

The criminal intimidation and insult cluster was charged a total of 204 times, 32% of the total in our dataset. Within the cluster, Section 503/Section 506 IPC (criminal intimidation)²⁰⁴ and Section 504 IPC (insult with intent to provoke breach of peace)²⁰⁵ were charged most frequently.

While these offences were invoked against journalists across the board, a higher proportion was against journalists in small cities and towns and against journalists reporting in Hindi and other regional languages.

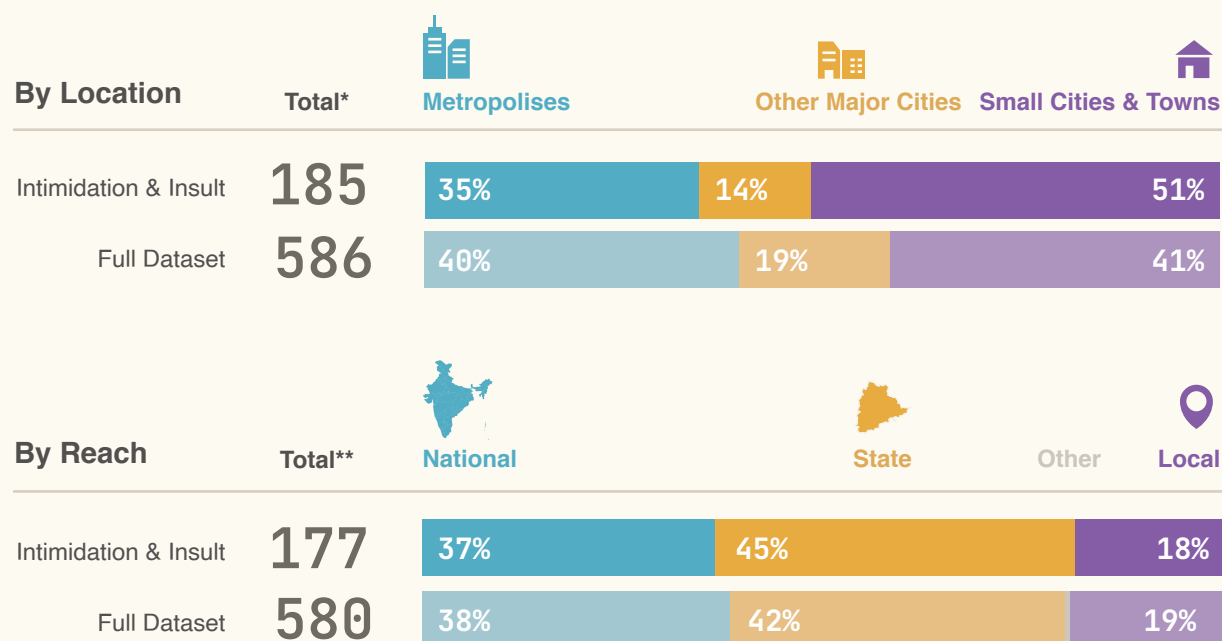
This could be explained by the fact that this cluster was invoked against reporting related to state-level politicians and local officials. If the previously mentioned categories of offences were meant to preserve public order broadly, this category, along with defamation, was used to protect officials themselves. Section 504, for instance, is grounded in the reaction of an individual rather than of a community, hence the repeated references to 'person' in the text of the provision. And indeed, the courts in interpreting Section 504 have made clear that the allegedly offensive words must be conveyed directly to the person against whom they are directed.²⁰⁶

204 The Indian Penal Code, Act No. 45 of 1860, Section 503: "Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation." Section 506 provides for a penalty of up to two years imprisonment, a fine, or both.

205 *Id.* at Section 504: "Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

206 G. Sivarajaboopathi v. State [(2022) Madras HC (Madurai Bench)], available at <https://indiankanoon.org/doc/127735603/>. There is, to be sure, some nexus to public order insofar as there is a requirement of inciting a breach of the peace.

Fig 16. Intimidation & Insult



*Total incidents with known location type

**Total incidents with known reach

Source: Primary Dataset

ALLEGATIONS against journalists and cameraman



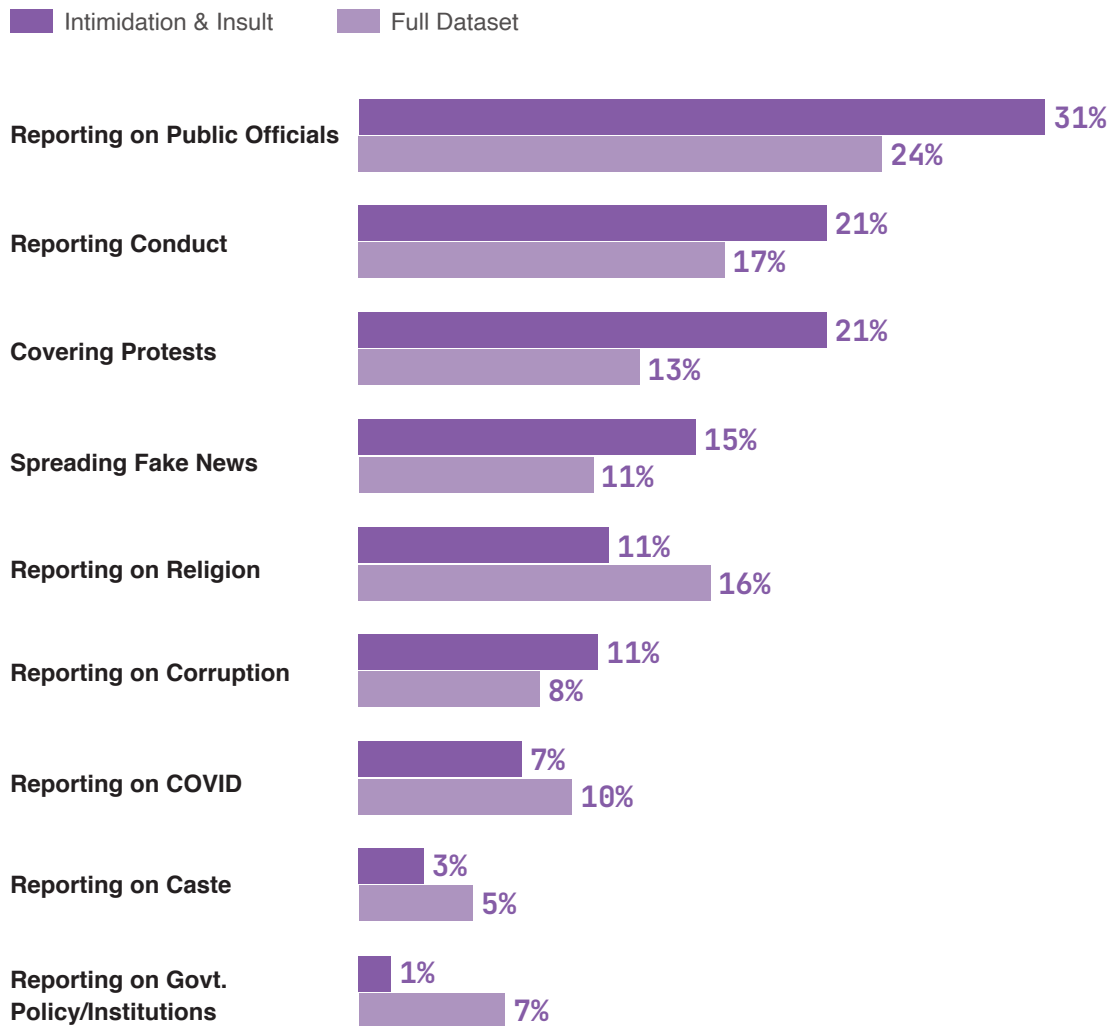
For instance, an FIR was registered against a journalist under Section 504 for his reporting on the Chief Minister of Chhattisgarh allegedly misusing his influence to get government positions for people known to him.²⁰⁷ In another case, a broadcast journalist and his accompanying cameraman faced criminal action under Section 504, merely for reporting on a politician from Karnataka watching pornographic images on his phone during an official function, which would not seem to be likely to incite a breach of the peace.²⁰⁸

²⁰⁷ Ayush Tiwari, Is it Harder to Do Journalism under Congress than BJP in Chhattisgarh?, News Laundry, July 20, 2022, available at <https://www.newslaundry.com/2022/07/20/is-it-harder-to-do-journalism-under-congress-than-bjp-in-chhattisgarh>.

²⁰⁸ News Laundry, K'taka Minister who Was Caught on Camera Files Case Against TV9 Journalist, Nov. 13, 2016, available at <https://www.newslaundry.com/2016/11/14/ktaka-minister-who-was-caught-on-camera-files-case-against-tv9-journalist>.

This too is borne out by the data—while instances of reporting on public officials featured in 24% of the overall dataset, they made up 31% of the ‘intimidation and insult’ category.

Fig 17. Intimidation & Insult



Source: Primary Dataset

As the graph depicts, this cluster of offences was also used for journalists covering protests, and for journalists’ alleged conduct while reporting.

In some cases where the journalists were reporting on public officials, the allegation levelled against them was that they were blackmailing or threatening the officials with publishing adverse news about them. Overall, allegations over extortion were made in 24 incidents in the dataset, almost half of these invoked offences in the ‘intimidation and insult’ cluster.

ALLEGATION against journalist and his assistant



For example, a local news web portal in Chhattisgarh published a report based on a sting operation, where two local legislators were found criticising the then Chief Minister of the State.²⁰⁹ The journalist and his assistant were arrested and detained under Sections 504 and 506 as well as Section 384 (extortion).²¹⁰ among other charges and were in jail for almost three months before being finally granted bail by the High Court.²¹¹ The High Court order reflects that the journalist was finally charged under Section 504 IPC (insult with the intent to provoke breach of peace) and Section 505(1)(b) IPC. As of October 2023, the trial against the journalist is still ongoing.

Like promoting enmity, this is broadly a category of offence predicated upon the likely reaction of an audience, although the difference is that these offences turn on an individual's reaction, rather than that of a community. As with the provisions above, court rulings on these offences have held that the likelihood of the speech or act having the criminal result is to be assessed from the perspective of the reasonable person.²¹² However, the data suggests that these limitations are not considered at the stage of registration of FIR.

As discussed above, the concept of 'causing alarm' (included in Section 503) is a vague one. Further, under international standards, "all public figures, including those exercising the highest political authority ... are subject to criticism and political opposition."²¹³ The United States Supreme Court struck down a law that, similar to Section 504, criminalized "[a]ny person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace."²¹⁴ And the UN Human Rights Committee has specifically recommended that insult be decriminalized in India.²¹⁵

209 International Federation of Journalists (IFJ), India: Journalists Arrested for Reporting on Legislative Assembly Members, Oct. 31, 2021, available at <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/india-journalists-arrested-for-reporting-on-legislative-assembly-members>.

210 *Id.*

211 Order dated 14 January 2022, High Court of Chattisgarh, MCRC No. 9068/2021.

212 *Surinder Suri v. State of Haryana and Ors.*, [(1966) SCC Online P&H 582], para. 17; *Mohammad Wajid v. State of UP*, [(2023) LiveLaw (SC) 624], paras. 25–28.

213 UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para 38.

214 Cf. *Gooding v. Wilson*, 405 U.S. 518 (1972) (striking down a law that criminalized "[a]ny person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace," finding that it was too broad to fit within the narrow exception for 'fighting words.').

215 UNHRC, Concluding Observations on the Fourth Periodic Report of India, UN Doc. CCPR/C/IND/CO/4, Sept. 2, 2024, para. 50(b).

IPC → BNS

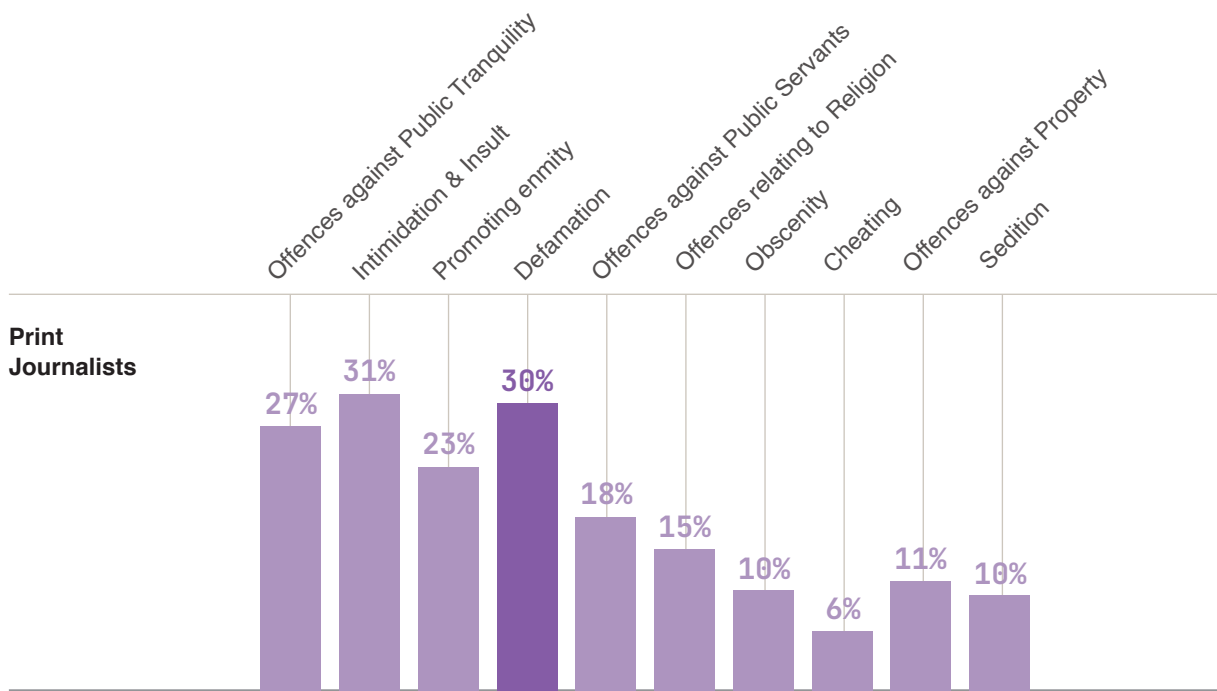
Sections 351(1) and 352 of the BNS are analogous to Sections 503 and 504 of the IPC, respectively. These sections have been amended to encompass threats and insults conveyed through any means.

F. Defamation

The defamation cluster was invoked a total of 148 times, 24% of the total in our dataset. While the most common offence was Section 499/500 IPC (defamation),²¹⁶ Section 501 (printing or engraving matter known to be defamatory)²¹⁷ and Section 502 (sale of printed or engraved defamatory matter)²¹⁸ also featured over 40 times each.

Print journalists were charged relatively frequently with defamation (along with intimidation and insult), and defamation was the cluster most commonly charged against investigative journalism (as compared to other offence categories).

Fig 18. Print Journalists - Categories of Offence

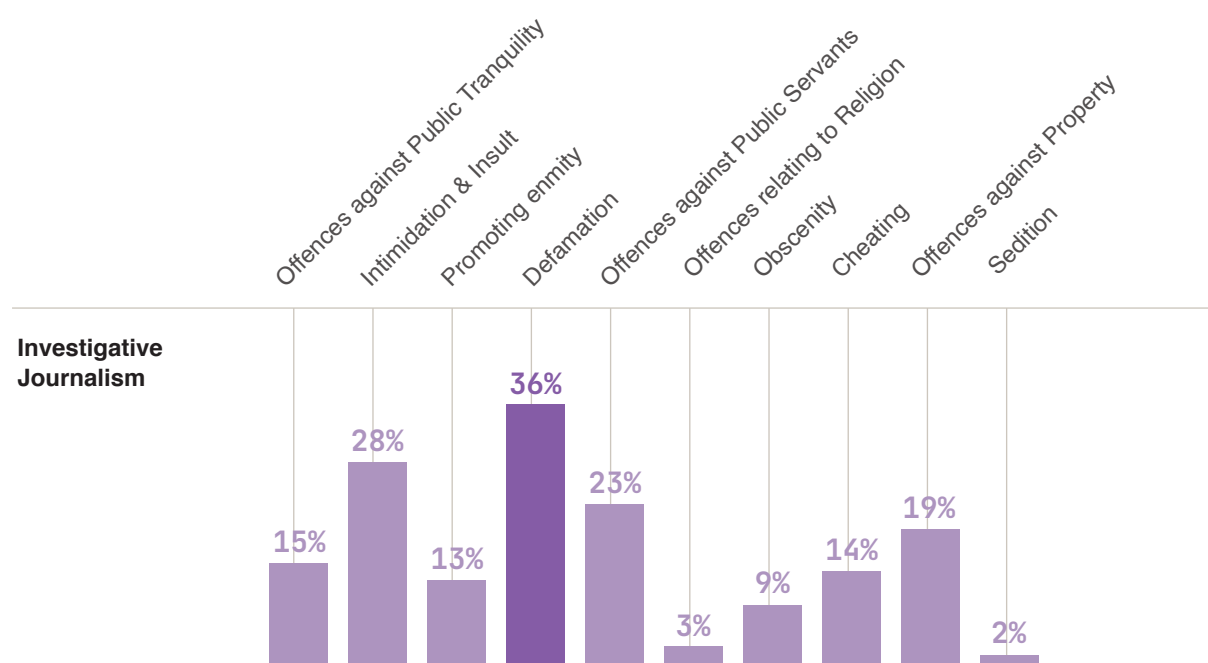


Source: Primary Dataset

216 Section 499 defines defamation, subject to certain explanations, as “any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person.” Section 499 also provides for ten exceptions to the definition of defamation. As per Section 500 IPC, defamation carries a penalty of up to two years imprisonment.

217 The Indian Penal Code, Act No. 45 of 1860, Section 501: “Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

218 *Id.* at Section 502: “Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

Fig 19. Investigative Journalism - Categories of Offence

Source: Primary Dataset

And while journalists who published in national or state level publications both faced defamation cases proportionally, it was most used against journalists reporting in English and those based in major metropolises.

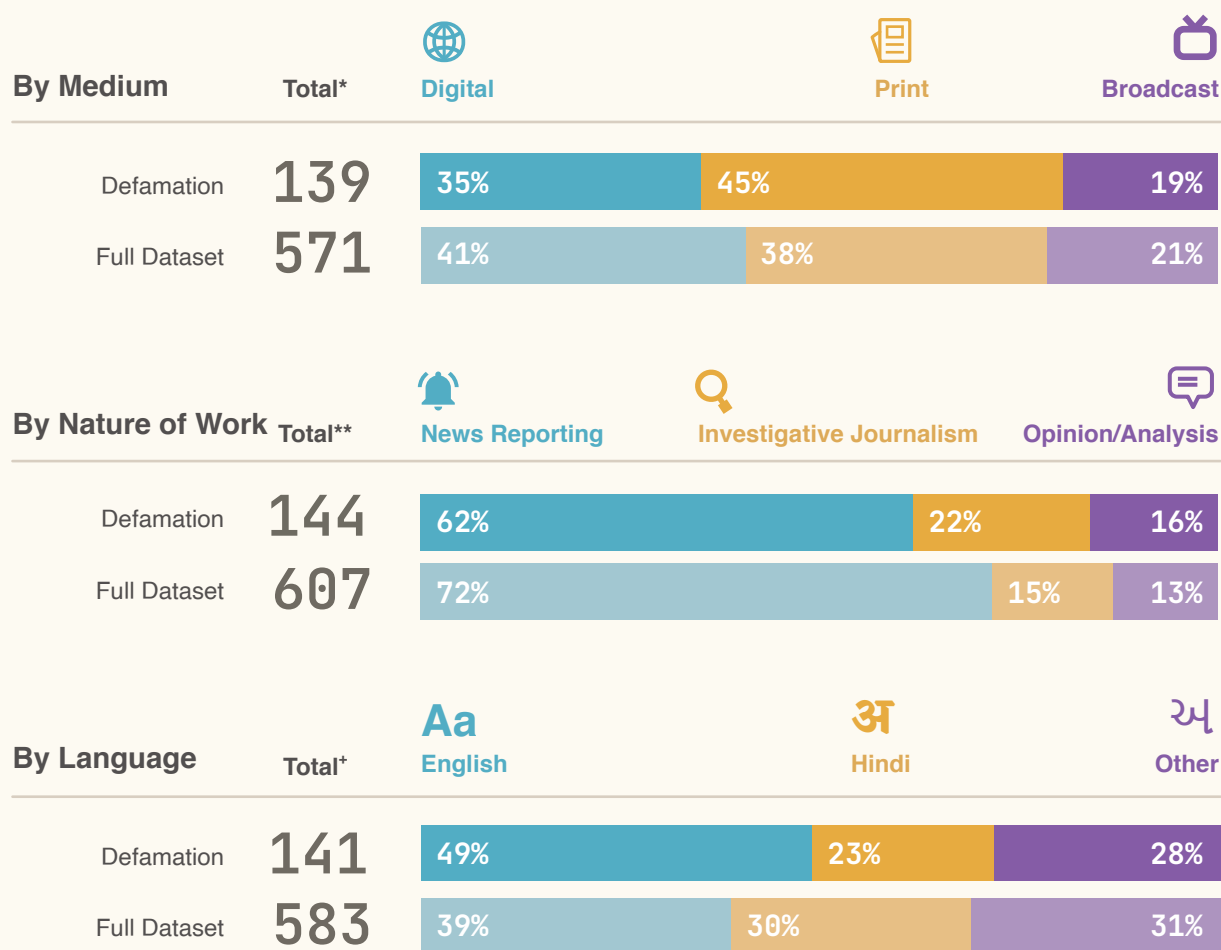
As discussed above, this is the companion to the insult and intimidation cluster, meant to protect individuals' reputations rather than collective feelings. While intimidation and insult was used more against journalists in small cities and towns, the higher proportion of defamation cases against big-city journalists could be explained by the fact that these cases are prosecuted privately, i.e. the police cannot register an FIR under Section 499/500 IPC. The use of this tool could then be attributed to the greater resources of complainants lodging cases against big-city journalists.

As per the Code of Criminal Procedure, 1973 ("CrPC") (now the Bharatiya Nagarik Suraksha Sanhita, 2023), an aggrieved individual (complainant) must file a complaint under Section 499/500 directly before a Magistrate.²¹⁹

²¹⁹ Code of Criminal Procedure, 1973, Section 199; The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 222. After a complaint is filed, the Magistrate records the statement of the complainant and any witness(es) on oath and can conduct an inquiry, to *inter alia* determine whether they have jurisdiction. Based on that evidence, the Magistrate can either issue a summons to the defendant to face trial or dismiss the complaint. If a summons is issued and the defendant does not plead guilty, the Magistrate will conduct a trial by taking evidence from both parties and thereafter issue a final judgment. See Chapter XV of the CrPC, XVI of the BNSS; see also Subramaniam Swamy v. Union of India, [(2016) 7 SCC 221]; Suresh v. Sub-inspector of Police, [(2019) (4) KLT 106]; Rajindra Nath Mahato v. T.Ganguly, [(1972) 1 SCC 450].

Journalists were charged with defamation for reporting on public officials and corruption, as well as for reporting on religious issues, caste, corporations and COVID.

Fig 20. Defamation

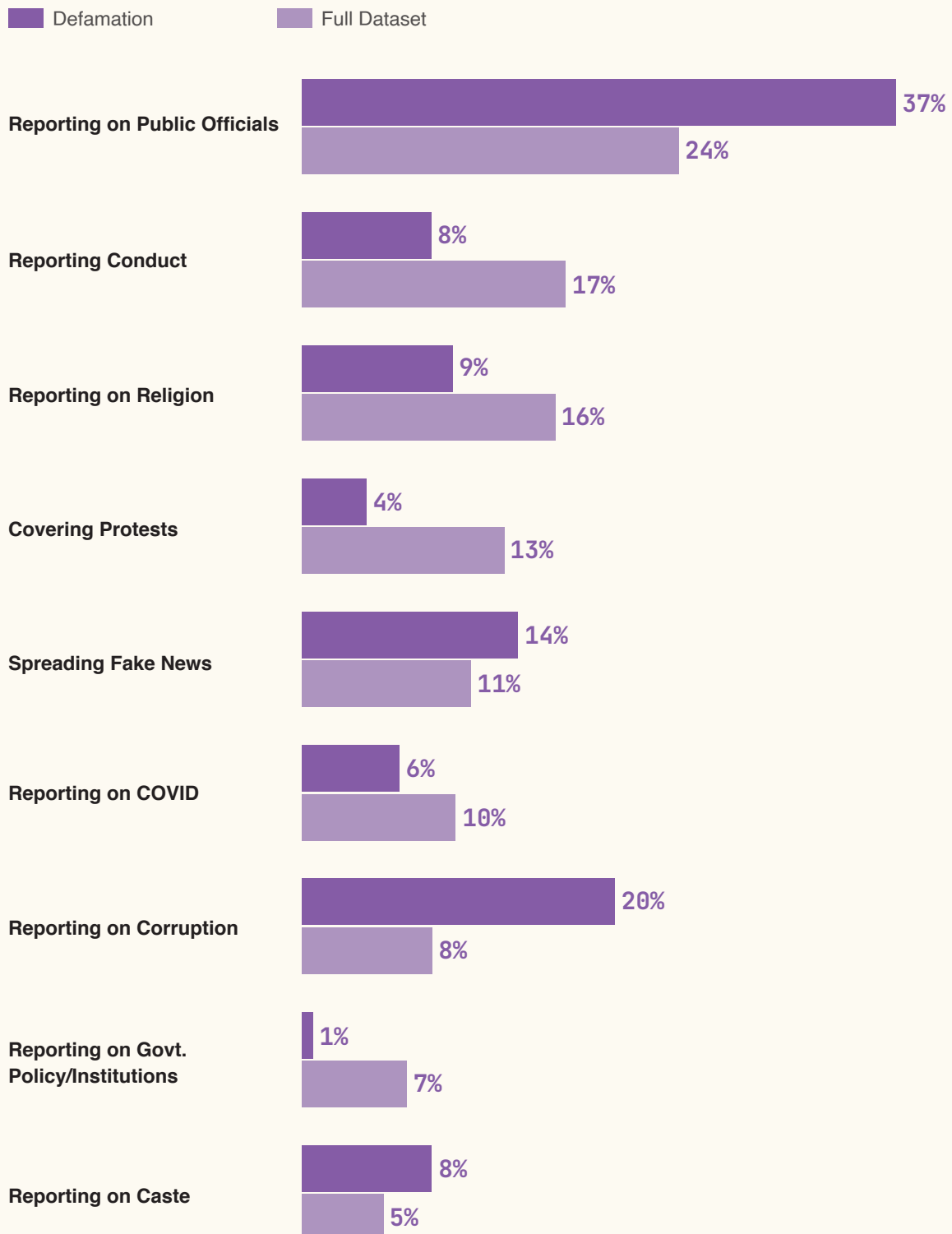


*Total incidents with known medium

*Total incidents with known language

**Total incidents with known nature of work

Source: Primary Dataset

Fig 21. Defamation - Basis of Charges

Source: Primary Dataset

DEFAMATION CHARGES against journalists and editors



Public officials and politicians across the political spectrum filed defamation cases against journalists.²²⁰ In one case, three journalists faced an FIR for defamation and trespass among other charges for publishing photos of a senior police official at a New Year party.²²¹ In another case, the editor, editor-in-chief and journalist of a newspaper faced defamation charges for reporting on alleged sexual harassment by professors in a government college. The complainant was not even named in the article in question and despite defamation being a bailable offence, the Magistrate's court issued non-bailable warrants against the journalists. The High Court had to intervene and issued an interim order staying proceedings in the case.²²²

Several defamation cases in the database could also potentially be characterised as Strategic Lawsuits Against Public Participation (SLAPPs).²²³ Journalists faced cases filed by corporations 16 times in the

²²⁰ See The Tribune, Scribe Held for FB post Against CM, Nov. 6, 2015, available at <https://www.tribuneindia.com/news/archive/crime/scribe-held-for-fb-post-against-cm-155019/>; News Laundry, J&K High Court Quashes Defamation Complaint Against Aditya Raj Kaul, Arnab Goswami and Others, Oct. 31, 2021, available at <https://www.newslaundry.com/2021/10/13/jk-high-court-quashes-defamation-complaint-against-aditya-raj-kaul-arnab-goswami-and-others>; Girish Menon, Chandy Files Defamation Case Against Saritha, Four Journalists, The Hindu, Oct. 18, 2016, available at <https://www.thehindu.com/news/national/kerala/Chandy-files-defamation-case-against-Saritha-four-journalists/article14226584.ece>.

²²¹ The Press Trust of India, Journos Condemn Top Cop's Action, One India, Jan. 7, 2012, available at <https://www.oneindia.com/2012/01/07/journos-condemn-top-cop-action.html>.

²²² Himanshu Dwivedi v. Dr. Saroj Parhate, Chattisgarh High Court, Order dated 3 January 2023 in Criminal Petition No. 2143/2022.

²²³ While there is no universally agreed definition of the term, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has described SLAPPs as attempts to “shut down critical speech by intimidating critics into silence and draining their resources, [which in the process] distract and deflect discussions on corporate social responsibility.” UN Office of the High Commissioner for Human Rights, UN Special Rapporteur on Freedom of Peaceful Assembly and of Association, SLAPPs and FoAA Rights: Info Note of the UN Special Rapporteur on the Rights to Freedom Assembly and of Association, available at <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx>. The Inter-American Court of Human Rights has likewise stated that “a SLAPP constitutes an abusive use of judicial mechanisms that must be regulated and controlled by the States, with the aim of allowing effective exercise of freedom of expression.” IACtHR, Palacio Urrutia et al. v. Ecuador, Series C. No. 446, Nov. 24, 2021, para. 95; see also para. 13 in the concurring opinion by Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Ricardo C. Pérez Manrique. And the ECtHR has referred to SLAPPs as “groundless legal actions by powerful individuals or companies that seek to intimidate journalists [and others] into abandoning their investigations ... [with the aim of] divert[ing] time and energy, as a tactic to stifle legitimate criticism.” The European Court of Human Rights in the case of *OOO Memo v. Russia* referred to the Council of Europe Commissioner for Human Rights’ definition of a SLAPP. ECtHR, *OOO Memo v. Russia*, App. No. 2840/10, June 15, 2022, para. 23.

dataset, 11 of which were defamation cases filed by one of India's largest business conglomerates, the Adani group, for reporting that was considered unfavourable.

DEFAMATION COMPLAINT against freelance journalist



A defamation complaint was filed against a freelance journalist by the Adani group, in July 2022.²²⁴ The journalist had published multiple reports about the group, including about it obtaining rights to develop and operate airports in India and its offshore investors. As of October 2023, the trial was pending. This was just one of many cases filed by the group against journalists and news publications.²²⁵

The UN Human Rights Committee has recommended that defamation be decriminalized,²²⁶ including in connection with its most recent review of India.²²⁷ The Committee has also stressed that truth should always be a defense to a criminal defamation case.²²⁸ And the Committee and the European Court of Human Rights have both emphasized that where national legislation or courts make no distinction between statements of fact and value judgments—which amounts to requiring proof of the truth of a value judgment—this is an “indiscriminate approach to the assessment of speech” and a per se violation of the right to freedom of expression.²²⁹

Section 499 only provides for a limited defense of truth and statements that are opinions.²³⁰ Further, there is widespread agreement that SLAPPs should be dismissed at an early stage.²³¹

²²⁴ CPJ, Adani Group Files Criminal Defamation Suit Against Freelance Indian Journalist Ravi Nair, July 28, 2022, available at <https://cpj.org/2022/07/adani-group-files-criminal-defamation-suit-against-freelance-indian-journalist-ravi-nair/>.

²²⁵ *Id.*

²²⁶ UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

²²⁷ UNHRC, Concluding Observations on the Fourth Periodic Report of India, UN Doc. CCPR/C/IND/CO/4, Sept. 2, 2024, para. 50(b).

²²⁸ UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 47.

²²⁹ See, e.g., *id.*; ECtHR, *Gorelishvili v. Georgia*, App. No. 12979/04, Sept. 5, 2007, para. 38; ECtHR, *Fedchenko v. Russia*, App. No. 33333/04, June 28, 2007, para. 37.

²³⁰ The Indian Penal Code, Act No. 45 of 1860, Section 499, Exception 1, 2 and 3.

²³¹ Media Defence, Protecting Public Watchdogs across the EU: A Proposal for an EU Anti-SLAPP Law, 2021, available at https://www.mediadefence.org/wp-content/uploads/2021/12/Anti_SLAPP_Model_Directive-2-1.pdf; European Parliament and the Council of the European Union, Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on Protecting Persons who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings (“Strategic Lawsuits Against Public Participation”), Apr. 11, 2024, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1069>.

At the same, a number of national jurisdictions have struck down defamation laws.²³² For instance, the High Court in Kenya opined that in light of the availability of a civil defamation claim, “the offence of criminal defamation constitutes a disproportionate instrument for achieving the intended objective of protecting the reputations, rights and freedoms of other persons. Thus, it is absolutely unnecessary to criminalize defamatory statements.”²³³

If anything, however, the scope of defamation has been widened under the BNS.

IPC → BNS

Section 356, BNS encompasses the substantive law on criminal defamation with clauses 1, 2, 3 and 4 corresponding to Sections 499, 500, 501 and 502 of the IPC, respectively. Under the BNS, the definition of defamation has been broadened to include any medium of publication and community service has been added as a form of punishment.

²³² See *supra* n. 6.

²³³ High Court of Kenya, Jacqueline Okuta & Anor v. AG & Others, Decision, Feb. 6, 2017, available at <http://kenyalaw.org/caselaw/cases/view/130781/?platform=hootsuite>.

G. Offences Against Public Servants

The final category of offences reflects a tactic to target not the reporting or speech of journalists (as the prior four did), but rather *their conduct during reporting*.

The ‘offences against public servants’ cluster was invoked a total of 124 times, 19% of the total in our dataset. The most frequent offences were Section 353 (assault on public servants),²³⁴ along with Sections 186²³⁵ and 188²³⁶ of the IPC (dealing with interference with the duties of or disobedience to a public servant).

ALLEGATION against nine photo and video journalists



In one case, nine local photo and video journalists were charged with public mischief, trespass and “obstructing a public servant” when they reported on an electronic voting machine being shifted in an allegedly suspicious manner at midnight.²³⁷

This cluster was overwhelmingly charged against journalists based in small cities/towns and against journalists reporting in Hindi, and against those reporting for state or local level publications.

This points to a tactic used by public officials at the local/state level—while criticism of public officials attracted defamation charges against big-city journalists, reporting on local public officials often led to charges of offences against public servants. Further, such offences were used for on the ground news gathering activities, such as covering protests, posing questions to police officers, conducting sting operations, visiting sites without permission, etc.

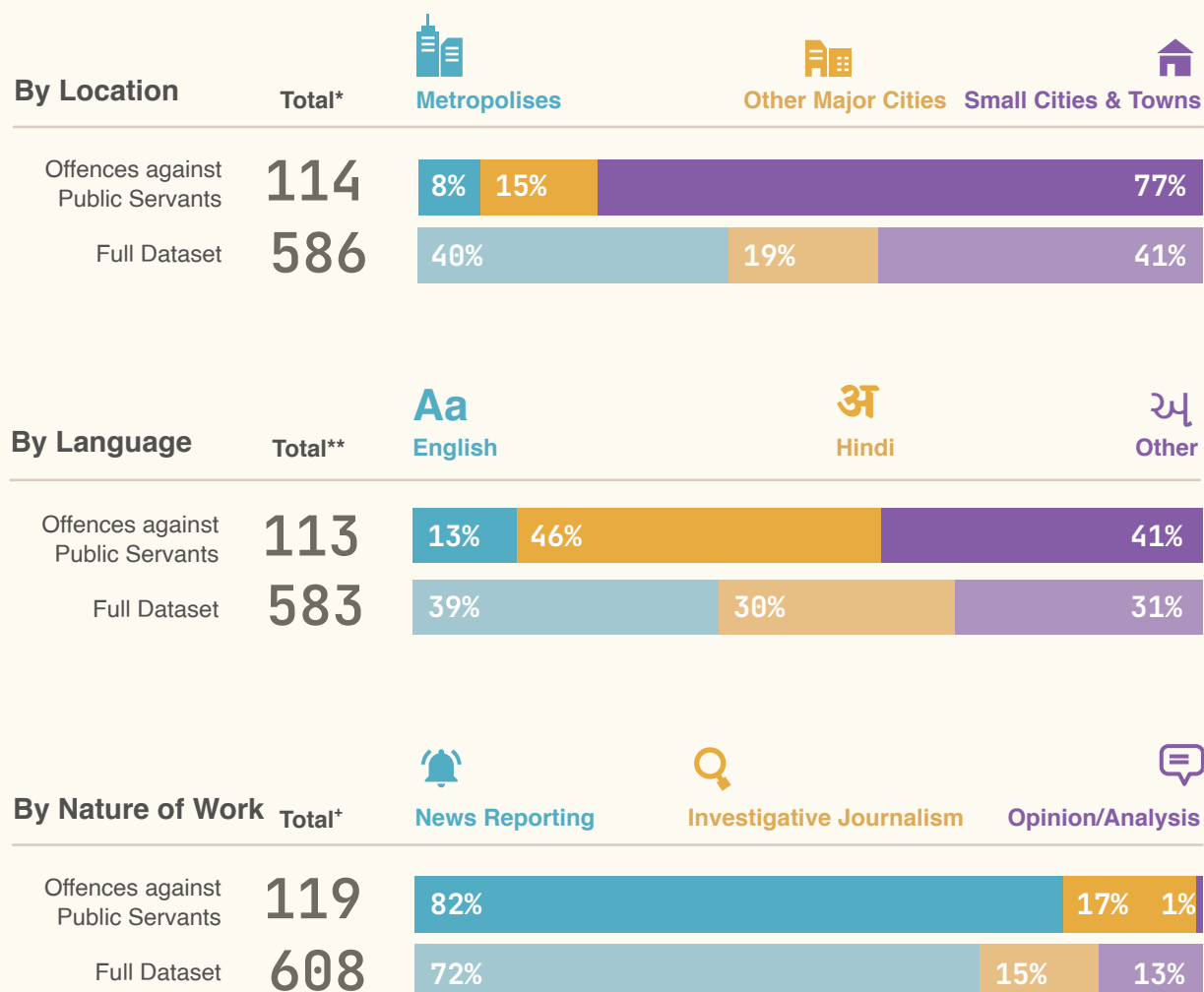
²³⁴ Section 353 criminalizes “assault or use of criminal force against a public servant in the discharge of their duty, or with intention of preventing or deterring them from carrying out their or in consequence of anything done or attempted them in the lawful discharge of his duty as such public servant.” Unlike Sections 186–188, the penalty for violating Section 353 is more severe: up to two years imprisonment.

²³⁵ Whoever “voluntarily obstructs any public servant in the discharge of his public functions.”

²³⁶ “Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed.”

²³⁷ Mumbai Mirror, Nine Photo and Video Journalists Capturing EVMs Shifting at Night Booked, Charged with Obstruction in Telangana, Apr. 17, 2019, available at <https://mumbaimirror.indiatimes.com/loksabha-elections/news/nine-photo-and-video-journalists-capturing-evms-shifting-at-night-booked-charged-with-obstruction-in-telangana/articleshow/68917729.cms>

Fig 22. Offences against Public Servants



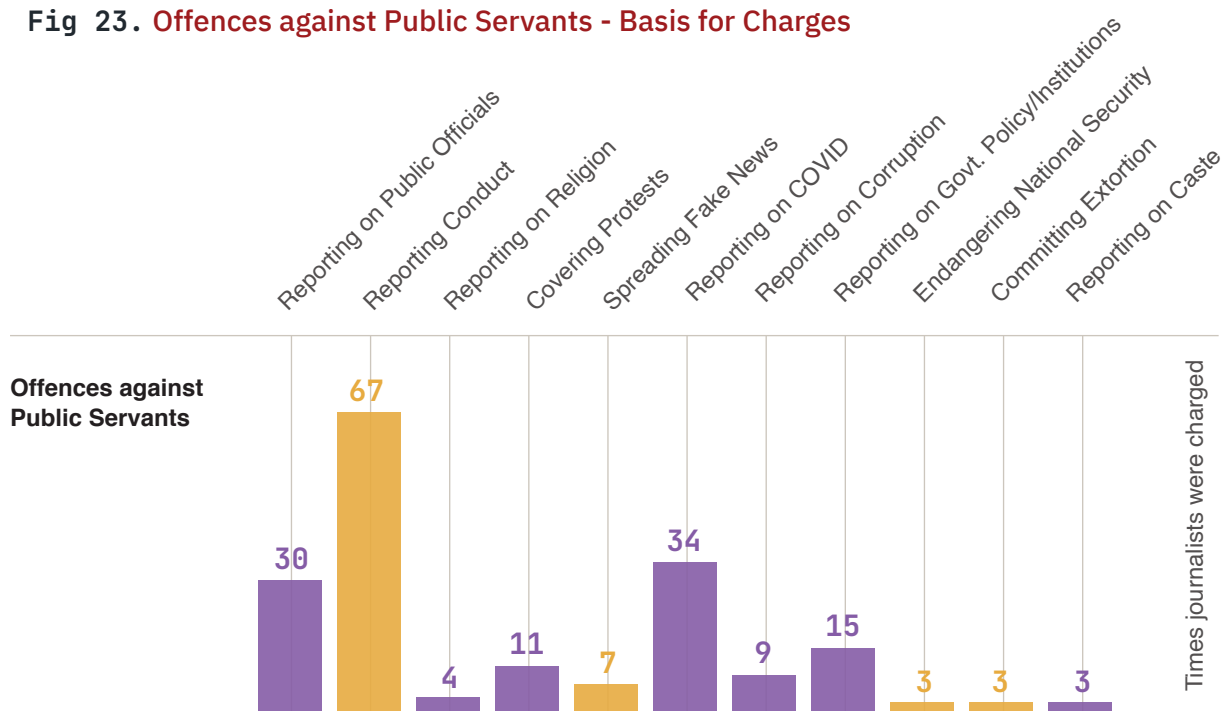
*Total incidents with known location

**Total incidents with known language

*Total incidents with known nature of work

Source: Primary Dataset

Consistent with this hypothesis, more than 50% of journalists facing charges in this category were reported to the police for their conduct while reporting, instead of the content of the reportage.

Fig 23. Offences against Public Servants - Basis for Charges

Source: Primary Dataset

ALLEGATIONS against journalists

In one case, a journalist was shooting a video of a slum demolition drive on her phone and was booked for obstructing the government servants from carrying out the demolition.²³⁸ Four journalists in Patna were detained while reporting on protests; while three were ultimately released, one of them was charged with assaulting a public servant and remained in detention, despite news reports suggesting he was in fact manhandled by police officers.²³⁹ Another freelance journalist was arrested for pushing a police officer while covering the farmers protests in Delhi—he was finally granted bail by the local Magistrate.²⁴⁰ Such cases were often clubbed with offences against public tranquility.

²³⁸ The Indian Express, Mumbai: Journalist Among 4 Booked for 'Disrupting' Demolition Drive, Dec. 27, 2017, available at <https://indianexpress.com/article/cities/mumbai/mumbai-journalist-booked-for-disrupting-demolition-drive-maharashtra-5000394/>.

²³⁹ The Free Speech Collective, 'The Activist' Journalist Amir Hamza Is Still in Custody, June 20, 2022, available at <https://freespeechcollective.in/the-activist-journalist-amir-hamza-is-still-in-custody/>.

²⁴⁰ The Indian Express, Farmers' Protest: Journalist Mandeep Punia Granted Bail, Judge Notes Delay in Filing FIR, Feb. 2, 2021, available at <https://indianexpress.com/article/india/farmers-protest-delhi-court-grants-bail-to-journalist-mandeep-punia-7171458/>.

These Sections, unlike others, do not concern feelings; nor do they require publication. They are focused on journalists' actions.

UN entities and the European Court of Human Rights have previously expressed concern at the potential for misuse of charges of resisting arrest or disobeying police orders, especially in the context of protests.²⁴¹ While these charges are on the books in many jurisdictions, and may be used legitimately, the examples in our dataset show their potential for abuse.

Indian courts have held that Section 186 requires an “overt act of obstruction and not merely . . . [a] refusal to carry out orders.”²⁴² and Section 188 must involve something more than mere disobedience of the order.²⁴³ It must also be shown that obstruction, injury, danger to human life, etc., have been caused or were likely to be caused.²⁴⁴

These offences, like those that came before, are included in the BNS.

IPC → BNS

While the BNS has adopted the language of Sections 186 and 188 IPC in Sections 221 and 223 respectively, the amount of fine has been enhanced to two thousand and five hundred rupees for both offences. Section 353 IPC is replicated in Section 132 BNS.

241 See, e.g., UN Human Rights Council, Visit to Georgia: Report of the Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, Mar. 19, 2024, (recommending “that articles 166 and 173, on petty hooliganism and disobedience of a police order, are not arbitrarily used to arrest, detain and sanction human rights defenders when participating in assemblies.”) available at <https://documents.un.org/doc/undoc/gen/g24/038/10/pdf/g2403810.pdf> (regarding Georgia); Ilgar Mammadov v. Azerbaijan, App. No. 15172/17, Oct. 13, 2014 and Ilgar Mammadov v. Azerbaijan (No 2), App. No. 919/15, Mar. 5, 2018 (both cases involving individuals who were charged with “resistance to or violence against public officials, posing a threat to their life or health” for allegedly inciting a riot, with the court in the first case concluding that “the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide.”).

242 Ram Gulam Singh v. Emperor [AIR (1925) All 401 p. 582].

243 N. G. Sabde v. Crown, [AIR (1950) Nag 12], para. 5 (“There is, however, no proof that any untoward consequences would have ensued due to the breach of the order.”).

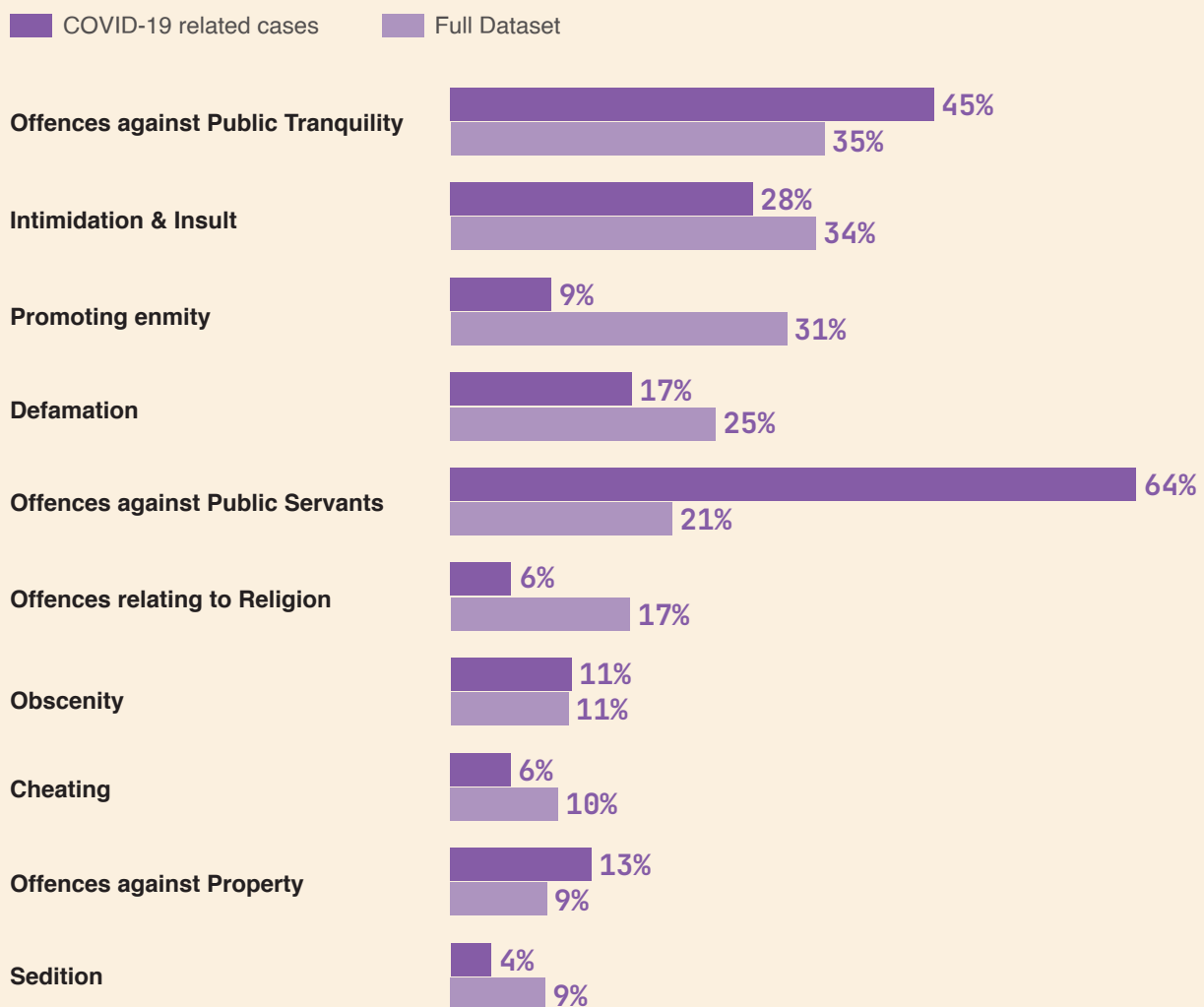
244 Madan Kishore, In re. 1[940 SCC OnLine Pat 27], para 6

Cases during the COVID-19 Pandemic

COVID-19-related cases featured 60 times in our dataset, in a total of 50 individual cases/FIRs.

Journalists reporting on COVID-19 were most commonly charged with offences against public servants (64%) and offences against public tranquility (45%).

Fig 24. COVID-19 related Cases- By Categories of Offence



Source: Primary Dataset

For example, an FIR was registered against a journalist invoking Sections 188 (disobedience of a public servant), 505(1)(b) (statement against public tranquility), and 269 and 270 (acts likely to spread infection) of the IPC, as well as provisions of the Disaster Management Act,²⁴⁵ for merely posting a tweet

²⁴⁵ Disaster Management Act, 2005, ss. 51, 54.

questioning the quarantine policy in Andaman & Nicobar Islands. The Calcutta High Court quashed the FIR labelling the allegation as “absurd” and observing such registration of FIR was a “sheer abuse of process of law and misuse of power of the Court.”²⁴⁶

There was a clear trend of criminalizing journalists for asking questions about COVID-19 management. This was seen in the sedition case quashed by the Supreme Court mentioned in the overview section above. In another case, a journalist with a leading Hindi daily faced an FIR for his report on alleged mismanagement in the COVID ward of a hospital.²⁴⁷ His report was based on his visit to the hospital, where he found that family members of the patients were present in the COVID-19 ward, without wearing PPE and even health workers were not wearing PPE.²⁴⁸ The FIR was registered under Sections of the IPC, DMA and the Epidemic Diseases Act, and alleged that the journalist entered the hospital without following COVID protocol and misbehaved with the staff.²⁴⁹

And as mentioned above, journalists in small cities/towns and those reporting in Hindi and other regional languages faced a greater proportion of COVID-19 related cases. As in the example above, many of these cases involved allegations that the journalist violated COVID-19 norms.

Interestingly, in 14 incidents, the COVID-19 related charges contained allegations that the journalist was peddling false news or misleading information.

Several specific provisions and laws were also invoked in COVID-related cases: Section 51 DMA (punishment for obstruction, categorized as an offence against public servant)²⁵⁰ and Section 54 DMA

²⁴⁶ Zubair P.K. v. The State, CRR No. 6 of 2021, High Court of Calcutta, Circuit Bench at Port Blair.

²⁴⁷ Ranjan Sinha, Harassment and False Charges Against Journalist Ranjan Sinha by Bihar Police for Reporting on Mismanagement in COVID Ward, Human Rights Defenders’ Alert India, Aug. 11, 2021, available at <https://hrdaindia.org/harassment-and-false-charges-against-journalist-ranjan-sinha-by-bihar-police-for-reporting-on-mismanagement-in-covid-ward>.

²⁴⁸ Umesh Kumar Ray, We’re Targeted for Exposing Government Mismanagement: Journalists on Bihar Media Crackdown, The Caravan, June 30, 2021, available at <https://caravanmagazine.in/media/were-targeted-for-exposing-government-mismanagement-journalists-on-bihar-media-crackdown>.

²⁴⁹ *Id.*

²⁵⁰ Disaster Management Act, 2005, Section 51 “-(1) Whoever, without reasonable cause- (a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or (b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.”

(punishment for false warning, categorized as an offence against public tranquility),²⁵¹ as well as Section 269 of the IPC²⁵² and Section 3 of the Epidemic Diseases Act, 1897.²⁵³ Further, as discussed above, numerous journalists were charged under Section 188 of IPC.

251 *Id.* at Section 54. “Punishment for false warning .-Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.”

252 The Indian Penal Code, Act No. 45 of 1860, Section 269: “[w]hoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life” is punishable with up to six months imprisonment, a fine, or both.

253 Epidemic Diseases Act, 1897, Section 3: “Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860). (2) Whoever,—(i) commits or abets the commission of an act of violence against a healthcare service personnel; or (ii) abets or causes damage or loss to any property, shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees. (3) Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”

BACKLASH CASES

As discussed above, while not part of our primary dataset, we also analyzed ‘backlash’ cases—that is, cases that were ostensibly unrelated to the accused’s work, but that the journalist themselves, or others, suggested were retaliation for their reporting.

A high-profile example is the case of bank-fraud filed against the promoters of prominent news channel NDTV.²⁶³ In 2017, the Central Bureau of Investigation, India’s premier investigation agency, filed an FIR against the promoters for cheating, criminal conspiracy and corruption in relation to complex loan transactions that allegedly transferred control of NDTV to a shell company. Seven years later, the CBI filed a “closure report” citing lack of sufficient evidence to proceed with the case.²⁶⁴ (At the same time, NDTV, which was reportedly “one of the few” broadcasting groups “critical of the government” was taken over by the Adani group²⁶⁵ during the pendency of the case—and this resolution of the case, while salutary, meant that there was no judicial precedent established in regard to the prosecution of these kinds of cases against journalists.) Meanwhile, the promoters also face another case for violating India’s foreign investment laws, which they claimed was an “attempt to silence free and fair reportage through malicious and fabricated charges”.²⁶⁶

Apart from the common offence categories in the primary dataset, the backlash dataset included offences against the human body and offences against property. In some cases, “offences against the human body” charges were invoked due to allegations that the journalist in question assaulted someone, while “offences against property” charges were invoked due to allegations of blackmail, extortion or bribery. It was not within the scope of this report to verify the veracity of these allegations.

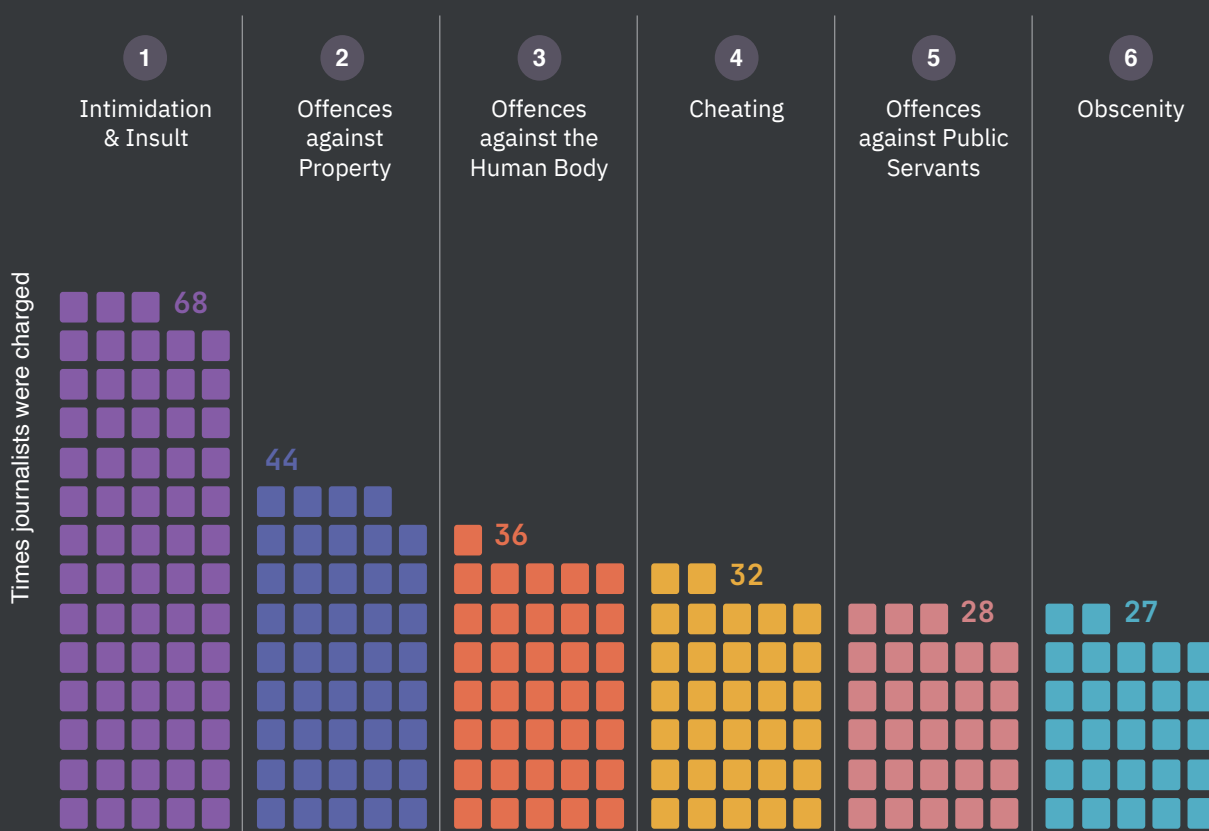
²⁶³ The Hindustan Times, CBI Closes 2017 Probe Against NDTV Founders Prannoy Roy and Radhika Roy, Oct. 1, 2024, available at <https://www.hindustantimes.com/india-news/cbi-closes-2017-probe-against-ndtv-founders-prannoy-roy-and-radhika-roy-101727789755864.html>

²⁶⁴ *Id.*

²⁶⁵ Carole Dieterich, India’s Richest Man Seeks to Get His Hands on NDTV, a Channel Critical of the Government, Le Monde, Oct. 27, 2022, available at https://www.lemonde.fr/en/economy/article/2022/10/27/india-s-richest-man-seeks-to-get-his-hands-on-ndtv-a-tv-channel-critical-of-the-government_6001914_19.html

²⁶⁶ The Indian Express, CBI Files Fresh Case Against NDTV, Prannoy Roy for Alleged Violation of FDI Norms, Aug. 21, 2019, available at <https://indianexpress.com/article/india/ndtv-prannoy-roy-tax-evasion-case-cbi-5923831/>

Fig 25. Backlash - Categories of Offense



Source: Backlash Dataset

The offences against the human body cluster includes Sections 323 (voluntarily causing hurt),²⁵⁴ 341 (wrongful restraint)²⁵⁵ and 307 (attempt to murder)²⁵⁶ of the IPC.

The offences against property cluster includes Sections 384 (extortion),²⁵⁷ 406 (criminal breach of trust)²⁵⁸ and 409 (criminal breach of trust by public servant, banker, merchant or agency)²⁵⁹ of the IPC.

²⁵⁴ Punishable by up to 1 year imprisonment, a fine, or both.

²⁵⁵ Punishable by up to 1 month imprisonment, a fine, or both.

²⁵⁶ Punishable by up to 10 years imprisonment and a fine; and if it caused hurt, punishment may be extended to life imprisonment.

²⁵⁷ Punishable by up to 3 years imprisonment, a fine, or both.

²⁵⁸ Punishable by up to 3 years imprisonment, a fine, or both.

²⁵⁹ Punishable by up to 10 years imprisonment and a fine; and the punishment can be extended to life imprisonment.

The most common specific offences invoked in backlash cases are as follows:

Fig 26. Backlash - Specific Offences

S 506 IPC: Criminal Intimidation



S 384 IPC: Extortion



S 420 IPC: Cheating



S 294 IPC: Obscenity



S 353 IPC: Assault of Public Servant



S 3 SCSTPOA: Atrocities against SC/ST persons



S 323 IPC: Causing Hurt



Source: Backlash Dataset

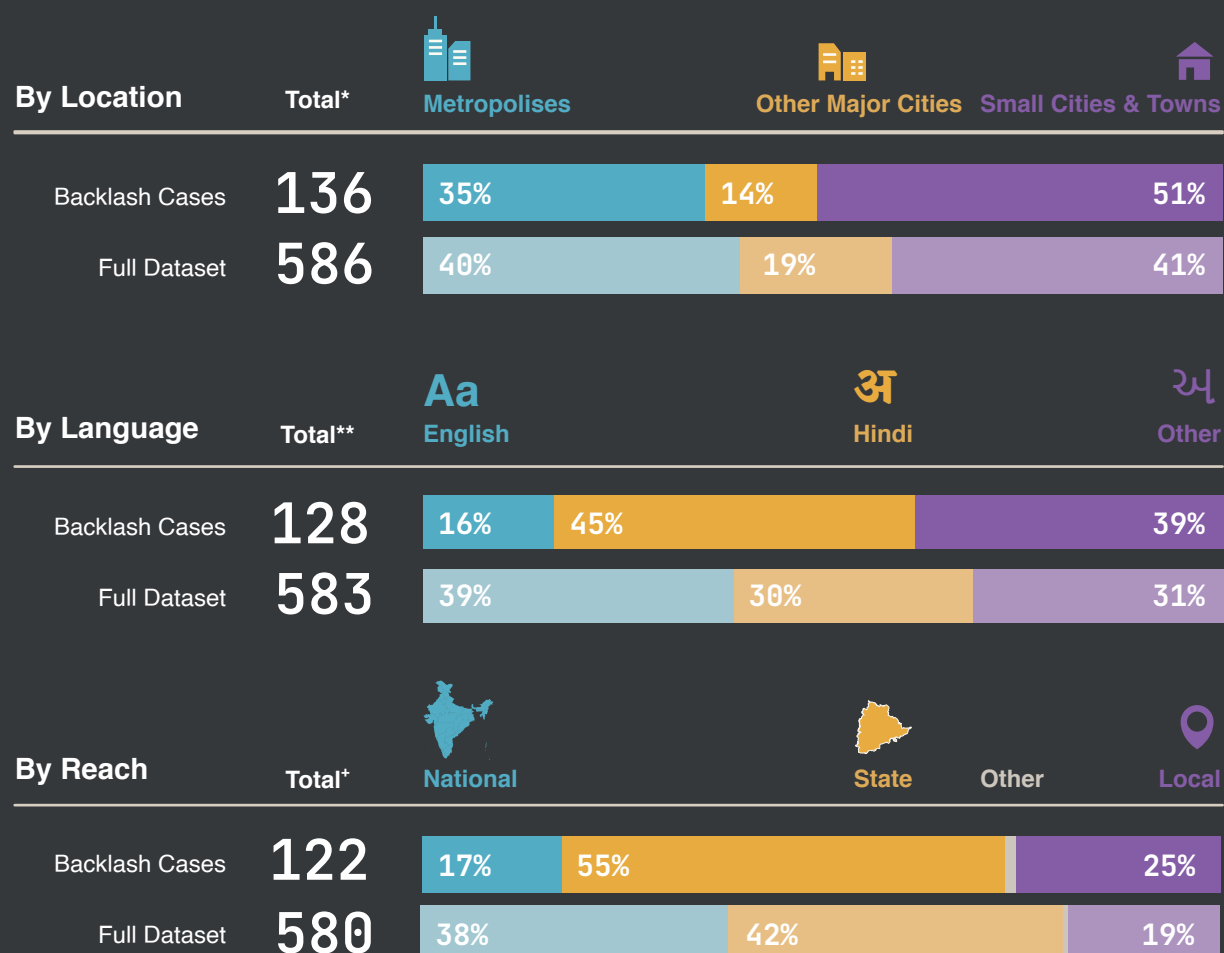
One rural reporter in the state of Chhattisgarh faces two cases—one registered in 2019 under Sections 294, 323, 353, 332, 186 and 34 of the IPC and Section 3 of the SCSTPOA²⁶⁰ and another registered in 2021 under Sections 294, 384, 506 of the IPC and Section 3 of the SCSTPOA.²⁶¹ Both cases allege that the journalist made casteist remarks and made threats to assault individuals.

²⁶⁰ Case status; FIR No. 20 of 2019, PS Balrampur, District and Sessions Court Balrampur.

²⁶¹ Human Rights Defenders' Alert India, Sub: HRD Alert -India – Urgent Appeal for Action – Chhattisgarh: Threats and Fabricated Charges Against Journalist Mr. Ramhari Gupta by Chhattisgarh Police as Reprisal for Reporting on Government Project, Aug. 31, 2021, available at https://hrdaindia.org/assets/upload/294738463HRDA-UA-EAST-CG-Ramhari_Gupta.pdf

As per civil society reports, the 2019 case was registered as reprisal for his reporting on illegal sand mining and the involvement of police and government officials in the mining, while the 2021 case was registered as reprisal for his reportage on poor quality construction in a government school.²⁶²

Fig 27. Backlash



*Total incidents with known location

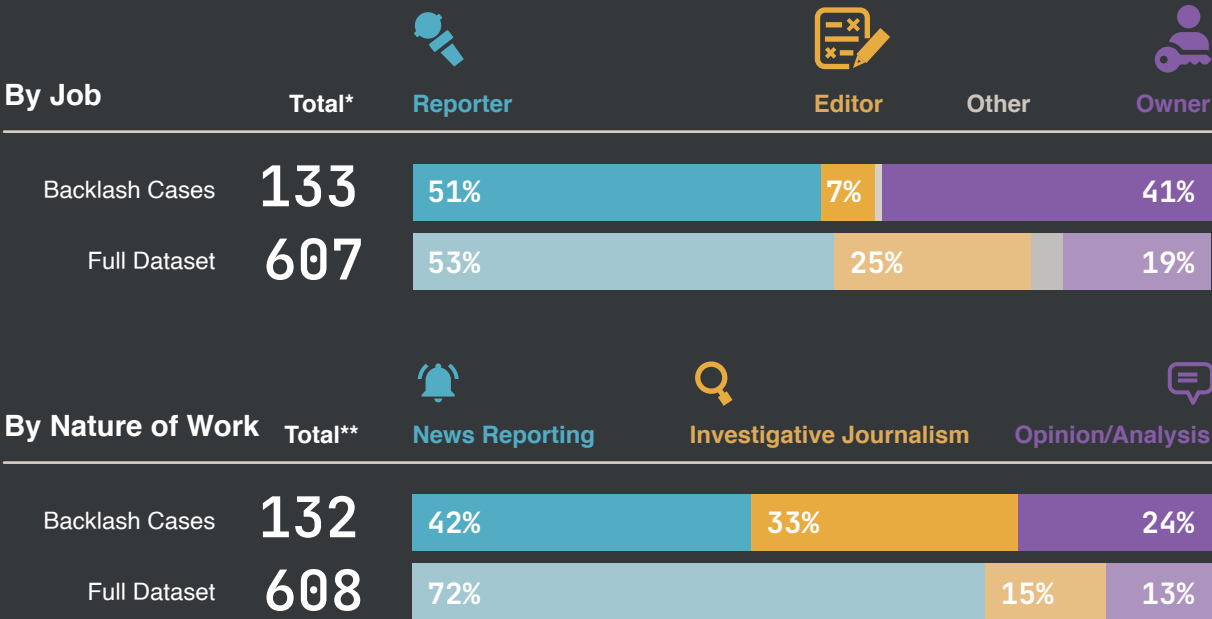
*Total incidents with known reach

**Total incidents with known language

Source: Backlash Dataset

Further, some of the most senior media workers appeared in backlash cases: That is, owners were comparatively more likely to be targeted in backlash cases than in the regular dataset, which suggests that some of these cases may have been geared at shutting down publications as a whole, rather than targeting individual journalists. Further, investigative journalism faced a higher share of backlash cases than in the regular dataset—while investigative journalism accounted for 15% of the main dataset, it accounted for 33% of the backlash cases.

Fig 28. Backlash



*Total incidents with job description
**Total incidents with known nature of work
Source: Backlash Dataset

H. Modes of Liability

The dataset reveals that multiple journalists were implicated in the same FIR. To bring these charges against multiple accused persons, the police use two other provisions in the IPC (1) criminal conspiracy (Section 120B of the IPC)²⁶⁷ and (2) acts done in furtherance of a common intention (Section 34 of the IPC)²⁶⁸. Together, these were invoked a total of 264 times in the dataset. Section 120B was included in 61 individual cases, while Section 34 in 66 individual cases, and both were frequently clubbed together.

Criminal conspiracy is a substantive offence,²⁶⁹ while Section 34 IPC on the other hand creates no distinct offence.²⁷⁰ It only lays down a rule of evidence that if two or more persons commit a crime in furtherance of a common intention, each of them will be liable jointly. Both sections need at least two people to be involved in the criminal activity to be invoked. An overt act in furtherance of the common intention is required for application of Section 34 while mere agreement is sufficient for Section 120B. In practice, Section 120B, like Section 34 IPC, is invoked only in conjunction with other substantive offences.²⁷¹

In the Republic Day protest cases, for instance, most of the 10 FIRs included Section 120B IPC and Section 34 IPC, with those presumably forming the basis to implicate the five or six journalists in each FIR, despite the police not even alleging that there was some “meeting of minds” between all the journalists as required by Section 120B IPC.²⁷² The data suggests that these offences were invoked in a blanket manner in all cases implicating multiple individuals.

267 The Indian Penal Code, Act No. 45 of 1860, Section 120B: Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2*[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

268 *Id.* at Section 34: “Acts done by several persons in furtherance of common intention.--When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

269 *State v. Nalini*, [(1999) 5 SCC 60]; The Indian Penal Code, Act No. 45 of 1860, Section 120A.

270 *Gurudatta Mal v. State of U.P.*, [AIR (1965) SC 257].

271 Sparsh Upadhyay, How Can Police File Charge-Sheet Only Under S. 34 & 120-B IPC: Allahabad High Court Calls For Explanation From IO, Live Law, Nov. 4, 2020, available at <https://www.livelaw.in/news-updates/charge-sheet-under-s-34-120-b-ipc-allahabad-high-court-calls-for-explanation-from-io-circle-officer-165455?infinitescroll=1>.

272 *State v. Nalini*, [(1999) 5 SCC 60].

I. Emerging Concern: “Fake news” & Financial and related crimes

As mentioned above, Section 152 of the BNS has the potential to be used to criminalize speech, as it shares similarities with the sedition law. Another provision in the BNS that merits discussion is Section 197(1)(d), which states: "Whoever makes or publishes false or misleading information jeopardising the sovereignty, unity, and integrity or security of India, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

This provision raises several concerns. The terms 'false and misleading' and 'jeopardizing' are vague and there does not appear to be a requirement to show intent. The provision's scope to include the mere creation of such information, even without publication, is also liable to potential misuse.²⁷³

Our dataset reveals that criminal cases are already filed against journalists based on allegations that they have spread "false news." Allegations of spreading "false news" were included in 10% of the incidents in the dataset. These allegations were found against journalists who were reporting on COVID-19, on public officials, criticizing the government and so on. This suggests that Section 195(1)(d) of the BNS is likely to be invoked against journalists, and its lacunae could give rise to abuse.

The Special Rapporteurs on freedom of expression from the UN, American, African and OSCE systems, for example, have stated that "[g]eneral prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'false news' or 'non-objective information', are incompatible with international standards for restrictions on freedom of expression . . . and should be abolished."²⁷⁴ And as discussed above, the Indonesian Constitutional Court has recently struck down a 'fake news' law.

Indian courts are also already alive to this issue: In considering a recent proposed Fact Check Unit,²⁷⁵ termed by some a proposed "Ministry of Truth,"²⁷⁶ a judge of the Bombay High Court stated, "I believe it is unthinkable that any one entity — be it the government or anyone else — can unilaterally 'identified', (meaning picked out and decided) to be fake, false or misleading. That surely cannot be the sole preserve

²⁷³ The P39A Criminal Law Blog, Criminal Law Bills 2023 Decoded #9: Implications of Criminalising False and Misleading Information Under BNS 2023, Oct. 3, 2023, available at <https://p39ablog.com/2023/10/criminal-law-bills-2023-decoded-9-implications-of-criminalising-false-and-misleading-information-under-bns-2023/>.

²⁷⁴ UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and 'Fake News', Disinformation and Propaganda, Mar. 3, 2017, s. 2(a), available at <https://www.osce.org/files/f/documents/6/8/302796.pdf>.

²⁷⁵ See Annex E for additional information.

²⁷⁶ Anmol Jain, The Bombay High Court Dismisses the Ministry of Truth, *Verfassungsblog*, Oct. 8, 2024, available at <https://verfassungsblog.de/india-fact-checking-unit-fake-news/>.

of the government.”²⁷⁷ On March 21, 2024, the Indian Supreme Court stayed the Government notification establishing the Fact Check Unit.²⁷⁸

The second trend that bears watching is the increasing use of financial charges against journalists. Cheating²⁷⁹ and forgery²⁸⁰ were among the most common ‘primary offences’ in the primary dataset (i.e., sorting by the offence within an FIR with the heaviest punishment) and were among the most common offences in the backlash dataset.

ALLEGATION against prominent journalist



One example from the “backlash” set of cases is a prominent journalist facing an FIR for allegedly collecting funds through a crowdfunding campaign for COVID-19 relief in violation of laws and misusing the funds collected.²⁸¹ The FIR included charges of cheating and criminal breach of trust among other charges. The journalist also faces charges of money-laundering on the same set of allegations, with the cheating case being the predicate offence.²⁸²

²⁷⁷ Kunal Kamra v. Union of India, Writ Petition (L) No. 9792 of 2023, para. 214, available at https://www.livelaw.in/pdf_upload/it-rules-justice-patel-judgment-519759.pdf.

²⁷⁸ Editors Guild of India v. Union of India and Ors., Civil Appeal Nos. 4509-4511 of 2024, para. 24(v).

²⁷⁹ Section 415 of the IPC defines cheating as “deceiving any person” and “fraudulently or dishonestly induc[ing] the person so deceived to deliver any property to any person” or “induc[ing] the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived,” where that act or omission causes or is likely to cause damage or harm to body, mind, reputation or property. Section 420 of the IPC punishes cheating that dishonestly induces a person to deliver property or alter, make, or destroy a valuable security. The offence is punishable with imprisonment of up to seven years and a fine.

²⁸⁰ Forgery is defined under Section 463 of the IPC as “mak[ing] any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed.” The Indian Penal Code, Act No. 45 of 1860, Section 463. Section 467 of the IPC punishes forgery of documents that purport to be a “valuable security,” a will, an authority to adopt a son, or documents authorizing the transfer or receipt of money, property, or valuable securities. The offence is punishable with imprisonment for life or with imprisonment of up to ten years, and a fine. The Indian Penal Code, Act No. 45 of 1860, Section 467.

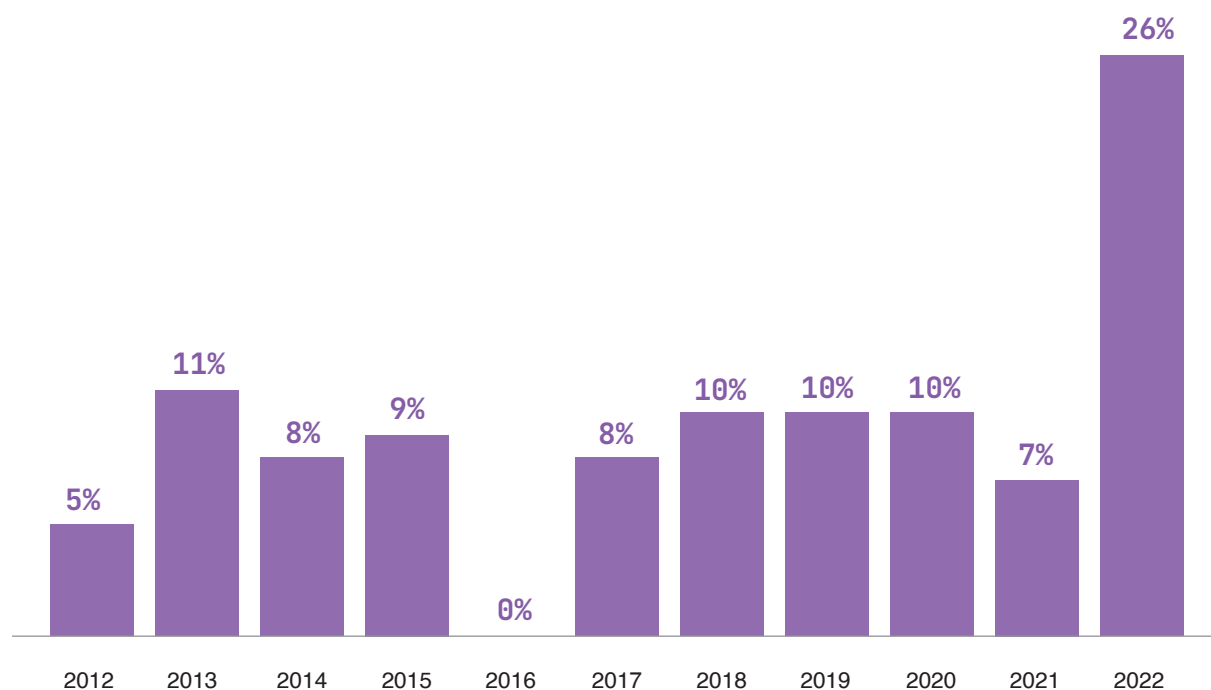
²⁸¹ Awstika Das, Supreme Court Dismisses Rana Ayyub’s Plea Challenging Jurisdiction of Ghaziabad Court to Try PMLA Case Against Her, Live Law, Feb. 6, 2023, available at <https://www.livelaw.in/top-stories/supreme-court-rana-ayyub-quashing-proceedings-ghaziabad-court-money-laundering-case-journalist-220906>.

²⁸² *Id.*

These cases have become more common over time. Indeed, the use of financial charges against journalists is a rising global trend.²⁸³

Fig 29. Financial Charges over time

Percent of times at least one of the charges a journalist faced was a financial charge



Source: Primary Dataset

And interestingly, there are no apparent patterns to their use, as they are invoked in major metropolises and small cities and towns, and for a wide variety of reasons. This suggests they may be a new, effective tool in the toolbox, rather than a tailored tactic.

²⁸³ See *supra*.

J. Conclusion

Many of the provisions most commonly invoked against journalists are vague and broad. They are thus among the ‘easiest’ to charge, which may explain in part why they are the most frequently included in FIRs/complaints. Further, the vast majority of the FIRs invoke multiple offences, suggesting that there may be a tendency to ‘see what sticks.’

While the Indian Supreme Court and High Courts have emphasised the ‘intent’ requirement of these offences,²⁸⁴ and narrowed down their interpretation (by requiring a nexus between speech and harm), police and courts often consider these issues to be decided at trial.²⁸⁵ However, as the following chapter demonstrates, many of these cases do not often go to trial, and the criminal process itself is the punishment.

Further, limitations read into these offences are not reflected in the BNS. Many of these offences are replicated, or expanded, in the BNS. This reflects an emerging practice of ‘re-nationalizing’ colonial laws. It also means that the same legal provisions can continue to be used to control ‘dangerous’ speech.

Yet there are also some discernible differences in experience among journalists based on where they work, what they report on, and the medium through which they report.

Our data suggests, for instance, that certain tactics are more likely against national-level journalists, or digital/social media, such as charging them with promoting enmity offences. This can potentially be explained by the particular ‘dangers’ that reporting to a wide audience and over social media may be perceived to pose. Often, journalists face FIRs registered across various states for the same speech—leading to multiple incidents of criminalization.

284 Sections 153A and 505(2) IPC, See *Balwant Singh v. State of Punjab* (1995) 3 SCC 214, para. 9 (“The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed.”); *Manzar Sayeed Khan v. State of Maharashtra* (2007) 5 SCC 1; *Bilal Ahmed Kaloo v. State of A.P.*, (1997) 7 SCC 431, para. 11 (“This Court has held in *Balwant Singh* and another vs. *State of Punjab* (1995 3 SCC 214) that mens rea is a necessary ingredient for the offence under Section 153A. Mens rea is an equally necessary postulate for the offence under Section 505(2).”). Both Sections also use the term ‘promote,’ which connotes active incitement of the audience. *Amish Devgan v. Union of India*, (2021) 1 SCC 1, para 67.; Section 503, see *Manik Taneja v. State of Karnataka*, (2015) 7 SCC 423, para. 12, and *Vikram Johar v. State of U.P.*, (2019) 14 SCC 207, para 23; Section 504, see *Fiona Shrikhande v State of Maharashtra*, (2013 SCC Online SC 757), para 13-14; Section 500, *Subramanian Swamy v UOI*, 2016 Cr LJ 3214 (SC); *Jeifrey J Dierneir v State of West Bengal*, AJR 2011 SC (Cri) 1215: (2010) 6 SCC 243; Section 295-A, *Narayan Das v. State*, 1951 SCC OnLine Ori 18, para 8; *Kamla Kant Singh v. Chairman/Managing Director, Bennetta Colman and Company Ltd.*, 1987 SCC OnLine All 528, paras 12-13.

285 Cf. *Afzal Quraishi and 3 Ors. v. State of U.P. and 3 Ors*, Allahabad High Court, Order dated 06 March 2020 in Criminal Misc. Writ Petition No. 4245/2020 (“correctness of the allegations is to be tested”).

Further, defamation cases were more common against big-city journalists, while journalists in small cities/towns were more likely to be charged with offences against public servants for their on-ground reporting activities or criticism of public officials. And as is discussed in the next Chapter, their experience of the justice system was in many ways much worse than more prominent journalists.

Finally, there is an increasing trend of using ‘non-speech’ offences, such as financial crimes, as seen in the primary and backlash dataset. In several incidents, the allegations against journalists related to their conduct while reporting, or incidents that took place while they were reporting, and as in the backlash cases, activities entirely unrelated to the reporting, invoking a wide range of offences.



THE LIFECYCLE OF A CASE: PROCESS AS PUNISHMENT

"[T]he trial proceeded for close to 4 years. It was apparent that it was a baseless case as during the alleged period of offence...I was not present in India! Me and my wife used to sit on court benches all day just to take dates."

- Journalist interviewed

While the prior Chapter sought to understand the charges that journalists face, and how they differ along various axes, this Chapter is focused on a quantitative exploration of journalists' experience with the criminal justice system.²⁸⁶ The next Chapter offers a qualitative exploration of the ramifications of these cases on journalists' lives based on interviews conducted.

The two core findings from our data are (1) that there are significant delays at each stage of the process, with the result that the 'process is the punishment' for journalists in India, with more than 65% of the cases for which we have data having not yet been completed; but also (2) that the impacts of these cases are felt most acutely by journalists in small cities/towns, who report in languages other than English, and/or whose reach is local or state-wide, rather than journalists in major metropolises, and/or those who work for national or international publications.

Two potential explanations for the differences in experience among journalists are (a) greater attention to cases against journalists reporting in English in metropolises, generating greater degrees of peer, public and legal support; and (b) greater access to justice for these journalists, including based on geographic proximity to higher courts.

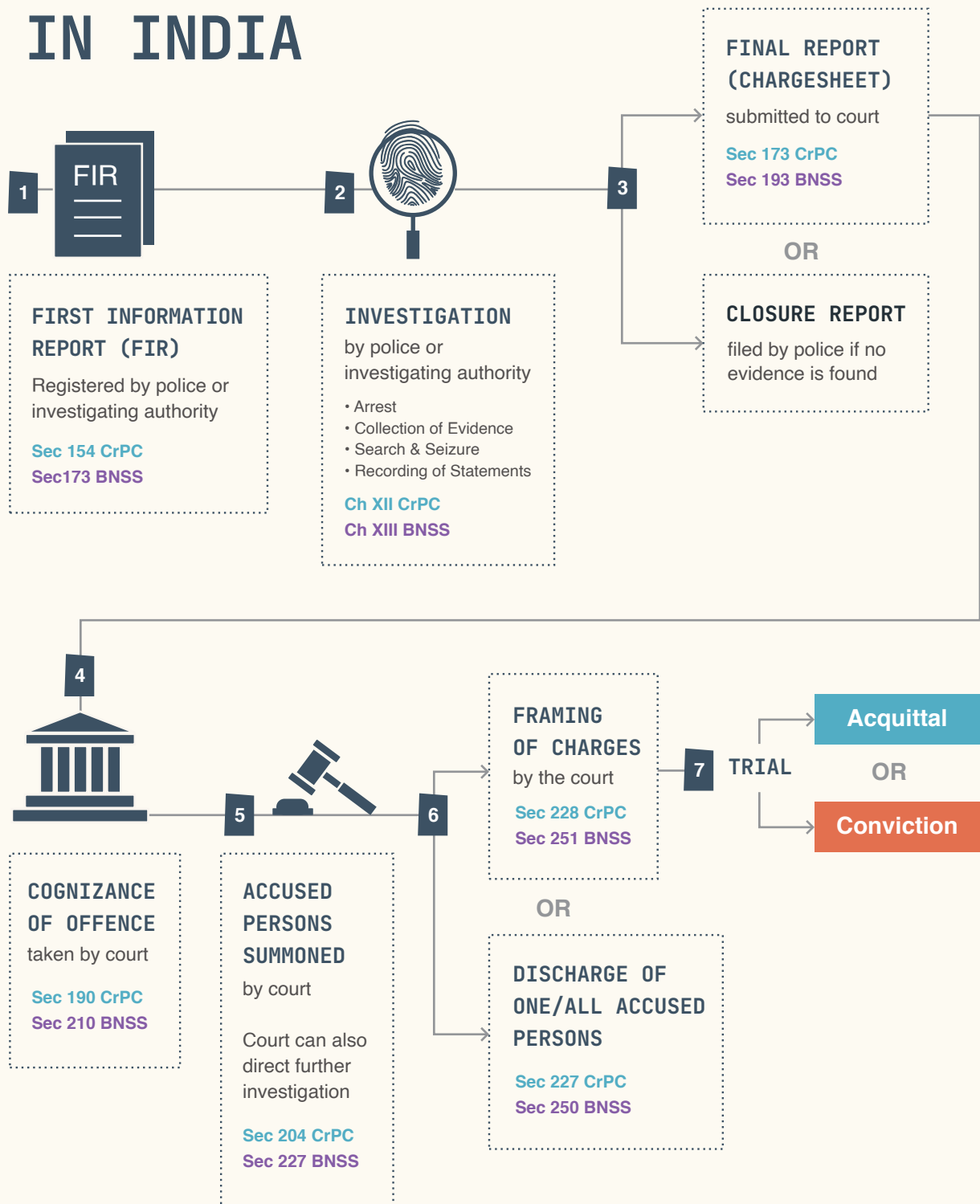
This Chapter proceeds step-by-step, from registration of a First Information Report (or filing of a criminal complaint, as the case may be) until the conclusion of the trial. The stages of a criminal case in India, as under the Code of Criminal Procedure, 1973, ("CrPC") are depicted below²⁸⁷:

286 Since we primarily relied on desk research, we are aware that the report may omit certain ramifications of a criminal case, such as asset freezes or device seizures, cf. *infra* on this point, which are less frequently reported in public sources.

287 This chart does not account for changes in procedure under the Bhartiya Nagarik Suraksha Sanhita (BNSS).

Fig 30.

CRIMINAL PROCESS IN INDIA



A. First Information Report/Criminal Complaint

"What the legal system needs is checks and balances; and a certain rigor before at least an FIR is registered, especially against journalists. Why journalists? Because they are the ones who are writing on matters that can be interpreted in any way..."

- Journalist interviewed

The first step in the investigation of an offence is generally registration of a First Information Report (FIR) by the police. Under the Code of Criminal Procedure, registration of an FIR is essentially automatic upon filing of a complaint with the police, provided the complaint discloses the commission of a cognizable offence.²⁸⁸ And indeed, the vast majority of the cases in our dataset concern 'cognizable' offences.²⁸⁹ In fact, Section 153A IPC and Section 295A IPC—commonly invoked offences—were made cognizable in the 1960s and 70s respectively, suggesting that they have become more stringent than their colonial origins.²⁹⁰

288 The First Schedule of the Code of Criminal Procedure Code, 1973 classifies offences as cognizable and non-cognizable. A cognizable offence is defined as one where the police can make arrests without warrant. See Code of Criminal Procedure, 1973, Section 2(c). For all cognizable offences, the police can register an FIR, commence investigations, and arrest persons during the investigation, without permission of a magistrate. In *Lalita Kumari v. Govt. of U.P.*, [(2014) 2 SCC 1], a five-Judge Bench of the Supreme Court held that registration of an FIR is mandatory upon receiving information disclosing a cognizable offence, without the need for a preliminary inquiry. A preliminary inquiry, if conducted, was permitted only to determine whether the information disclosed a cognizable offence. However, under the *Bhartiya Nagarik Suraksha Sanhita*, 2023, a preliminary inquiry is now mandatory before the registration of an FIR where the alleged offence is punishable with imprisonment of three years or more but less than seven years. See *Bhartiya Nagarik Suraksha Sanhita*, 2023, Section 173 (3).

289 Among the 10 most commonly charged offences, eight are cognizable: s. 153A IPC, s. 505(2), s. 295A, s. 153B IPC, s. 124A IPC, s. 353 IPC, s. 420 IPC, s. 188 IPC.

290 Abhinav Sekhri, *Pursuing Unity Through Lathis: The Pitfalls of Arming the State to Secure Social Harmony*, Article 14, June 16, 2022, available at <https://www.article-14.com/post/pursuing-unity-through-lathis-the-pitfalls-of-arming-the-state-to-secure-social-harmony-62aa949a6f4ca>.

Even where a ‘non-cognizable’ offence is alleged, the police can add a ‘cognizable’ offence to the FIR, thus evading the need to seek permission for investigation from a Magistrate.²⁹¹ The police have wide discretion to decide which offences to include in an FIR, leading to the arbitrary inclusion of multiple offences, as mentioned in the Chapter above.

ALLEGATION against journalist



For example, in a case where the journalist was charged for his reporting on the Chief Minister’s advisor allegedly misusing his influence to get government positions for his friends, the FIR included Section 509 (insulting the modesty of a woman, a cognizable offence) apart from Section 504 (insult that provokes breach of peace, a non-cognizable offence), leading to the case being considered ‘cognizable’.²⁹²

This means that there is a very low barrier to entry for those who feel aggrieved by a journalist’s reporting, without the need for a Magistrate’s involvement.²⁹³

Further, once an FIR is registered, that does not necessarily mean that the journalist gets a copy. Some journalists interviewed for this report said they came to know about the FIR against them from social media, and a few others said they came to know about the FIR only after they had been arrested/detained. In one prominent case where a senior journalist was arrested on charges of terrorism and unlawful activities,²⁹⁴ a copy of the FIR was supplied to the accused only after an application seeking a copy was filed and allowed by the court, with the Delhi police opposing the application.²⁹⁵ This is despite

²⁹¹ If the complaint pertains to a non-cognizable offence, the police must refer the complainant to a Magistrate, and can only investigate the case upon direction of the Magistrate. Code of Criminal Procedure, 1973, Section 155.

²⁹² Ayush Tiwari, Is it Harder to do Journalism Under Congress than BJP in Chhattisgarh?, News Laundry, July 20, 2022, available at <https://www.newslandry.com/2022/07/20/is-it-harder-to-do-journalism-under-congress-than-bjp-in-chhattisgarh>.

²⁹³ In certain cases, such as defamation discussed above, the criminal complaint must be filed directly before the Magistrate, and the Magistrate can conduct an inquiry and summon the accused to face trial as per the procedure laid down in Chapter XV of the Code of Criminal Procedure, 1973. These cases are prosecuted privately, and the stages of the case described in the sections below do not apply to defamation cases.

²⁹⁴ This case is not within the database of this report; it has been mentioned based on public reporting due to relevance of the issue.

²⁹⁵ Nupur Thapliyal, Delhi Court Allows News Click Founder Prabir Purkayastha, HR Head To Get FIR Copy in UAPA Case, Live Law, Oct. 5, 2023, available at <https://www.livelaw.in/news-updates/delhi-court-allows-news-click-founder-prabir-purkayastha-hr-head-to-get-fir-copy-in-uapa-case-239412#:~:text=A%20Delhi%20Court%20on%20Thursday,money%20for%20pro%2DChina%20propaganda>.

the fact courts have recognised the right of an accused to obtain a copy of the FIR.²⁹⁶ The Supreme Court has in fact directed the police of all states to upload FIRs on their respective websites, except where the offence is ‘sensitive’ such as offences pertaining to national security or sexual offences.²⁹⁷

The data points to two other significant issues faced by journalists: the registration of multiple FIRs against them, and the registration of FIRs in places far away from where they were based.

Sixty out of the 427 journalists who faced criminal action had more than one case filed against them.

While for some journalists, different cases were filed over the years, for others the same incident led to multiple FIRs. In general, there is supposed to be only one FIR registered for the commission of an offence—the police cannot register a further FIR every time they receive additional information about the incident that gives rise to the alleged offence(s).²⁹⁸ This rule is often circumvented, however, by different parties filing complaints with different police stations, sometimes in different states, on the basis of the same underlying incident.²⁹⁹ And in our data, a total of 36 journalists saw multiple FIRs being filed against them for the same incident.

FIRs REGISTERED ACROSS STATES against news anchor



One news anchor faced eight FIRs, registered across different states, namely West Bengal, Maharashtra, Jammu and Kashmir and Delhi, in relation to controversial remarks made on a “prime-time” news show hosted by her.³⁰⁰

The Supreme Court ultimately transferred the investigation of all FIRs to one police station³⁰¹—the only relief available for journalists in such scenarios.

²⁹⁶ See Court on its Own Motion through Mr. Ajay Choudhary v. State, [WP (CrI.) No. 468/2010]; Mohammed Khalid Shaikh v. The State of Maharashtra, [CrI. Appl. No. 709/2010]; Arun Kumar Budhia v. State of Orissa, [W.P.(CrI.) No. 1096 of 2011]; Jiju Lukose Aged 30 Years v. State of Kerala, [WP(C).NO. 1240 of 2015 (S)]; Panchanan Mondal v. The State, [(1971) CRILJ 875]; Channappa Andanappa Siddareddy v. State, [(1980) CRILJ 1022]; Jayantibhai Lalubhai Patel v. The State of Gujarat, [(1992) 1 GLR 723]; Shyam Lal v. State of U.P. And Ors., [(1998) CRILJ 2879]. Section 207 of the Code of Criminal Procedure also requires that documents—including the FIR—be shared with an accused once a chargesheet is filed before the Court.

²⁹⁷ Cf. Youth Bar Association of India v. Union of India, [(2016) SCC OnLine SC 1703].

²⁹⁸ T.T. Antony v. State of Kerala, [(2001) 6 SCC 181].

²⁹⁹ Cf. T.T. Antony v. State of Kerala, [(2001) 6 SCC 181]; Arnab Ranjan Goswami v. Union of India, [(2020) 14 SCC 12].

³⁰⁰ Navika Kumar v. Union of India, Supreme Court of India, Judgment dated 23 September 2022, in Writ Petition Criminal No. 286/2022.

³⁰¹ Navika Kumar v. Union of India, Supreme Court of India, Judgment dated 23 September 2022, in Writ Petition Criminal No. 286/2022.

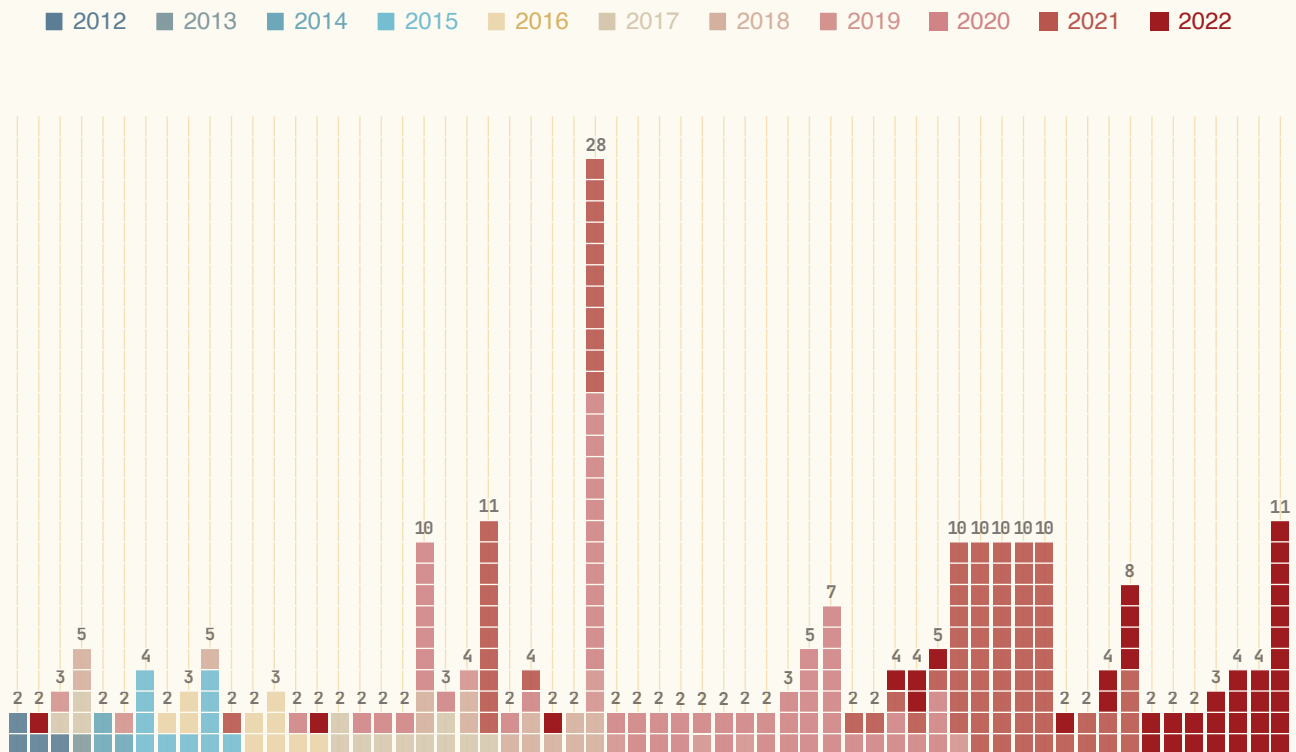
However, as will be discussed in detail in the sections below, only certain journalists are able to access the Supreme Court and High Courts, limiting the availability of such relief.

"It is not once or twice, but four times that I have been through this."

- Journalist interviewed

Fig 31. Multiple FIRs faced by journalists

Each line represents one of the 60 journalists who faced multiple FIRs for their work.



Source: Primary Dataset

Another trend is the implication of multiple journalists in the same FIR—often by using the charge of “criminal conspiracy” as mentioned in the chapter above. This includes the cases of five journalists who were arrested for spreading allegedly misleading news that corrosion-related damage to a temple was due to a communal attack³⁰² and of six journalists implicated in each of the 10 Republic day protest FIRs.

Taken together, this means that individual journalists may face multiple FIRs for the same reporting, or may be roped together despite little evidence of an actual conspiracy.

The second issue of concern identified is the registration of cases in places far away from where the journalists was based. This was particularly true for journalists with a national-level audience, as complaints were filed across multiple states, causing significant hardship to effectively defend themselves.

ALLEGATION against freelance journalist



In 2016, a freelance journalist was charged with “promoting enmity” for a story that alleged that right-wing nationalist groups had trafficked more than 31 girls from indigenous communities in Assam to other parts of India to indoctrinate them with a Hindu-nationalist ideology.³⁰³ The journalist has been travelling to the north-eastern state of Assam, over 2000km from where she is based, for the last eight years for court hearings, and yet there is no significant progress in the case.³⁰⁴ She claims that “process is the punishment,” which induces self-censorship among journalists.³⁰⁵

302 Ians, Andhra Journos Who Spread ‘False’ News on a Temple Attack Jailed for a Day, The News Minute, Jan. 8, 2021, available at <https://www.thenewsminute.com/andhra-pradesh/andhra-journos-who-spread-false-news-temple-attack-jailed-day-141138>

303 CPJ, Neha Dixit, India: International Press Freedom Awards, available at <https://cpj.org/awards/neha-dixit-india/>.

304 Supriti David, ‘Process Is the Punishment’: Neha Dixit on her 5-year Legal Battle Over her Outlook Reportage, News Laundry, Feb. 7, 2022, available at <https://www.newslaundry.com/2022/02/07/process-is-the-punishment-neha-dixit-on-her-5-year-legal-battle-over-her-outlook-reportage>; News Laundry, Eight Years Later, Journalist Neha Dixit Continues to Battle Court Case for Outlook Story, Nov. 19, 2024, available at <https://www.newslaundry.com/2024/11/19/eight-years-later-journalist-neha-dixit-continues-to-battle-court-case-for-outlook-story>.

305 Supriti David, ‘Process Is the Punishment’: Neha Dixit on her 5-year Legal Battle Over her Outlook Reportage, News Laundry, Feb. 7, 2022, available at <https://www.newslaundry.com/2022/02/07/process-is-the-punishment-neha-dixit-on-her-5-year-legal-battle-over-her-outlook-reportage>.

The Indian Supreme Court took note of this issue, while granting interim bail to a journalist who had faced six FIRs for the same social media posts, stating “the machinery of criminal justice has been relentlessly employed against the petitioner. Despite the fact that the same tweets allegedly gave rise to similar offences in the diverse FIRs mentioned above, the petitioner was subjected to multiple investigations across the country. Consequently, he would be required to hire multiple advocates across districts, file multiple applications for bail, travel to multiple districts spanning two states for the purposes of investigation, and defend himself before multiple courts, all with respect to substantially the same alleged cause of action. Resultantly, he is trapped in a vicious cycle of the criminal process where the process has itself become the punishment.”³⁰⁶

The analysis thus far points to a fundamental issue: the registration of FIRs by the police against journalists, without due regard to the requirements of each offence and its implications for freedom of press. A change in procedure under the Bharatiya Nagarak Suraksha Sanhita, 2023, which replaces the Code of Criminal Procedure, 1973, offers a possible path of reform. Under the BNSS, a preliminary inquiry before registration of an FIR is mandatory if the offence is punishable with imprisonment of three years or more but less than seven years.³⁰⁷ In a recent judgment, the Supreme Court held that police officers are mandated to hold a preliminary inquiry to ascertain whether a *prima facie* case is made out, particularly when the allegation relates to a speech-related offence.³⁰⁸ The Court emphasised that “the police officer concerned will have to keep in mind the fundamental rights guaranteed under Article 19(1)(a).”³⁰⁹

³⁰⁶ Mohammed Zubair v. State of Nct of Delhi & Ors, [(2022) 18 S.C.R. 494].

³⁰⁷ Bhartiya Nagarik Suraksha Sanhita, 2023, Section 173 (3).

³⁰⁸ Imran Pratapgadhi v. State of Gujarat, Supreme Court of India, Criminal Appeal No. 1545/2025, Judgment dated 28 March 2025, para. 20(3)(i).

³⁰⁹ Imran Pratapgadhi v. State of Gujarat, Supreme Court of India, Criminal Appeal No. 1545/2025, Judgment dated 28 March 2025, para. 30.

B. Arrest

"I was arrested by a special force at my home, in front of my wife and children. It was a traumatic experience, they were rough and even pulled my hair during the arrest."

- Journalist interviewed

Journalists faced arrest in 40% of total incidents in our dataset (where the information on arrest was available).³¹⁰

Arrest is not mandatory in the Indian legal system.³¹¹ In lieu of arrest, the police can instead issue a notice of appearance under Section 41A of the Code of Criminal Procedure, requiring an accused to appear at a specified date and time. In 2014, the Supreme Court made the issuance of a notice under Section 41A prior to arrest mandatory for all offences punishable with imprisonment of seven years or less (which comprise a majority of our dataset).³¹²

ALLEGATION against journalist



As mentioned above, one journalist was arrested under six FIRs registered in different parts of Uttar Pradesh and Delhi for posting tweets that allegedly offended Hindus and "triggered" religious sentiments. While granting him interim bail, the Supreme Court reiterated that "the existence of the power of arrest must be distinguished from the exercise of power of arrest. The exercise of the power of arrest must be used sparingly."³¹³

³¹⁰ Out of the 624 total incidents in the database, arrest information was available in 515.

³¹¹ *Satender Kumar Antil v. CBI*, [(2022) 10 SCC 51], para. 21.

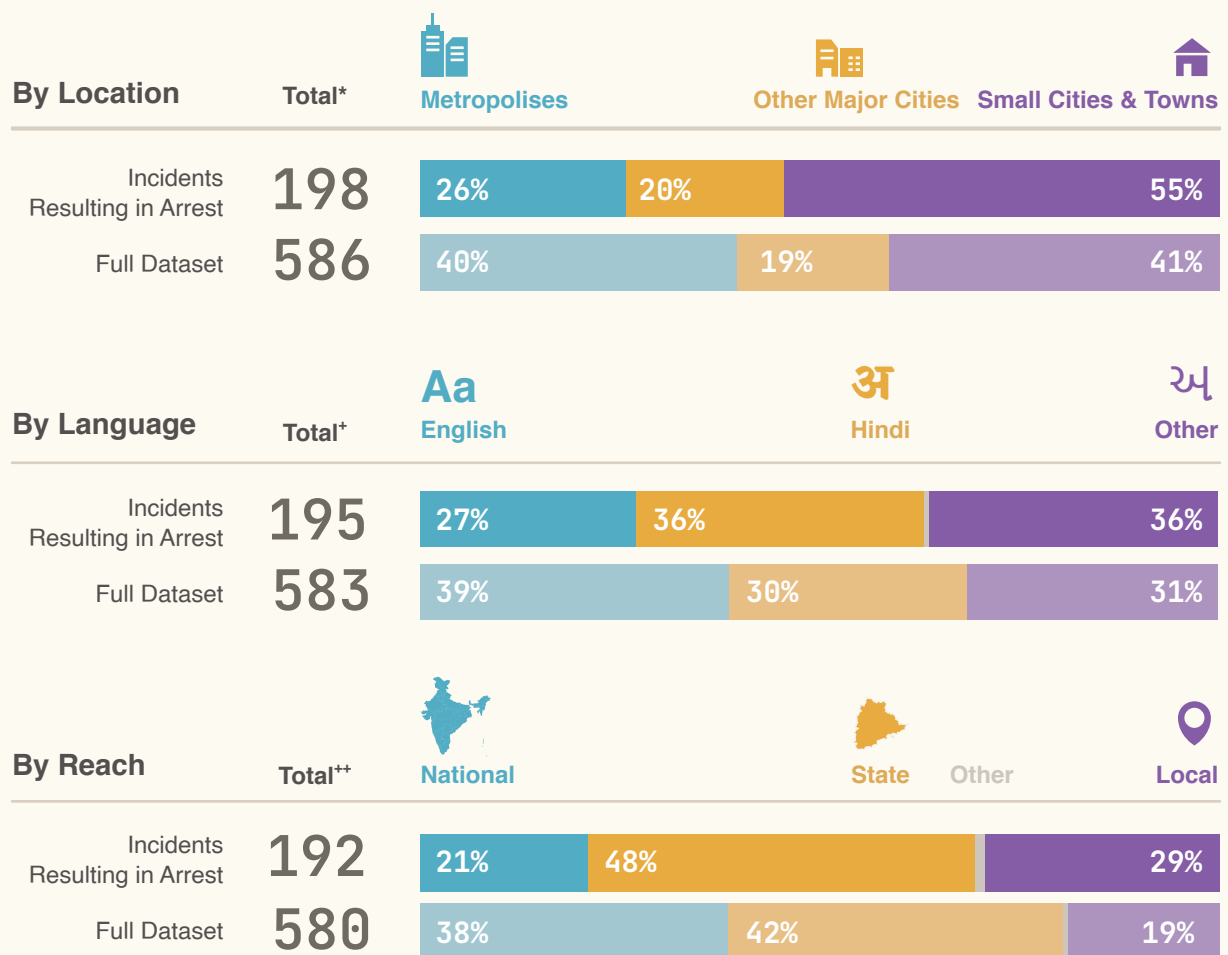
³¹² *Arnesh Kumar v. State of Bihar*, [(2014) 8 SCC 273], para. 12.

³¹³ *Id.* paras. 12-15.

Yet, it appears that this judicial ruling is often not followed on the ground, particularly in small cities and towns. Journalists in small cities and towns faced arrest in 58% of the incidents in the dataset, as compared to 24% of the incidents involving journalists in major metropolises.

The data also indicates that local and regional journalists were more likely to face arrest than their national counterparts. Similarly, Hindi-language journalists were more likely to face arrest than those reporting in English.

Fig 32. Incidents Resulting in Arrest



*Total incidents with known location

*Total incidents with known language

**Total incidents with known reach

Source: Primary Dataset

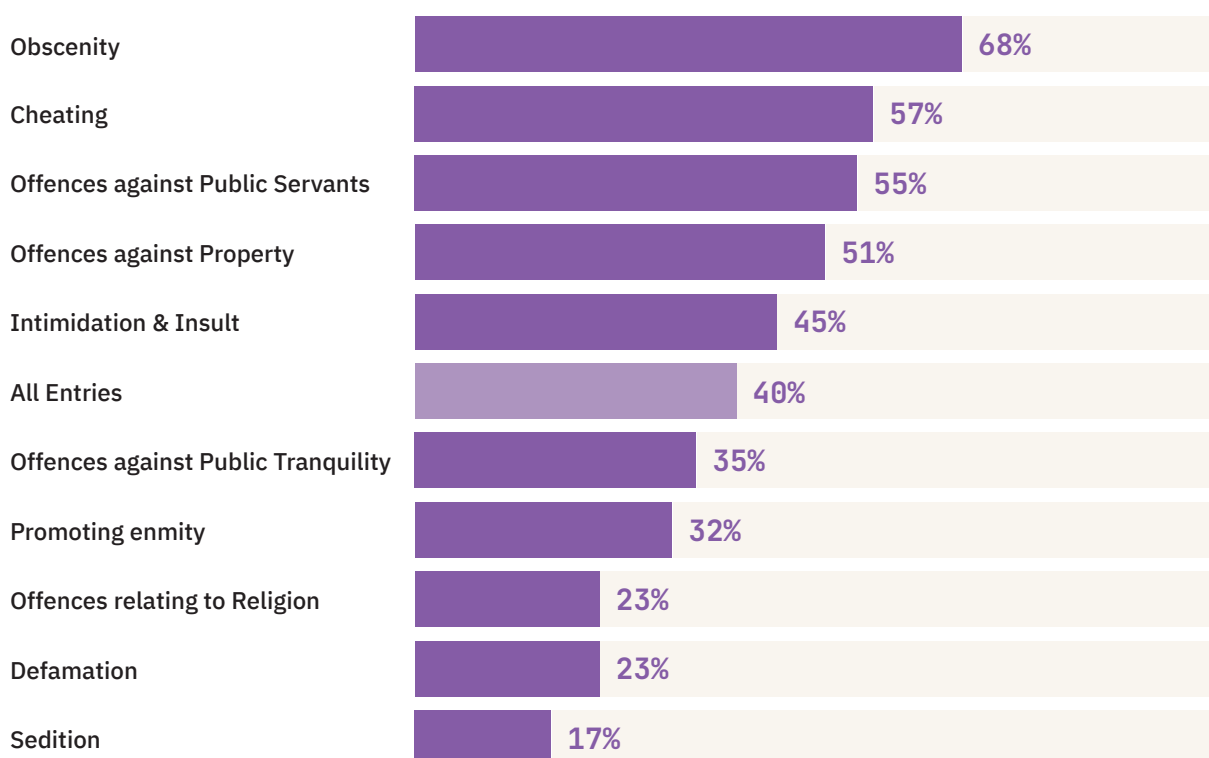
ALLEGATION against Hindi-language journalist



One Hindi-language journalist based in Chhattisgarh was arrested for posting a message on a local news WhatsApp group, which insinuated that those opposing a journalist protection law were affiliated to a senior police official of the state (using certain expletives).³¹⁴ The FIR was registered on charges of obscenity under Sections 67 and 67-A of the Information Technology Act and Section 292 IPC. He remained in pre-trial detention for more than three months, and was finally granted bail by the High Court on the ground that Section 292 IPC was bailable and that he had not circulated any “sexually explicit” material.³¹⁵

The fact that journalists outside of major metropolises, working in languages other than English, were more vulnerable to arrest is also corroborated by analysis of the offences that were most likely to lead to arrest.

Fig 33. Percent Arrested - By Categories of Offence



Source: Primary Dataset

³¹⁴ Scroll.in, How Journalist Prabhat Singh Became the Target of Chhattisgarh Police, Mar. 23, 2016, available at <https://scroll.in/article/805596/how-journalist-prabhat-singh-became-the-target-of-chhattisgarh-police>.

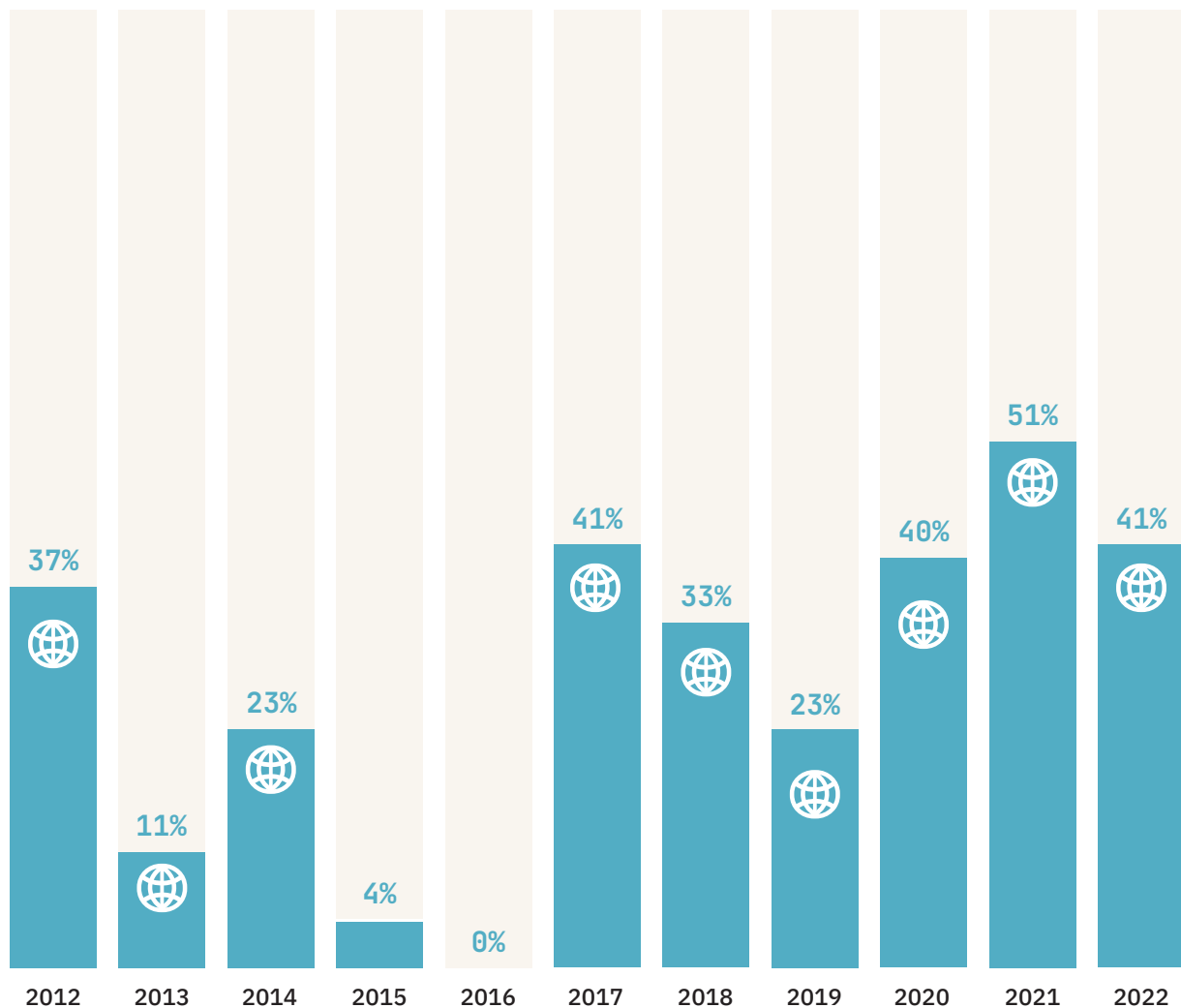
³¹⁵ Prabhat Singh v. State of Chattisgarh, High Court of Chattisgarh, Order dated 01 June 2016 in MCRC No. 2517/2016.

Of the categories of offences for which journalists were most frequently charged (see previous Chapter), they were most likely to be arrested for offences involving obscenity, followed by offences against public servants and cheating. These offences—in particular, offences against public servants—are disproportionately charged against journalists from smaller towns and villages.

Journalists in the digital space also faced a higher likelihood of arrest, as compared to print or broadcast journalists. Indeed, the uptick in cases in relation to online/digital news from 2020-2022 also corresponds to an uptick in arrests for journalists in this space over time, signalling a disturbing trend.

Fig 34. Increase in cases against digital medium

Percent of times medium of journalism was Digital.



Source: Primary Dataset

When an accused person is arrested—or they suspect they may be arrested—there are four main avenues for obtaining relief from the courts (in the form of protection from arrest or bail).

**REGULAR
BAIL**

If the accused is arrested for a ‘bailable offence’ (generally less serious offences), the police/courts have no discretion to continue detention and must grant bail. In case of arrest for non-bailable offences, the accused may seek regular bail under Section 437 of the Code of Criminal Procedure (CrPC) before the Magistrate’s court and/or under Section 439 of the CrPC before the High Court or Sessions Court.³¹⁶ These courts have the discretion to grant bail based on factors such as the merits of the case, and whether the accused will tamper with evidence, influence witnesses or is a flight-risk if granted bail.³¹⁷

**ANTICIPATORY
BAIL**

If a person suspects that they may be arrested for a non-bailable offence, they may petition for anticipatory bail under Section 438 of the CrPC before the High Court or Sessions Court. A person may move an anticipatory bail application even before registration of an FIR.

**INTERIM
BAIL**

Courts also have the power to grant bail to persons in custody for a short period of time—often for medical reasons or family emergencies, or to give the person time to apply for regular bail or another form of relief. Interim bail is time-bound—the accused person is taken back into custody upon its expiry unless another form of relief is obtained within that time.

**INTERIM
PROTECTION
FROM ARREST**

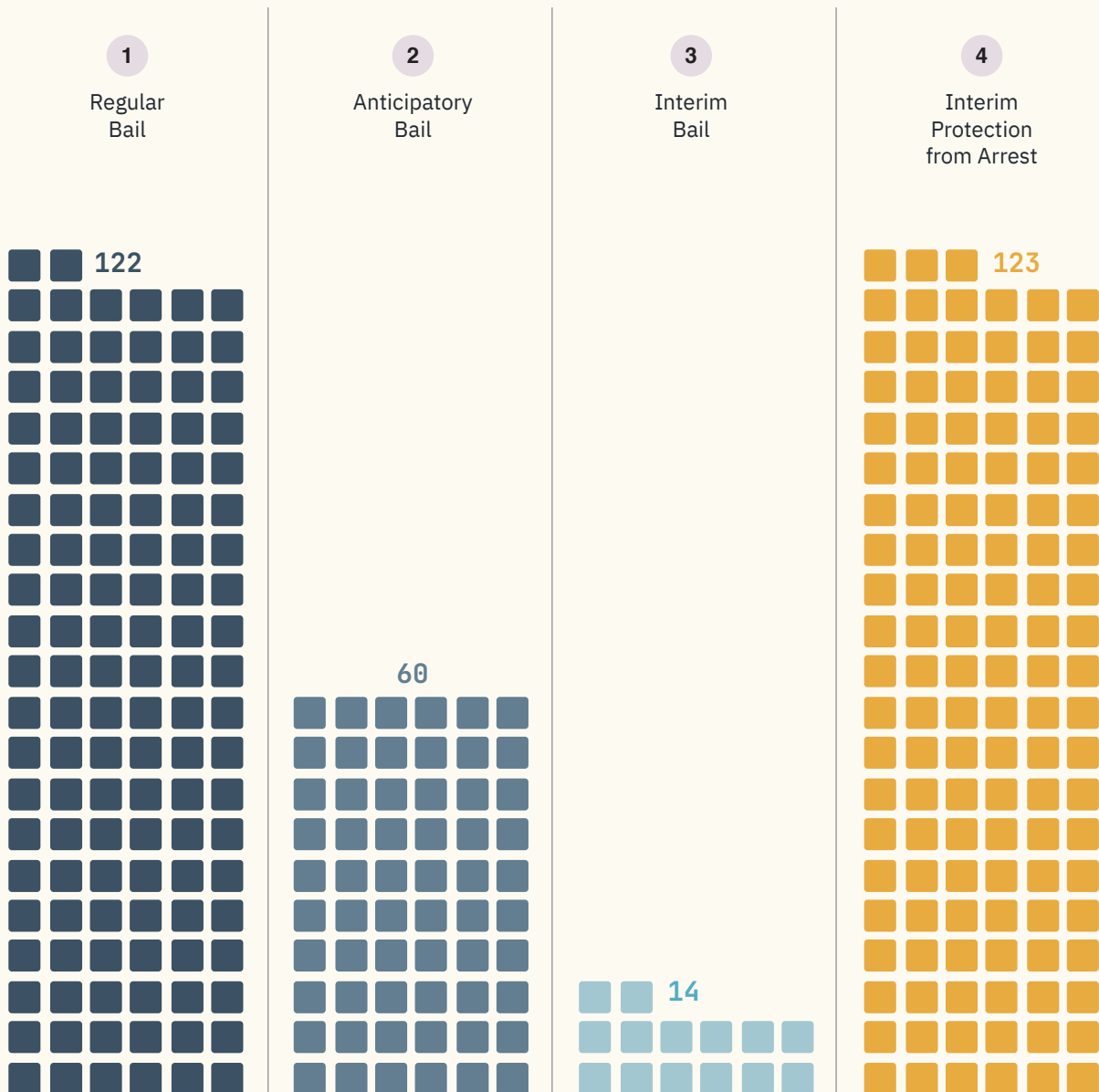
Finally, apart from bail, High Courts and Supreme Courts can also grant accused persons interim protection from arrest, which is an order to not arrest the accused and may be granted as interim relief in a petition for bail or for quashing of a case.

³¹⁶ The hierarchy of courts in India for criminal cases is as follows: Magistrate Courts (which can try cases and grant bail for offences punishable with up to 7 years imprisonment); Sessions Courts (which can try and grant bail for all offences); High Courts (which act as appellate courts and also have original jurisdiction to grant bail for all offences); and the Supreme Court (which is the highest appellate court).

³¹⁷ P. Chidambaram v. Directorate of Enforcement, [(2019) 9 SCC 24].

Overall, interim protection from arrest was the most commonly availed form of relief in our data set, followed by regular bail.

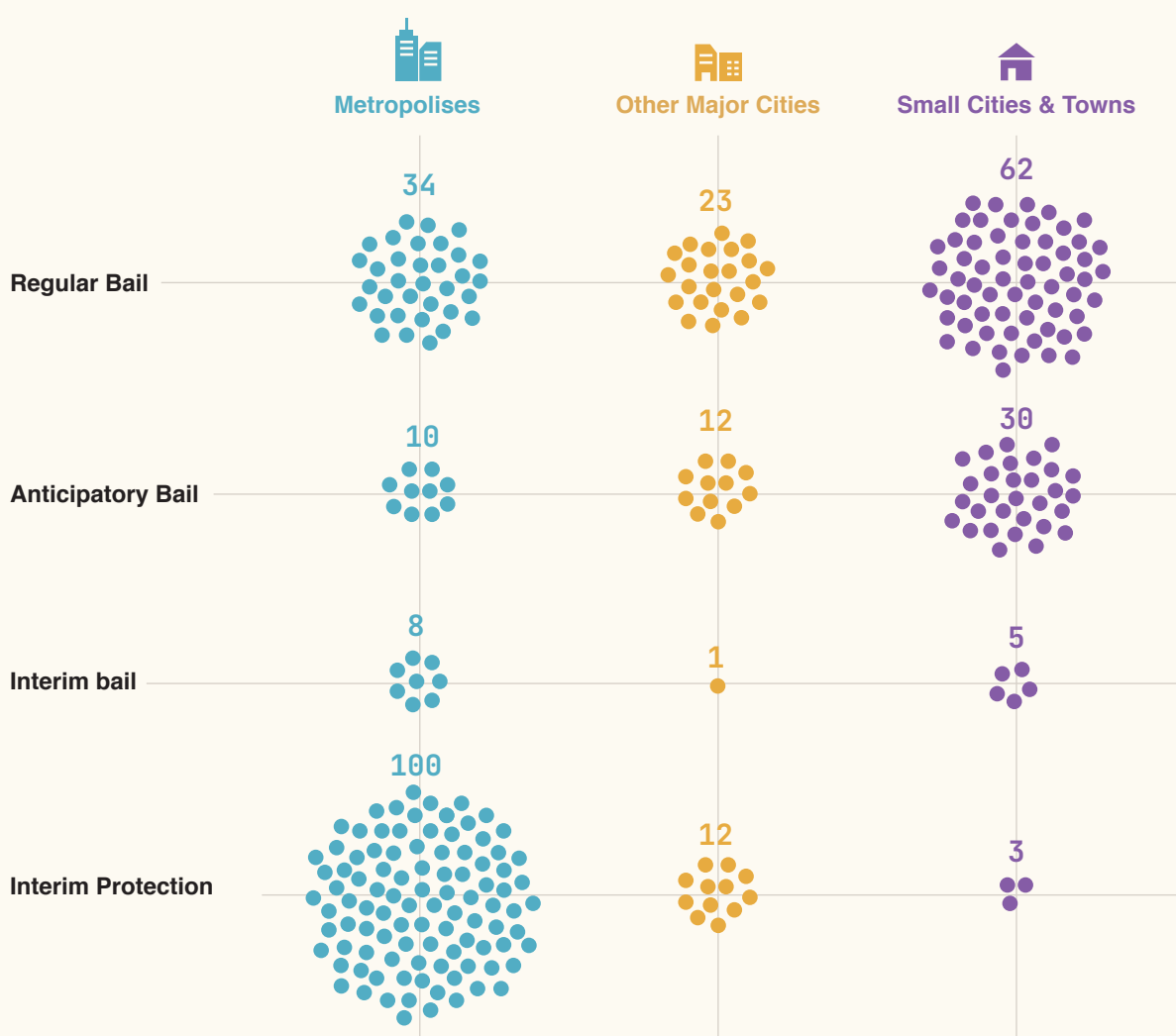
Fig 35. Form of Relief obtained



Source: Primary Dataset

Only a certain cross-section of journalists were, however, able to access this relief. While in 65% of incidents involving from journalists from major metropolises, journalists managed to secure interim protection from arrest, the percentages dropped significantly to only 3% for small cities/towns.³¹⁸ For journalists outside of major metropolises, regular bail was the most frequent form of relief—meaning that they were only able to secure their liberty *after* arrest.

Fig 36. Form of Relief by Location



Source: Primary Dataset

³¹⁸ While journalists outside metropolitan cities were granted anticipatory bail from their respective High Courts or District & Sessions Courts in greater numbers than their counterparts, anticipatory bail can be more stringent than interim protection. In cases of anticipatory bail, the accused must satisfy bond conditions, which may—though not always—include surrendering their passport and facing travel restrictions.

ALLEGATION against national and state level journalist compared

This is reflected in the Republic Day protest cases—the journalists named in the FIRs were prominent national-level journalists who approached the Supreme Court seeking quashing of the FIRs. The Supreme Court granted them interim protection from arrest within the initial few hearings of the petitions, despite the FIRs including serious charges of sedition.³¹⁹ This stands in contrast to the experience of a journalist from Chhattisgarh, who was only able to secure regular bail from the High Court three months after his arrest, despite the offences in the FIR being less serious in comparison.

The same patterns are reflected when looking at journalists reporting in national publications versus local ones, and those reporting in English versus Hindi.

In conclusion, our data, when analyzed along multiple dimensions, shows that the risk of arrest faced by journalists outside of major metropolitan areas and/or who are reporting at the local level is more severe. As discussed in greater detail below, this may be due to the fact that journalists in major metropolitan areas have visibility and networks, and proximity to justice, which may reduce the risk of arrest

The UN HRC has made clear that any arbitrary deprivation of a journalist's liberty on account of the exercise of free speech can constitute a violation of Article 19 of the ICCPR.³²⁰ The HRC and the UN Working Group against Arbitrary Detention have held that arrest or detention for exercise of protected rights, including freedom of opinion and expression, is arbitrary and have found detention of journalists to be arbitrary in a number of contexts.³²¹

Further, and specifically, in many of the cases, arresting journalists would be inconsistent with international standards because the offences fail to meet the principle of legality or are not ones where a

³¹⁹ Live Law, LIVE UPDATES From Supreme Court-Plea Against Multiple FIRs Against Shashi Tharoor, Rajdeep Sardesai And Others Over Farmers Death On Republic Day, Feb. 8, 2021, available at <https://www.livelaw.in/top-stories/shashi-tharoor-rajdeep-sardesai-supreme-court-firs-farmers-death-on-republic-day-framers-protest-tractor-rally-169590>.

³²⁰ See, e.g., UNHRC, Zhagiparov v. Kazakhstan, UN Doc. CCPR/C/124/D/2441/2014, Nov. 29, 2018, para. 13.6; UNHRC, Khadzhiyev et al. v. Turkmenistan, UN Doc. CCPR/C/122/D/2252/2013, Apr. 27, 2018, para. 7.7 (finding a violation of Article 9 and Article 19 for the arrest of a journalist and human rights activist); UNHRC, Cacho Ribeiro v. Mexico, UN Doc. CCPR/C/123/D/2767/2016, Aug. 29, 2018, paras. 10.9–10.10.

³²¹ UNHRC, Abdurakhmanov v. Uzbekistan, UN Doc. CCPR/C/125/D/2295/2013, May 23, 2019, paras. 7.2, 7.4–7.6; UN Working Group on Arbitrary Detention, Nguyễn Văn Thắng v. Viet Nam, Opinion No. 51/2024, UN Doc. A/HRC/WGAD/2024/51, Dec. 10, 2024, paras. 103–105; UN Working Group on Arbitrary Detention, José Rubén Zamora Marroquín v. Guatemala, Opinion No. 7/2024, UN Doc. A/HRC/WGAD/2024/7, May 17, 2024, paras. 97–98.

sentence of imprisonment could ever be deemed proportionate. Thus, for instance, the UN Human Rights Committee has explained in interpreting Article 9 of the ICCPR that “any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application, and deprivation of liberty without such legal authorization is unlawful.”³²² As discussed above, many of the offences most charged in our dataset are unlawfully vague.

Likewise, the UN Human Rights Committee has made clear that where imprisonment is not an appropriate penalty for an offence, pretrial detention pursuant to such an offence is arbitrary. In a case in which a defendant was charged with defamation and calumny, the Committee held that the accused’s pretrial detention was arbitrary because “[i]f defamation should never result in a penalty of deprivation of liberty being imposed on the grounds that it is not an appropriate penalty, then a fortiori no detention based on charges of defamation may ever be considered either necessary or proportionate.”³²³

TIME SPENT

Based on the cases where the information was available,³²⁴ the mean time between the registration of an FIR and arrest was about 50 days. In many cases the arrest took place the same day the FIR was registered; however, in several instances the FIR remained open for months or even years before an arrest was made, leaving the threat of arrest hanging over journalists.

Once journalists were arrested, the time spent in pre-trial detention ranged from one day to over 10 years.³²⁵ Cases where the journalists were held in pre-trial detention for more than one year involved charges under the Unlawful Activities Prevention Act (UAPA).

³²² UNHRC, General Comment No. 35 on Article 9, Liberty and Security of Person, UN Doc. CCPR/C/GC/35, Dec. 16, 2014, para. 22.

³²³ UNHRC, *Lydia Cacho Ribeiro v. Mexico*, UN Doc. CCPR/C/123/D/2767/2016, Aug. 29, 2018, para. 10.8; see also UN Working Group on Arbitrary Detention, *Siraphop Kornaroot v. Thailand*, Opinion No. 4/2019, UN Doc. A/HRC/WGAD/2019/4, May 30, 2019, para. 49 (“[T]he Working Group has found that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.”).

³²⁴ Of the 204 incidents in the dataset where journalists were arrested, information on both the date of FIR and date of arrest was available in 115 incidents, and information on the date of arrest and date of bail was available in 116 incidents.

³²⁵ In one case in the dataset, the journalist remained in custody for the entire duration of his trial, which lasted nearly 10 years, resulting in a total of 3771 days spent in pretrial detention.

ARREST of journalist

A journalist was, for instance, arrested and booked under the UAPA in October 2020 when he was on his way to cover the rape of a Dalit girl in Uttar Pradesh that had sparked nationwide protests.³²⁶ He was granted bail by the Supreme Court in September 2022, and was only released in February 2023, after 28 months in detention, after securing bail in a related case under the Prevention of Money Laundering Act.³²⁷

This case also highlights the impact allegations of financial crimes have on pretrial detention— charges of cheating under Section 420 IPC led to pre-trial detention of close to nine months for two journalists.

Over 50% of the journalists (for whose cases data was available) spent 15 or more days in custody.³²⁸ Under international law, pretrial detention should be the exception, not the rule, and should be ordered for as short a duration as possible.³²⁹ Detention pending trial must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.³³⁰

³²⁶ United States Commission on International Religious Freedom, Siddique Kappan, available at <https://www.uscifr.gov/religious-prisoners-conscience/forb-victims-database/siddique-kappan>.

³²⁷ V. Venkatesan, Siddique Kappan's Release on Bail After 846 Days Is a Harsh Reminder of What Can Happen to Our Precious Freedom, Live Law, Feb. 4, 2023, available at <https://www.livelaw.in/columns/siddique-kappans-release-after-846-days-harsh-reminder-what-can-happen-to-our-precious-freedom-220755>.

³²⁸ This is of course not unique to journalists.

³²⁹ UN Working Group on Arbitrary Detention, Phan Kim Khánh v. Vietnam, Opinion No. 15/2020, UN Doc. A/HRC/WGAD/2020/15, May 29, 2020, paras. 57, 59.

³³⁰ UN Working Group on Arbitrary Detention, Kadyr Yusupov v. Uzbekistan, Opinion No. 3/2021, UN Doc. A/HRC/WGAD/2021/3, June 4, 2021, paras. 62–63.

C. Investigation/Submission of Chargesheet

Under Indian criminal procedure, the period of investigation starts after registration of the FIR and culminates with the filing of a “final report” (commonly referred to as a “**chargesheet**”). Under Section 173 of the CrPC, following an investigation the authorities are supposed to submit a final report: which could either be a chargesheet³³¹ or a “closure report,” if there is not enough evidence for the case to proceed. However, our data shows that this is often where a case stalls: The FIR often does not culminate in a chargesheet, and remains open/pending for several years.

ALLEGATION against journalist



In March 2017, an FIR was filed against a journalist for an investigative report that showed the vulnerability of India’s biometric ID system-Aadhaar.³³² The news report attempted to demonstrate that a person could obtain two separate Aadhaar numbers with the same set of biometrics,³³³ and the FIR was filed against the journalist for cheating and impersonation among other provisions of the Aadhaar Act.³³⁴ A petition challenging the FIR was filed before the Delhi High Court—as per orders it appears the chargesheet was only filed in 2023/2024³³⁵—after more than 6 years.

Out of 169 cases³³⁶ for which we had data, however, the final report/chargesheet was only filed in 99 cases.³³⁷ In 66 cases no chargesheet has been filed.³³⁸ And at least 22 of the FIRs in the dataset have been pending for over five years, with no chargesheet filed.

³³¹ A Chargesheet contains all the evidence collected by the investigating agency that is proposed to be relied upon during trial and includes a recommendation regarding the charges to be brought against the accused.

³³² Shashidhar KJ, UIDAI Files FIR Against Journalist for Exposing Flaws in Aadhaar Enrolment, Medianama, Mar. 29, 2017, available at <https://www.medianama.com/2017/03/223-uidai-fir-aadhaar/>.

³³³ *Id.*

³³⁴ News Laundry, Delhi Police Files FIR Against Two Under Aadhaar Act, Mar. 28, 2017, available at <https://www.newslaundry.com/2017/03/28/delhi-police-files-fir-against-two-under-aadhaar-act>.

³³⁵ Debayan Roy v. State of NCT of Delhi and Anr, Delhi High Court, Order dated 31 January 2024, W.P(CrL.), 1935/2017.

³³⁶ This analysis was conducted as per cases to provide accurate procedural data on individual cases, rather than incidents of criminalization.

³³⁷ This figure includes five cases where a closure report was filed, and one case in which the charges were dropped after the filing of a chargesheet.

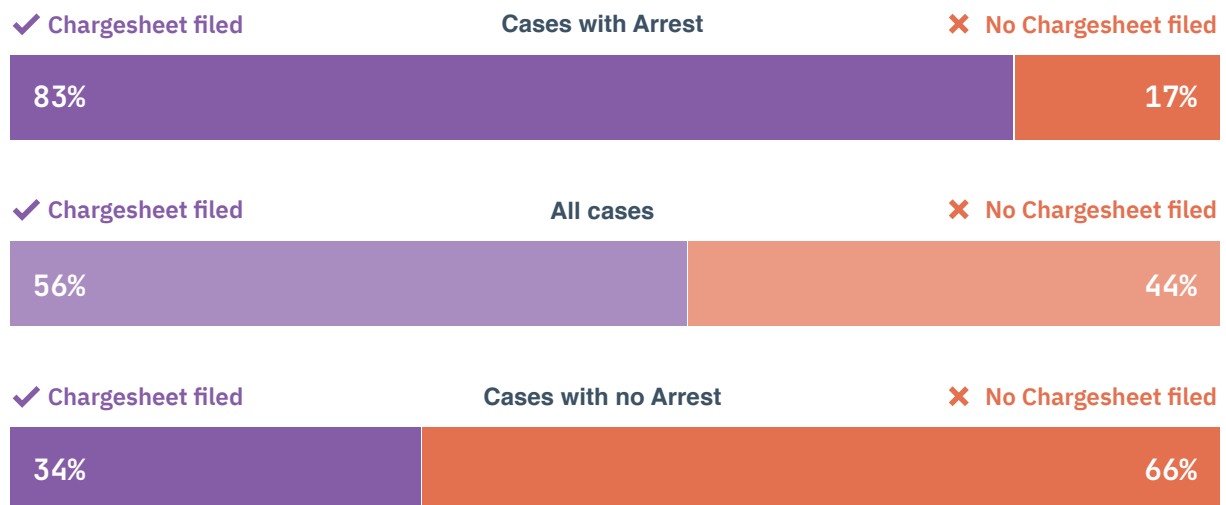
³³⁸ In 26 cases, no chargesheet was required to be filed, either because they were complaint cases or because the FIRs had been quashed.

Fig 37. Filing of Chargesheet

Source: Primary Dataset

This is not, of course, unique to journalist cases. And yet, the existence of a pending FIR, without a chargesheet or closure report being filed, creates a particular risk in journalist cases—of self-censorship.³³⁹

Our data further suggests that the police are more likely to file chargesheets in cases where journalists were arrested.

Fig 38. Filing of Chargesheet - Arrest vs. No Arrest

Source: Primary Dataset

³³⁹ Another way prolonged periods of investigation impact journalists is through the seizure of electronic devices. For instance, in September 2023, a court ordered the release of electronic devices seized from the editors of an online portal, noting that devices cannot be held indefinitely, especially where mirror images were available to aid the investigation. Nupur Thapliyal, Delhi Court Orders Release Of Electronics Devices Seized From Editors Of 'The Wire', Says They Can't Be Kept Indefinitely, The Wire, Sept. 23, 2023, available at <https://www.livelaw.in/news-updates/delhi-court-release-electronics-devices-editors-the-wire-238549?infinitescroll=1>

This could be attributed to the requirement under Indian criminal procedure to release detained persons on bail if a chargesheet is not timely filed. As mentioned above, Magistrates may authorise pre-trial detention in 15-day intervals, up to a maximum of 60 days (or 90 days in certain cases).³⁴⁰ If the police or investigating agency fail to file their chargesheet/complaint within this time frame, the courts are mandated to grant bail—this is known as statutory bail, also called default bail.

This creates an incentive for the police to file a chargesheet in cases where arrests are made. Indeed, journalists had been arrested in over 50% of the cases where a chargesheet was filed.

ALLEGATION against journalist and his assistant



For example, in a case where a journalist and his assistant were arrested for conducting a sting operation on local legislators,³⁴¹ the chargesheet was filed close to the 60th day from the date of arrest³⁴²—if the chargesheet had been filed even a day or two later, the journalist would have been entitled to default bail.

This means two, interrelated things: (1) that even where chargesheets are filed, it may be a means to ensure continued incarceration, and not geared toward bringing the case to trial expeditiously³⁴³; and (2) chargesheets were most frequently filed against journalists in small cities/towns, and against journalists whose work appeared in publications with local or state reach, as compared to national publications (because they were the group more likely to face arrest).³⁴⁴

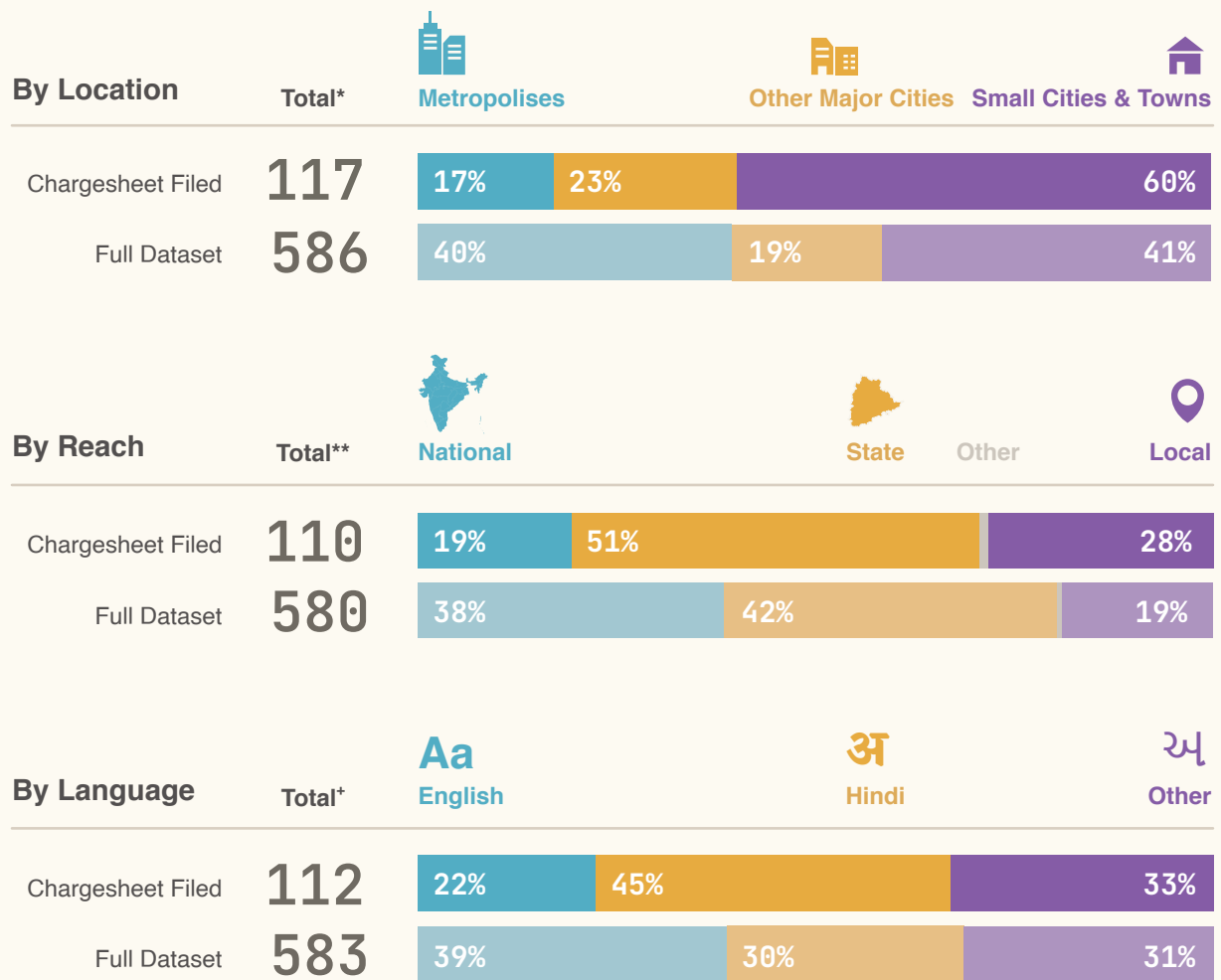
³⁴⁰ India Code of Criminal Procedure, 1973, Section 167. Certain specialised criminal statutes, such as the UAPA, extend this time-frame for certain offences. Where the offence is punishable with death, life imprisonment, or imprisonment for a term of more than ten years, the permissible period for investigation and filing a chargesheet may be extended beyond the standard time limits.

³⁴¹ IFJ, India: Journalists Arrested for Reporting on Legislative Assembly Members, Oct. 31, 2021, available at <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/india-journalists-arrested-for-reporting-on-legislative-assembly-members>.

³⁴² The arrest occurred on 25 October 2021, and the chargesheet was filed on 24 December 2021.

³⁴³ See Abhinav Sekhri, On Never-Ending Criminal investigations, the Supreme Court Is Its Own Worst Enemy, Supreme Court Observer, Apr. 2, 2024, available at <https://www.scobserver.in/journal/on-never-ending-criminal-investigation-the-supreme-court-is-its-own-worst-enemy/>.

³⁴⁴ Similarly, chargesheets were more likely to be filed against journalists reporting in Hindi than English.

Fig 39. Chargesheet Filed

*Total incidents with known location type

*Total incidents with known language

**Total incidents with known reach

Source: Primary Dataset

D. Trial Proceedings

"The chargesheet filed in the matter and the FIR registered to tell entirely different stories. Despite this, charges have been framed.

What's interesting is that my matter is in the Fast Track Court... it's been 4 years but there has been zero progress."

- Journalist interviewed

After a chargesheet is filed, a Magistrate having the necessary jurisdiction must 'take cognizance' of the offence(s) alleged in the chargesheet (or others).³⁴⁵ After taking cognizance and completing certain pre-trial proceedings,³⁴⁶ the court decides on whether to 'frame charges' and proceed to trial.³⁴⁷ For certain offences in our dataset, courts can only 'take cognizance' after taking sanction for prosecution from the relevant State or Central Government.³⁴⁸ Thus, even once an investigation is complete, and a chargesheet filed, that does not necessarily mean that a trial will begin expeditiously.

Out of the 423 cases analyzed for this project, we were able to obtain data on the status of the case for 244 cases.³⁴⁹

Overall, over 65% of the cases were not completed as of October 2023, suggesting that there may be significant delays in bringing cases to trial, and concluding proceedings.³⁵⁰ Thirty-five percent of these cases were at pretrial stages. The trial was ongoing for over 20% of the cases, and in 10% proceedings had been stayed by an appellate court.

³⁴⁵ The Magistrate is not bound by the conclusions drawn by the police in the chargesheet; they may take cognizance of offences different from those mentioned in the chargesheet and summon only those accused against whom a *prima facie* case is made out.

³⁴⁶ India Code of Criminal Procedure, 1973, Section 207. Disclosure under 207; arguments on charge.

³⁴⁷ The charges "framed" by the trial court against each accused determine the offences for which they will face trial. The trial begins once the "charges are framed," and all proceedings prior to that are considered pretrial proceedings.

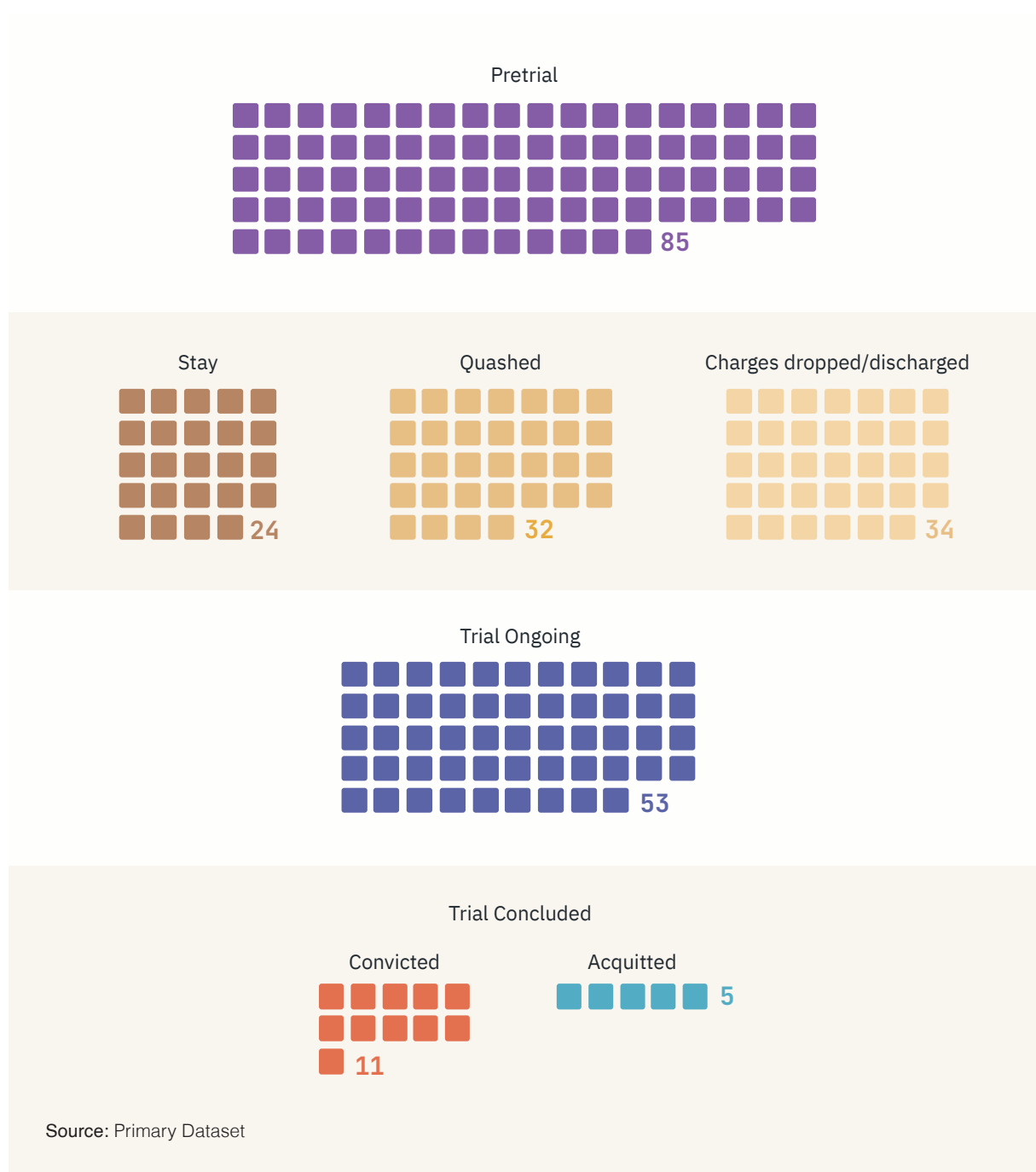
³⁴⁸ India Code of Criminal Procedure, 1973, Sections 195, 196.

³⁴⁹ A very small number of cases were counted more than once because of differing outcomes among the journalists accused.

³⁵⁰ This too is a phenomenon not unique to cases against journalists. Delays are endemic to the Indian criminal justice system.

Only **16 of the 244 cases (6%)** saw a complete trial—ending in conviction or acquittal. The remaining cases concluded because the charges were dropped or the courts ordered the accused to be discharged (13%) or the cases were quashed by an appellate court (13%).

Fig 40. Stage of Proceeding



Among the cases that were not completed (and for which there was available data), the mean number of days from FIR registration until October 30, 2023 was a stunning 1,164 days.

ALLEGATION against executive editor



An FIR was, for instance, registered against the executive editor of an online news publication for her report on the effects of the COVID-19 lockdown in the Prime Minister's constituency in June 2020.³⁵¹ The complaint was reportedly filed by one of the persons interviewed for the report who stated that the editor had allegedly misrepresented her comments and identity. The Allahabad High Court granted the journalist interim protection from arrest but refused to quash the FIR and permitted the investigation to continue in August 2020.³⁵² Yet, there appears to be no substantive progress in the case as of October 2023.³⁵³

International standards provide for the right to a trial “without undue delay.”³⁵⁴ The Human Rights Committee has indicated that it will consider the period from “the initiation of criminal proceedings.”³⁵⁵ The European Court of Human Rights has more specifically held that the clock begins ticking “from an official notification given to an individual by the competent authority of an allegation that he has committed a criminal offense.”³⁵⁶ In assessing whether there has been a violation of the right to trial without undue delay, the UN Human Rights Committee looks to the totality of the circumstances, including factors such as “the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.”³⁵⁷ The right to trial without undue delay complements the right of anyone arrested or detained on a criminal charge “to trial within a reasonable time.”³⁵⁸ Indeed, a court’s obligation to conclude proceedings expeditiously is heightened when defendants are in detention.³⁵⁹ The data above suggests that these rights are not being respected in many of the cases against journalists in our dataset.

³⁵¹ Scroll.in, Scroll.in’s Supriya Sharma Gets Protection From Arrest in FIR Filed for Report on Impact of Lockdown, Aug. 26, 2020, available at <https://scroll.in/latest/971472/scroll-ins-supriya-sharma-gets-protection-from-arrest-in-fir-filed-for-report-on-impact-of-lockdown>.

³⁵² *Id.*

³⁵³ Case status: ecourts.gov.in.

³⁵⁴ ICCPR, 999 U.N.T.S 171, Mar. 23, 1976, Art. 14(3)(c).

³⁵⁵ UNHRC, Smirnova v. Russian Federation, UN Doc. CCPR/C/81/D/712/1996, Aug. 18, 2004, para. 10.4.

³⁵⁶ ECtHR, Kangasluoma v. Finland, App. No. 48339/99, Jan. 20, 2004, para. 26. The Inter-American Court has held the same. IACtHR, Perrone v. Argentina, Series C, No. 385, Oct. 8, 2019, para. 141 (“The Court has held that a reasonable period of time should be determined in relation to the duration of the entire procedure, from the first action until the final judgment is handed down.”).

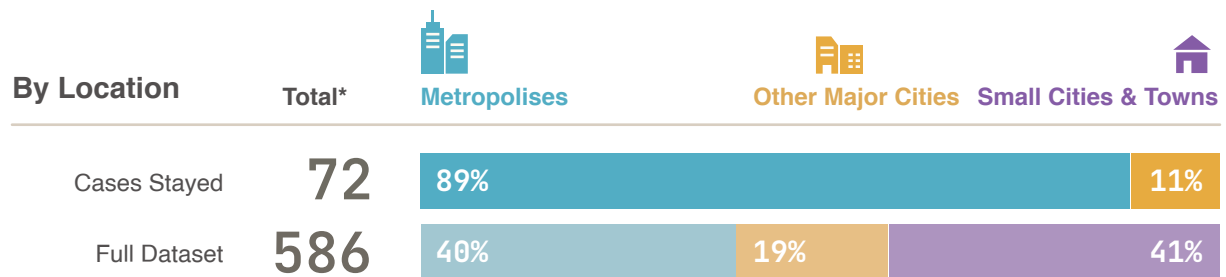
³⁵⁷ UNHRC, General Comment No. 32 Right to Equality Before Courts and Tribunals and to Fair Trial, UN Doc. CCPR/C/GC/32, Aug. 23, 2007, para. 35.

³⁵⁸ ICCPR, 999 U.N.T.S 171, Mar. 23, 1976, Art. 9(3).

³⁵⁹ UNHRC, General Comment No. 32 Right to Equality Before Courts and Tribunals and to Fair Trial, UN Doc. CCPR/C/GC/32, Aug. 23, 2007, para. 35.

Differences in access to justice identified above are seen at the stage of trial as well. Eighty-nine percent of the incidents where a stay was obtained (relief usually granted by the Supreme Court or High Courts) were of journalists from metropolitan cities; while no journalists based in small cities and towns were able to obtain a stay on proceedings.

Fig 41. Stayed - By Location Type

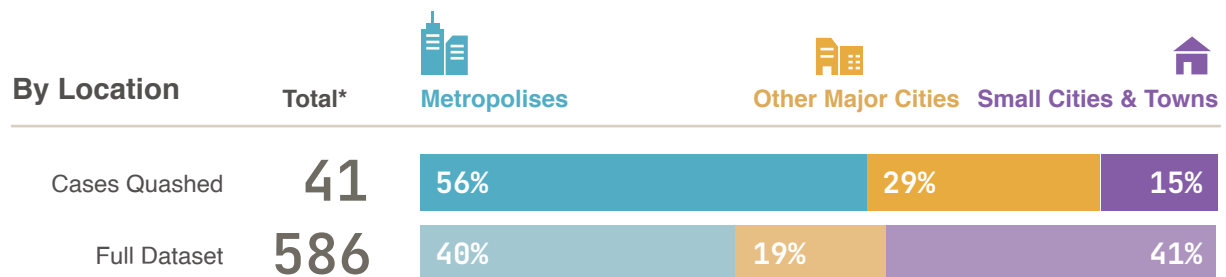


Source: Primary Dataset

*Total incidents with known location type

Of the incidents where appellate courts quashed the case with respect to the journalist who approached the court, 56% were of journalists in major metropolises while only 15% pertained to journalists in small cities.

Fig 42. Quashed - By Location Type



Source: Primary Dataset

*Total incidents with known location type

ALLEGATION against journalist

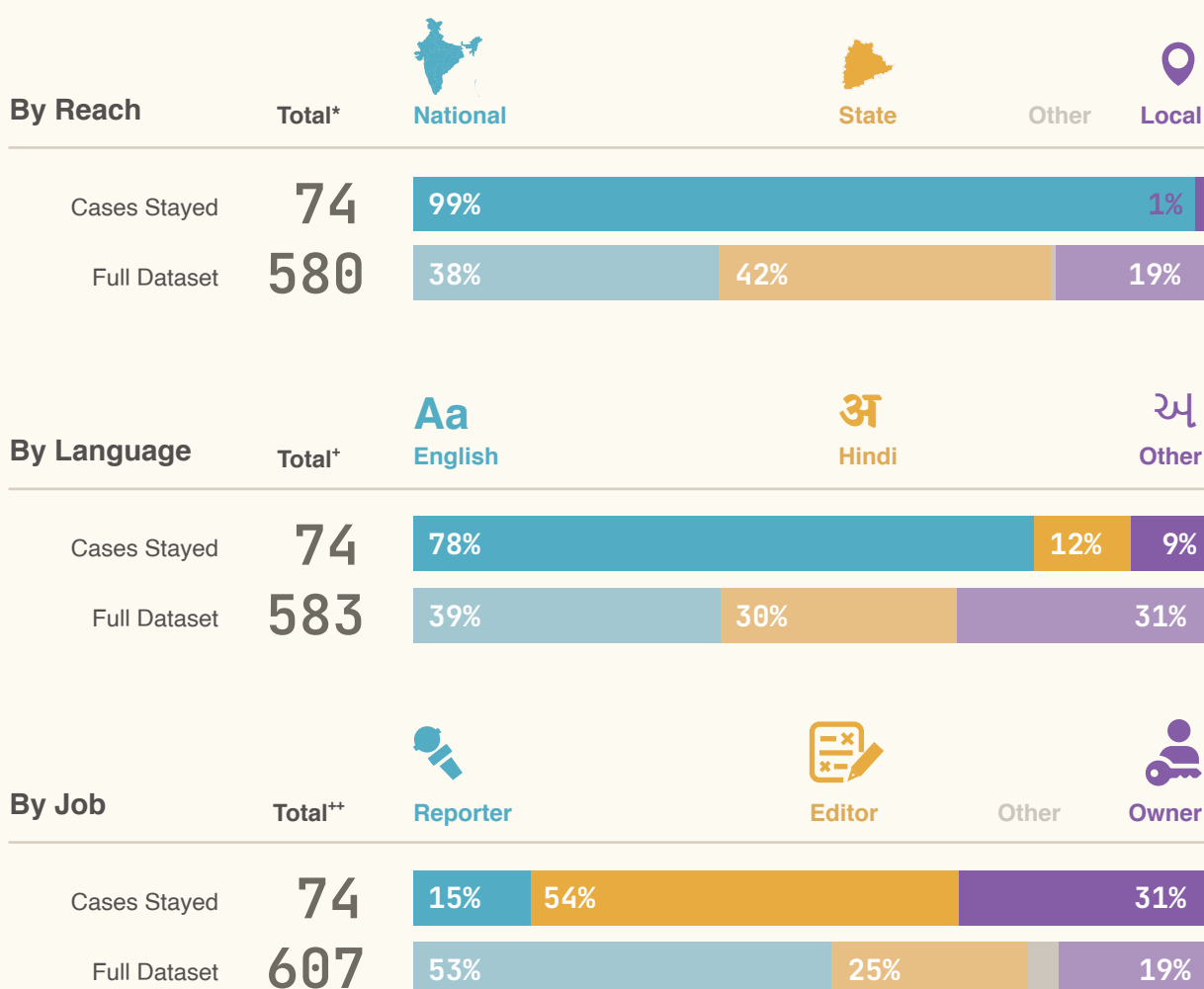


For example, a journalist who faced sedition charges for criticising the Government's response to the COVID-19 pandemic on his YouTube show was able to get the FIR quashed by the Supreme Court within a year—he was a prominent Delhi-based journalist.³⁶⁰

³⁶⁰ Vinod Dua v. Union of India and Ors., Supreme Court of India, Judgment dated 3 June 2021, in Writ Petition (CrI. No. 154/2020).

These patterns repeat when looking at journalists working for national publications and reporting in English as compared to local-level journalists reporting in local languages. Ninety-nine percent of the incidents where a stay on proceedings was obtained were of journalists reporting in national publications; similarly, 78% were of journalists reporting in English. Editors and owners were also more likely to have their cases stayed as compared to reporters: while editors represented only 25% of the total incidents, 54% of the incidents where a stay was obtained were of editors.

Fig 43. Cases Stayed

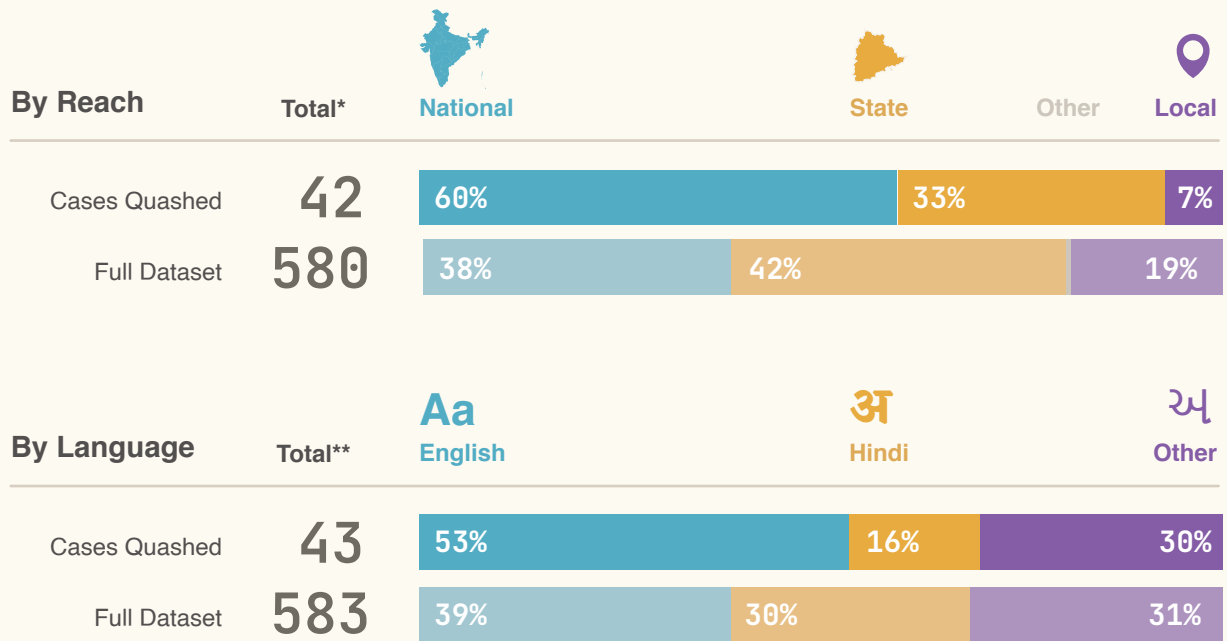


*Total incidents with known reach

*Total incidents with known language

**Total incidents with known job description

Source: Primary Dataset

Fig 44. Cases Quashed

*Total incidents with known reach

**Total incidents with known language

Source: Primary Dataset

Backlash Cases

As discussed in Chapter 2, the ‘backlash dataset’ is distinct from the primary dataset along some key dimensions. With respect to criminal process, journalists in backlash cases were more likely to be arrested—52% of the journalists in the backlash cases faced arrest (among the cases for which we have data) versus 40% in the primary dataset.

Fig 45. Arrest of Journalist - Backlash vs Not Backlash

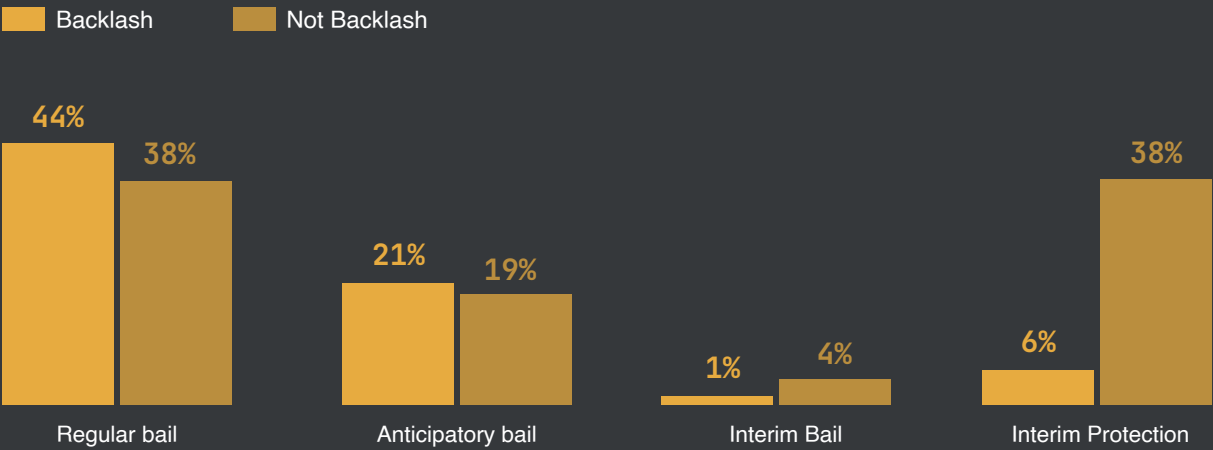


Source: Backlash Dataset

With respect to bail types, the patterns in the backlash dataset also differ from the primary dataset. Regular bail was the most common form of relief obtained, suggesting that given the serious nature of offences, interim protection was harder to obtain. This may also be because backlash cases were more likely in small cities and towns, as mentioned above.

Journalists facing backlash cases were most likely to secure bail from the High Court, rather than the trial court, indicating they would have to incur significant financial burden in the form of lawyers’ fees and travel fees, as explained in detail in Chapter 4 below.

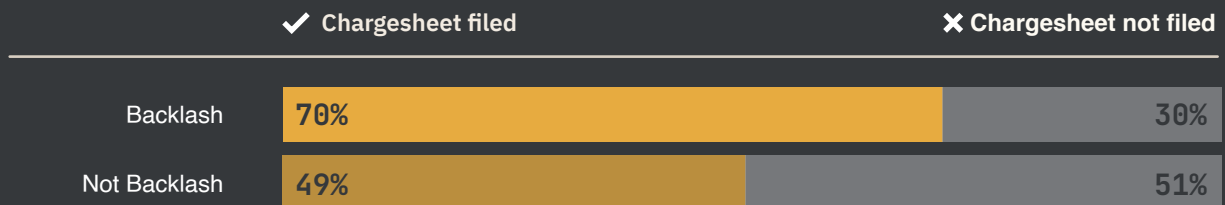
Fig 46. Backlash - Relief Obtained



Source: Backlash Dataset

The backlash cases also appear more likely to go to trial: Of the 77 cases for which we had information, chargesheets were filed more often than not.

Fig 47. Backlash Cases - Chargesheet Filed



Source: Backlash Dataset

This suggests that the authorities may pursue these cases more aggressively, although it may also be a correlate of where these cases arise and the lower levels of protection that journalists in small cities/towns enjoy.

E. Journalists’ Different Experiences of Criminal Justice and Potential Explanations

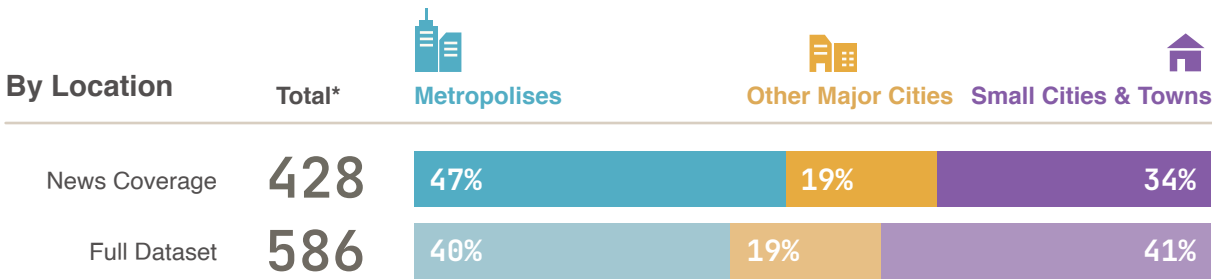
“We got the national media’s attention; we got the judiciary's attention - whoever the judge may have been in such a situation could not have denied us relief. How many people can afford to even approach [senior lawyers] for that matter? The problem is what happens at the local level.”

- Journalist interviewed

One of the main findings of this Chapter is that journalists’ experiences varied based on where they were based, the nature of the publication they reported for, the language they reported in and their job profile. Our data points to potential reasons why journalists working in small cities/towns or for local news outlets may face more danger than their counterparts.

First, journalists in metropolises may find it easier to garner public and peer support given the visibility of their matters. The news coverage of cases against journalists saw a steep decline as one moved from metropolises to small cities and towns.

Fig 48. News Coverage - By Location



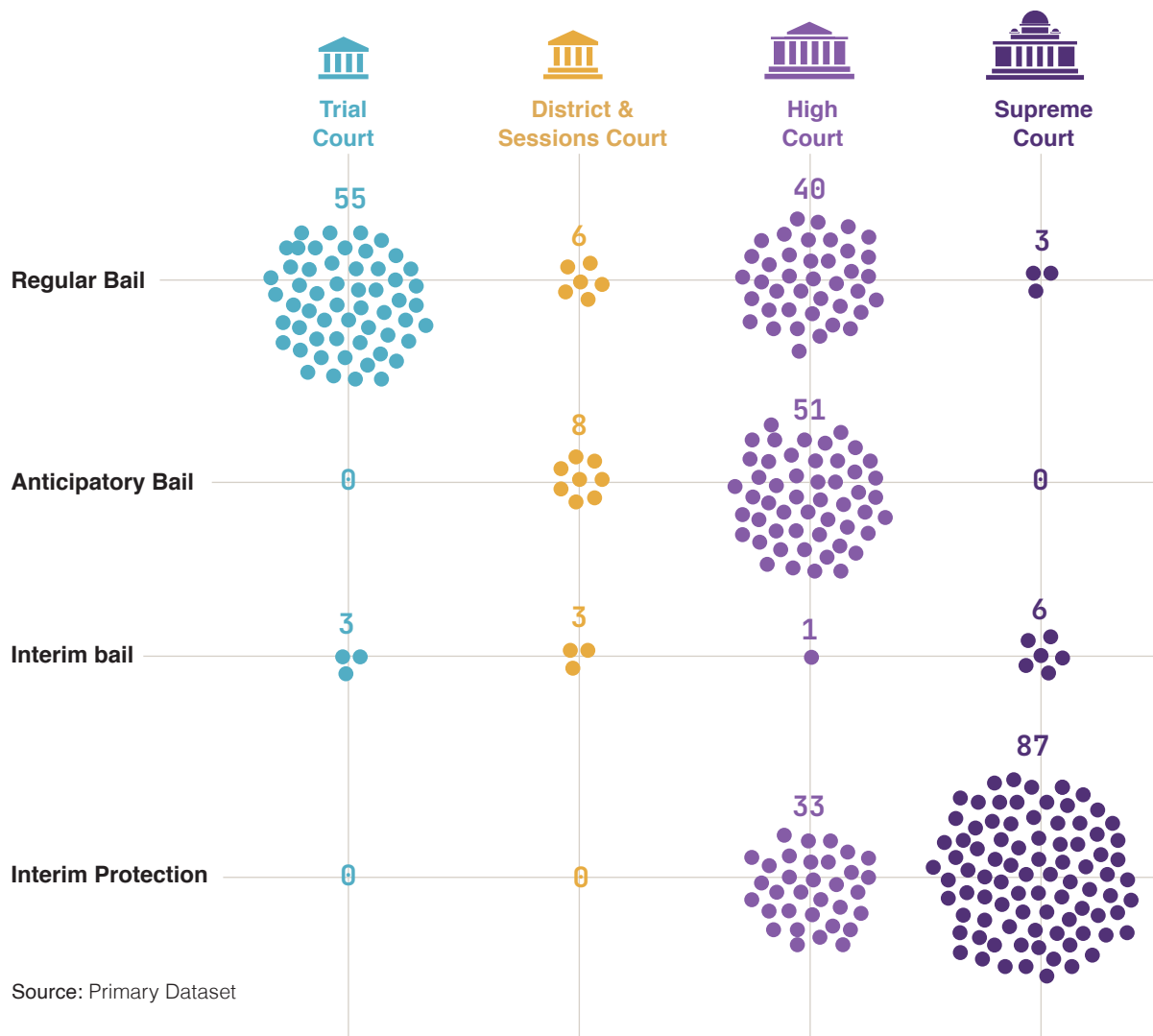
*Total incidents with known location

Source: Primary Dataset

While our data does not establish a correlation between news coverage and likelihood of arrest, as discussed in greater detail in Chapter 4, publicity can be important in securing access to legal and peer support, as well as support from civil society organizations, which in turn has an impact on the journalists' access to justice and protection from adverse consequences of criminal proceedings.

Second, journalists' ability to secure certain reliefs depends on their proximity/ability to access appellate courts like the Supreme Court and the High Courts. The Supreme Court is most likely to grant journalists interim protection from arrest, while High Courts are most inclined to grant anticipatory bail, followed by District & Sessions Courts. Trial courts, conversely, release journalists on regular bail once they are arrested.³⁶¹

Fig 49. Relief Secured - By Court Level

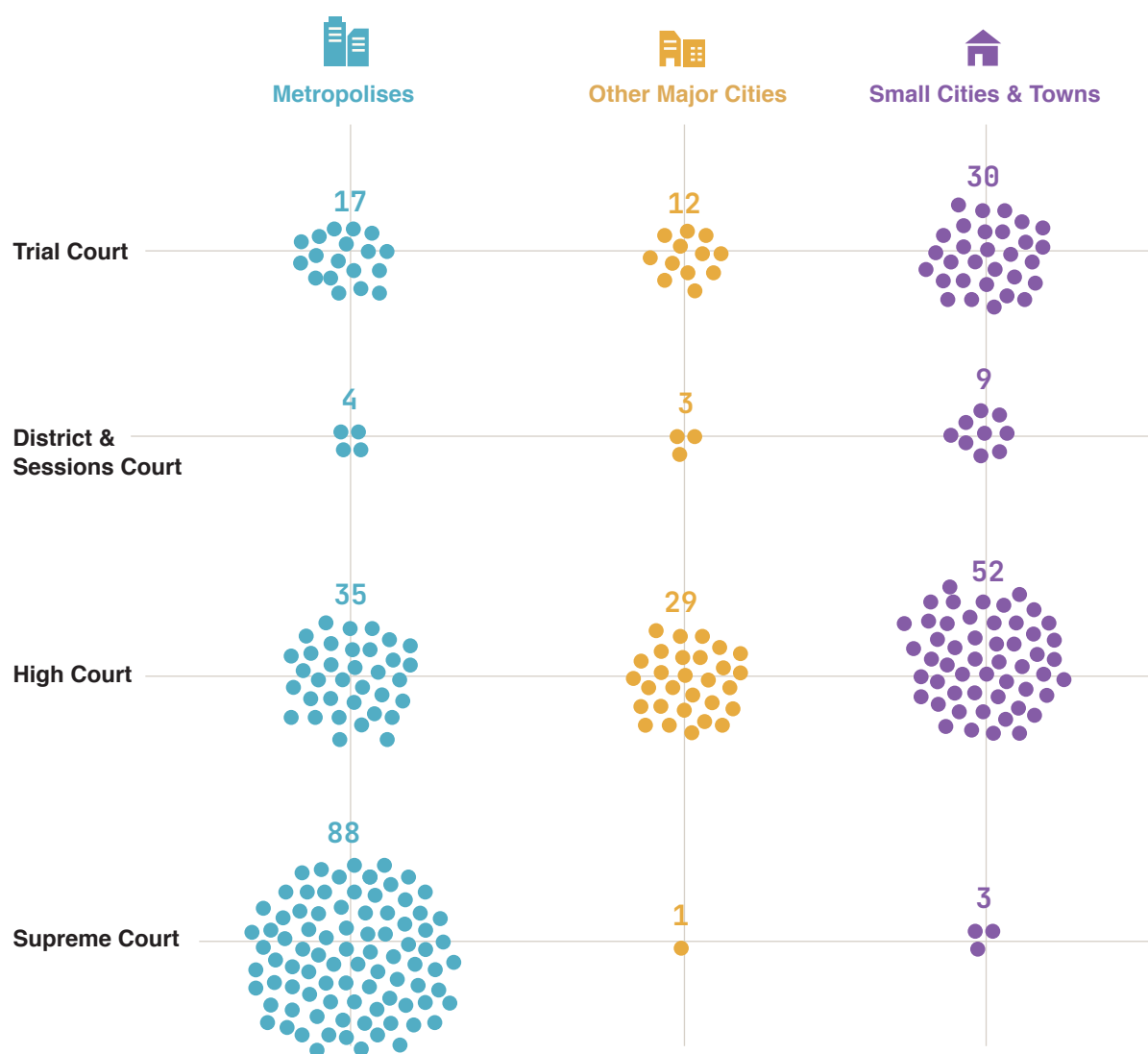


³⁶¹ We have categorized the court of first instance as the “trial court.” The term “district court” is used only where it functions as an appellate body reviewing a trial court’s decision. In cases where the district and sessions court served as the court of first instance, we have retained the label “trial court” for consistency.

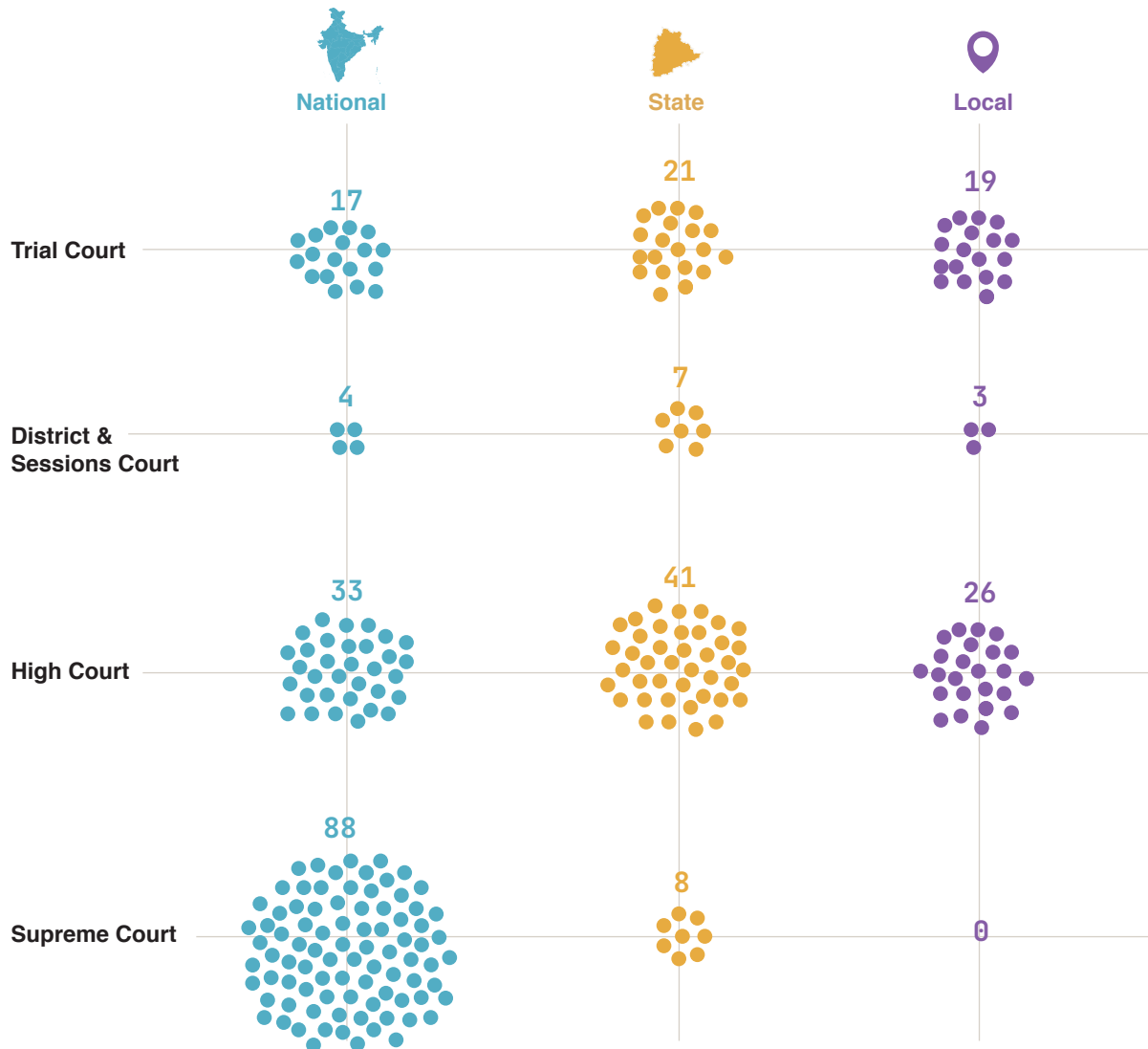
It's relevant here, that while both District & Sessions Courts and High Courts have concurrent powers to grant anticipatory bail, the data above suggests that High Courts have exercised this power more often. Similarly, both High Courts and the Supreme Court have powers to grant interim protection from arrest while hearing petitions to quash FIRs and subsequent criminal proceedings. Still, High Courts are not as willing to exercise the power, making the Supreme Court, with a single seat at New Delhi, the only realistic forum for that relief. Thus, those geographically proximate to the forums most likely to grant these kinds of relief have an advantage.

Our data bears this out—journalists in metropolises and those who report for national publications are more likely to secure relief from the Supreme Court. In contrast, those in other cities and towns tend to rely more heavily on High Courts. Furthermore, there is an increasing dependence on trial courts as one moves from journalists from major metropolises to small cities and towns.

Fig 50. Court Level - By Location



Source: Primary Dataset

Fig 51. Court Level - By Reach

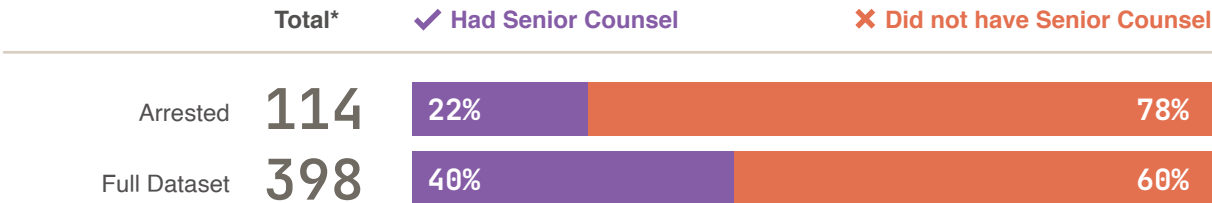
Source: Primary Dataset

The inability to access the Supreme Court and High Courts has significant impacts apart from bail, since it is only these courts that have the power to quash baseless criminal proceedings at any stage. These courts also have the power to stay criminal proceedings and grant interim protection from arrest while they are hearing a petition for quashing—extraordinary reliefs that stymie the harsh impact of facing a criminal case. As mentioned above, these reliefs are more likely to be available to journalists in major metropolises and/or those working for national publications.

Finally, our data also shows that certain journalists have better access to legal resources. In India, litigants may choose to engage a Senior Counsel to argue bail and quashing applications before the High Courts or Supreme Court, as well as for crucial junctures of trial, especially framing of charges and examination of important witnesses. The choice to engage a Senior Counsel is often but not always a

question of affordability since they tend to charge higher fees.³⁶² While our data is not entirely clear on the effect of senior counsels—in part, because it does not show when they were engaged—there is some correlation between seniority of counsel and outcomes visible in the data, which also stands to reason.³⁶³ For instance, those with senior counsels were less likely to be arrested.

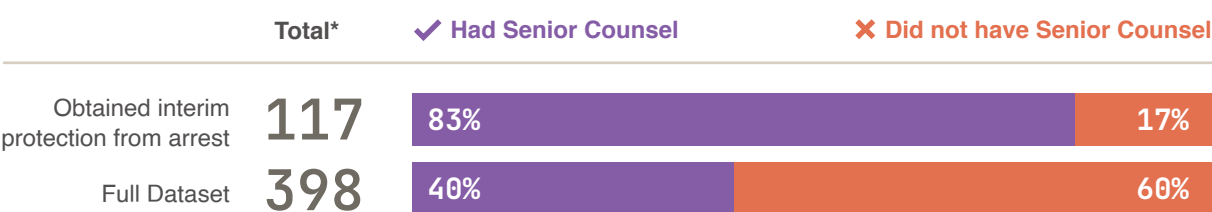
Fig 52. Arrested Journalists - By Senior Counsel



*Total incidents with known senior counsel
Source: Primary Dataset

And those with senior counsel were more likely to obtain protection from arrest (interim protection).

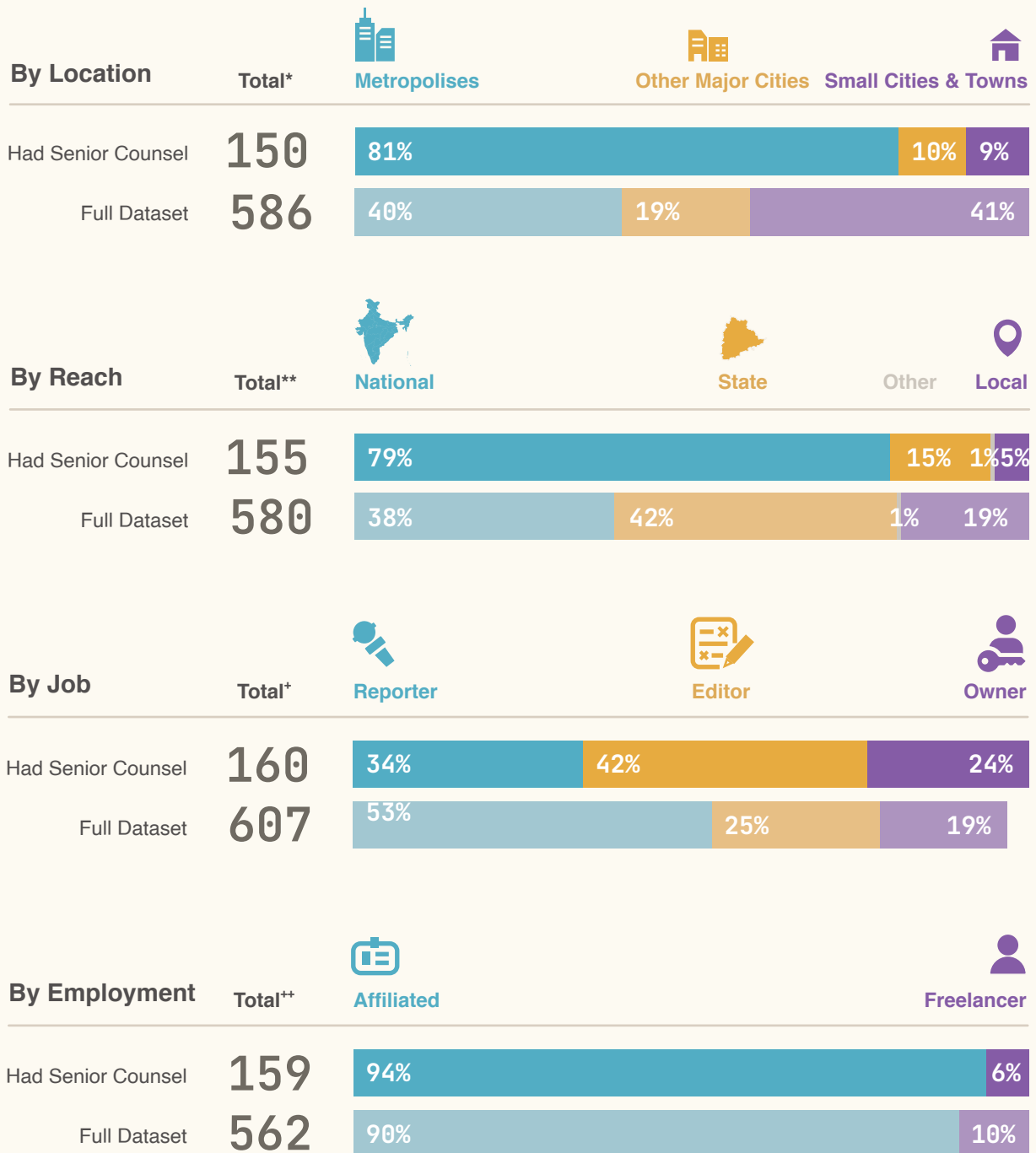
Fig 53. Obtained Protection from Arrest - By Senior Counsel



*Total incidents with known senior counsel
Source: Primary Dataset

While all but five journalists managed to engage lawyers to represent them, 37% engaged senior counsels at some stage or the other. The data shows that there is a greater likelihood among some groups of journalists to be able to have senior counsels represent them.

362 In other cases, a litigant may have personal or professional connections, or senior counsels make take up matters of national interest pro bono.
363 This would likely be true for most criminal defendants. However, higher-profile journalists likely have a degree of access to senior counsels that may be unavailable to other defendants.

Fig 54. Senior Counsel

*Total incidents with known location type

**Total incidents with known reach

*Total incidents with known job description

**Total incidents with known employment type

Source: Primary Dataset



The prior two Chapters have sought to demonstrate the consequences of applying broad criminal laws meant to protect public order and personal reputation to journalists, whose very job is to ask difficult questions and expose uncomfortable truths. The legal system fails to account for the particular vulnerabilities faced by journalists due to their profession, leaving the door open for anyone who takes issue with their work to file a case against them. Journalists then find themselves entangled in a system plagued by prolonged pretrial detention and endless delays—relief from which may only be available to those that have the resources and networks to secure extraordinary relief from India's appellate courts. The ramifications for journalists, their families, and press freedom are explored in the next Chapter, from the perspective of the journalists themselves.



VOICES OF THE PRESS: PERSONAL EXPERIENCES AND PERSPECTIVES

"My family gets scared a lot of times -
a fear has now crept in that what if we are
faced with a similar situation again?

I am more careful while reporting now
so that me and family don't go through
this ordeal again."

- Journalist interviewed

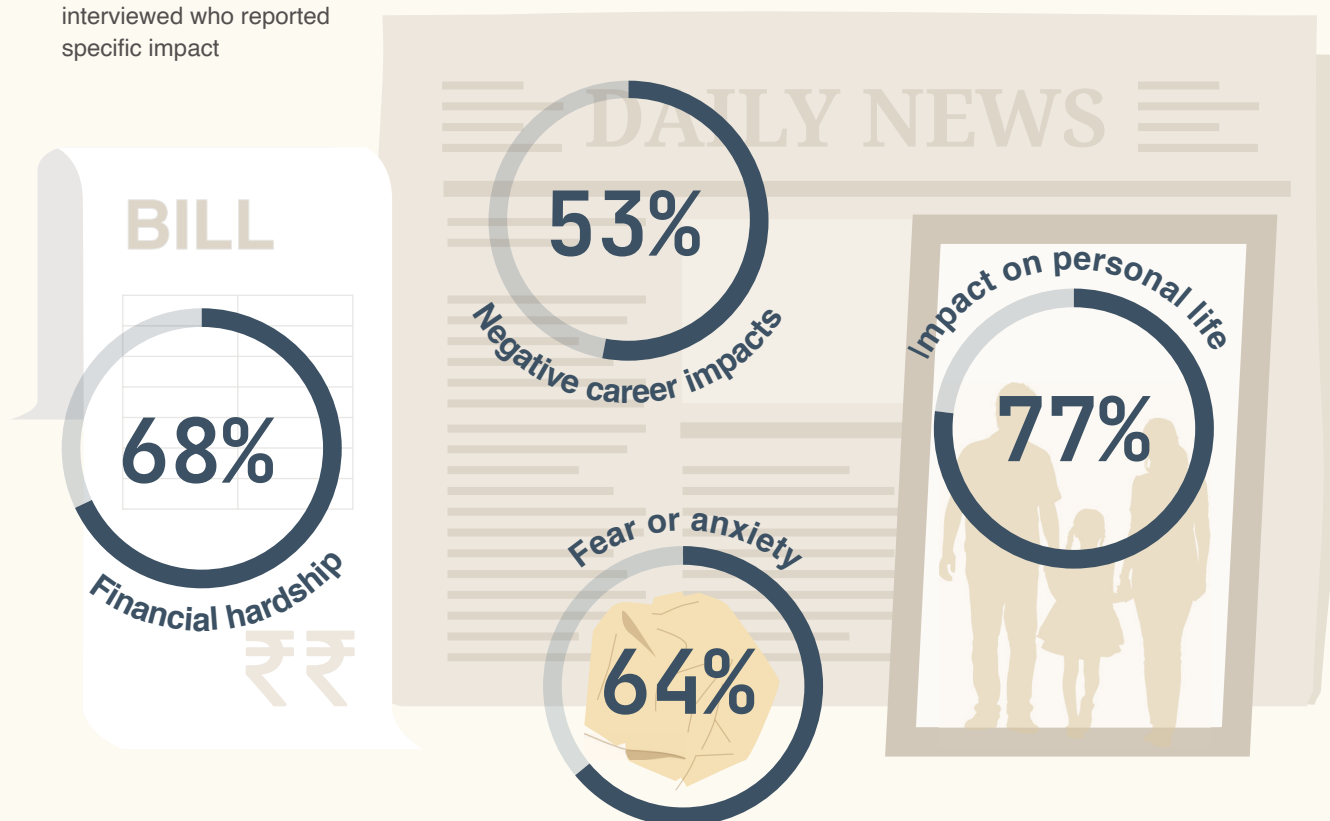
While the prior Chapter sought to understand the impacts of criminal proceedings on journalists in a quantitative manner, this Chapter interrogates the same question based on in-depth interviews with 48 journalists who had cases launched against them.

Specifically, this Chapter aims to shed light on (1) the impact of the cases, including in particular financial, emotional, personal, and professional impacts; and (2) how the journalists navigated the cases, including how they obtained legal representation and the support they received and from what quarters, and the difference such support made.

The interviews reveal that even though cases did not frequently progress to trial, journalists facing charges suffered a variety of significant impacts. Sixty-eight percent said they faced financial hardship; 64 percent reported feelings of fear or anxiety as a result of the case; 77 percent identified an impact on their personal life; and 53 percent said the case or cases had negatively affected their careers. As will be discussed below, most journalists experienced a combination of these interconnected impacts.

Fig.55 Impacts of Cases

Percent of journalists interviewed who reported specific impact



MULTIPLE CASES against one journalist

One journalist from a small city, who operated his own online Hindi news portal, spoke to the financial drain the multiple cases against him had—his bank accounts were frozen, his family had to resort to manual labour to support themselves and his children had to be shifted from a private school to a government school. This journalist also spoke to the impact on his career—the news portal he ran became defunct when he was in custody and his laptop and camera were also seized. “Without these devices,” he says, “we journalists are paralysed...these devices are expensive and for freelancers or owners like me, that creates an additional burden since we do not have any corporate to provide us with equipment but have to carry our own.”

Indeed, journalists who reported fewer adverse effects tended to attribute this to the support they received from their organization, colleagues or the public more widely. For example, several journalists who remained resolute in their commitment to continue their work despite the case(s) against them tied this to the support they received from the public.

Further, the profile of the journalist, and their location, had a significant effect on the impact of the case(s). For instance, among the 14 journalists in metropolises who spoke about economic challenges, nine managed to avoid any financial burden. Similarly, out of the 12 journalists with national reach who addressed the financial impact of the case or cases, 10 had no legal expenses to bear. Lastly, among the 14 English-medium journalists, only three incurred nominal expenses, while seven bore no financial burden at all. By contrast, among the 21 journalists who acknowledged significant financial strain due to their case, 12 hailed from small cities/towns. These factors are explored in further detail below.

It is important to note that in some circumstances where journalists reported that they were not affected by a case, one reason for this was the normalization of the levying of criminal charges against journalists in India. Three journalists specifically expressed the view that legal battles were an inherent risk in their line of work. Reflecting on this sentiment, a Hindi broadcast journalist with over two decades of experience remarked, **"If journalists are easily deterred by threats, how can they fulfil their duties effectively?"** Another journalist from Assam viewed criminal cases as inherent to investigative journalism, and was undeterred by threats from political actors. Similarly, a journalist from a predominantly rural region in Central India said they see FIRs against journalists as commonplace and refuse to be intimidated by such tactics. This suggests that the qualitative assessment of the impacts of these cases that follows may be an undercount.

A. Financial Impact

“It was extremely financially draining. I spent nearly five to fifteen lakhs on legal fees just for my bail at the High Court, and another ten lakhs for the trial. There were several other overhead expenses as well. I had to arrange for my own lawyer.”

– Journalist interviewed

Twenty-one out of the 41 journalists who addressed this question acknowledged experiencing significant financial strain, while seven reported nominal financial expenses. The remaining 13 reported no financial losses.

For those who did experience financial impacts, these could take a significant toll: a journalist from Chhattisgarh told us **“I feel too ashamed to face my family, as I've been unable to provide for them.”** One journalist, in custody for about four months, received his salary from his media house for only the first two months and was thereafter placed on 'leave without pay,' making it impossible to meet daily expenses. He faced what he described as false allegations implicating not only him, but also family members.

This points to the importance of financial and other means of support from the news organizations for which the journalists worked. For the 13 journalists who reported no financial loss, 10, including three freelancers, received comprehensive financial backing from the news organizations that published their work.

Further, nine out of the 13 journalists who experienced no negative financial impact were from major metropolises (New Delhi accounted for four, Hyderabad three, with one each from Kolkata and Mumbai). One journalist remarked, **“If I were in Delhi, for example, not only would I have not faced these many cases in the first place, but I would have also won awards due to the kinds of stories I have covered!”**

Financial impacts were often attributable to legal expenses (13 out of 21 identified this as the main or one of the main drivers of the impact). Journalists also identified travel costs as significant, as well as other factors, such as freezing of bank accounts and seizure of electronic devices. As will be discussed in the subsequent section, facing a criminal case also affected the journalist's career, which in turn has a significant financial impact. One journalist reported that due to the case, **“my freelance work dried up, forcing me to sell my house.”**

Legal Representation

The financial impact was most significant for journalists arrested during their cases. One journalist from Punjab spent Rs. 15 lakhs (approximately \$18,000) on legal fees for bail and trial matters, apart from other expenses. This journalist was eventually acquitted (but presumably did not obtain any compensation for legal costs incurred). A Haryana-based journalist disclosed that he spent Rs. 2 lakhs (approximately \$2,500) on legal expenses.

A freelancer reported spending Rs. 40,000-50,000 (approximately \$600-700) on legal costs, aided by significant contributions from friends and family. Journalists' families also bore the brunt of legal cases and associated financial costs- one journalist's son was implicated along with him, and he "had to spend all his savings on legal expenses."

CASE against one journalist

A journalist from Telangana, known for his work for caste-oppressed communities, cited limited financial resources and reluctance of experienced lawyers to take up his case *pro bono*. He eventually settled for a fresh graduate who agreed to represent them without charge; however the complainant in the case had engaged a Senior Counsel. Despite believing he had a strong case, he was ultimately convicted—highlighting how disparities in legal representation can profoundly affect case outcomes.

As mentioned above, several journalists obtained lawyers through their news organization.³⁶⁴ Four journalists who were able to engage Senior Counsels or other experienced lawyers could do so due to their organization's network. One journalist stated, **"On the very first day of the FIR being filed, I was put in touch with a Senior Counsel by my organization."** Another mentioned, **"We have a Senior Counsel associated with our organization—she's our go-to person."** A journalist from Maharashtra praised their organization's support, stating, **"[t]he management was incredibly supportive. They engaged a law firm to provide me with the best possible legal representation and took charge of managing the case."**

Yet, this was not the experience across the board—one journalist expressed disappointment, noting that after the political drama around his case subsided, his organization stepped back, leaving him to battle the case alone. One journalist, with three pending cases, said that his organization helped him with the first case, including securing his bail. However, they turned hostile when two more cases were lodged. A freelance journalist highlighted the lack of support from the magazine that published her article and

³⁶⁴ Other journalists received legal aid through human rights or press organizations. Here, too, journalists had mixed experiences.

lamented: **“This is, unfortunately, the norm in Indian journalism. Organizations do not stand up for journalists facing criminal charges.”**

Travel Costs

Seven journalists struggled with travel expenses to court. The harsh impact of such costs was most acutely felt by journalists who faced cases filed far away from where they were based. One Delhi-based freelancer had to travel to a small town in Gujarat for each hearing, spending on flight fares, one night's stay and local travel, in addition to other costs. One journalist said his cases are spread across “three different jurisdictions” and he “had [been] repeatedly summoned to the court.” Another journalist explained that **“[t]he primary expense was travel-related, especially trips to Delhi to attend hearings at the Press Council.”**

Local journalists also felt the brunt of travel costs: four small town journalists described significant travel expenses, ranging from five hundred to two thousand rupees per court visit, sometimes monthly. These costs add up: one journalist reported going to court “around 40 to 50 times.”

Other costs

One journalist reported that **“[t]he main financial loss was my digital devices, which were seized and later returned in a damaged condition.”** Indeed, deprivation of the means of livelihood is often a critical blow for journalists. And in 2023, the Supreme Court directed the government to formulate guidelines to regulate the seizure of devices, responding to a petition by the Foundation for Media Professionals (FMP).³⁶⁵

In addition to the damage to his laptop and camera, he also faced significant financial hardship due to the freezing of his and his wife's bank accounts.

365 R. Sai Spandana, Guidelines for Search and Seizure of Digital Devices a Must Under Right to Privacy, Supreme Court Says, Supreme Court Observer, Nov. 7, 2023, available at [https://www.scobserver.in/journal/guidelines-for-search-and-seizure-of-digital-devices-a-must-under-right-to-privacy-supreme-court-says/#:~:text=Kaul%20and%20Sudhanshu%20Dhulia%20directed,FMP\)%E2%80%94journalists%20collective](https://www.scobserver.in/journal/guidelines-for-search-and-seizure-of-digital-devices-a-must-under-right-to-privacy-supreme-court-says/#:~:text=Kaul%20and%20Sudhanshu%20Dhulia%20directed,FMP)%E2%80%94journalists%20collective). It is beyond the scope of this report to assess whether any such limitations are respected.

B. Impact on Mental Well-being

"At that point, I had felt that I should not have written the report at all. As the cases dragged on with no resolution, and I had to endure jail while my family suffered alongside me."

- Journalist interviewed

Twenty-seven journalists expressed experiencing varying degrees of fear and anxiety, arising from fear of arrest or other coercive action by the state, fear of other intimidatory actions by state and non-state actors and fear for their physical safety.

ARREST of journalist

One journalist, who had been arrested, described feeling broken and exhausted by the unrelenting legal battles. Even after his release from jail, a police vehicle remained outside his house for six months, intensifying his distress. With two cases pending against him, the cumulative pressure took a toll on his mental well being. Ultimately, he stepped away from journalism and transitioned to a different career.

Arrest and incarceration

Journalists who had been arrested shared that imprisonment shatters one's spirit, and there is a lingering and persistent fear of being jailed again. Some journalists from small towns voiced fears of fresh cases being filed against them, even after being released from prison—keeping them in a constant state of uncertainty. A journalist who has since been acquitted shared that he never fully recovered from what he endured during his arrest. Another journalist from Manipur spoke to the "dark thoughts" he had during incarceration, of his family, friends, and his future weighing heavily on his mind.

Four journalists interviewed reported that instances of police harassment and custodial violence left a deep, unsettling mark of trauma and mistrust within them. A senior journalist, who is also a single father, also shared that his detention was a gruelling experience that left him feeling helpless, particularly as his child was at a stressful point in his education.

Apart from the lasting impact of the period of detention, journalists also spoke to the time when they were arrested. A journalist recollected being roughed up during his arrest in front of his family, describing the whole ordeal as “mental torture.” A freelancer learned about a pending case against him only when served with an arrest warrant by the police. **“It’s only natural to get scared when you see police officers at your house ... I was calmer once I learnt they had come to serve bailable warrants,”** he explained.

Even journalists who were not arrested expressed a great deal of fear and anxiety of being incarcerated. A female journalist, who was under 25 when an FIR was filed against her, spoke of her fear about the prospect of being incarcerated were she convicted. She received complete support from her news agency, and eventually, the case against her was quashed. Despite her confidence in being on the right side of the law, the constant worry took a toll on her mental health, prompting her to take a sabbatical. Similarly, a local journalist from Chhattisgarh conveyed how vexatious litigation had robbed him of his peace of mind.

MULTIPLE FIRs against editor

The editor of an English publication, facing multiple FIRs with no progress in the cases, feared imminent arrest and asset freeze, leading him to plan for his family's financial security in anticipation of long-term detention. His sense of vulnerability was heightened by his editorial role and refusal to retract the contested material. In contrast, a co-accused, the owner of a press in Delhi, described only mild concern, believing that an arrest would trigger significant backlash. Interviews revealed that public and peer support plays a critical role in shaping how journalists experience and respond to criminal proceedings, including the threat of arrest.

“The opposition, intellectuals, and media **condemned the arrest,** which played a significant role in securing my bail.”

– Journalist interviewed

Fourteen journalists interviewed, out of which six had been arrested, said that they were unmoved by the case(s) against them and the case(s) did not have a damaging emotional impact. Many of these attributed this to the support they received. A reporter from Hyderabad, employed at a national media outlet, initially felt stressed but emerged without lasting trauma. He attributed his resilience to the relatively brief detention and subsequent support from multiple stakeholders. Another editor from the same city suggested his lack of fear was due to the overwhelming support he received. Similarly, two local journalists, facing cases during the pandemic, credited their confidence to the public and political backing they received.

Three journalists spoke of receiving support from politicians or political connections. One journalist mentioned that the editor he worked under had close ties with the dominant political party, which helped his case. Two journalists mentioned receiving support from politicians over social media.

However, as mentioned above, the support received by journalists is a function of where they were based, the news organization they worked at and also their role within the organization.

Two journalists said they believed that if they had been higher up in the hierarchy of their organizations, their cases would have received more visibility. According to them, this would have led to greater impact on their reputation, but it would also have resulted in more support. A senior journalist commented that most local journalists employed by large media organizations at the lower levels are paid measly salaries and have multiple layers between them and the senior editors or owners. This disconnect and lack of means create powerlessness and fear that can be harnessed by those in power to shut them down or avoid uncomfortable questions.

Intimidation by state and non-state actors

Journalists spoke of intimidation by various entities, including police, politicians, and corporations. This included stalking and other forms of harassment. A Delhi-based investigative journalist shared how police would frequently visit her house unannounced; she had no choice but to allow them in to avoid further trouble.

INTIMIDATION & TROLLING of journalist

A journalist recalled receiving late-night calls from unknown numbers while reporting on sensitive issues— “[s]omething like this sends a chill down my spine,” she said. She was reportedly informed that her phone had been tapped by the state government then in power. Even now, she continues to be trolled on social media with insults and slurs when her stories are published.

Another reporter, who faced charges for the first time during the COVID-19 lockdown, described immense pressure from police officers and government officials to silence him and his family. Three others spoke of frequent police raids and harassment from “political goons,” leading to mental exhaustion. One of them opted to go underground temporarily to escape harassment.

Three senior journalists from New Delhi recounted being inundated with legal notices from corporations when working on investigative pieces involving these entities. One of them also mentioned common intimidation tactics like stalking, recalling instances of being followed home or observing individuals on the roof of his apartment.

These threats and intimidation tactics pushed journalists out of their chosen path—a journalist from Telangana recounted quitting journalism due to constant police inquiries, which continued even after he ceased publication. Additionally, a journalist who faced criminal charges early in his investigative journalism career transitioned into legal journalism after receiving a public threat by an official.

C. Impact on Personal Life

"Our relationships are damaged. There is an effort to break the journalist's will by keeping him behind bars and his family life getting affected contributes to this in a big way."

- Journalist interviewed

Out of the 48 journalists interviewed, 45 discussed the effects of criminal prosecution on their personal lives. Among these, 35 journalists described significant impacts on their personal lives, apart from the impacts described above. The subjective experience of each journalist is distinct, shaped by factors like their location, work profile and socio-economic background. But overall, four overarching themes emerged from the interviews regarding the impact on journalists' personal lives: relationships with friends and family, the burden of social stigma, restrictions on liberty and privacy and risks to physical safety. These personal impacts are closely intertwined with the impacts described above, and the impact on their careers described in the final section below.

Impact on Friends and Family

Twenty-five journalists highlighted the distress or fear experienced by their family members, who expressed concerns for the safety, life, and health of the journalist. One journalist who had been arrested poignantly described this suffering, stating, **"More than the victims, the people outside are suffering and feel scared. They skip meals, often going from pillar to post trying to secure relief."**

Journalists arrested described the mental health challenges and trauma experienced by their families due to witnessing their loved ones being arrested. One journalist recounted how his wife fell into depression after he was arrested. Another shared the painful experience of his family, stating, **"My family felt so tortured due to my absence, especially my little children who were so worried. Families get broken due to these cases. Ultimately, they make you beg on your knees."** Another journalist shared that his wife and daughter were alone and scared at home when he was arrested, and his family was not allowed to meet him in prison.

There is also significant financial strain on families--one journalist reported that his brother's shop was closed for seven months due to his criminal case (and other related intimidatory tactics). He said the "hidden costs" his family had to bear due to his case(s) were in "lakhs."

Social Stigma and Trolling

Journalists experience a sense of injustice when they are labelled as "wrongdoers" by society for their work. This stigma manifests in various ways, such as social exclusion, online harassment, and a decrease in work and career prospects (covered in detail in the section below).

Three journalists reported being trolled once the case against them was reported publicly. An award-winning journalist who worked with a news website spoke in detail about being mercilessly trolled online each time her stories were put forth on social media. Derogatory and misogynist slurs were used against her on social media. Another stated, **"I have never recovered from what I went through. I am still trolled for this incident."**

Five others said they were ostracized by those around them—including those who had previously supported them.

SOCIAL OSTRACIZATION of freelance journalist

One freelance journalist spoke of the personal and professional toll of social ostracization. Editors who once offered him assignments—some of whom he deeply trusted—began to turn him away. Even while reporting, people recognise him as "the journalist who was arrested" a label that disrupts his work. He also shared that people once close to him have since distanced themselves. "I went to an alumni meet recently," he recounted, "I feel like people look at me differently now. Things aren't the same."

One journalist spoke about how he would have been pursuing higher education if not for the case against him, but foreign universities would often no longer offer him admission. Another remarked that no media agency wanted to be associated with a "problematic" individual like himself.

Three journalists also indicated that their families saw the brunt of this stigma as well. A Maharashtra-based journalist explained, **"My daughter had to face bullying in school. For nearly 2 years, they would taunt her."**

Constraints on Liberty and Privacy

Journalists reported experiencing a loss of privacy and various restrictions, which made them feel less free in their movements, actions, and reporting. One local reporter, who had been implicated in multiple cases, lamented that for him "the process does not seem to end at all" as he had now "been registered

as habitual offender,”³⁶⁶ as a result of which he had **“to report to the police station every Thursday and Sunday. I am not allowed to travel anywhere but I have to inform them where and why I am going ... thus, they come to know which issues I plan to report on. I am always under surveillance and it feels wrong.”**

A Delhi-based journalist said they experienced surveillance by the Local Intelligence Unit and had a police van parked near their home for nearly six months.

Three journalists from major metropolises expressed concerns about possible surveillance of their devices. One journalist recounted hearing a beep sound during calls after covering an important story, indicating potential tapping of their devices.

The press card of another journalist was invalidated as a result of the case against them, effectively confining them to their home during the COVID-19 lockdown and preventing reporting activities.³⁶⁷

Physical Safety

Another concern identified was fear for journalists’ physical safety and that of their families. Journalists recounted being targeted by what they described as associates of various politicians and land and mining interests. These journalists reported difficulties in getting the police to register FIRs about threats to their physical safety. Another journalist revealed being threatened with gang rape, death, and harm to her mother by unknown persons, and eventually her house was broken into. Despite her efforts, registering an FIR proved futile.

A senior journalist shared multiple instances of vandalism when she wrote on a polarizing topic. One journalist expressed fear of walking on streets, fearing a car might run him over to silence him.

366 Several states in India have “habitual offender” laws that permit police to control movements of persons designated as habitual offenders and subject them to extensive surveillance.

367 There were exceptions from the lockdown for journalists (among other professions); however, without a press card, they could not claim the exemption and were therefore unable to report.

D. Impact on Professional Pursuits

"It's been overwhelming. I lived in a constant state of worry and felt trapped, despite having done nothing wrong. This pushed me to leave journalism and move it business -I simply could not focus on anything else"

- Journalist interviewed

Of the 48 journalists who were interviewed, 41 spoke about how the criminal prosecution affected their work, opportunities and professional pursuits. Out of these 41, 22 said that the case had negatively affected their careers, 14 said it had little impact, and five said it had actually emboldened them.

The negative impacts that emerged from the interviews took three main shapes: challenges in obtaining or keeping work (i.e., external impacts), self-censorship, and disillusionment with the profession, including in some cases profession change.

Difficulties in Obtaining or Keeping Work

Journalists described how the case hindered their ability to perform their work effectively. In some cases, the legal or financial repercussions led to the discontinuation of their organization. For instance, one journalist mentioned that the organization they had founded eventually ceased to operate after the case proceedings.

Others mentioned the challenges they faced in finding work due to the harm caused to their reputation by the case. One journalist explained that after his arrest, he struggled to resume work because no media company wanted to associate with someone labelled as "troublesome." Although people admired his bravery, it was not sufficient for them to offer him employment.

Despite having worked with several editors over the years, one seasoned freelancer found himself struggling to secure assignments after being arrested. The reluctance of editors to engage with him has resulted in a loss of opportunities to cover stories and build professional continuity, thereby impacting his livelihood. **"Out of the eight editors I used to work with, only three have continued to support me,"** he noted. Another journalist pointed out that even if they are acquitted, there is insufficient news coverage of the same, so they continue to be viewed as criminals.

Self-Censorship

Journalists reported that the institution of criminal cases against them led to an increased sense of caution and hesitance in carrying out their reporting due to fear of adverse repercussions to their lives. This manifested as both an increase in caution and fact-checking, as well as a tendency to dilute statements or refrain from reporting on certain issues.

Three journalists elaborated on the cautionary measures they have incorporated into their journalism. A senior editor from Telangana mentioned becoming more cautious about the facts and methods of coverage because retaliation often affects the entire journalistic community. Another editor outlined steps taken before publication, emphasizing the importance of fact-checking and legal scrutiny. Echoing this sentiment, another editor stressed the significance of repeated fact-checking for safety in the profession.

Six other journalists believed they had adjusted their reporting style beyond additional fact-checking. One grassroots journalist, whose freelancing pursuits had been hurt by the case against him, acknowledged that his reporting style would inevitably have to be less critical to earn a livelihood. A journalist based in Delhi shared that she now gives greater thought to each story before pursuing it, acknowledging an element of self-censorship. Another journalist mentioned the shift in their social media activity: **“if you look at my Twitter activity from 2020-2021 compared to 2022-2023 you will notice a significant drop in the number and frequency of tweets. When you are fresh into the profession, you feel you can write and change the world. But six years in, I have realized self-preservation is the key to a long, sustainable career in journalism in India today.”**

One journalist, a single parent of two children, worried about continuing to report on politically precarious matters and shifted to another branch of journalism. Similarly, another journalist from Delhi transitioned to a different form of journalism due to a sense of fear and lack of security.

Disillusionment

Eight journalists expressed a sense of disillusionment toward their profession, reflecting on the heavy personal costs and limited scope for making a difference in the face of adversity. This disillusionment stemmed from a feeling of injustice and suppression, leading to a diminished passion for their causes.

Four journalists reported a complete change in profession, moving away from journalism altogether. One local investigative journalist candidly spoke about how legal matters had become overwhelming, leading him to start a business. Similarly, the founding member of an online channel now runs a company in an entirely different industry. Though still passionate about journalism, he realized it had become too problematic to pursue.

Another journalist said they had been forced to quit journalism and had joined politics. Reflecting on the situation, he said, **"I have completely stepped away from journalism—it was my passion. I've since entered politics. My passport was impounded, preventing me from going abroad for higher studies."** And another journalist, as mentioned above, now pursues an entirely different career. Reflecting on the change, he stated that his spirit for journalism had broken, leading him to make this decision. **"I was tired and had no courage to do this again."** Journalists who left the profession also spoke to concerns, attributing the decision to the overwhelming pressure and worry caused by the professional hazard of facing cases.

An Editorial Guild of India member highlighted a widespread disenchantment among journalists due to the lack of space for unfiltered speech and writing. **"Many journalists enter this field not for monetary gain, but for the professional fulfilment of making a meaningful impact. However, the current ecosystem often restricts their ability to uphold these values."**

E. Sources of Support

"These experiences have only deepened my resolve to report the truth fearlessly.. The challenges I've faced made me more determined to expose injustice, no matter the personal risks involved. As journalists, I believe we have a responsibility to report accurately and with integrity—especially in times of crisis."

– Journalist interviewed

As mentioned above, several journalists reported feeling emboldened and continued their work, despite the roadblocks described above. This in turn is linked to the support they received from their families, employers/news organizations, peers from the journalistic community and the larger public.

Some journalists expressed that the legal cases against them had in fact strengthened their resolve and commitment to their profession and approach to journalism. Notably, these journalists received significant community and peer support, which bolstered their spirits. For instance, one local journalist felt overwhelming support from his town, with all press clubs advocating for his exoneration. He emphasized that this was due to his reputation for honesty and integrity within his community and expressed a heightened determination to report matters regardless of potential legal consequences.

SUPPORT FROM NEWS REGULATORY BODY for three journalists

Three journalists received support from the Press Council of India (PCI), which, according to them, significantly impacted their matters. In one instance, the PCI Chairman publicly voiced support; in another, the PCI escalated the matter to higher authorities. For the third journalist, the PCI took up the matter *suo moto*. He explained that both the state's Press Trust and the PCI pursued his case and hearings before the PCI for several years, eventually leading the police to drop charges. In his interview, he noted that with the backing of multiple individuals and organisations, he felt reassured that harm was unlikely.

A New Delhi-based journalist reported receiving an outpouring of support on social media, including offers of free legal advice. "On the day of the FIR, several lawyers reached out on Twitter offering to represent me pro bono. Media organizations and [a rights organization] also reached out," she recounted. Another journalist from Hyderabad described how support came to him without him having to reach out because of the visibility of his case.

As mentioned above, this was not the experience across the board—there is a wide disparity of experiences based on the background, work profile of the journalist and where they worked. One journalist from Meghalaya, for instance, expressed disappointment with the lack of support they received and spoke to the disparities in treatment between journalists from larger and smaller states.

CONCLUSION

"As part of a professional obligation if you are writing something day in and day out that has the potential of irking somebody or unsettling somebody then you need to be protected...There is definitely a case being made for an extra layer of protection for journalists."

- Journalist interviewed

Journalists play a critical role in society. The UN Human Rights Committee, for instance, has explained that “free, uncensored and unhindered press or other media” that is “independent and diverse” “constitutes one of the cornerstones of a democratic society.”³⁶⁸ Similarly, the Inter-American Court of Human Rights has stated that “[t]he media play an essential role as vehicles for the exercise of the social dimension of freedom of expression in a democratic society, which is why it is vital that the media are able to gather the most diverse information and opinions.”³⁶⁹ And the European Court of Human Rights has repeatedly emphasized the “vital role of the media in facilitating and fostering the public’s right to receive and impart information and ideas.”³⁷⁰

There are also related protections for speech concerning matters of public interest or public figures—topics and individuals on which journalists frequently report. The Human Rights Committee has emphasized that “the value placed by the Covenant upon uninhibited expression is particularly high” in circumstances of public debate concerning public figures in the political domain and public institutions.³⁷¹ The Committee has also specifically made clear in the context of defamation cases that “a public interest in the subject matter . . . should be recognized as a defence.”³⁷² Likewise, “[a]t least with regard to comments about public figures consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice.

International and regional bodies have also recognized that journalists must be allowed room to maneuver. As the Inter-American Court explained in *Moya Chacón et al. v. Costa Rica*:

*[F]or investigative journalism to exist in a democratic society, journalists must be allowed ‘room for error’ because, without this margin of error, neither independent journalism nor the possibility of the necessary democratic scrutiny that results from this can exist.*³⁷³

In this regard, journalists play the role of ‘public watchdogs.’³⁷⁴ Their reporting may—and in fact, can be expected to—reveal uncomfortable truths. Good journalism should cause discomfort.

For its part, the Indian Supreme Court has likewise recognized the critical role that journalists play. In one

³⁶⁸ UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 13.

³⁶⁹ IACtHR, Case of Herrera-Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para. 117.

³⁷⁰ ECtHR, Satakunnan Markkinapörssi Oy & Satamedia Oy v. Finland, App. No. 931/13, June 27, 2017, para. 126.

³⁷¹ UNHRC, General Comment No. 34 on Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, Sept. 12, 2011, para. 38.

³⁷² *Id.* at para. 47.

³⁷³ IACtHR, *Moya Chacón et al. v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, (ser. C) No. 451, May 3, 2022, para. 76 (citations omitted), available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_451_ing.pdf.

³⁷⁴ *Id.*

recent case, the Court cited with approval the view that “India’s freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal.”³⁷⁵ The Court has also opined that “[m]erely because writings of a journalist are perceived as criticism of the Government, criminal cases should not be slapped against the writer.”³⁷⁶

The Indian Supreme Court has also sought to lay down guardrails to prevent prosecution of protected speech. In particular, the Court has emphasized just how dangerous speech must be for it to be criminalized, stressing that while “[t]here does indeed have to be a compromise between the interest of freedom of expression and social interests . . . we cannot simply balance the two interests as if they are of equal weight. . . . The anticipated danger should not be remote, conjectural or far fetched. It should have proximate and direct nexus with the expression. . . . In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a powder keg.’”³⁷⁷ At the same time, the Court has stressed the importance of intent in respect of the interpretation of a number of provisions discussed in this report: For instance, in *Manzar Sayeed Khan vs State Of Maharashtra & Anr*, the Court reiterated that “[t]he gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC.”

But limits on broad legal provisions that are meant to protect free speech are being ignored, and procedural protections are lacking. This leaves journalists exposed.

This report adds to growing evidence, showing a clear lack of implementation of Supreme Court limitations on speech cases.³⁷⁸ Indeed, litigants have had to approach the Court in contempt proceedings when cases were registered under a law that the Court declared to be unconstitutional after which the court took a prescriptive approach to ensure implementation of its decision.³⁷⁹

³⁷⁵ Mohammed Zubair v. State of Nct of Delhi & Ors, [(2022) 18 S.C.R. 494].

³⁷⁶ Abhishek Upadhyay v. The State Of Uttar Pradesh, W.P. (CrI.) No. 402 of 2024 (SC, Oct. 4, 2024).

³⁷⁷ S. Rangarajan Etc v. P. Jagjivan Ram, [(1989) SCR (2) 204].

³⁷⁸ NDTV, Can’t Have Separate Avenue for Press to Set Aside FIRs, Says Supreme Court, Sept. 8, 2021 (“[S]ix decades later [after Kedar Nath], neither governments nor the police at the thana level appear to understand what that judgement means given the ease with which Section 124A of the Indian Penal Code dealing with sedition continues to be used against journalists and others.”), available at <https://sedition.article-14.com/>; see also, Kalpana Sharma, Why, Despite SC’s Vinod Dua Ruling, Dissenting Journalists Won’t Be Safe, News Laundry, June 10, 2021, available at <https://www.newslaundry.com/2021/06/10/why-despite-scs-vinod-dua-ruling-dissenting-journalists-wont-be-safe>.

³⁷⁹ When cases continued to be pressed under Section 66A of the Information and Technology Act, 2000, despite it having been struck down by the Court, the Court ultimately directed various State authorities to ensure that the police would no longer invoke the section, and required that in all publications on the IT Act readers be informed that the provision had been struck down. Gauri Kashyap, Implementation of Shreya Singhal Day #2: Order Pronounced with Four Directions, Supreme Court Observer, Oct. 12, 2022, available at <https://www.scobserver.in/reports/implementation-of-shreya-singhal-day-2-order-pronounced-with-four-directions/>.

The Indian Supreme Court appreciates the dangers that the application of some of the provisions discussed in this report pose to journalists. In one recent case, the Court indicated that “the ambit and parameters of the provisions of Sections 124A, 153A and 505 of the Indian Penal Code 1860 would require interpretation, particularly in the context of the right of the electronic and print media to communicate news, information and the rights, even those that may be critical of the prevailing regime in any part of the nation.”³⁸⁰ And the Court has also opined that forcing journalists to respond to multiple cases across different states creates “a vicious cycle of the criminal process where the process has itself become the punishment.”³⁸¹

And yet general criminal law continues to be used against journalists with little regard to the protections for speech—over 90% of the cases in the dataset included provisions of the Indian Penal Code, while only two cases invoked violations of specific media laws. This may be explained due to a lack of robust alternatives and the lack of protections for journalists.

The Indian Supreme Court has to date declined to lay down guidelines specific to cases against journalists—in one case, specifically finding that this would “amount to encroachment upon the field reserved for the legislature.”³⁸² And in any event, relying on the Supreme Court for relief could only come through (often protracted) litigation, which as this report has discussed, is an avenue not equally available to all journalists.

Other systems have adopted approaches that intervene at an earlier stage.

In Indonesia, for instance, the Press Council and the National Police signed a Memorandum of Understanding (MoU) that outlines a collaborative framework for handling cases involving journalists and media outlets in a way that aligns with the country’s Press Law,³⁸³ with the specific objective of ensuring that complaints about journalistic work are handled by the Press Council before any criminal investigation or legal action is taken.³⁸⁴

³⁸⁰ Aamoda Broadcasting Co. Pvt. Ltd. v. State of Andhra Pradesh, W.P. (Crl.) No. 217 of 2021 (SC, May 31, 2021).

³⁸¹ Mohammed Zubair v. State of Nct of Delhi & Ors, [(2022) 18 S.C.R. 494].

³⁸² Vinod Dua v. Union of India & Ors, W.P. (Crl.) No. 154 of 2020 (SC, June 3, 2021), para. 66.

³⁸³ Memorandum of Understanding, No.2/DP/MoU/II/2017, Art. 2, available at <https://dewanpers.or.id/assets/documents/kesepahaman/040-Mou%20Dewan%20Pers%20-%20Polri.pdf> (unofficial translation) This system does not, however, always function as intended. See, e.g., Staff at the American Bar Association Center for Human Rights et al., TrialWatch Fairness Report, Indonesia v. Muhammad Asrul, Indonesia v. Stella Monica, Dec. 2023, available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/indonesia-ite-report.pdf.

³⁸⁴ *Id.* at Arts. 4, 5.

Journalist groups in India have also proposed a similar framework.³⁸⁵

In other countries, there are enhanced efforts to screen out meritless cases—in particular, Strategic Lawsuits Against Public Participation (SLAPPs)—at the earliest stages. For instance, in the Philippines, rules initially established to deter SLAPPs against environmental defenders have been applied more widely and create a burden-shifting procedure whereby once a defendant has made a preliminary showing, the burden shifts to the party initiating the action to show that it is a valid claim and not a SLAPP.³⁸⁶ And in Thailand, after earlier adopting provisions that sought to provide an early dismissal mechanism for meritless private cases, the Thai authorities are currently considering a bill that would expand these protections in cases brought by public prosecutors.³⁸⁷

Another important conclusion of this report is that journalists in smaller cities, towns, and villages are more vulnerable to arrest and detention.

Many of these vulnerabilities, and the impacts faced by these journalists, turn on the lack of legal support. Journalists who are not proximate to High Courts or the Supreme Court have greater difficulty in obtaining protection from arrest. Journalists whose employers neither find nor provide a lawyer may face severe financial consequences. This adds to the existing vulnerability faced by journalists at the bottom of the news pyramid.

Of course, this is a much broader question of access to justice in a large country such as India. But one approach to consider would be to create more robust networks to connect journalists, especially those in more remote areas, with legal supports. At the international level, there have been recent efforts to establish such networks, such as the Legal Network for Journalists at Risk.³⁸⁸

Looking forward, many of the provisions most frequently invoked against journalists have been incorporated nearly verbatim into the BNS. This suggests that they may remain just as susceptible to abuse. Further, the BNS has added new vague laws, such as Section 195(1)(d), which criminalizes “false or misleading information jeopardizing the sovereignty, unity, and integrity or security of India.” This means that the threat to journalism in India will likely remain acute.

³⁸⁵ The Media Transparency (And Accountability) Bill, 2024 proposes the establishment of a National Media Council. As per Clause 6 of the Bill, permission of the National Media Council must be taken before institution of any criminal proceedings against a media outlet or any of its employees regarding any journalistic story or activity. See Media Transparency (And Accountability) Bill, 2024, available at <https://pressclubofindia.org/Media-Transparency-Bill.pdf>

³⁸⁶ Supreme Court of the Philippines, Annotation to the Rules of Procedure for Environmental Cases, pgs. 131-32, available at https://philja.judiciary.gov.ph/files/learning_materials/A.m.No.09-6-8-SC_annotation.pdf.

³⁸⁷ Rights and Liberties Protection Department, Draft Act on the Prevention of Strategic Lawsuits Against Public Participation, Ministry of Justice, Thailand.

³⁸⁸ <https://www.medialegalhelp.org/>.

At the same time, it is not only journalists, strictly speaking, who are doing the kinds of work that are likely to expose them to these threats going forward. Whistleblowers seeking and exposing information, ‘citizen journalists,’ and others are also at risk of prosecution and silencing.

It is our hope that this report’s findings and conclusions shed light on how journalists are criminalized across various states in India—and the scale and ramifications of this criminalization. We hope this report can spark a discussion of the most effective ways of protecting journalists, so that the right to freedom of speech, protected by Indian law and India’s international obligations, is meaningfully realized.

ANNEX A

01. Methodology

This project entailed gathering information on criminal cases registered against journalists in relation to their professional work between 2012 and 2022. Instances of assault/unlawful detention/intimidation/harassment of journalists by state or non-state actors are beyond the scope of the report.

Since this report deals with cases from 2012-2022, the Indian Penal Code, 1860 (IPC) and Code of Criminal Procedure, 1973 governed law and procedure. On July 1, 2024 the Bharatiya Nyaya Sanhita (BNS), the Bhartiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) replaced the IPC, Code of Criminal Procedure and Indian Evidence Act, 1872, respectively.

Data Gathering

In the absence of any comprehensive database of criminal cases registered against journalists, information was collected in the following manner:

- **In the first phase**, 21 reports by civil society organizations³⁸⁹ in the field were reviewed with a view to identifying cases against journalists.
- **In the second phase**, a standardized Boolean Google search was conducted, with the sources predominantly being online news reports. For this phase, sources were limited to the languages the researchers were proficient in: English, Hindi, Kannada, Bengali and Marathi.

389 Rights and Risks Analysis Group, India: Media's Crackdown During COVID-19 Lockdown, June 15, 2020, available at <https://ruralindiaonline.org/mr/library/resource/india-medias-crackdown-during-covid-19-lockdown/>; Rights and Risks Analysis Group, 194 Journalists Targeted, Eight Killed During 2022 in India, June 27, 2023, available at <https://www.rightsrisks.org/press-release/press-release-194-journalists-targeted-eight-killed-during-2022-in-india/>; Geeta Seshu, Free Speech Collective, Behind Bars: Arrest and Detention of Journalists in India, 2010-20, available at <https://freespeechcollectivedot.in.wordpress.com/wp-content/uploads/2020/12/behind-bars-arrests-of-journalists-in-india-2010-20.pdf>; Article 14, A Decade of Darkness: The Story of Sedition in India, available at <https://sedition.article-14.com/>; The Hoot, Censorship: How and Where - Free Speech in India 2014, available at <http://asu.thehoot.org/free-speech/media-freedom/censorship-how-and-where-free-speech-in-india-2014-8719>; The Hoot, Free Speech in India, 2015, available at <http://asu.thehoot.org/research/special-reports/free-speech-in-india-2015-9091>; The Hoot, India 2016-17: The Silencing of Journalists, available at <http://asu.thehoot.org/free-speech/media-freedom/india-2016-17-the-silencing-of-journalists-10070>; The Hoot, The India Freedom Report, January 2016-April 2017, available at <http://asu.thehoot.org/public/uploads/filemanager/media/LATEST-FREEDOM-REPORT-.pdf>; The Hoot, Free Speech Tracker; Free Speech Collective, Free Speech in India 2018: The State Rolls On, Dec. 31, 2018, available at <https://freespeechcollective.in/wp-content/uploads/2025/01/FSC-Report-Cover-Page.png>; WAN-IFRA, Media Laws in India, Sept. 2020, available at <https://wan-ifra.org/insight/report-media-laws-in-india/>; Free Speech Collective, Free Speech of Press and Media in India, July 1, 2022, available at <https://freespeechcollective.in/reports/fsc-reports/with-13-mediapersons-in-custody-in-india-whither-free-speech/>; Human Rights Watch, World Report 2016, available at https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf; Rights and Risks Analysis Group, India Press Freedom Report 2021; Rights and Risks Analysis Group, Press Freedom – At Least 228 Journalists Targeted Including 13 Killed with Highest Attacks in Uttar Pradesh in 2023, July 30, 2021, available at <https://www.rightsrisks.org/reports/india-press-freedom-report-2020/>; Committee to Protect Journalists, Alerts, available at <https://cpj.org/news/>; Internet Freedom Foundation, Foundation for Media Professionals, available at <https://internetfreedom.in/tag/foundation-for-media-professionals/>; DIGIPUB News India Foundation, Twitter (X), available at https://x.com/DigipubIndia?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor; International Federation of Journalists, South Asia Press Freedom Report 2020-21, available at <https://samsn.ifj.org/SAPFR20-21/>; International Federation of Journalists, States of Control: Covid, Cuts and Impunity, South Asia Press Freedom Report 2019-2020, available at https://www.ifj.org/fileadmin/user_upload/States_of_Control_-_South_Asia_Press_Freedom_Report_2019-20_Spreads.pdf; Human Rights Law Network, Harassment and Cases Against Journalists During COVID19, 15.03.2020:10.07.2020, available at <https://www.slic.org.in/uploads/2020/07-July/31-Fri/Journalists%20during%20COVID19.pdf>; Free Speech Collective, Free Speech in the States: Between Electoral Rhetoric and Ground Reality, Nov. 6, 2023, available at <https://freespeechcollective.in/wp-content/uploads/2023/11/Free-Speech-In-The-States-6Nov23-A-Free-Speech-Collective-Report.pdf>.

- **In the third phase**, case searches were carried out in two legal databases, IndianKanoon and SCC Online. A comprehensive list of all penal provisions invoked against journalists was prepared based on data collected from Phases 1 and 2. Boolean search techniques were used to find criminal cases that invoked these provisions against journalists across the two legal databases. Since the penal provisions used in the search were based on results yielded in the first and second round of case search, there is a chance of exclusion of any criminal cases against journalists involving other penal provisions.

At each stage, care was taken to avoid duplication of data and inclusion of ineligible entries. Cases against non-journalists or cases where being a journalist was only incidental to the matter were deleted. Non-journalist co-accused in cases against journalists were also excluded. The list of journalists to be considered for the study was frozen on December 31, 2022. The case-related data for each journalist was updated and finalized on October 31, 2023.

For every entry in the dataset, the following details have been included:

I. Year

II. State/UT where the criminal case was registered

III. Offence(s) Alleged – Law(s), Provision(s), Category or Categories of Offence(s)

IV. Case Related Details:

- **Date of FIR**
- **Basis for charge (Cause of action)**
- **Arrest/Coercive action**, if applicable
- **Relief obtained**, if any
- **Stage of Investigation**³⁹⁰
- **Legal Representation:**
Yes/No and whether Senior Counsel engaged
- **Forum granting relief:**

Five primary fora for granting relief have been identified: the Supreme Court, High Court, District Court, Trial Court, and Police Station. We have categorized the court of first instance as the “trial court.”³⁹¹ The term “district court” is used only where it functions as an appellate body reviewing a trial court’s decision. In cases where the district and sessions court served as the court of first instance, we have retained the label “trial court” for consistency.

³⁹⁰ The filing of a chargesheet indicates the completion of investigation in a criminal case.

³⁹¹ Using the various domestic nomenclature would have prevented meaningful analysis and made the report less accessible to an international audience.

- **Stage of Criminal Proceedings:**

Eight categories indicative of the stage of the case were identified and assigned to each entry. These categories were:

- i. Pre-trial:

This includes cases where the FIR was registered but chargesheet was not filed (as per information available) and those where chargesheet was filed but charges were not framed i.e. trial had not begun.

- ii. Charges Dropped/Cognizance not taken/Complaint Withdrawn/Discharged/Closure Report

- iii. Trial Ongoing

- iv. Quashed

- v. Proceedings Stayed

- vi. Trial Concluded - Acquitted

- vii. Trial Concluded - Convicted

- viii. Case abated on death

These 8 categories were further organised into 2 categories to reflect whether the case had concluded or was still on going. Case was considered as “not completed” for all cases that were in stages of Pre-trial, Trial Ongoing or Stayed. For the remaining, it was marked as concluded.

V. Profile of journalists:

- **Gender (Male or Female)**

- **Medium (Print, Broadcast or Digital):**

This relates to the medium of the news organization the journalist was reporting for or worked in. The predominant medium of the organization was considered. For instance, a daily newspaper was classified as print even though it has an online presence.

- **Reach of publication** (International, National, State or Local):

This refers to whether the news organization the journalist was reporting for or worked in had an international, national, state-wide or local audience.

- **Language** (Assamese, Bengali, English, Gujarati, Hindi, Kannada, Malayalam, Marathi, Punjabi, Tamil, Telugu, Urdu)

- **Location** (Tier I/X, Tier II/Y, Tier III/Z cities³⁹² renamed as major metropolises, other major cities, smaller cities and towns respectively)

- **Nature of employment** (Freelance or affiliated with media organization)

- **Job description** (Editor, Owner, Reporter, Cartoonist, Columnist, Other - including Editorial Assistant, Photographer, Publisher, Research Assistant, Technician) .

- **Nature of work attacked** (News reporting, opinion/analysis, investigative journalism).

³⁹² https://doe.gov.in/files/circulars_document/7th_July_2017.pdf.

Details of the criminal cases, including the date and place of registration, offence(s) alleged, details of coercive action, interim relief and stage of the case were collected from news reports, court orders, and copies of FIRs, summons/warrants and/or chargesheets, where available. Reliance was also placed on the e-courts and State Police Department websites. Details of the journalists' work profiles and demographic details were primarily collected from news reports or social media accounts of journalists. Where available, journalists were directly contacted for relevant information or sharing of documents. In some cases, demographic details were either directly drawn or inferred from court orders.

ANNEX B

List of Laws with Abbreviations

AA	Arms Act, 1959
APA	The Madhya Pradesh Ayurvigyan Parishad Adhiniyam, 1987
APPSA	Andhra Pradesh Public Security Act, 1992
BCEA	Bihar Conduct of Examinations Act, 1981
BMSIPPA	Bihar Medical Service Institution and Person Protection Act, 2011
CA	Copyright Act, 1957
CCA	Contempt Of Courts Act, 1971
CLA	Criminal Law (Amendment) Act, 2013
CPC	Code of Civil Procedure, 1908
CPEA	Chhattisgarh Public Examination (Prevention of Unfair Means) Act, 2008
CPSA	Chhattisgarh Special Public Security Act, 2005
CTNA	Cable Television Network Act, 1995
DCA	Drugs & Cosmetics Act, 1940
DMA	Disaster Management Act, 2005
EDA	Epidemic Diseases Act, 1897
ESA	Explosive Substances Act, 1908
FCRA	Foreign Contribution (Regulation) Act, 2010
GPA	Gujarat Police Act, 1951
IPC	Indian Penal Code, 1860
IRWPA	Indecent Representation of Women (Prohibition) Act, 1986
ITA	Information Technology Act, 2000
ITeIA	Indian Telegraph Act, 1885
ITPA	Immoral Trafficking (Prevention) Act, 1956
JJA	Juvenile Justice (Care and Protection of Children) Act, 2000
JKPSA	Jammu and Kashmir Public Safety Act, 1978
KPA	Kerala Police Act, 2011

KPDLP	The Prevention of Destruction and Loss of Property Act, 1981 Karnataka
MPCECSVKSA	The Security Act 2008 for Madhya Pradesh Doctors and Associated Medical Care People
MPMCA	The MP Upcharyagriha Tatha Rujopchar Sambandhi Sthapanaye (Registrikaran Tatha Anugyapan) Adhiniyam, 1973
MVA	Motor Vehicles Act, 1988
NSA	National Security Act, 1980
OSA	Official Secrets Act, 1923
PA	Police Act, 1861
PCA	Prevention of Corruption Act, 1988
PCRA	Protection of Civil Rights Act, 1955
PRBA	Press and Registration of Books Act, 1867
PDPPA	Prevention of Damage to Public Property Act, 1984
PIDA	Police (Incitement to Disaffection) Act, 1922
PINHA	Prevention of Insult to National Honour Act, 171
PMLA	Prevention of Money Laundering Act, 2002
PNDTA	Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994
POCSO	Protection of Children from Sexual Offences Act, 2012
RBDA	Registration of Births and Deaths Act, 1969
RONR	Registration of Newspaper (Central) Rules, 1956
ROPA	Representation of the People Act, 1951
RPC	Ranbir Penal Code, 1932
SCSTPOA	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
TADA	Terrorist and Disruptive Activities (Prevention) Act, 1985
TNOPPDA	Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959
TPA	Tripura Police Act, 2007
TPSA	Telangana Public Security Act, 1992
UAPA	Unlawful Activities (Prevention) Act, 1967
UP	Uttar Pradesh
UPPEA	UP Public Examinations (Prevention of Unfair Means) Act, 1998

ANNEX C

Categories of Offences

	Categories of Offence	Sections, Laws
A	Waging War	S 122 IPC
		S 121 IPC
		S 121A IPC
		S 125 IPC
B	Violating Media Regulations	S 4 PRBA
		S 12 PRBA
		S 13 PRBA
		S 14 PRBA
		S 15 PRBA
		S 16 CTNA
C	Use of unfair means at Public Examination	S 10 BCEA
		S 10 UPPEA
		S 4 UPPEA
		S 5 UPPEA
		S 6 CPEA
D	Use of arms/explosives	S 25 AA
		S 25(1B) AA
		S 26 AA
		S 35 AA
		S 27 AA
		S 4 ESA
		S 3 ESA
		S 5 ESA

	Categories of Offence	Sections, Laws
E	Unlawful or terrorist activities	S 8 CPSA
		S 10 UAPA
		S 11 UAPA
		S 13 UAPA
		S 15 UAPA
		S 16 UAPA
		S 17 UAPA
		S 17 CLA
		S 18 UAPA
		S 18A UAPA
		S 18B UAPA
		S 19 UAPA
		S 20 UAPA
		S 39 UAPA
		S 40 UAPA
		S 38 UAPA
		S 7 CLA
		S 8 APPSA
		S 6 CPSA
		S 13 JKPSA
		S 8 TPSA
		S 66F ITA
F	Unauthorized Disclosure of Information	S 66E ITA
		S 72 ITA
		S 228A IPC
		S 37 Aadhaar Act
		S 72A ITA

	Categories of Offence	Sections, Laws
G	Trespass	S 24 ITelA
		S 454 IPC
		S 435 IPC
		S 441 IPC
		S 446 IPC
		S 447 IPC
		S 448 IPC
		S 451 IPC
		S 452 IPC
		S 461 IPC
H	Sedition	S 124A IPC
		S 3 Police Incitement to Disaffection Act
I	SCST Related Offences	S 3 SCSTPOA
		S 7(c) PCRA
J	Promoting enmity	S 153A IPC
		S 505(1)(c) IPC
		S 505(2) IPC
		S 505(3) IPC
K	Offences relating to Religion	S 295 IPC
		S 295A IPC
		S 298 IPC
L	Offences relating to official secrets	S 4 OSA
		S 3 OSA
		S 5 OSA
		S 7 OSA
M	Offences against women/ Child Sexual Offences - based on case facts	S 4 ITPA
		S 5 ITPA
N	Offences Against women/ Offences against children (based on facts)	S 370 IPC
		S 371 IPC

	Categories of Offence	Sections, Laws
O	Offences against women	S 3 IRWPA
		S 354 IPC
		S 354A IPC
		S 354D IPC
		S 376 IPC
		S 509 IPC
		S 4 TN Prohibition of Harassment of Women Act
		s 6 IRWPA
P	Offences Against Public Tranquility	S 143 IPC
		S 144 IPC
		S 147 IPC
		S 148 IPC
		S 149 IPC
		S 153 IPC
		S 153B IPC
		S 159 IPC
		S 160 IPC
		S 30 Police Act
		S 505(1)(b) IPC
		S 54 DMA
		S 56 DMA
		S 505(1)(a) IPC
		S 505(1) IPC
		S 505 IPC
		S 505 RPC
		S 151 IPC

	Categories of Offence	Sections, Laws
Q	Offences against Public Servants	S 124 IPC
		S 177 IPC
		S 182 IPC
		S 186 IPC
		S 188 IPC
		S 189 IPC
		S 3 MPCECSVKSA
		S 4 MPCECSVKSA
		S 332 IPC
		S 333 IPC
		S 353 IPC
		S 135(1) Gujarat Police Act
		S 4 BMSIPPA
		S 51 DMA
		S 7 BMSIPPA
		S 117 KPA
		S 120 KPA
R	Offences against public justice	S 174 IPC
		S 179 IPC
		S 193 IPC
		S 200 IPC
		S 201 IPC

	Categories of Offence	Sections, Laws
S	Offences against Property	S 414 IPC
		S 380 IPC
		S 387 IPC
		S 379 IPC
		S 388 IPC
		S 383 IPC
		S 394 IPC
		S 384 IPC
		S 385 IPC
		S 386 IPC
		S 389 IPC
		S 392 IPC
		S 395 IPC
		S 406 IPC
		S 408 IPC
		S 409 IPC
		S 411 IPC
T	Offences Against Human Body	S 330 IPC
		S 306 IPC
		S 307 IPC
		S 323 IPC
		S 336 IPC
		S 336 RPC
		S 336 IPC
		S 342 IPC
		S 324 IPC
		S 365 IPC
		S 364 IPC
		S 341 IPC

	Categories of Offence	Sections, Laws
U	Offences Against Children	S 12 POCSO
		S 8 POCSO
		S 14 POCSO
		S 15 POCSO
		S 74 JJA
		S 83 JJA
		S 67B ITA
		S 81 JJA
V	Obscenity	S 292 IPC
		S 294 IPC
		S 67 ITA
		S 67A ITA
W	Nuisance	S 120(o) KPA
		S 90 TPA
		S 268 IPC
		S 290 IPC
X	Money laundering	S 2 PMLA
		S 4 PMLA
		S 45 PMLA
		S 44 PMLA
		S 3 PMLA
Y	Mischief	S 2 KPDLP Act
		s 2 PDPPA
		S 3 PDPPA
		S 4 PDPPA
		S 4 Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959
		S 427 IPC
		S 431 IPC

	Categories of Offence	Sections, Laws
Z	Intimidation and Insult	S 503 IPC
		S 504 IPC
		S 506 IPC
		S 507 IPC
		S 66A ITA
		S 504 RPC
AA	Insult to National Honour	S 2 PINHA
AB	Impersonation	170 IPC
		s 34 Aadhaar Act
		S 35 Aadhaar Act
		S 36 Aadhaar Act
AC	Forgery	S 63 CA
		S 14B Foreigners Act
		S 457 IPC
		S 465 IPC
		S 466 IPC
		S 467 IPC
		S 468 IPC
		S 469 IPC
		S 471 IPC
		S 474 IPC
		S 67 CA
		S 74 ITA
AD	Electoral Offences	S 126 RPA
		S 171F IPC
		S 171G IPC

	Categories of Offence	Sections, Laws
AE	Defamation	S 499 IPC
		S 500 IPC
		S 501 IPC
		S 502 IPC
		S 499 RPC
		S 500 RPC
AF	Corruption by public servant	S 13 PCA
		S 7 PCA
AG	Contempt of Court	S 15 CCA
AH	Cheating	S 66B ITA
		S 417 IPC
		S 418 IPC
		S 419 IPC
		S 420 IPC
		S 66C ITA
		S 66C ITA
		S 66D ITA
AI	Affecting Public Health	S 269 IPC
		S 270 IPC
		S 271 IPC
		S 3 EDA
AJ	FCRA Contravention	S 39 FCRA
		S 35 FCRA

	Categories of Offence	Sections, Laws
AK	Other	S 66 ITA
		S 65 ITA
		S 84B ITA
		S 84C ITA
		S 76 ITA
		S 43 ITA
		S 3 Passport Act
		S 196 MVA
		S 134 MVA
		S 192 MVA
		S 23 PNDDTA
		S 22 PNDDTA
		S 18 PNDDTA
		S 24 APA
		S 511 IPC
		S 13 DCA
		S 60 UP Excise Act
		S 63 UP Excise Act
		S 497 IPC
		S 23 RBDA
		S 24 MPMCA

ANNEX D

CATEGORIES: BASIS FOR CHARGES

Researchers sought to identify the underlying basis for the cases in the dataset based on available public sources. In some instances, the sources described the content of the reporting or the journalist's social media activity that allegedly led to the case against the journalist and in others, the sources only described the allegation against the journalist. Accordingly, Categories 1-8 relate to the content of the reporting or social media activity, while Categories 9-13 focus on the nature of the allegation. If more than one category applied to a particular incident, a second category would be included in the entry for that incident.³⁹³ Where the underlying basis for the case was not known, the incident was tagged as “ambiguous.”

List of Categories

1. Corporations
2. Public Officials
3. Corruption
4. Government Policies/ Institutions
5. Protest
6. COVID
7. Religion
8. Caste
9. Reporting Conduct
10. Extortion
11. Classified Information
12. National Security
13. Fake News
14. Ambiguous

³⁹³ For example, where the allegation related to the journalist's conduct while reporting, and the journalist was covering a protest, both categories “Reporting Conduct” and “Protest” were assigned.

Category Descriptions

Corporations: reporting on or social media activity related to companies or alleged corporate misconduct.

For cases in this category, the determination was based on whether a company/companies and/or businessperson(s) was the subject of the content in question. Attention was also given to whether a company or businessperson was the complainant in the case.

Reliance was placed on the commonly accepted definitions for “company” (a legal entity formed for the purpose of engaging in a commercial or industrial enterprise for profit)³⁹⁴ and “business” (a commercial or industrial enterprise).³⁹⁵ Reliance was also placed on academic sources for the understanding of “corporate misconduct” as activities attributable to companies that violate legal, ethical, or social norms.³⁹⁶

Public Officials: reporting on or social media activity related to public officials or functionaries.

For cases in this category, the determination was based on whether one or more public officials formed the subject of the content in question. Attention was also given to whether a public official was the complainant in the case.

Reliance was placed on the commonly accepted definition of “public official” or “functionary” as a person holding public office or having official duties, or holding an appointed or elected position, particularly in government or a political party,³⁹⁷ which includes the following:

394 See, e.g., Merriam-Webster.com Dictionary, company, n., 3.b, available at <https://www.merriam-webster.com/dictionary/company>; Oxford English Dictionary (OED.com), company, n., 5.b, available at https://www.oed.com/dictionary/company_n?tab=meaning_and_use#8794823.

395 See, e.g., Merriam-Webster.com Dictionary, business, n., 1, available at <https://www.merriam-webster.com/dictionary/business>; Oxford English Dictionary (OED.com), business, n., II.14, available at https://www.oed.com/dictionary/business_n?tab=meaning_and_use&tl=true#11687724.

396 See, e.g., M.C. Braun & S.M. Mueller, External Corporate Governance and Corporate Misconduct: A Meta-Analysis, CORP. GOVERNANCE INT’L REV. (Oct. 25, 2024), available at <https://onlinelibrary.wiley.com/doi/full/10.1111/corg.12627?msocid=2f567e073d5d6c6d222b6a363c0f6dcd>; H.R. Greve et al., Organizations Gone Wild: The Causes, Processes, and Consequences of Organizational Misconduct, ACAD. MGMT. ANNALS 53–107 (Jan. 1, 2010), available at <https://journals.aom.org/doi/full/10.5465/19416521003654186>.

397 See, e.g., Oxford English Dictionary (OED.com), officer, n., 1.b, available at https://www.oed.com/dictionary/officer_n?tab=meaning_and_use#33857789; Oxford English Dictionary (OED.com), official, n., 3, available at https://www.oed.com/dictionary/official_n1?tab=meaning_and_use#33861433; Merriam-Webster.com Dictionary, functionary, n., 2, available at <https://www.merriam-webster.com/dictionary/functionary>; Cambridge Online Dictionary, functionary, n., available at <https://dictionary.cambridge.org/us/dictionary/english/functionary> (noting “official” as a synonym).

- i. Police officials;
- ii. Ministers and other officials from government agencies/departments;
- iii. Current and former politicians, as well as political parties;
- iv. Judges.

Corruption: reporting on or social media activity related to the misuse of authority by public officials.

For cases in this category, the determination was based on whether the misuse of authority by public officials formed the subject of the content in question, including the following:

- v. Alleged bribery;
- vi. Alleged misappropriation and misuse of public funds and resources;
- vii. Alleged illegal activities (such as smuggling, illegal mining and construction, illegal transactions, fraud).

Government Policies/Institutions: reporting on or social media activity critical of government institutions/policies.

For cases in this category, the determination was based on whether Central/State government institutions and/or government schemes, plans, or proposals formed the subject of the content in question. “Government” includes all wings of Central or State government, including the judiciary, the military, the Election Commission, government agencies, and government schools.

Protest: reporting on or social media activity related to protests and related incidents.

For cases in this category, the determination was based on the following relevant factors:

- viii. whether protest activity formed the subject of the content in question;
- ix. whether incidents related to protest activity formed the subject of the content in question;
- x. whether the case related to the journalist’s presence at a protest.

COVID: reporting on or social media activity related to the COVID-19 pandemic and lockdown measures.

For cases in this category, the determination was based on whether COVID-19 and/or the lockdown measures imposed by the Central/State governments to contain the pandemic formed the subject of the content in question, including the following issues:

- xi. Alleged COVID mismanagement by government or private actors;
- xii. Lockdown restrictions and impact thereof;
- xiii. Hospital/medical facilities and supplies;
- xiv. Spread of virus and/or other health impacts;
- xv. Treatment of migrant workers with respect to the pandemic and/or lockdown measures.

Attention was also given to whether the case involved allegations of violating COVID-19 related restrictions and norms.

Religion: reporting on or social media activity related to religious issues.

For cases in this category, the determination was based on the following relevant factors:

- xvi. whether religious figures or events, or other religious issues or opinions, formed the subject of the content in question;
- xvii. whether the content was allegedly offensive to a religion;
- xviii. whether the content related to clashes between different religious groups.

Caste: reporting on or social media activity related to caste-based issues including issues relating to *Adivasis* (indigenous communities).³⁹⁸

For cases in this category, the determination was based on the following relevant factors:

- xix. whether the content was related to a caste-based atrocity or discrimination;
- xx. whether the content was allegedly offensive to a caste group or caste-oppressed community;
- xxi. whether the content was related to clashes between oppressor and oppressed castes.

This category includes cases that involved charges under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.³⁹⁹ However, not all cases involving charges under this Act fell under this category since in some, the allegation under the Act was unrelated to the content of the reporting.

Reporting Conduct: cases involving allegations related to the journalist's conduct undertaken in the course of reporting, rather than the content of the reporting itself.⁴⁰⁰

For the cases in this category, the determination was based on whether the underlying allegations related to the conduct undertaken in the course of journalistic reporting. Such allegations include:

- xxii. Physical obstruction;
- xxiii. Trespass;
- xxiv. Impersonation;
- xxv. Threats, intimidation, or harassment of individuals.

³⁹⁸ These indigenous communities have been historically marginalized by the caste system, although they do not subscribe to it and lie outside the systems fold. See C.R. Bijoy, *The Adivasis of India - A History of Discrimination, Conflict and Resistance*, PUCL BULLETIN (2003).

³⁹⁹ The SCSTPOA was enacted to prevent the commission of atrocities against members of officially designated, disadvantaged groups (the "Scheduled Castes" and "Scheduled Tribes"). See *THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES ACT (1989))*, <https://www.indiacode.nic.in/bitstream/123456789/1920/1/a1989-33.pdf>;

⁴⁰⁰ For all cases where the allegation is related to the conduct of the reporter, and information regarding the content of reporting is also available, we have included this category as well the category for the content of the reporting.

Extortion: cases involving allegations of extortion and blackmail.

For the cases in this category, the determination was based on whether the case involved allegations of blackmailing or extortion against the journalist. Reliance was placed on the commonly accepted definitions of “extortion” (the act of obtaining money or other property from another person by force, intimidation, or undue or unlawful authority)⁴⁰¹ and “blackmail” (coercion by threats or pressure, particularly of public exposure or criminal prosecution, to obtain some payment or other benefit).⁴⁰²

Classified Information: cases involving allegations relating to official secrets.

For the cases in this category, the determination was based on whether the allegations related to leaking confidential government information. Such cases were often filed under the Official Secrets Act.⁴⁰³

National Security: cases involving allegations related to national security.

For the cases in this category, the determination was based on whether the allegations related to national security. Such cases were often filed under provisions of the Indian Penal Code pertaining to sedition⁴⁰⁴ as well as other laws targeting unlawful or terrorist activity.⁴⁰⁵

Fake News: cases involving allegations of spreading false news and/or misinformation.

For the cases in this category, the determination was based on whether the allegations related to the spreading of false news and/or misinformation.

⁴⁰¹ See, e.g., Merriam-Webster.com Dictionary, extort, v., <https://www.merriam-webster.com/dictionary/extorting>; Oxford English Dictionary (OED.com), extortion, n., 1.a., https://www.oed.com/dictionary/extortion_n?tab=meaning_and_use#4864360.

⁴⁰² See, e.g., Oxford English Dictionary (OED.com), blackmail, n., 1.b., https://www.oed.com/dictionary/blackmail_n?tab=meaning_and_use#19244793; Merriam-Webster.com Dictionary, blackmail, n., 2, <https://www.merriam-webster.com/dictionary/blackmail>.

⁴⁰³ The Official Secrets Act of 1923 is India's anti-espionage legislation that is intended to punish conduct that aids an enemy state against India and which prohibits unauthorized persons from handling official secrets. See THE OFFICIAL SECRETS ACT (1923), <https://www.indiacode.nic.in/bitstream/123456789/2379/1/A1923-19.pdf>.

⁴⁰⁴ Section 124A, Indian Penal Code, https://www.indiacode.nic.in/bitstream/123456789/15289/1/ipc_act.pdf.

⁴⁰⁵ See, e.g., Sections 10, 18, 20, Unlawful Activities Prevention Act (1967), https://www.indiacode.nic.in/bitstream/123456789/6853/1/unlawful_activities_prevention_act1967.pdf; Chhattisgarh Special Public Security Act, 2005, https://www.indiacode.nic.in/bitstream/123456789/12663/1/chhattisgarh_vishesh_jan_suraksha_act%2c_2005_no._14_of_2006_date_07.03.2006.pdf

Ambiguous: all other cases not falling under one of the thirteen categories.

This category includes the cases where there was insufficient information about the cause of action to make a determination or where the cause of action fell outside of the thirteen categories described above.

ANNEX E

ADDITIONAL INFORMATION: REGULATORY LANDSCAPE OF THE MEDIA IN INDIA

History

Some of India's biggest contemporary newspapers, such as the *Times of India* and *The Hindu*, were launched in the 1800s, during British colonial rule.⁴⁰⁶ By the late 1800s and early 1900s, newspapers had become a primary platform for nationalists and reformers, who used these to educate the public and to engender nationalist thought.⁴⁰⁷ All India Radio, India's state broadcaster, was set up in 1936.⁴⁰⁸

After gaining independence in 1947, the Indian government maintained strong control over radio, barring private radio channels from carrying any independent news shows—a practice that carries on today.⁴⁰⁹ Newspapers, which thrived in most Indian languages, were run largely by private, family-owned companies. For example, Bennett, Coleman and Company (BCCL), a prominent media conglomerate (also known as the Times group) first established in the 1830s by British proprietors, was acquired by an Indian family in 1946, which has run it since.⁴¹⁰

In the 1980s, the Indian TV news industry was dominated by a single player: Doordarshan, the state-owned news broadcaster.⁴¹¹ Meanwhile, rural India was reliant on the transistor radio, where news came through the government-run All India Radio. At this time, India's economy was largely government-run, with a dominant public sector. In 1991, economic liberalisation policies dismantled market controls,

⁴⁰⁶ <https://www.britannica.com/topic/The-Times-of-India>; <https://www.thehindu.com/aboutus/>

⁴⁰⁷ Bipin Chandra, *History of Modern India* (NCERT, n.d.). "The chief instrument through which the nationalist-minded Indians spread the message of patriotism and modern economic, social and political ideas and created an all-India consciousness was the press."

⁴⁰⁸ <https://prasarbharati.gov.in/all-india-radio-2/>

⁴⁰⁹ Adil Rashid, The Hundred-Year Battle for India's Radio Airwaves, *The Wire*, Nov. 28, 2023, available at <https://www.wired.com/story/india-radio-elections-narendra-modi/>

⁴¹⁰ Ken Auletta, Citizens Jain, *New Yorker*, Oct. 8, 2012, available at <https://www.newyorker.com/magazine/2012/10/08/citizens-jain>.

⁴¹¹ Nalin Mehta, introduction, *in* *Television in India: Satellites, Politics and Cultural Change* pg. 6 (Routledge, 2008) ("As late as 1991 – and in legal terms, until as late as 19959 – Indian viewers could only watch one television channel, Doordarshan.").

reduced the restrictions on the entry of private enterprises and allowed for increased foreign investment. This led to a boom in satellite TV—“[b]y 1998, the first of India’s private 24-hour news channels was on the airwaves and by 2007 more than 300 satellite channels were broadcasting into Indian homes,” media scholar Nalin Mehta writes.⁴¹² “Of these, 106 broadcast news in 14 languages and as many as 54 of these were 24-hour news channels in 11 languages.” Among the earliest English-language news companies was NDTV, a New Delhi-based firm. Many of these media channels were established in partnership with foreign investors—in the early 1990s, NDTV tied up with media baron Rupert Murdoch to start *Star News*, a 24-hour news channel, which later became the news channel, *NDTV*.⁴¹³ By 2010, more Indian families owned televisions than had toilets in their homes.⁴¹⁴

In the last two decades, the proliferation of relatively inexpensive smart phones and access to internet has transformed the news industry.⁴¹⁵ Social media websites such as Facebook and Twitter have become part of the regular media diet of most urban Indians—surveys conducted in major cities reveal that 70-80% of respondents consumed news from social media or online sources.⁴¹⁶ Among these platforms, YouTube and WhatsApp are the most popular.⁴¹⁷ According to media scholar Pamela Philipose, Facebook’s acquisition of WhatsApp, in 2014, was fuelled largely by the latter’s audience in India, a whopping 45 million at the time.⁴¹⁸ Like their global counterparts, young Indians in both rural and urban locations are increasingly getting their news from their phones.⁴¹⁹ “Indians consume an average of 9.8 GB per month of mobile data. Taking into consideration over 500 million mobile users, phones are naturally an important news distribution platform,” the *Goethe Institute* reported in 2020.⁴²⁰

⁴¹² Nalin Mehta, in *Television in India: Satellites, Politics and Cultural Change* pg. 31 (Routledge, 2008).

⁴¹³ Krishn Kaushik, *The Tempest: Have Radhika and Prannoy Roy Undermined NDTV?*, *The Caravan*, Nov. 30, 2015, available at <https://caravanmagazine.in/reportage/the-tempest-prannoy-radhika-roy-ndtv>

⁴¹⁴ Pamela Philipose, *Media’s Shifting Terrain: Five Years That Transformed the Way India Communicates* (Hyderabad: Orient BlackSwan, 2019)

⁴¹⁵ Indian internet consumption increased exponentially with the availability of cheap data packages, especially provided by companies such as Jio, a telecom giant and subsidiary of Reliance Industries, owned by Asia’s richest man, Mukesh Ambani. *The Economic Times*, *Jio’s Share of Data Traffic in India Rose to About 60% in FY24: RIL Annual Report*, Aug. 8, 2024, available at <https://economictimes.indiatimes.com/industry/telecom/telecom-news/jios-share-of-data-traffic-in-india-rose-to-about-60-in-fy24-ril-annual-report/articleshow/112356007.cms?from=mdr>.

⁴¹⁶ *The Economic Times*, *Paradigm Shift: 80 per cent Indians Consume News from Social Media Rather than a Newspaper*, July 23, 2017, available at <https://economictimes.indiatimes.com/magazines/panache/paradigm-shift-80-per-cent-indians-consume-news-from-social-media-rather-than-a-newspaper/articleshow/59724410.cms?from=mdr>.

⁴¹⁷ “Our survey respondents reflect, in some measure, a new generation of Indians whose main source of news is often via social media platforms. Almost half of respondents use YouTube (54%) and WhatsApp (48%) for news each week, while Facebook and X are becoming less popular.” *Reuters Institute Digital News Report 2024*, available at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/india>.

⁴¹⁸ Philipose, *Media’s Shifting Terrain*, pg.13 *supra*.

⁴¹⁹ Anupriya Chatterjee, *Social Media Top Source of News for Many Young Indians, Says Reuters Journalism Institute Survey*, *The Print*, June 16, 2022, available at <https://theprint.in/india/social-media-top-source-of-news-for-many-young-indians-says-reuters-journalism-institute-survey/997986/>

⁴²⁰ Nimish Sawant, *Digital-First Upstarts in India’s Newsrooms*, *Goethe Institute*, available at <https://www.goethe.de/ins/in/en/kul/fmd/btl/21982958.html>.

Regulatory Landscape

Governments, both at the Central and State level, exercise control through laws governing registration and licensing and content regulation.

Provisions governing print media

Under the Press and Registration of Books Act (PRBA), 1867, the printer and publisher of a newspaper were required to submit a declaration before the local Magistrate, with the details of the owner, editor, printer and publisher. Once authenticated by the Magistrate, this declaration was admissible evidence for the purpose of affixing civil or criminal responsibility on the persons so named.⁴²¹ In 1954, the PRBA was amended to create a Central Government authority—the Registrar of Newspapers—responsible for issuing a certificate of registration based on the declaration before the Magistrate.⁴²² The Registrar was also responsible for maintaining a register of all the newspapers in the country with detailed particulars.⁴²³ A newspaper's declaration could be cancelled by the Magistrate (effectively cancelling their ability to operate) if after conducting an inquiry it appeared that the newspaper had violated the PRBA, or if the declaration made a false representation or concealed a material fact.⁴²⁴ The upshot of these provisions was to make the publisher of a newspaper identifiable and primarily responsible for any violations by the newspaper with which they were associated.

Under the 2023 law, the powers of the local Magistrate and Registrar of Newspapers have been subsumed in a new Central Government authority—the Press Registrar General. Instead of a declaration, the law requires the publisher to submit an online application for a certificate of registration, with authorisation of the owner. The Press Registrar General can deny or cancel registration, with the grounds for cancellation of registration expanded under the 2023 law as compared to the PRBA.

Both the PRBA and the 2023 law allow for the Registrar to access all records of registered newspapers/periodicals, enter premises where records are kept, inspect or obtain records as needed and “ask any question necessary for obtaining any information.”⁴²⁵ The Editors Guild of India has criticized the

⁴²¹ Press and Registration of Books Act 1867, ss. 4-8. As per Section 8, any person named in such declaration had the responsibility to appear before the Magistrate and seek amendment if they ceased to be involved with the newspaper or were incorrectly named.

⁴²² Press and Registration of Books Act 1867, s 19C

⁴²³ Press and Registration of Books Act 1867, s 19B. “(2)The Register shall, as far as may be practicable, contain the following particulars about every newspaper published in India, namely:— (a) the title of the newspaper; (b) the language in which the newspaper is published; (c) periodicity of the publication of the newspaper; (d) the name of the editor, printer and publisher of the newspaper; (e) the place of printing and publication; (f) the average number of pages per week; (g) the number of days of publication in the year; (h) the average number of copies printed, the average number of copies sold to the public and the average number of copies distributed”

⁴²⁴ Press and Registration of Books Act 1867, s 8B.

⁴²⁵ Press and Registration of Books Act 1867, s 19F; Press and Registration of Periodicals Act 2023, s 6(b).

continuation of such “excessively intrusive” powers under the 2023 law,⁴²⁶ which was touted as a shift from “the legacy of the British Raj” to the “spirit of upholding media freedom and ease of doing business by making the entire process of allotment of title and registration of periodicals simple.”⁴²⁷ The law and its accompanying rules came into force in March 2024.⁴²⁸

Provisions governing broadcast

The main legislation is the Cable Television Network Act (CTNA), 1995, as well as guidelines and policies laid down by the Ministry of Information and Broadcasting. Unlike newspapers, news channels are granted registration only for a fixed period and are subject to stringent regulations, face heightened scrutiny and must provide more extensive information for registration.

For a company to be eligible to apply for a license to uplink/downlink a news channel via satellite, it must have a minimum net worth of 20 crore rupees, the foreign equity holding should not exceed 49 per cent and management and control of the company must be in Indian hands.⁴²⁹ Further, an entity granted permission to uplink/downlink a news channel must comply with special conditions that *inter alia* include, keeping a record of the content uplinked for ninety days and producing the same before any agency of the Government when required, furnishing information required by the government from time to time and providing a monitoring facility, at its own cost, for monitoring of their content by any Government agency.⁴³⁰

Provisions governing digital media

The main legislation is the Information Technology Act, 2000, and the rules framed thereunder. The most important of these are the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Intermediary Guidelines).

Under these rules, the Central Government has established a Grievance Appellate Committee—a government-appointed body that can be approached by users dissatisfied with decisions made by the intermediary’s grievance officer.⁴³¹ Through this, the government will have the ability to rule on the validity of content moderation decisions taken by all intermediaries, including social media platforms.

⁴²⁶ Editors Guild, EGI Statement on Press and Registration of Periodicals Bill, Aug. 6 2023, available at <https://editorsguild.in/statements-issued>.

⁴²⁷ Statement of Objects and Reasons, Press and Registration of Periodicals Bill, 2023, para. 3, available at https://prsindia.org/files/bills_acts/bills_parliament/2023/Press%20and%20Registration%20of%20Periodicals%20Bill,%202023.pdf.

⁴²⁸ <https://pib.gov.in/PressReleasePage.aspx?PRID=2010874>.

⁴²⁹ Policy Guidelines for Uplinking and Downlinking of TV Channels from India 2022, cl. 6, 10.

⁴³⁰ Policy Guidelines for Uplinking and Downlinking of TV Channels from India 2022, cl. 8.

⁴³¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2022. See <https://pib.gov.in/PressReleasePage.aspx?PRID=1894258>.

In 2023, the Intermediary Guidelines were amended to empower a Fact Check Unit of the Government to unilaterally declare information in respect of the government as “fake, false or misleading.”⁴³² Intermediaries are then under an additional obligation to ensure that online content that is deemed fake by a Fact Check Unit is not uploaded, published, transmitted, etc.⁴³³ These amendments were challenged before the Bombay High Court and subsequently the Supreme Court. On March 21, 2024, the Supreme Court extended an agreed stay on establishment of the Fact Check Unit, finding that the challenge to these rules “involve[s] serious constitutional questions.”⁴³⁴

In 2023, the Government also released a Draft Broadcasting Services (Regulation) Bill, 2023. It sought to replace the CTNA and broaden the regulatory framework to include different types of broadcasting networks, including radio broadcasting and broadcasting via the Internet.⁴³⁵ As per Clause 20 of the bill, “Any person who broadcasts news and current affairs programs through an online paper, news portal, website, social media intermediary, or other similar medium” would be subject to the registration requirements of the law. This provision “would apply to any individual, and not just media companies or journalists, who chooses to share news as part of a ‘systematic business, professional, or commercial activity.’”⁴³⁶ Civil society groups expressed concern that this law would “threaten journalistic expression as well as a users’ right to access multiple, diverse points of view, especially in the environment of high penalties for non-compliance with prescribed ethical codes and government orders.”⁴³⁷ In 2024, the Government circulated a revised version of the Bill; that was, however, reportedly withdrawn for reconsideration.⁴³⁸

⁴³² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules 2021, Rule 3(1)(b)(v).

⁴³³ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules 2021, Rule 3(1)(b)(v).

⁴³⁴ *Editors Guild of India v. Union of India and Ors.*, Civil Appeal Nos. 4509-4511 of 2024, para. 24(v).

⁴³⁵ Draft Broadcasting Services (Regulation) Bill 2023, s. 3.

⁴³⁶ Draft Broadcasting Services (Regulation) Bill 2023, s. 20(1).

⁴³⁷ Letter to Shri Sanjiv Shankar from Internet Freedom Foundation, Dec. 7, 2023, para. 2(c), available at https://content.internetfreedom.in/api/files/divco3ywedt9rpe/j1qbgrb1z4092pd/iff_s_comments_on_broadcasting_bill_2023_gTIK6GVbjP.pdf?ref=static.internetfreedom.in.

⁴³⁸ Tejas Panjiar, *The Bill That Never Was: The Comeback, Resistance, and Downfall of the Broadcasting Bill*, Internet Freedom Foundation, Aug. 30, 2024, available at <https://internetfreedom.in/a-broadcasting-summary/>

