

TECHNOLOGY AND COUNTER-TERRORISM:

Mapping the impact of biometric surveillance
and social media platforms on civic space

CASE STUDY INDIA

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Notable uses of biometric technology

Aadhaar is the biometric digital identity system in India, which has over 1.3 billion enrolments.¹ Enrolment in Aadhaar, which has mostly been voluntary so far, requires providing fingerprints and iris scans. The trustees of non-profit organisations registered under the Foreign Contributions Regulation Act in India are required to provide their Aadhaar numbers.² Thus, effectively, this makes the provision of biometrics mandatory for trustees of non-profit organisations who received any form of foreign contribution.

In December 2021, the Election Laws (Amendment) Bill 2021 was passed in the Indian Parliament.³ The amended bill mandated that the electoral and Aadhaar databases be linked, and enabled electoral registration officers to request Aadhaar numbers to establish identity.⁴ There are concerns that this may lead to greater political demographic profiling, which may include members of civic movements. Indeed, the amended bill allows merging databases to create granular and invasive profiles of individuals. Over the past decade, Aadhaar has emerged as a default, or in some cases the only unique identifier to access private and public services.⁵

Furthermore, there is publicly available information on the use of facial recognition technology by the Delhi Police at protests and political rallies.⁶ The Delhi Police have

- 1 Manohar. A. (2021, June 29) LiveMint "big boost for UIDAI: Today 99% of India's adult population holds Aadhaar card" <https://www.livemint.com/news/india/big-boost-for-uidai-today-99-of-indian-adult-population-holds-aadhaar-card-11624939991372.html> ; Government Aadhaar Registration https://uidai.gov.in/aadhaar_dashboard/
- 2 The Foreign Contribution (Regulation) Amendment Act, Section 12A (2020). https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf
- 3 The Election Laws (Amendment) Bill. (2021). http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/162_2021_LS_Eng.pdf
- 4 The Election Laws (Amendment) Bill. Chapter 2, Part 4. Amendment of Section 23(4). (2021). [https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Election%20Laws%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Election%20Laws%20(Amendment)%20Bill,%202021.pdf)
- 5 Sinha, A. et al (2017, February 19). The Centre for Internet & Society, Big Data in Governance in India: Case Studies. <https://cis-india.org/internet-governance/files/big-data-compilation.pdf>
- 6 Mazoomdar, J. (2019, December 28). Delhi Police film protest, run its images through face recognition software to screen crowd, Indian Express. <https://indianexpress.com/article/india/police-film-protests-run-its-images-through-face-recognition-software-to-screen-crowd-6188246/>



reportedly created a photo dataset of 150,000 suspects. The people attending the rally were required to pass through a metal detector gate where a camera captured the image of the person and sent a live feed to the control room. The live feed was then compared to an existing dataset.

Relatedly, the Punjab police have been using an AI system for crime prevention and criminal justice. Law enforcement officers may take photographs of suspects with their smartphone and search them within a database of suspects, which was compiled by uploading pictures of convicted offenders housed in jails across the state.⁷ The system uses facial recognition, natural language processing, gang analysis, and phonetic search technologies and contains name, alias, parents name, date of birth, crime type, FIR number, police acts, facial image, and speech text data.

Finally, Pehchan is an app for citizens and law enforcement alike in Uttar Pradesh.⁸ It's powered by Microsoft's Advanced Facial Recognition Technology.⁹ The app provides users with a confidence score of the likelihood that two faces belong to the same person by running the face against the 'All India Criminal Database'.

Notable uses of online content moderation and social media surveillance

There have been several allegations that platforms such as Facebook are 'censoring' content that is critical of the ruling administration.¹⁰ Stories critical of powerful political figures have had to wait for an inordinately long time to get Facebook to boost the post.¹¹ In some cases, journalists who were critical of the government complained that they were being locked out of their Facebook accounts for no explicable reason.¹²

7 Sathe, G. (2018, August 16). Huffpost. Cops In India Are Using Artificial Intelligence That Can Identify You In a Crowd.

https://www.huffpost.com/archive/in/entry/facial-recognition-ai-is-shaking-up-criminals-in-punjab-but-should-you-worry-too_a_23502796

8 Pechan App <https://play.google.com/store/apps/details?id=com.pehchan.nic.pehchan&hl=hi&gl=US>

9 Gupta, A. & Gaur, G. (2018). FICCI, FICCI Smart Policing Awards 2018: Compendium of Best Practices in Smart Policing. <http://ficci.in/spdocument/22984/FICCI-Compendium-of-Best-Practices-in-SMART-Policing-2018.pdf>

10 Dey, A. (2018, May 23). Scroll.in. Is Facebook really blocking criticism of the Indian government, BJP and Hindutva groups? <https://scroll.in/article/852571/is-facebook-blocking-criticism-of-indian-government-bjp-and-right-wing-groups>; Ghaffary, S. (2021, May 1). Vox.com, A major battle over free speech on social media is playing out in India during the pandemic. <https://www.vox.com/recode/22410931/india-pandemic-facebook-twitter-free-speech-modi-covid-19-censorship-free-speech-takedown>

11 Dhara, T. (2018, August 30). The Caravan. Why Did Facebook Stop the Promotion of The Caravan's Story on Amit Shah and Jay Shah? <https://caravanmagazine.in/media/why-did-facebook-stop-the-promotion-of-the-caravans-story-on-amit-shah-and-jay-shah>

12 Anonymous. (2022, February 10). Over 60 social media accounts blocked for anti-India fake news: Government. The Economist Times. <https://economictimes.indiatimes.com/tech/technology/over-60-social-media-accounts-blocked-for-anti-india-fake-news-government/articleshow/89475722.cms?from=mdr>; Perrigo, B. (2022, July 15). Facebook Accused of 'Whitewashing' Long-Awaited Human Rights Report on India. Time. <https://time.com/6197154/facebook-india-human-rights/>; Jalan, T. (2018, October 8). Medianama. Facebook Blocks Accounts of a Dozen Indian Journalists: Report. <https://www.medianama.com/2018/10/223-facebook-blocks-indian-journalists-report/>

In July 2020, the Delhi Police Special Cell sent a notice to an Internet service provider hosting Fridays for Future India's domain,¹³ asking it to block the group's website because their "unlawful activities may disturb peace, sovereignty of India."¹⁴ Fridays for Future India (FFI) is the Indian chapter of the global youth climate movement founded by the Swedish teenage climate activist Greta Thunberg. After a complaint by a minister for a campaign under which several emails were sent to the ministry related environmental issues, the notice to the ISP invoked the use of India's draconian anti-terror laws,¹⁵ such as the Unlawful Activities (Prevention) Act.¹⁶

Relevant laws and legal precedents

Under the new Information Technology Rules notified in 2021, platforms are bound to acknowledge complaints made by individuals within 24 hours and take action on the complaint in 15 days.¹⁷ However, all platforms do not appear to send notices to the user whose content is taken down. Importantly, the IT Rules have been met with much concern from civil society¹⁸; the Indian government can now order platforms to remove content without any judicial oversight, leading to severe impacts to freedom of expression. In July 2022, Twitter filed a lawsuit in the Karnataka High Court in Bangalore, challenging an order from the Indian government requesting they remove content and block dozens of accounts, including those of activists, journalists and political dissidents.¹⁹ The case is currently pending in court.²⁰

Another high-profile case related to the constitutional validity of the Aadhaar project and legislation was *S. Puttaswamy and others vs. Union of India* ("Aadhaar Matter").²¹ In the court's final decision, delivered on September 26, 2018, the court ultimately ruled 4-1 in favour of upholding the Aadhaar program within certain constraints. For instance, obtaining a bank account or mobile phone or registering for school cannot be conditional on biometric registration. This limits data collection and mitigates the risk of function creep.

13 <https://fridaysforfutureindia.com/>

14 Internet Freedom Foundation (2020, July 23). Blogpost. Fridays For Future India resists illegal website blocking #WhatTheBlock. <https://internetfreedom.in/fridays-for-future-representation-to-delhi-police/>.

15 Krunal, K. (2020, July 23). India Today, UAPA charge in notice to environmental group Fridays for Future due to 'clerical error': Delhi Police. <https://www.indiatoday.in/india/story/uapa-charge-in-notice-to-environmental-group-fridays-for-future-due-to-clerical-error-delhi-police-1703716-2020-07-23>

16 Unlawful Activities (Prevention) Act (1967), India, Act No. 37 of 1967, <https://www.indiacode.nic.in/handle/123456789/1470>

17 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules. Part 2, Section 3.2. (2021, February 25). <https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf>

18 HRW. (2022, May 3). India: Media Freedom Under Threat. Human Rights Watch. <https://www.hrw.org/news/2022/05/03/india-media-freedom-under-threat#:~:text=In%20February%202021%2C%20the%20Indian,content%20without%20any%20judicial%20oversigh>

19 <https://www.nytimes.com/2022/07/05/business/twitter-india-lawsuit.html>

20 <https://www.thehindu.com/news/national/karnataka-high-court-notice-to-centre-on-twitter-petition-challenging-content-and-account-blocking-orders/article65684683.ece>

21 Sikri, A. (2018, September 26). Supreme Court of India, Justice K.S. Puttaswamy (Retd) vs Union Of India. <https://indiankanoon.org/doc/127517806/>

Assessing whether the proportionality of Aadhaar, the judgment noted that “there is no alternative measure with lesser degree of limitation which can achieve the same purpose” as Aadhaar. However, the decision failed to provide any analysis of alternative technological

solutions, nor did they examine whether the existing system achieved the purpose. At first, the restrictions on private sector use of Aadhaar appeared significant. Since then, however, the government has brought in new rules and legislations, extending the uses of Aadhaar by private actors as well as linking Aadhaar with the electoral database, as mentioned above.²² The limited pilots runs to seed electoral databases with Aadhaar Numbers²³ clearly suggest that fears of voter disenfranchisement and greater voter microtargeting are not unfounded.²⁴

22 Aadhaar (and other laws) Amendment Act. (2019). PRS Legislative Research. <https://www.prsindia.org/billtrack/aadhaar-and-other-laws-amendment-bill-2019>; http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/162_2021_LS_Eng.pdf

23 Bhatia, Gautam, ‘Opinion : The Election Commission Must Come Clean on the Deletion of Voters’, Hindustan Times, 2 April 2019, accessed 26 July 2019, <https://www.hindustantimes.com/analysis/the-election-commission-must-come-clean-on-the-deletion-of-voters/story-RpYyepCp2X4ibI4qYdDuhN.html>; Reddy, Sudhakar, ‘Telangana Assembly Elections: Did Aadhaar-EPIC Seeding Trigger Deletion of Voters?’ The Times of India, 9 December 2018, Accessed 26 July 2019, <https://timesofindia.indiatimes.com/city/hyderabad/telangana-assembly-elections-did-aadhar-epic-seeding-trigger-deletion-of-voters/article-show/67008173.cms>.

24 Sinha, Amber, *The Networked Public*. New Delhi: Rupa Publications, 2019.



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