

University of Virginia School of Law

International Human Rights Law Clinic



Digital Authoritarianism in Indian-Administered Jammu and Kashmir (IAJK): Legal Analysis on the Culpability of Social Media Platforms and Guide to Accountability^{1*}

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Executive Summary

This report addresses the role of U.S.-based social media companies in the digital occupation of Indian-Administered Jammu and Kashmir (IAJK). The first and second portions of this report provides background information on India’s digital authoritarianism and digital occupation of IAJK and the role of social media companies in aiding and abetting human rights violations in IAJK, as well as providing context for the role these same companies play in other countries. The third part of this report analyzes the legal obligations and oversight mechanisms to which these companies are subject. The fourth and final part of this report enumerates certain action items that human rights defenders and advocates might pursue to seek accountability for these companies’ violations and protect the freedom of expression of their users.

Glossary

IAJK: Indian-Administered Jammu and Kashmir; the southern and southeastern portions of Kashmir, a region of the northwestern Indian subcontinent.²

UAPA: Unlawful Activities Prevention Act; a law originally enacted in 1967 to expand the Indian government’s power to intervene with people who were suspected to be a threat to national or economic security.³

² *Kashmir*, BRITANNICA, <https://www.britannica.com/place/Kashmir-region-Indian-subcontinent> (last visited Sept. 18, 2022).

³ Nikhita Mudium, *India’s UAPA: A Crackdown on Indian Activists*, UAB INSTITUTE FOR HUMAN RIGHTS BLOG, <https://sites.uab.edu/humanrights/2022/04/22/indias-uapa-a-crackdown-on-indian-activists/> (last visited Sept. 18, 2022).

JKCCS: Jammu Kashmir Coalition of Civil Society; a group of organizations based in Srinagar, Jammu, and Kashmir that advocates for the rights of the people of Jammu and Kashmir.⁴

APDP: Association of Parents of Disappeared Persons; a group of relatives of victims of enforced and involuntary disappearances in Kashmir that campaigns for an end to the practice of enforced and involuntary disappearances.⁵

BJP: Bharatiya Janata Party; a Hindu nationalist political party in India.⁶

API: Application Programming Interface; a program that enables companies to open their applications' data and functionality to third parties.⁷

GNI: Global Network Initiative; and independent human rights oversight organization that releases human rights principles and Facebook has committed itself to “implementing the [GNI] Principles on Freedom of Expression and Privacy” and its compliance with that commitment is assessed regularly.⁸

SMC: Social Media Corporations.⁹

ICCPR: International Covenant for Civil and Political Rights; international human rights treaty adopted by the United Nations in 1976.¹⁰

⁴ *About, JAMMU KASHMIR COALITION OF CIVIL SOCIETY (JKCCS)*, <https://jkccs.wordpress.com/about/> (last visited Sept. 18, 2022).

⁵ *About Association of Parents of Disappeared Persons, ASSOCIATION OF PARENTS OF DISAPPEARED PERSONS*, <https://apdpkashmir.com/about/> (last visited Sept. 18, 2022).

⁶ *What is the Bharatiya Janata Party (BJP)? What Does it Stand For, In Terms of Ideas?*, CARNEGIE ENDOWMENT FOR INT'L PEACE, <https://carnegieendowment.org/2018/10/11/what-is-secret-to-success-of-india-s-bharatiya-janata-party-bjp-pub-77477> (last visited Sept. 18, 2022).

⁷ *What is an application programming interface (API)?*, IBM Cloud, <https://www.ibm.com/cloud/learn/api> (last visited Sept. 18, 2022).

⁸ *Corporate Human Rights Policy*, FACEBOOK, <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf%20> (2021).

⁹ *'If India is within the mistaken, ought to we comply with go well with?': IHC high decide berates PTA over social media guidelines*, LATEST NEWS PAKISTAN, <https://www.newsupdate.pk/amp/if-india-is-in-the-wrong-should-we-follow-suit-ihc-top-judge-berates-pta-over-social-media-rules/> (last visited Sept. 18, 2022).

¹⁰ *International Covenant on Civil and Political Rights (ICCPR)*, EQUALITY AND HUM. RTS. COMM'N, <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil-and> (last visited Sept. 18, 2022).

UDHR: Universal Declaration of Human Rights; proclaimed by the United Nations General Assembly in 1948 as “a common standard of achievements for all peoples and all nations.”¹¹

SWK: Stand With Kashmir; a diaspora-driven grassroots movement spreading awareness and solidarity on India’s occupation of IAJK provides a plethora of information on social media for individuals looking to learn more about what is happening in Kashmir.¹²

Introduction

Indian-Administered Jammu and Kashmir (IAJK) has been subject to a physical and digital siege.¹³ In 2019, when India revoked article 370 of India’s constitution, which memorialized Jammu and Kashmir’s “mixed” sovereignty, the Indian administration imposed 55 internet blackouts, including one that lasted 213 days.¹⁴ The Indian administration’s internet and communication shutdowns in IAJK have prevented approximately 12.25 million Kashmiris¹⁵ from communicating with each other and connecting with the outside world.¹⁶ Today, IAJK remains under military occupation by the Indian administration with frequent internet shutdowns – Kashmiris are at risk of imprisonment, torture and/or death when posting on social media about

¹¹ *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Sept. 18, 2022).

¹² SWK, *The IAJK Syllabus*, STAND WITH KASHMIR, <https://standwithkashmir.org/the-kashmir-syllabus/>.

¹³ Jammu-IAJK Coalition of Civil Society (JKCCS), *Kashmir’s Interest Siege*, <https://jkccs.net/report-kashmirs-internet-siege/>. This comprehensive report, as of March 27, 2022, appears to no longer be accessible by internet servers. When one visits the link, it says that “This Domain Name Has Expired.” Given that the JKCCS is a highly reputable organization, it is likely that this “expiration” is a product of Indian administration censorship. An alternative source is available here, via the internet archive service WaybackMachine: <https://web.archive.org/web/20200825102750/https://jkccs.net/report-kashmirs-internet-siege/>.

¹⁴ Software Freedom Law Center, *Internet Shutdowns*, <https://internetshutdowns.in/>.

¹⁵ Ayesha Kuwari, *Digital Apartheid in Kashmir*, Sept. 15, 2020, HUMAN RIGHTS PULSE, <https://www.humanrightspulse.com/mastercontentblog/digital-apartheid-in-kashmir>. “The work of a technology researcher – Prateek Waghre – is mentioned, who estimates that ‘a loss of around 3.5 billion hours (and counting) of disrupted internet access for approximately 12.25 million people’ has occurred as a result.”

¹⁶ Vindu Goel, Karan Deep Singh, and Sameer Yasir, *India Shut Down Kashmir’s Internet Access. Now, ‘We Cannot Do Anything’*, N.Y. TIMES, (Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/technology/india-kashmir-internet.html>.

the human rights abuses occurring in IAJK.¹⁷ The Indian administration has continued to impose communication blackouts and has simultaneously taken more extreme measures to surveil and suppress Kashmiri voices on social media.¹⁸

Internet and communication shutdowns have been devastating for Kashmiris, affecting every part of their lives. Many Kashmiris are unable to participate in online school¹⁹, maintain their businesses²⁰, access basic healthcare, or acquire information about critical topics, like the COVID-19 pandemic.²¹ In 2021, it was reported that the internet shutdowns since August 2019 were responsible for more than \$5.3 billion in losses for Kashmiri businesses.²²

¹⁷ See e.g., Ifat Gazia,, *The IAJK Podcast with Ifat Gazia: Episode 5: Kashmiri Women Speak: Living and Working Under Occupation*, THE IAJK PODCAST, <https://podcasts.apple.com/us/podcast/episode-five-kashmiri-women-speak-living-and-working/id1527930921?i=1000495214256>.

¹⁸ <https://sflc.in/internet-shutdown-tracker-india-20132016>; see e.g., Katitza Rodriguez and Kurt Opsahl, *India's Draconian Rules for Internet Platforms Threaten User Privacy and Undermine Encryption*, ELECTRONIC FRONTIER FOUNDATION, (July 20, 2021), <https://www.eff.org/deeplinks/2021/07/indias-draconian-rules-internet-platforms-threaten-user-privacy-and-undermine#:~:text=The%20key%20principle%20of%20end,content%20and%20the%20sender's%20information..>

¹⁹ Rifat Fareed, *IAJK lockdowns, slow internet rob students of their education*, DW, (Mar. 03, 2021), <https://www.dw.com/en/kashmir-lockdowns-hurt-students/a-56904725>

²⁰ Ananya Bhattacharya, *The 550-day 4G blackout cost Kashmir's economy \$4.2 billion*, QUARTZ INDIA, (Feb. 9 2021), <https://qz.com/india/1970363/the-550-day-4g-blackout-cost-kashmirs-economy-4-2-billion/>.

²¹ <https://scroll.in/article/968719/a-year-without-high-speed-internet-ravaged-health-education-entrepreneurship-in-kashmir>; Interview with Sayed Suri, *Voices from Kashmir: Narratives that Lost Connection*, (May 27, 2020), SOFTWARE FREEDOM L. CENTER,

<https://www.youtube.com/watch?v=3ivG0sLzinI&list=PLae3FkSrH1xyjmbeLWEz9INcHtHQgFTK5&index=7>. In Suri's May 2020 interview with the Software Freedom Law Center, she explained that the only way for Kashmiris to get any information about the COVID-19 pandemic was through the radio, and therefore, many communities in rural populations, who lacked radio access and typically would get updates from WhatsApp were left completely in the dark about how to protect themselves from COVID. Suri also spoke to the extent to which the internet shutdowns, combined with the pandemic, completely paralyzed all of IAJK in every facet of day-to-day life.

²² JKCCS, *supra* note 1.

²² Ivan Mehta, *The human cost of a year of internet blackouts in Kashmir*, TNW, (Aug. 10, 2020), <https://thenextweb.com/news/the-human-cost-of-a-year-of-internet-blackouts-in-kashmir>. In an interview with the Software Freedom Law Center, one businessman in IAJK explained his family's construction company was in severe danger, as all of their contracts were solicited and conducted online, Interview with "A Local Businessman", *Voices from Kashmir: Narratives that Lost Connection*, (Feb. 10, 2020), SOFTWARE FREEDOM L. CENTER, <https://www.youtube.com/watch?v=PS4vCPmFits&list=PLae3FkSrH1xyjmbeLWEz9INcHtHQgFTK5&index=1>.

Social media corporations (SMCs), some of which have made public commitments to upholding human rights laws and norms,²³ are complicit in India's digital authoritarianism²⁴ in IAJK. SMCs have aided and abetted India's human rights violations in IAJK. In assisting the Indian administration in removing, censoring and banning speakers and speech that content that exposes otherwise suppressed ideas and information about India's occupation of IAJK and human rights violations in IAJK, these corporations are culpable for human rights violations in IAJK.

This report examines the digital suppression of free expression in IAJK and seeks to understand how U.S. SMCs are complicit in digital authoritarianism with a focus on IAJK. This report offers tangible potential action items for human rights defenders and advocates to consider in seeking accountability for these companies' violations and to protect Kashmiris' freedom of expression.

I. The Rise of Digital Authoritarianism in IAJK and Abroad

As identified and condemned by human rights observers, digital authoritarianism is becoming a more pervasive issue around the globe.²⁵ This problem is very acute in IAJK, but little attention has been paid to it on the global stage.²⁶ Understanding IAJK's specific context is

²³ See Part III of this paper, which details the human rights commitments various social media corporations have undertaken.

²⁴ The term "digital authoritarianism" can be defined as "the use of the Internet and related digital technologies by leaders with authoritarian tendencies to decrease trust in public institutions, increase social and political control, and/or undermine civil liberties," Erol Yayboke, *Promote and Build: A Strategic Approach to Digital Authoritarianism*, CTR. FOR STRATEGIC & INT'L STUDIES (Oct. 15, 2020), <https://www.csis.org/analysis/promote-and-build-strategic-approach-digital-authoritarianism>.

²⁵ See e.g., The Takeaway, In IAJK and Elsewhere, Digital Authoritarianism is on the Rise, THE WORLD, (Aug. 29, 2019), <https://theworld.org/programs/takeaway/kashmir-and-elsewhere-digital-authoritarianism-rise-2019-08-29>. See also David Kaye, *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Letter to Jack Dorsey*, OL OTH 70/2018, (Dec. 10, 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24230>.

²⁶ See e.g., E-Occupied: How Social Media Corporations Enable Silence on Kashmir, STAND WITH KASHMIR, (Sept. 2021), https://standwithkashmir.org/wp-content/uploads/2021/09/Report-Social-Media-Censorship_Sept-2021.pdf.

critical to understanding the impact of digital authoritarianism in IAJK and the way that SMCs contribute to it.

A. Digital Authoritarianism in IAJK

IAJK is occupied territory. India exercises effective control over IAJK although India does not have sovereign title to the territory. India's occupation extends into the digital realm, where India controls Kashmiris' communications and expression. Kashmiris cannot speak freely about the grave human rights abuses they experience at the hands of the Indian administration.²⁷ Such expression has resulted in speakers being arrested, detained, charged for serious offences, threatened with retribution, etc. The Indian administration's digital occupation insidiously monitors all forms of expression, placing anyone who expresses ideas publicly, particularly ideas that are deemed politically subversive or critical of the Indian administration, at risk.

Pursuant to counter-terrorism laws like the Unlawful Activities Prevention Act (UAPA) and Jammu and Kashmir Public Safety Act (PSA), the Indian administration has arrested and detained (without due process of law) members of the general public and civil society actors for their speech or beliefs, including "academics, writers and poets."²⁸ In 2019 alone, according to the Jammu and Kashmir Coalition of Civil Society (JKCCS) and the Association of Parents of Disappeared Persons (APDP), 662 people were arrested in IAJK under the PSA.²⁹ After the Fall 2021 T20 Cricket World Cup match between Pakistan and India, for example, some Kashmiris were imprisoned for over 100 days, allegedly for sending messages celebrating Pakistan's

²⁷ See e.g., The IAJK Podcast with Ifat Gazia, *Episode 7: Trials and Tribulations of Kashmiri Journalists*, <https://www.buzzsprout.com/1238807/6410386-episode-seven-trials-and-tribulations-of-kashmiri-journalists>.

²⁸ See Emily Schmall and Sameer Yasir, *A Jailed Priest's Death in India Stirs Outrage*, N.Y. TIMES, (July 5, 2021), <https://www.nytimes.com/2021/07/05/world/asia/india-jailed-priest-dies.html>; Mudasir Ahmad, *How the Public Safety Act Continues to Haunt Kashmir*, (Jan. 28, 2020), <https://thewire.in/rights/psa-detentions-kashmir>.

²⁹ Mudasir Ahmad, *How the Public Safety Act Continues to Haunt Kashmir*, THE WIRE, (Jan. 28, 2020), <https://thewire.in/rights/psa-detentions-kashmir>.

victory on WhatsApp.³⁰ Another example is the January 2022 arrest of Sajad Gul, a Kashmiri journalist and contributor to The Kashmir Walla. Gul was arrested over a social media post that documented Kashmiris protesting against Indian military occupation.³¹ When his initial detention expired, the Indian authorities simply devised a new charge to prolong his detention.³² Prior to his arrest, Gul told reporters at Article 14, “I sleep with all my clothes on, I keep shoes beside my bed. . . I do not know when they will raid our house again and take me away.”³³

Another example of digital authoritarianism is shutting down the Internet. Internet access is a fundamental right under both Indian and international law.³⁴ Internet shutdowns are a form of collective punishment that violate a broad set of rights in addition to the right to Internet access, including the right to free expression, the right to free assembly, the right to access to education, the right to work and the right to adequate healthcare. India is the most prolific country in the world in shutting down the Internet.³⁵ In 2021, India imposed 106 documented shutdowns—more than the rest of the world combined.³⁶ Most of those shutdowns, 85 in total, were in one place—IJK.³⁷ India targets Kashmiris for collective punishment, including by

³⁰ Al Jazeera Staff, *IJK men spend over 100 days in jail for cheering Pakistan win*, AL JAZEERA, (Feb. 16, 2022), <https://www.aljazeera.com/news/2022/2/16/families-of-arrested-kashmiri-students-struggle-to-free-them#:~:text=breaking%20news%20ticker-.Kashmir%20men%20spend%20over%20100%20days%20in%20jail%20for%20cheering,cricket%20World%20Cup%20in%20October>.

³¹ Kaisar Andrabi, *'Hopes Shattered,' Says Family of Scribe Sajad Gul Booked Under PSA After Getting Bail*, THE WIRE, (Jan. 17, 2022), <https://thewire.in/media/sajad-gul-kashmir-journalist-psa>.

³² Andrabi, *supra* note 15.

³³ Safina Nabi, *Why Kashmiri Journalist Sajad Gul Faces Police Cases for Doing His Job*, ARTICLE14, (Dec. 29, 2021), <https://article-14.com/post/why-kashmiri-journalist-sajad-gul-faces-police-cases-for-doing-his-job-61cbcd7784b6>.

³⁴ Prabhaskar K Dutta, *Internet Access a Fundamental Right, Supreme Court Makes It Official: Article 19 Explained*, INDIA TODAY (January 10, 2020), <https://www.indiatoday.in/news-analysis/story/internet-access-fundamental-right-supreme-court-makes-official-article-19-explained-1635662-2020-01-10>.

³⁵ Julia Bergin et al., *Flicking the kill switch: governments embrace internet shutdowns as a form of control*, THE GUARDIAN (Aug. 28, 2022), <https://www.theguardian.com/technology/2022/aug/29/flicking-the-kill-switch-governments-embrace-internet-shutdowns-as-a-form-of-control>.

³⁶ *Id.*

³⁷ *Id.*

Internet shutdown; Kashmiris suffer more than any other group in the world from such violations.

The Indian administration has enacted policies to strengthen their control over SMCs, and to access confidential, protected user data. In 2021, the Indian administration passed a new regulation entitled “Intermediary Guidelines and Digital Ethics Code” that requires “platforms to identify the origins of messages and pre-screen content, which fundamentally breaks strong encryption for messaging tools.”³⁸ In essence, the Indian administration now requires that SMCs provide it user information that should be confidential and protected if they want to operate in Indian territory. These new laws also require that SMCs wishing to operate in India “appoint a chief compliance officer, a grievance officer, and a contact person to respond to requests from [Indian] law enforcement 24 hours a day.”³⁹ In gaining access to this information, India is better able to keep tabs on user conversations and remove content that presents a dissident view or sheds light on human rights violations in IAJK, effectively stifling all free expression in IAJK. In August 2022, former Twitter security chief Peiter Zatko filed a whistleblower complaint alleging that the Indian government forced Twitter to hire government agents who had access to sensitive user data.⁴⁰ Twitter has called the complaint a “false narrative” but, as of the date of this report, has not publicly addressed Zatko’s allegations regarding its hiring of Indian government agents.⁴¹

³⁸ Katitza Rodriguez and Kurt Opsahl, *India’s Draconian Rules for Internet Platforms Threaten User Privacy and Undermine Encryption*, ELECTRONIC FRONTIER FOUNDATION, (July 20, 2021), <https://www.eff.org/deeplinks/2021/07/indias-draconian-rules-internet-platforms-threaten-user-privacy-and-underline#:~:text=The%20key%20principle%20of%20end,content%20and%20the%20sender's%20information.>

³⁹ Jon Porter, *Twitter has lost legal immunity for users’ posts in India, government argues*, THE VERGE, (July 6, 2021), [https://www.theverge.com/2021/7/6/22564768/twitter-india-legal-liability-users-posts-defamation-digital-media-ethics-code.](https://www.theverge.com/2021/7/6/22564768/twitter-india-legal-liability-users-posts-defamation-digital-media-ethics-code)

⁴⁰ Arif Rafiq, *India: Twitter, Facebook and the appeasement of Hindu extremists*, MIDDLE EAST EYE (Sept. 5, 2022), [https://www.middleeasteye.net/opinion/india-twitter-facebook-hindu-extremists-appeasement.](https://www.middleeasteye.net/opinion/india-twitter-facebook-hindu-extremists-appeasement)

⁴¹ *Id.*

The Indian administration has made it clear that SMCs will face repercussions if they do not conform with India's new rules or "comply with data and takedown requests."⁴² The Indian government has used its powers to issue orders regarding various disfavored speech. For example, the government issued orders for Twitter, Facebook, and Instagram to remove content critical of India's approach to the COVID-19 pandemic.⁴³ According to a report by NPR, Twitter and Facebook "complied in some of these cases but not all."⁴⁴ For non-compliance, Indian authorities have raided the companies' offices.⁴⁵ Indian authorities have also threatened employees at Facebook, WhatsApp, and Twitter with imprisonment.

When Twitter failed to adhere to all of the new rules imposed by the Indian administration, the Indian Information Technology Ministry declared in a filing to the New Delhi High Court that Twitter was "legally liable for content posted by its users in India."⁴⁶ Generally, platforms such as Twitter are not liable for the content of their users' posts.⁴⁷ It is broadly understood that such platforms do not control what their users post. If they were nonetheless legally liable for their users' posts, it is broadly understood that their business would be rendered uneconomic. Typically, Twitter simply takes down content in response to legal challenges.⁴⁸ Indian authorities' extraordinary imposition of legal liability for users' content is effectively an attempt to create an extraordinary level of state control over Twitter in India.

⁴² Jeff Horwitz and Newley Purnell, *India Threatens Jail for Facebook, WhatsApp, and Twitter Employees*, THE WALL STREET JOURNAL, Mar. 5, 2021, <https://www.wsj.com/articles/india-threatens-jail-for-facebook-whatsapp-and-twitter-employees-11614964542>.

⁴³ Shannon Bond, *India's Government is Telling Facebook, Twitter to Remove Critical Posts*, NPR, (Apr. 27, 2021), <https://www.npr.org/2021/04/27/991343032/indias-government-is-telling-facebook-twitter-to-remove-critical-posts>.

⁴⁴ Bond, *supra* note 23.

⁴⁵ Kim Lyons, *Police in India raid Twitter offices in probe of tweets with 'manipulated media' label*, THE VERGE, (May 24, 2021), <https://www.theverge.com/2021/5/24/22451271/police-india-raid-twitter-tweets-government-manipulated-media>.

⁴⁶ Jon Porter, *Twitter has lost legal immunity for users' posts in India, government argues*, THE VERGE, (July 6, 2021), <https://www.theverge.com/2021/7/6/22564768/twitter-india-legal-liability-users-posts-defamation-digital-media-ethics-code>.

⁴⁷ *Id.*

⁴⁸ Porter, *supra* note 26.

As a result of the Indian administration's heightened censorship and surveillance, journalists, human rights defenders and ordinary people in IAJK face constant threats of death and imprisonment for reporting what is happening on the ground. In a January 2022 article in The Nation, a Kashmiri journalist, who for their safety remains anonymous, said "[j]ournalism is not just in crisis, it is a crime."⁴⁹ In early February 2022, Fahad Shah, Editor in Chief of The Kashmir Walla, an independent weekly newsmagazine, was arrested by Indian forces for "uploading anti-national content."⁵⁰ Shah had reported the murder of a 17-year old, Inayat Ahmad Mir, by the Indian Army.⁵¹ According to an anonymous journalist in Kashmir, "Fahad [Shah]'s arrest has sent shock waves, and streets where journalists would generally roam all day are deserted."⁵²

Shah's arrest followed the arrest of prominent Kashmiri human rights activist Khurram Parvez in November 2021. Unlike most of the thousands of known cases of arbitrary detention in IAJK, Parvez's arrest evoked international outrage and precipitated a statement from the United Nations Office of the High Commissioner for Human Rights urging Indian authorities "to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately."⁵³

⁴⁹ Suchita Vijayan, *India's Press Crackdown: The Silencing of Journalists in Kashmir*, THE NATION, (Jan. 25, 2022), <https://www.thenation.com/article/world/fahad-shah-kashmir-press-freedom-india/>, "A reporter who left Indian-administered IAJK a few years back told me, 'Journalism is not just in crisis, it is a crime.'"

⁵⁰ See Vijayan, *supra* note 25; Mujib Mashal, *Editor in IAJK is Arrested Amid Intensifying Clampdown*, NEW YORK TIMES, (Feb. 5, 2022), <https://www.nytimes.com/2022/02/05/world/asia/kashmir-editor-arrested.html>.

⁵¹ Vijayan, *supra* note 26.

⁵² Vijayan, *supra* note 25. "Like many journalists in Kashmir, Shah has been questioned multiple times by local police. However, no one expected Shah's arrest, despite the threatening calls, summons, and harassment that reporters have recently endured. Another journalist observed, 'Fahad's arrest has sent shock waves, and streets where journalists would generally roam all day are deserted.'"

⁵³ <https://www.bbc.com/news/world-asia-india-59383554>. See Tweet from Mary Lawlor, UN Special Rapporteur HRDs, "I am hearing disturbing reports that Khurram Parvez was arrested today in IAJK & is at risk of being charged by authorities in #India with terrorism-related crimes. He's not a terrorist, he's a Human Rights Defender @mujmash @RaftoFoundation @GargiRawat @NihaMasih," <https://www.bbc.com/news/world-asia-india-59383554>; UN Office of the High Commissioner, *UN experts urge Indian authorities to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately*, OHCHR, (Dec. 22, 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28006&LangID=E>.

India officially reacted by attacking the UN’s Human Rights Office, saying it made “baseless and unfounded allegations against law enforcement authorities and security forces in India” betraying “a complete lack of understanding” and “clear bias.”⁵⁴

In the IAJK context, the Indian administration’s digital authoritarianism extends broadly to expression that only indirectly and remotely dissents from official Indian narratives regarding IAJK. For example, people using social media platforms to celebrate and preserve Kashmiri culture and history have been attacked and silenced. This is illustrated by the Twitter account “@KashHistorypics,” which had to create a new Twitter account because their old account had been “geographically blocked” in IAJK and India since August 2021.⁵⁵ Blocking an account that seeks to preserve historical memory suggests that a policy goal of India’s digital authoritarianism in IAJK is to erase Kashmir’s culture, memory and history.

While India’s digital repression primarily targets Kashmiris in IAJK, members of the Kashmiri diaspora have also been targets. In addition to being unable to reach loved ones in Kashmir, some who are speaking out about what is transpiring in IAJK are being censored on social media for allegedly “engag[ing] in platform manipulation and spam.”⁵⁶ For example, Ifat Gazia, a PhD candidate at the University of Massachusetts, Amherst, had her personal and podcast Twitter accounts suspended in March 2021.⁵⁷ Gazia’s podcast, The Kashmir Podcast,

⁵⁴ *India Hits Out at OHCHR for Baseless Comments on J-K*, NEW INDIAN EXPRESS (Dec. 2, 2021), <https://www.newindianexpress.com/nation/2021/dec/02/india-hits-out-at-ohchr-for-baseless-comments-on-j-k-2390906.html>.

⁵⁵ Tweet by @KashmiriHistoryPics, Mar. 1, 2022, <https://twitter.com/kashmirhistpics/status/1498564417113694210?s=21>. “Our Twitter Account @KashHistorypics Has Been Geographically Blocked In IAJK And In India Since August, 2021. Follow Us! @kashHistPics.”

⁵⁶ Ifat Gazia, *Silicon Valley Must Not Silence Kashmir*, TECHNOLOGY, POWER, POLICY, AND PEOPLE, (May 24, 2021), <https://techpolicy.press/silicon-valley-must-not-silence-kashmir/>.

⁵⁷ Gazia, *supra* note 32.

interviews civilians, legal professionals, and others who have experienced violations in IAJK and brings out otherwise suppressed stories.⁵⁸

B. Digital Authoritarianism in Other Regimes

The problem of digital authoritarianism is not isolated to IAJK. Understanding the techniques of digital authoritarianism used by regimes in other countries facilitates a deeper understanding of the issues involved while also developing more effective trans-national resistance. Throughout the world, authoritarian regimes use social media platforms as mechanisms of suppression and surveillance.⁵⁹ Regimes also leverage social media's capacity to quickly and efficiently reach large numbers of people to spread misinformation and/or disinformation, which both obfuscates reality for their own citizens and manipulates the perception of non-domestic audiences.

In Russia, for example, President Vladimir Putin has referred to the internet more broadly as the "C.I.A. Project"⁶⁰ and has "fined [social platforms] for failing to delete content it says is illegal, slow[ed] down the speed of Twitter as punishment."⁶¹ Russia has also created "filtering technology" that is able to slow or halt "the vast majority of the country's more than 120 million wireless and home internet users."⁶² In March 2022, as Russia began its military invasion of Ukraine, President Putin signed a law "punishing 'fake news' with up to 15 years in prison."⁶³

⁵⁸ Noshewan Khan, The IAJK Project Podcast, <https://open.spotify.com/show/5Bbkv2qQ6yezi4OenP9DsV>.

⁵⁹ To better understand the rise of digital authoritarianism across other international contexts, see The Tech Against Terrorism Podcast, *How we fight terrorism while protecting human rights*, (Oct. 11, 2019), <https://audio.buzzsprout.com/iege4wujucpqx49c2qb06pmv4yyo?response-content-disposition=inline&>.

⁶⁰ Adam Satariano and Paul Mozur, *Russia is Censoring the Internet, With Coercion and Black Boxes*, (Oct. 22, 2021), <https://www.nytimes.com/2021/10/22/technology/russia-internet-censorship-putin.html>.

⁶¹ <https://www.reuters.com/technology/putin-signs-law-forcing-foreign-it-firms-open-offices-russia-2021-07-01/>.

⁶² Satariano and Mozur, *supra* note 36.

⁶³ Adi Robertson, *Russian 'fake news' law could give offenders 15 years in prison*, THE VERGE, (Mar. 4, 2022), <https://www.theverge.com/2022/3/4/22961472/russia-fake-news-law-military-ukraine-invasion-casualties-jail-time>.

China also employs digital authoritarianism to restrict freedom of speech, expression, and assembly, and to block its citizens from greater access to the world outside of China's borders. In China, "many Western platforms are banned, and their Chinese equivalents are closely monitored by the government."⁶⁴ In February 2021, China's administration issued new regulations that require "bloggers, influencers and content creators on public social media accounts, known as 'self-media,' to possess a government-issued credential in order to publish anything on a host of topics."⁶⁵ This new regulation is one example of how the Chinese administration seeks to suppress, control, and surveil the information and content its citizens can access.

The Nigerian government has also wielded digital authoritarianism to maintain control of what its citizens can consume. After Twitter deleted a tweet by President Muhammadu Buhari in June 2021, the government banned Twitter for 7 months.⁶⁶ Among the conditions for Twitter's return to Nigeria, the Nigerian government required that Twitter establish a physical office in Nigeria, pay taxes to the Nigerian government and agree that they were "committed to being sensitive to national security and cohesion."⁶⁷

In order to maintain access to growth markets, SMCs have capitulated to the demands of authoritarian regimes and amplified state-supported speech while suppressing information and expression that is contrary to state narratives and/or is of dissenting voices, particularly from those most marginalized and most in need of a forum in which to be heard. By continuing to

⁶⁴ Anshu Siripurapu & Will Merrow, *Social Media and Online Speech: How Should Countries Regulate Tech Giants?*, COUNCIL ON FOR. RELATIONS (Feb. 9, 2021), <https://www.cfr.org/in-brief/social-media-and-online-speech-how-should-countries-regulate-tech-giants>.

⁶⁵ Rebecca Davis, *China Imposes New Rules to Restrict Independent Online Content Creators*, (Feb. 23, 2021), VARIETY, <https://variety.com/2021/digital/news/china-cac-self-media-new-regulations-censorship-1234913799/>.

⁶⁶ BBC's Digital Planet Podcast, *Twitter Returns to Nigeria*, (Jan 23, 2022), <https://www.bbc.co.uk/programmes/w3ct1lt8>.

⁶⁷ Digital Planet Podcast, *supra* note 42.

operate in these contexts, SMCs have agreed to be instruments of authoritarianism, violating and facilitating the violation of human rights in the pursuit of greater financial returns.

Notably, China has built a firewall to censor Internet content within its borders and Russia has begun to do so as well.⁶⁸ Both of these countries have also encouraged the development of more compliant domestic alternative platforms to those of the US-based SMCs. For example, the Chinese government has subsidized and controlled the large Chinese social media company WeChat since 2011.⁶⁹ Similarly, the media division of Russia's state-owned gas company, Gazprom, owns Russia's equivalent of YouTube, RuTube.⁷⁰ Platforms such as RuTube have seen an increase in users as Russia has increased restrictions on domestic SMCs.⁷¹ While the Indian government has not built a firewall, it has encouraged the use of government-friendly platforms such as Koo, an Indian version of Twitter.⁷² Therefore, while India has been nominally rated as more "free" on the Internet than Russia and China,⁷³ it is not clear that this is the case in practice. In fact, India's restrictions may be even more pernicious because they have largely escaped condemnation.

⁶⁸ Yaqui Wang, *In China, the 'Great Firewall Is Changing a Generation*, POLITICO (Sept. 1, 2020), <https://www.politico.com/news/magazine/2020/09/01/china-great-firewall-generation-405385>; *Russia is trying to build its own great firewall*, THE ECONOMIST (Feb. 19, 2022), <https://www.economist.com/business/russia-is-trying-to-build-its-own-great-firewall/21807706>.

⁶⁹ Lynn Peskoe-Yang, *How China's State-Sponsored Social Networks Control Misinformation—and Dissent*, IEEE SPECTRUM (Nov. 20, 2018), <https://spectrum.ieee.org/how-chinas-statesponsored-social-networks-control-misinformationand-dissent>.

⁷⁰ Reuters, *Russians flock to domestic social media as Western sites barred*, DAILY SABAH (Apr. 11, 2022), <https://www.dailysabah.com/business/tech/russians-flock-to-domestic-social-media-as-western-sites-barred>.

⁷¹ *Id.*

⁷² Gerry Shih, *In India, a government-friendly social media network challenges Twitter*, WASH. POST (Nov. 16, 2021), <https://www.washingtonpost.com/world/2021/11/16/india-twitter-koo-social-network/>.

⁷³ See *Freedom on the Net 2021: India*, FREEDOM HOUSE, <https://freedomhouse.org/country/india/freedom-net/2021> (last visited Sept. 11, 2022) (rating India as "Partly Free" at 49/100); *Freedom on the Net 2021: China*, FREEDOM HOUSE, <https://freedomhouse.org/country/china/freedom-net/2021> (last visited Sept. 11, 2022) (rating China as "Not Free" at 10/100); *Freedom on the Net 2021: Russia*, FREEDOM HOUSE, <https://freedomhouse.org/country/russia/freedom-net/2021> (last visited Sept. 11, 2022) (rating Russia as "Not Free" at 30/100).

II. Social Media Platform Violations in IAJK that Contribute to Digital Authoritarianism

A. Meta

i. Facebook

Meta, through Facebook and its other subsidiaries, including but not limited to, WhatsApp and Instagram, has been used by the Indian administration to commit and further human rights violations. At times, these violations have directly contravened Meta's, and Facebook's, public commitments to upholding human rights laws and norms.

The 2021 Facebook Whistleblower papers revealed the way that Facebook has allowed hate speech against Kashmiris to thrive on its platform. Facebook employees created a fake account to track the way that politically motivated hate speech has thrived in India.⁷⁴ In 2019, this account was flooded with calls for violence against Kashmiris.⁷⁵ News outlets have reported that Facebook is aware of its hate speech problem and considers it an “integrity nightmare”.⁷⁶ Facebook has commissioned a report on its hate speech problem in the India market, however it has refused to release it to the public, despite the urging of human rights groups.⁷⁷ Facebook has also ignored hate speech when it is posted by users with ties to Hindu nationalists, including India's ruling *Bharatiya Janata Party* (BJP).⁷⁸

At the same time, Facebook has silenced Kashmiri expression both in IAJK and in the Kashmiri diaspora. The diaspora-based activist group Stand With Kashmir released a report on the way SMCs, like Facebook, shut down accounts and block content shared by Kashmiri

⁷⁴ Cat Sakrewski, et. al, *How Facebook Neglected the Rest of the World, fueling Hate Speech and Violence in India*, WASH. POST, (Oct. 24, 2021), <https://www.washingtonpost.com/technology/2021/10/24/india-facebook-misinformation-hate-speech/>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Elizabeth Culliford, *Facebook Critics Call for Release of India Human Rights Review*, REUTERS, (Jan. 19, 2022), <https://www.reuters.com/world/india/facebook-critics-call-release-india-human-rights-review-2022-01-19/>.

⁷⁸ Newley Purnell & Jeff Horwitz, *Facebook's Hate-Speech Rules Collide with Indian Politics*, WALL STREET JOURNAL, (Aug. 14, 2021), <https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346?mg=prod/com-wsj>.

users.⁷⁹ Given the scope and scale of India’s repression and the risk of reprisals to relatives in IAJK, we understand from discussions with Kashmiri activists that Kashmiris are increasingly reluctant to speak out about violations, express dissent or speak regarding harassment by SMCs. This exacerbates a longstanding and deeply problematic dynamic – SMCs’ amplification of powerful, bigoted and authoritarian voices while silencing the marginalized groups targeted by their bigotry and repression.

This tension is inherent in Facebook’s business model. Facebook’s business model is built around encouraging users to share posts and generate content.⁸⁰ The leaked Facebook Whistleblower papers reveal that Facebook knew early on that the posts that generate the most “engagement” (or user interest) were those that evoked anger from viewers. These posts were frequently disinformation and “fake news,” which both attracted engagement and had tangible real-world costs.⁸¹ Facebook did test a system for emotions-based reaction to content to address this issue. When research emerged that controversial and even dangerous posts elicited emotions that would result in their being demoted in the algorithm, Facebook refused to implement the system fearing that it would be detrimental to engagement (and therefore financial performance).⁸²

Facebook has also chosen to comply with rather than challenge other problematic requests of the Indian government. Facebook has closely allied itself with the ruling BJP. A March 2022 report revealed that in nine elections over 22 months, Facebook’s algorithm sold

⁷⁹ https://standwithkashmir.org/wp-content/uploads/2021/09/Report-_Social-Media-Censorship_Sept-2021.pdf

⁸⁰ See Kate Linebaugh & Ryan Knutson, *The Facebook Files Part 4: The Outrage Algorithm*, WSJ PODCASTS, (Sept. 18, 2021), <https://www.wsj.com/podcasts/the-journal/the-facebook-files-part-4-the-outrage-algorithm/e619fbb7-43b0-485b-877f-18a98ffa773f>.

⁸¹ Jeremy B. Merrill & Will Ormus, *Five Points for Anger, One for a ‘Like’: How Facebook’s Formula Fostered Rage and Misinformation*, WASH. POST, (Oct. 26, 2021), <https://www.washingtonpost.com/technology/2021/10/26/facebook-angry-emoji-algorithm/>.

⁸² *Id.*

advertising at a cheaper rate to the BJP than to other Indian political parties.⁸³ There appears to be more than one factor behind this business decision. Facebook's close relationship with the BJP may have played a part. It also appears that Facebook's algorithm itself promoted the BJP's content because of its hateful, divisive, and damaging nature.⁸⁴

The relationship between the Indian administration and Meta is further complicated by the fact that India is a very important market for the company. In 2019, India became the largest user-base worldwide for Facebook.⁸⁵ During the pandemic, Facebook's ad revenue in India grew by 41% year-over-year.⁸⁶ Despite a nominally unfavorable regulatory environment, Meta has invested billions in an Indian internet company further entrenching itself in the Indian market.⁸⁷

Meta publishes a monthly report on its activities in India under the Intermediary Guidelines and Digital Ethics Code. These reports provide a limited amount of data; however, they do include two valuable data metrics. First, the reports show the amount of content created by users in India that is subjected to a takedown, and the percentage of that data that is removed proactively (i.e. before the government of India or a private user requests the removal of that information.)⁸⁸ In September 2022, Meta removed 103.1k pieces of content that it deemed

⁸³ Khumar Samhav & Nayntara Ranganathan, Facebook Charged BJP Less for India Election Ads than Others, AL JAZEERA, (Mar. 16, 2022), <https://www.aljazeera.com/economy/2022/3/16/facebook-charged-bjp-lower-rates-for-india-polls-ads-than-others>.

⁸⁴ Nayantara Ranganathan & Kumar Sambhav, *What Helps India's BJP Get Lower Facebook Rates? Divisive Content*, AL JAZEERA (Mar. 17, 2022), <https://www.aljazeera.com/economy/2022/3/17/facebook-algorithm-favours-polarising-politics-helps-bjp>.

⁸⁵ Donna Fuscaldo, *Facebook Now Has More Users in India Than in Any Other Country*, INVESTOPEEDIA (June 25, 2019), <https://www.investopedia.com/news/facebook-now-has-more-users-india-any-other-country/>.

⁸⁶ Vinod Mahanta & Anumeha Chaturvedi, *Facebook India's FY21 Gross Ad Revenue Soars to Rs 9,326 Crore*, ECONOMIC TIMES (Dec. 3, 2021), <https://economictimes.indiatimes.com/tech/technology/facebook-indias-fy21-gross-ad-revenue-soars-to-rs-9326-crore/articleshow/88062904.cms>.

⁸⁷ Rishi Iyengar, *Facebook Has More Users in India Than Anywhere Else. It's Now Dealing With a Hate Speech Crisis*, CNN BUSINESS (Sept. 23, 2020), <https://www.cnn.com/2020/09/22/tech/facebook-india-hate-speech/index.html>.

⁸⁸ INDIA MONTHLY REPORT UNDER THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021, META, 2 (Oct. 31, 2022) <https://transparency.fb.com/sr/india-monthly-report-oct31-2022/>.

“Dangerous Organizations and Individuals: Terrorism” with a 98.5% proactive rate.⁸⁹ What Meta does not provide is an explanation as to how it determines what content meets this standard.

Meta also provides data as to the amount of content it restricts in each country based on local law. In India, Meta has generally restricted less than 1,000 pieces of content based on Indian law over each six-month period.⁹⁰ This is substantially lower than the amount of content that Meta restricts based on its own decisions. Meta also provides details as to the number of government requests for user data, giving some limited insight into the amount of data that Facebook provides governmental authorities. The data spans from 2013 until the present, broken up into six-month periods. Since 2013, the number of Indian government requests for user data has increased steadily from roughly 3,000 per six-month period to over fifty thousand.⁹¹ Since 2013, Meta has complied with over half of these requests. However, in the last six month period, Meta has complied with 64% of these requests.⁹²

ii. WhatsApp

WhatsApp, a subsidiary of Facebook, offers a messaging service with end-to-end encryption that is supposed to protect the privacy and confidentiality of communications. While WhatsApp has facilitated standard communications, it is also a preferred tool in India to spread disinformation.⁹³ WhatsApp is also a preferred tool in India to organize mob violence including against, and lynching of, marginalized people, especially Muslims and low-caste people. This

⁸⁹ *Id.* at 3.

⁹⁰ *India*, Transparency Center, META, <https://transparency.fb.com/data/content-restrictions/country/IN/> (last visited Nov 4, 2022). This does not account for July-December 2018, in which Meta restricted over 16,000 pieces of content. The official changelog attributes this variance to “a Delhi High Court order regarding claims made about PepsiCo products.”

⁹¹ *India*, Transparency Center, META, <https://transparency.fb.com/data/government-data-requests/country/IN/> (last accessed Nov. 5, 2022).

⁹² *Id.*

⁹³ See Devika Khandelwal, *Covid Lies are Tearing Through India’s Family WhatsApp Groups*, WIRED UK, (April 14, 2021) <https://www.wired.co.uk/article/india-covid-conspiracies-whatsapp>.

disinformation has led to tragic results, including numerous cases of mistaken identity that have led to mob violence and sometimes lynching.⁹⁴

While individuals and groups aligned with the BJP have instigated the violence and committed most of the violent acts (not infrequently encouraged by BJP figures and often with the cooperation of the police), the BJP-led Indian government has used the fact of such violence to justify violating users' privacy.⁹⁵ The Indian administration introduced new laws in 2021 to end the end-to-end encryption and make messages traceable back to their original source.⁹⁶ The new laws also incorporate criminal penalties for companies that do not comply with the new regulations.⁹⁷ In May 2021, WhatsApp and Facebook sued to challenge the traceability requirement, calling it a form of "mass surveillance"⁹⁸ that "fundamentally undermines people's right to privacy."⁹⁹

B. Twitter

Twitter is often regarded as a "global town square."¹⁰⁰ Despite publicly committing to "Tweets Must Flow"¹⁰¹ to facilitate freedom of expression around the world,¹⁰² Twitter has

⁹⁴ See, e.g.: Balla Satish, *How WhatsApp Helped Turn an Indian Village Into a Lynch Mob*, BBC NEWS, (July 19, 2018) <https://www.bbc.com/news/world-asia-india-44856910>; *India Lynchings: WhatsApp Sets New Rules After Mob Killings*, BBC NEWS, (July 20, 2018) <https://www.bbc.com/news/world-asia-india-44897714>; Elyse Samuels, *How Misinformation on WhatsApp Led to a Mob Killing in India*, WASH. POST., (Feb. 21, 2020), <https://www.washingtonpost.com/politics/2020/02/21/how-misinformation-whatsapp-led-deathly-mob-lynching-india/>.

⁹⁵ Manish Singh, *WhatsApp Balks at India's Demand to Break Encryption*, VENTUREBEAT, (July 23, 2018), <https://venturebeat.com/2018/07/23/whatsapp-balks-at-indias-demand-to-break-encryption/>.

⁹⁶ Mike Isaac, *WhatsApp Sues India's Government to Stop New Internet Rules*, N.Y. TIMES, (May 25, 2021), <https://www.nytimes.com/2021/05/25/technology/whatsapp-india-lawsuit.html>.

⁹⁷ Aditi Agrawal, *Facebook, WhatsApp sue Indian Government Over Traceability Requirement*, FORBES INDIA (May 26, 2021), <https://www.forbesindia.com/article/take-one-big-story-of-the-day/facebook-whatsapp-sue-indian-government-over-traceability-requirement/68175/1>.

⁹⁸ *Id.*

⁹⁹ Varsha Bansal, *WhatsApp's Fight With India Has Global Implications*, WIRED (May 27, 2021), <https://www.wired.com/story/whatsapp-india-traceability-encryption/>.

¹⁰⁰ <https://www.theatlantic.com/international/archive/2015/08/twitter-global-social-media/402415/>.

¹⁰¹ https://blog.twitter.com/en_us/a/2011/the-tweets-must-flow.

¹⁰² See also Twitter's "Twitter for Good Initiative", seeking to "use the positive power of Twitter to strengthen our communities," <https://about.twitter.com/en/who-we-are/twitter-for-good>.

censored and removed tweets from Kashmiris regarding human rights violations committed by India.¹⁰³ Again, Kashmiris are a marginalized and targeted group whose rights and freedoms, including of expression, are violated *en masse* by the Indian administration.

Compared to Meta, Twitter appears to have offered more resistance to the Indian administration's calls for censorship.¹⁰⁴ This resistance led to the administration threatening Twitter's employees with jail time when Twitter refused to remove posts from activists and journalists during the popular 2021 protests against proposed agricultural reforms in India.¹⁰⁵ Twitter's willingness to do more to respect the right of free expression by some disfavored groups in India may result from the fact that Twitter, unlike Meta, maintains a clear separation between editorial and business activities.¹⁰⁶ Meta allows one person to both lobby the Indian administration and administer its Facebook platform's rules.¹⁰⁷ Nonetheless, as of August 2021, the Indian administration publicly deemed Twitter "in compliance"¹⁰⁸ with India's new information technology rules that require SMCs to "acknowledge takedown requests of unlawful, misinformation and violent content within 24 hours and deliver a complete redressal within 15

¹⁰³ See e.g., Ifat Gazia, *Silicon Valley Must Not Silence Kashmir*, TECHNOLOGY, POWER, POLICY, AND PEOPLE, May 24, 2021, <https://techpolicy.press/silicon-valley-must-not-silence-kashmir/>. See also Tweet by @KashmiriHistoryPics, Mar. 1, 2022, <https://twitter.com/kashmirhistpics/status/1498564417113694210?s=21>. "Our Twitter Account @KashHistorypics Has Been Geographically Blocked In IAJK And In India Since August, 2021. Follow Us! @kashHistPics."

¹⁰⁴ See, Soutik Biswas, *The Indian government's war with Twitter*, BBC, (Feb. 12, 2021), <https://www.bbc.com/news/world-asia-india-56007451>; Lauren Frayer, *Twitter In Standoff With India's Government Over Free Speech and Local Law*, NPR, ALL THINGS CONSIDERED, (Feb. 18, 2021), <https://www.npr.org/2021/02/17/968641246/twitter-in-standoff-with-indias-government-over-free-speech-and-local-law>.

¹⁰⁵ <https://www.cnn.com/2021/02/09/tech/twitter-india-government-farmer-protests/index.html>

¹⁰⁶ Karishma Mehrotra, *Facebook Whistleblower Says if India is to Stay a Democracy it Must Tackle Issues Like The "IT Cell Arms Race"*, QUARTZ, (Nov. 12, 2021) <https://qz.com/india/2088427/facebook-whistleblower-sophie-zhang-on-indian-democracy/>.

¹⁰⁷ *Id.*

¹⁰⁸ Manish Singh, *Twitter now in compliance with India's new IT rules, government says*, TECH CRUNCH, (Aug. 10, 2021), <https://techcrunch.com/2021/02/25/india-announces-sweeping-guidelines-for-social-media-on-demand-streaming-firms-and-digital-news-outlets/>.

days.”¹⁰⁹ This suggests that like in the case of India’s requests targeting Kashmiris, Twitter’s has failed to resist India’s digital authoritarianism and instead decided to aid and abet violations.

Twitter brands itself as an open global forum. However, it is quite difficult for researchers to access Twitter data in order to analyze and assess the degree to which Twitter is aiding state efforts to surveil and suppress dissidents and suppress information and speech deemed to be against state interests. While Twitter is one of the few SMCs that allows users to view its Application Program Interface (API), a mechanism for third parties to analyze data, there are different levels of access to the API, depending on payment.¹¹⁰ Furthermore, scholars question the extent to which users can actually access a holistic data set, despite Twitter promising “clear guidelines” regarding its Public APIs.¹¹¹

India is Twitter’s third largest market (with 23.6 million users as of January 2022) and a major growth market.¹¹² Twitter management has publicly expressed that India is a “priority market” for Twitter.¹¹³ Twitter has invested in designing new features specific to India’s users, such as a special cricket tab and the ability to conduct transactions over the platform, to make it

¹⁰⁹ Manish Singh, *Facebook, Twitter, WhatsApp face tougher rules in India*, TECH CRUNCH, (Feb. 25, 2021), <https://techcrunch.com/2021/02/25/india-announces-sweeping-guidelines-for-social-media-on-demand-streaming-firms-and-digital-news-outlets/>.

¹¹⁰ <https://developer.twitter.com/en/docs/twitter-api>.

¹¹¹ See <https://blogs.lse.ac.uk/impactofsocialsciences/2015/09/28/challenges-of-using-twitter-as-a-data-source-resources/>; <https://towardsdatascience.com/limitations-of-twitter-data-94954850cacf>; Easy Data, Hard Data: The politics and pragmatics of Twitter research after the computational turn, <https://snurb.info/files/2015/Easy%20Data,%20Hard%20Data.pdf>; Rory Quinn, *Gathering Twitter Data*, DEGREES OF BELIEF, Oct. 12, 2019, <https://degreesofbelief.roryquinn.com/gathering-twitter-data>; Andrew Hutchinson, *What’s Wrong with Twitter - and How do You Fix it?*, Social Media Today, <https://www.socialmediatoday.com/social-networks/whats-wrong-twitter-and-how-do-you-fix-it>. See also *Defending and Respecting the Rights of People Using Our Service*, Twitter, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice> (last visited Apr. 3, 2021).

¹¹² CNBCTV18.com, *Twitter in India is hiring, to focus on country-specific products: Report*, CNBCTV18, (Mar. 30, 2022), <https://www.cnbctv18.com/technology/twitter-india-is-hiring-to-focus-on-country-specific-products-report-12995972.htm>.

¹¹³ CNBCTV18.com, *supra* note 85, ““Today there are close to 6 million developers in India. Twitter too has strong aspirations for India, a priority market for us. We are constantly piloting new features and learning from people’s experience on the service...’said Apurva Dalal, Engineering Site Lead at Twitter.”

even more appealing to its Indian demographic.¹¹⁴ According to Apurva Dala, Engineering Site Lead at Twitter India, “the company has a roadmap to achieve growth that aligns with its global goal of reaching 315 mDAU (number of monetizable daily active Twitter users) by quarter four 2023.”¹¹⁵ As Twitter’s investment and commercial interests in India grow, so too should concern and accountability for Twitter’s failure to uphold its commitments, particularly facing marginalized and disfavored groups (including Kashmiris).

C. YouTube

YouTube, owned by Alphabet Inc. (Google), has worked in concert with the Indian administration to ban approximately 78 YouTube channels since India enacted “emergency” information technology rules in 2021.¹¹⁶ In April 2022, YouTube blocked 22 of the 78 channels, which had garnered approximately 2.6 billion views.¹¹⁷ India’s Ministry of Information and Broadcasting stated that “Multiple YouTube channels were used to post fake news on various subjects such as the Indian Armed Forces, Jammu and Kashmir, etc.”¹¹⁸ According to a Reuter’s article from February 2022, Google has said that it, “where appropriate restrict[s] or remove[s] content in keeping with local laws” of India.¹¹⁹ Alphabet appears to be unabashedly aiding and abetting the Indian administration’s suppression of information deemed unfavorable to it and the expression of marginalized and disfavored groups (including Kashmiris).

¹¹⁴ CNBCTV18.com, *supra* note 85.

¹¹⁵ Anumeha Chaturvedi, *Committed to expanding tech teams in India, says Twitter*, THE ECONOMIC TIMES, INDIAN TIMES, (Mar. 29, 2022), <https://economictimes.indiatimes.com/tech/technology/committed-to-expanding-tech-teams-in-india-says-twitter/articleshow/90519113.cms>.

¹¹⁶ Manish Singh, *India blocks 22 YouTube channels over national security concerns*, TECH CRUNCH, (April 5, 2022), <https://techcrunch.com/2022/04/05/india-blocks-22-youtube-channels-over-national-security-concerns/>.

¹¹⁷ Singh, *supra* note 90.

¹¹⁸ Singh, *supra* note 90.

¹¹⁹ Aditya Kalra, *Exclusive: In hearted meeting, India seeks tougher action from U.S. tech giants on fake news*, REUTERS, (Feb. 2., 2022), <https://www.reuters.com/world/india/exclusive-heated-meeting-india-seeks-tougher-action-us-tech-giants-fake-news-2022-02-02/>.

III. Applicable Legal Obligations and Responsibilities of the State and Social Media Corporations

Under international law, the Indian government and SMCs have myriad legal obligations and responsibilities applicable to the issues addressed in this report. Among them, they must respect the human rights, including the right to free expression of their users, including their Kashmiri users. They must also prevent hate speech and online abuse on their platforms, including hate speech targeting Kashmiris.

A. International Human Rights Obligations of the Indian State

1. Freedom of Expression

Article 19 of the UDHR states that “everyone has the right to freedom of expression” and “receive and impart information and ideas through any medium and regardless of frontier”.¹²⁰ Freedom of expression is also protected under Article 19 of the ICCPR,¹²¹ which states that people also have the right to “seek, receive and impart information and ideas of all kinds”¹²². Article 19(3) of the ICCPR also allows that right to freedom of expression to be limited when necessary for “protection of national security or of public order (*ordre public*), or of public health or morals.”¹²³ These restrictions must be put in place in a manner that is provided by law and necessary for the maintenance of public order and national security.¹²⁴ Under international law, in order for such restrictions to be legal they must satisfy all of the elements of a three-

¹²⁰ UDHR art. 19.

¹²¹ International Covenant on Civil and Political Rights, Dec. 19, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. The United States became a signatory to the treaty on October 5, 1977 and ratified it on June 8, 1992. India acceded to the treaty on April 10, 1979.

¹²² ICCPR art. 19.

¹²³ ICCPR art. 19(3).

¹²⁴ Rep. of the Special Rapporteur on the Promotion and Protection of the right to freedom of opinion and expression, U.N. Doc. A/HRC/32/38 <https://www.undocs.org/A/HRC/32/38> at ¶7.

prong legality, necessity and proportionality test.¹²⁵ Indian domestic law also incorporates this three-prong legality, necessity and proportionality test.¹²⁶

i. Legality

The legality element of the three-prong test requires restrictions on freedom of speech to be “provided by law.” The Human Rights Council has clarified that this must be law that includes “laws of parliamentary privilege and laws of contempt of court” however, due to the seriousness of the restriction of human rights, they must not be “a restriction to be enshrined in traditional, religious or other customary law.”¹²⁷ Any law meant to restrict freedom of expression must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly” and “must not confer unfettered discretion for the restriction of freedom of expression.”¹²⁸ Applicable Indian laws fail to satisfy the requirement of legality, particularly as they enable government officials to “pick favorites” among SMCs and oblige them to accede to the Indian administration’s demands to take down critical or dissenting posts and content.¹²⁹ As illustrated elsewhere in this report, the SMCs themselves have also demonstrated a willingness to comply with the Indian administration’s requests, including with respect to Kashmiri users.

ii. Proportionality

The proportionality requirement of the three-prong test requires that restrictive measures “must be appropriate to achieve their protective function; they must be the least intrusive

¹²⁵ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Doc. A/HRC/38/35 (2018).

¹²⁶ Adti Agrawal, Facebook, WhatsApp sue Indian government Over Traceability Requirement, Forbes India (May 26, 2021) <https://www.forbesindia.com/article/take-one-big-story-of-the-day/facebook-whatsapp-sue-indian-government-over-traceability-requirement/68175/1>.

¹²⁷ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, ¶24 (Sept. 12, 2011) <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹²⁸ General Comment No. 34, at ¶25.

¹²⁹ Raghav Mendiratta, *India’s IT Rules, 2021: Incompatible with the ICCPR and a Fatal Blow to Democratic Discourse*, OPINIO JURIS <http://opiniojuris.org/2021/05/13/indias-it-rules-2021-incompatible-with-the-iccpr-and-a-fatal-blow-to-democratic-discourse/> (May 13, 2021).

instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected.”¹³⁰ Proportionality also requires that restrictions “take account of the form of expression at issue.”¹³¹

Applicable Indian laws fail to satisfy the requirement of proportionality. For example, the criminal penalties for SMCs who are found to be non-compliant with India’s 2021 information technology laws are not appropriate to achieve their purported protective function, are not proportionate to the interest being protected and do not take the form of expression at issue into account. These penalties create strong chilling effect on free expression and strongly incentive SMCs to violate their commitments, including to protect the right to free expression and comply with international human rights law more generally.

iii. Necessity

The necessity requirement of the three-prong test requires that restrictive measures must be “necessary for the protection of one of the permissible grounds stated in the ICCPR.”¹³² Applicable Indian laws fail to satisfy the requirement of necessity.

The UN Human Rights Council has expressly criticized provisions such as the one in article 19 of the Indian constitution, which allow for restrictions of human rights such as freedom of expression in the name of “[v]ague and unspecified notions of ‘national security’.”¹³³ The Special Rapporteur on the promotion and protection of the right to freedom of expression expressly criticized such provisions, saying that they are “vulnerable to manipulation by the State

¹³⁰ Human Rights Committee, General Comment No. 34, U.N. Doc CCPR/C/GC/34, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> ¶34.

¹³¹ General Comment No. 34, ¶35.

¹³² U.N. Human Rights Off. of High Comm’r, Emergency Measures and Covid-19: Guidance, (April 27, 2020) https://www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures_COVID19.pdf.

¹³³ U.N. Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, ¶58, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

as a means of justifying actions that target vulnerable groups such as human rights defenders, journalists, or activists. It also acts to warrant often unnecessary secrecy around investigations of law enforcement activities, undermining the principles of transparency and accountability.”¹³⁴

These vulnerabilities have been manifest in India and have been very prevalent in India’s administration of IAJK.

2. Limitations on Hate Speech

Recognizing that some speech can lead to violence, however, international human rights law permits reasonable restrictions freedom of expression. Article 20 of the ICCPR states that “propaganda for war” and “advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence” must both be prohibited.¹³⁵ There is particular concern that SMCs have nonetheless allowed hate speech to flourish. In a call to action to curb what he calls a “tsunami of hate and xenophobia in social media,” Special Rapporteur of Minority Issues, Dr. Fernand de Varennes, called for “clarity and consistency in guidance and understanding built upon international human rights law.”¹³⁶ He also called on “social media companies, to do more to flag and, in line with international human rights law, remove racist, misogynist, and other harmful content.”¹³⁷ SMCs are both required to protect free speech and prohibit hate speech. SMCs are subject to the tension created by these sometimes competing mandates under the ICCPR (and other Human Rights instruments such as the Convention on the Elimination of All Forms of Racial Discrimination¹³⁸). However, SMCs are

¹³⁴ *Id.* at ¶60.

¹³⁵ ICCPR art. 20.

¹³⁶ Report: Online Hate Increasing Against Minorities, Says Expert, U.N. Hum. Rts. Off. Of High Comm’r, (Mar. 23, 2021) <https://www.ohchr.org/en/stories/2021/03/report-online-hate-increasing-against-minorities-says-expert>.

¹³⁷ *Id.*

¹³⁸ See: Corporate Human Rights Policy, Facebook, <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf%20> (2021), including CERD as one of the international human rights instruments it utilizes.

failing in both of these mandates. As otherwise described in this report, their failures appear to be driven by their profit motive and the interests of the powerful state actors that they seek to please in pursuit of greater profits and come at the expense of groups targeted, marginalized and disfavored by those powerful interests.

3. India's Modifications to the ICCPR

India has signed on to the ICCPR and has incorporated its provisions into its domestic law. Upon acceding to the treaty, India also included several reservations to its obligations, stating that “with reference to articles 12, 19(3), 21, and 22 of the [ICCPR], the Government of the Republic of India declares that the provisions of the said [article] shall be so applied as to be in conformity with the provisions of article 19 of the Constitution of India.”¹³⁹ Article 19 of India's constitution provides that all citizens “shall have the right to freedom of speech and expression.”¹⁴⁰ This right is limited by article 19(2), which allows the government to create laws restricting free expression in order to preserve “the security of the State, friendly relations with foreign States, public order, decency or morality” or “in relation to...incitement to an offence.”¹⁴¹

Reservations modify for the reserving state the provisions of a treaty,¹⁴² however the reservation must not be “incompatible with the object and purpose of the treaty.”¹⁴³

Declarations, as India has applied to article 19(3) of the ICCPR, do not modify the terms of the treaty and only clarify the state's position on “the scope attributed by the declarant to the

¹³⁹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en

¹⁴⁰ Constitution of India, Nov. 26, 1949, art.19(1)(a).

¹⁴¹ Constitution of India, Nov. 26, 1949, art. 19(2).

¹⁴² Vienna Convention of the Law of Treaties, art. 21(1)(a), *entry into force* Jan. 27, 1980, 1155 U.N.T.S. 331 [VCLT].

¹⁴³ VCLT art. 19(c).

treaty.”¹⁴⁴ Since the relevant portion of the declaration only applied to article 19(3) of the ICCPR (the provisions concerning limitations restrictions for the protection of public order and national security), the other binding provisions of Article 19 of the ICCPR should apply under Indian law without being subject to any limitations under India’s constitution. Accordingly, all of the binding provisions of Article 19 of the ICCPR apply under Indian law. The only applicable reservation concerns limitations for the protection of public order and national security. However, even these presumptive restrictions are subject to the requirements of mandatory international law, including the principles of legality, proportionality and necessity.

Furthermore, the standard for SMCs should be international human rights law and not any country’s domestic law. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, outlined, companies should be able to “rely on fundamental norms to protect their expression over and above what national law might curtail.”¹⁴⁵ To comply with human rights rules and norms, SMCs should protect free expression and fundamental freedoms where those come into conflict with the domestic law of the countries in which they operate.

B. Social Media Companies’ Corporate Responsibility to Protect and Respect Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by the Human Rights Council in 2011 and confirmed that companies are responsible for respecting human rights under legal instruments such as the International Covenant for Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights

¹⁴⁴ Third Report on Reservations to Treaties, by Mr. Alain Pellet, Special Rapporteur, ¶1.2 U.N. Doc. A/CN.4/491 (1998).

¹⁴⁵ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, ¶43 U.N. Doc. A/HRC/38/35 (2018).

(UDHR).¹⁴⁶ The UNGPs are based on a “Protect, Respect, Remedy” framework.¹⁴⁷ This framework compiles legal obligations for states and responsibilities for businesses. For states, the UNGPs require “protection against human rights abuse within their territory by third parties, including business enterprises.” The UNGPs require companies to respect human rights and “avoid causing or contributing to adverse human rights impacts through their own activities” and “prevent or mitigate adverse human rights impacts that are directly linked to their operations.”¹⁴⁸ These responsibilities exist independent of the domestic law or demands of the states in which such businesses operate.

Article 15 of the UNPGS creates an outline of how businesses can meet their obligations. These include creating “a policy commitment to meet their responsibility to respect human rights,” drafting a “human rights due diligence process,” and developing methods to “enable the remediation of any adverse human rights impacts.”¹⁴⁹ This due diligence requirement is considered the heart of the UNGPS¹⁵⁰ and is the clearest standard for companies to meet.

Both Facebook and Twitter have voluntarily accepted the UNGPs. Moreover, the oversight programs and other grievance mechanisms put into place by these companies, like the Facebook Oversight Board, are supposed to ensure compliance with international obligations and regulate

¹⁴⁶Working Group on Bus. And Hum. Rts, Corporate Human Rights Due Diligence – Identifying and Leveraging Emerging Practices, <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>.

¹⁴⁷ Rep. of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, U.N. Doc A/HRC/17/3, ¶5(2011) at https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

¹⁴⁸ UNITED NATIONS HUM. RTS. OFF. OF HIGH COMM’R, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, at art. 13, U.N Doc. HR/PUB/11/04.

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (2011).

¹⁴⁹ UNGPS at art. 15.

¹⁵⁰ See: Björn Fasterling & Greet Demijnk, Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights, 116 J Business Ethics 4 799-814 (2013).

<https://www.jstor.org/stable/42002502?seq=3>; Md. Abdur Razzak, Corporate Responsibility to Respect Human Rights Through the Practice of Human Rights Due Diligence, ILA Reporter, <https://ilareporter.org.au/2020/02/corporate-responsibility-to-respect-human-rights-through-the-practice-of-human-rights-due-diligence-md-abdur-razzak/> (01/02/2022).

corporate policies through a human rights framework. However, there are serious problems with these bodies, as they are voluntary self-governance procedures that companies can (and do) choose to disregard. This is contrary to SMCs' commitments. A spokesperson for Facebook, for example, has said these are "not a minimalist posture."¹⁵¹ They have not been treated with concomitant seriousness.

1. Twitter's Legal Commitments

Twitter states that "defending and respecting the user's voice is one of our core values... This value is a two-part commitment to freedom of expression and privacy. Transparency is also a part of this commitment."¹⁵² Twitter has also expressed its commitment to freedom of expression by specifically invoking the UNGPs and must be held to these commitments.¹⁵³ However, Twitter's submissive posture towards the Indian administration's surveillance and suppression measures described elsewhere in this report demonstrates that Twitter has not lived up to its commitments and values, including in IAJK and with respect to Kashmiris.

Twitter also emphasizes its commitment to operating a robust "Trust and Safety team" who will "understand the impact certain decisions may have on the people and organizations using our service, for example: entering new markets; releasing new product features."¹⁵⁴ Given Twitter's desire to grow in the Indian market,¹⁵⁵ Twitter has followed the laws of an increasingly

¹⁵¹ Miranda Sissons, Facebook's Commitment to Human Rights, *Opinio Juris*, <http://opiniojuris.org/2021/03/16/facebooks-commitment-to-human-rights/> (Mar. 16, 2021).

¹⁵² Defending and Respecting the Rights of People Using Our Service, Twitter, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice> (last visited Apr. 3, 2021).

¹⁵³ Defending and Respecting the Rights of People Using Our Service, Twitter, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice> (last visited Apr. 3, 2021).

¹⁵⁴ Defending and Respecting the Rights of People Using Our Service, Twitter, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice> (last visited Apr. 3, 2021).

¹⁵⁵ Chaturvedi, *supra* note 91.

authoritarian state that violate human rights norms and Twitter’s commitments.¹⁵⁶ It is clear that Twitter’s Trust and Safety team has been ineffective in India or that Twitter has chosen not uphold its commitments in India.

2. Facebook’s Legal Commitments

Facebook has committed to several international legal instruments. In 2021, it released a Corporate Human Rights Policy, which stated that it was committed to “respecting human rights as set out in the United Nations Guiding Principles on Business and Human Rights,” which incorporates the International Bill of Human Rights and the ICCPR.¹⁵⁷ It has also joined a multi-stakeholder organization called the Global Network Initiative, which imposes its own set of human rights obligations on its members.¹⁵⁸

Facebook has created a compliance oversight mechanism by establishing the Facebook Oversight Board which began operation in 2020.¹⁵⁹ The Oversight Board is a body of 20 experts picked by Facebook to provide oversight on Facebook’s policy decisions.¹⁶⁰ The Oversight Board includes legal experts, former civil servants, and journalists.¹⁶¹ Facebook funds the Oversight Board through a \$130 million trust. Facebook stresses that, despite this funding, the Oversight Board operates independently.¹⁶² The Oversight Board serves as a venue to appeal

¹⁵⁶ Manish Singh, *Twitter now in compliance with India’s new IT rules, government says*, TECH CRUNCH, (Aug. 10, 2021), <https://techcrunch.com/2021/02/25/india-announces-sweeping-guidelines-for-social-media-on-demand-streaming-firms-and-digital-news-outlets/>.

¹⁵⁷ Corporate Human Rights Policy, Facebook, <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf%20> (2021).

¹⁵⁸ The GNI Principles, Global Network Initiative, <https://globalnetworkinitiative.org/gni-principles/> (last accessed Apr. 20, 2022).

¹⁵⁹ Nick Clegg, *Welcoming the Oversight Board*, META (May 6, 2020), <https://about.fb.com/news/2020/05/welcoming-the-oversight-board/>.

¹⁶⁰ Cecilia Kang, *What is the Facebook Oversight Board*, N.Y. TIMES, (May 5, 2021), <https://www.nytimes.com/2021/05/05/technology/What-Is-the-Facebook-Oversight-Board.html>.

¹⁶¹ Meta, *Meet the Board*, <https://www.oversightboard.com/meet-the-board/>.

¹⁶² Kang, *supra* note 42.

content take down decisions made by Facebook¹⁶³ and began accepting cases in 2020. In the Facebook Oversight Board Charter, the Oversight Board states that it will “review content enforcement decisions and determine whether they were consistent with Facebook’s content policies and values.”¹⁶⁴

The Oversight Board has made several human rights commitments. First, the Oversight Board has committed to following Facebook’s Content Policy Values in making moderation decisions.¹⁶⁵ These values have been distilled into: Voice (“The goal of our Community Standards has always been to create a place for expression and give people voice...Building community and bringing the world closer together depends on people’s ability to share diverse views, experiences, ideas and information.”), Authenticity (“We want to make sure the content people are seeing on Facebook is authentic. We believe that authenticity creates a better environment for sharing, and that’s why we don’t want people using Facebook to misrepresent who they are or what they’re doing.”), Safety (“We are committed to making Facebook a safe place. Expression that threatens people has the potential to intimidate, exclude or silence others and isn’t allowed on Facebook.”), Privacy (“We are committed to protecting personal privacy and information. Privacy gives people the freedom to be themselves, and to choose how and when to share on Facebook and to connect more easily.”), and Dignity (“We believe that all people are equal in dignity and rights. We expect that people will respect the dignity of others and not harass or degrade others.”).¹⁶⁶ Second, the Oversight Board is governed by a charter which states that the “purpose of the board is to protect free expression making principled,

¹⁶³ Meta, *Appeals Process*, <https://www.oversightboard.com/appeals-process/>.

¹⁶⁴ Oversight Board, Oversight Board Charter, https://about.fb.com/wp-content/uploads/2019/09/oversight_board_charter.pdf art. 2, section 2.

¹⁶⁵ Meta, *Meet the Board*, <https://www.oversightboard.com/meet-the-board/>.

¹⁶⁶ Meta, *Meet the Board*, <https://www.oversightboard.com/meet-the-board/>.

independent decisions about important pieces of content and by issuing policy advisory opinions on Facebook’s content policies.”¹⁶⁷

The Oversight Board’s primary function is to process appeals of takedown orders from Facebook or Instagram.¹⁶⁸ Appeals may only be made if Facebook has already reviewed the contested takedown decision.¹⁶⁹ However, the Oversight Board also accepts referrals for policy advisory opinions,¹⁷⁰ and accepts commentary from the public on potential policy decisions.¹⁷¹ Ultimately, the implementation of these policy recommendations is contingent on Facebook’s willingness to implement them.

3. Private Oversight Mechanisms and other Grievance Mechanisms

i. GNI Principles

The Global Network Initiative (GNI) is an independent human rights oversight organization that releases human rights principles and Facebook has committed itself to “implementing the [GNI] Principles on Freedom of Expression and Privacy” and its compliance with that commitment is assessed regularly.¹⁷² However, although it creates rules and oversight for companies, the enforcement of these principles is difficult to assess. Furthermore, there are significant concerns with the financial incentives surrounding continued membership in GNI, further complicating enforcement.

¹⁶⁷ Oversight Board, Oversight Board Charter, 2, (2019) <https://oversightboard.com/governance/>.

¹⁶⁸ Appealing Content Decisions on Facebook or Instagram, Oversight Board, <https://oversightboard.com/appeals-process/> (last visited Apr. 3, 2021).

¹⁶⁹ *Id.*

¹⁷⁰ Jennifer Broxmeyer, *Oversight Board Selects First Policy Advisory Opinion Requests to Review*, Meta (June 15, 2021), <https://about.fb.com/news/2021/06/oversight-board-selects-first-policy-advisory-opinion-request-to-review/>.

¹⁷¹ Oversight Board Opens Public Comments for Policy Advisory Opinion on Cross-Check, Oversight Board (Dec. 2021) <https://oversightboard.com/news/485696136104748-oversight-board-opens-public-comments-for-policy-advisory-opinion-on-cross-check/>.

¹⁷² *Corporate Human Rights Policy*, FACEBOOK, <https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf%20> (2021).

GNI is a multistakeholder organization based on internationally recognized human rights as enshrined in the ICCPR and the UNGPS.¹⁷³ Furthermore, the GNI principles create a specific obligation that companies like Facebook will “respect and work to protect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions on freedom of expression.”¹⁷⁴ Consistent with commitments outlined in the ICCPR, the GNI principles specify that any restrictions on freedom of expression should be consistent with international human rights laws and be necessary and proportionate to the relevant purpose.¹⁷⁵

A key portion of the GNI principles calls on members like Facebook to develop mitigation strategies to handle domestic laws that come in conflict with international standards for freedom of expression.¹⁷⁶ This includes an evaluation over whether the company’s continued presence in the jurisdiction might enable human rights abuses.¹⁷⁷

These assessments occur every two years, and the last one was released on April 22, 2020 to assess Facebook’s progress at implementing the GNI principles.¹⁷⁸ The summary of GNI assessments of companies is publicly available. The 2020 report did reveal that Facebook had previously received nine areas of improvement in 2018 and had only fully addressed three of

¹⁷³ About GNI, GLOBAL NETWORK INITIATIVE, <https://globalnetworkinitiative.org/about-gni/> (last visited Apr. 12, 2021).

¹⁷⁴ The GNI Principles, GLOBAL NETWORK INITIATIVE, <https://globalnetworkinitiative.org/gni-principles/> (last visited Apr. 12, 2021).

¹⁷⁵ *Id.*

¹⁷⁶ *The Operation of the GNI Principles When Local Law Conflicts with Internationally Recognized Human Rights*, GLOBAL NETWORK INITIATIVE, <https://globalnetworkinitiative.org/operating-difficult-jurisdictions/> (last visited April 12, 2022).

¹⁷⁷ *Id.*

¹⁷⁸ *Tech and Telecom Companies Make Progress Implementing the Global Network Initiative’s Principles on Freedom of Expression and Privacy*, GLOBAL NETWORK INITIATIVE (Apr. 22, 2020) <https://globalnetworkinitiative.org/tech-and-telecom-companies-make-progress-implementing-the-global-network-initiatives-principles-on-freedom-of-expression-and-privacy/>.

them.¹⁷⁹ GNI, however does not release the specific recommendations given to companies and therefore it is unclear where Facebook has failed to implement changes.

A major issue with the GNI principles is a lack of enforcement mechanisms. GNI is funded primarily by member companies. GNI's structure seems to encourage companies to remain members even if they do not adhere to its principles. According to GNI's Form 990, Facebook gave \$100,000 USD in contributions in 2020. This represents a substantial share of GNI's 2020 revenue of \$1.6 million.¹⁸⁰ Other companies gave similar amounts of funding, and membership income amounted to \$835,530 of their funding—half of their yearly revenue.¹⁸¹ The New York University Center for Business and Human Rights resigned from their GNI membership. Their resignation letter noted that the “current structure and funding model makes it unable to meet the pressing human rights challenges it was established to address.”¹⁸² The letter also noted that the GNI Board had voted in 2015 to eliminate compliance from its principles. It instead imposed a softer set of obligations on companies to “commit” to the principles and make a “good faith effort to implement and apply them.”¹⁸³ The combination of low standards, lack of enforcement mechanisms, and corporate capture obviates meaningful enforcement when member companies like Facebook fail to uphold the principles by failing to protect the freedom of expression of its users (including its Kashmiri users).

¹⁷⁹ See: *The GNI Principles at Work, Public Report on the Third Cycle of Independent Assessments of GNI Company Members*, 2018/2019, GLOBAL NETWORK INITIATIVE (2020), 51-53. <https://globalnetworkinitiative.org/wp-content/uploads/2020/04/2018-2019-PAR.pdf>.

¹⁸⁰ *Financials*, GNI Annual Report, GLOBAL NETWORK INITIATIVE https://globalnetworkinitiative.org/wp-content/uploads/2022/03/GNI-Annual_Report-2020.pdf (2020).

¹⁸¹ *Id.*

¹⁸² Sarah Labowitz & Michael Posner, *NYU Center for business and Human Rights Resigns Its Membership in the Global Network Initiative*, NYU STERN CENTER FOR BUSINESS AND HUMAN RIGHTS, (Feb. 1, 2016) <https://bhr.stern.nyu.edu/blogs/cbhr-letter-of-resignation-gni>.

¹⁸³ *Id.*

As described elsewhere in this report, Facebook and other SMCs are violating their commitments to uphold human rights laws and norms. In the case of IAJK, Facebook is acting at the behest of an Indian administration which is violating human rights and therefore both itself violating human rights and aiding and abetting India's violations. Contrary to its obligations and commitments, Facebook is not respecting human rights or meeting its diligence requirements to enable remediation of human rights impacts. Instead, Facebook and others have created a nominally compliant and independent oversight organization in GNI that appears in fact to be captive and toothless. Facebook's efforts appear to amount to "bluewashing" – effectively, marketing to deflect attention from harmful or violative practices.

ii. Facebook's Human Rights Impact Assessments

Facebook has released its own assessments of the impact of its presence in Myanmar,¹⁸⁴ Sri Lanka,¹⁸⁵ Cambodia,¹⁸⁶ and Indonesia¹⁸⁷ however, Facebook has still not released a full version of its report of its Human Rights Impact in India. These reports are important because they are undertaken by independent entities and purport to use methodologies in line with the UNGPs.¹⁸⁸

Facebook commissioned the law firm Foley Hoag to draft a report on its activities in India in 2019.¹⁸⁹ The report was completed on June 30, 2021¹⁹⁰, however it has not been made

¹⁸⁴ Alex Warofka, An Independent Assessment of the Human Rights Impact of Facebook in Myanmar, Meta <https://about.fb.com/news/2018/11/myanmar-hria/> (Nov. 5, 2018).

¹⁸⁵ FACEBOOK RESPONSE: SRI LANKA HUMAN RIGHTS IMPACT ASSESSMENT, FACEBOOK, <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Sri-Lanka-HRIA.pdf>.

¹⁸⁶ FACEBOOK RESPONSE, CAMBODIA HUMAN RIGHTS IMPACT ASSESSMENT, FACEBOOK, <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Cambodia-HRIA.pdf>.

¹⁸⁷ FACEBOOK RESPONSE, INDONESIA HUMAN RIGHTS IMPACT ASSESSMENT, FACEBOOK <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Indonesia-HRIA.pdf>.

¹⁸⁸ Alex Warofka, An Independent Assessment of the Human Rights Impact of Facebook in Myanmar, Meta <https://about.fb.com/news/2018/11/myanmar-hria/> (Nov. 5, 2018).

¹⁸⁹ Billy Perrigo, *Facebook's Ties to India's Ruling Party Complicate Its Fight Against Hate Speech*, TIME, (Aug. 27, 2020) <https://time.com/5883993/india-facebook-hate-speech-bjp/>.

¹⁹⁰ <https://about.fb.com/wp-content/uploads/2022/07/Meta-Human-Rights-Report-July-2022.pdf> at 57

available to the public. In early 2022, reports emerged that Facebook was suppressing the impact report,¹⁹¹ and in response, human rights groups including Human Rights Watch, Amnesty International, and ARTICLE 19 put out a call for its release.¹⁹²

In July 2022, Meta released an annual human rights report that included a summary of its impact report on its activities in India.¹⁹³ The report claimed that Meta had “provided an invaluable space for civil society to organize and gain momentum, provided users with essential information and facts on voting, and also enabled important public health updates.”¹⁹⁴ The summary of the report was silent on the allegations that Meta had interfered with the democratic process in India. It also only discussed the impact of the proliferation of hate speech and biased moderation policies in the hypothetical, without acknowledging its own responsibility for biased moderation policies and facilitation of the proliferation of hate speech in India.¹⁹⁵

The report made several vague commitments to expand Meta’s participation in the Resiliency Initiative and reaffirmed its commitment to transparency by sharing its Transparency Center Reports.¹⁹⁶ However these reports only show what civil society has already raised the alarm over--that Meta has received, and honored, an increase in information requests from the Indian government.¹⁹⁷ They also show that Meta has decreased the amount of content it has

¹⁹¹ Newley Purnell, *Facebook is Stifling Independent Report on its Impact in India*, *Human Rights Groups Say*, WALL STREET JOURNAL, (Nov. 12, 2021) <https://www.wsj.com/articles/facebook-is-stifling-independent-report-on-its-impact-in-india-human-rights-groups-say-11636725601?mg=prod/com-wsj>.

¹⁹² Release of the Human Rights Impact Assessment of Facebook in India, Association for Progressive Communications, <https://www.apc.org/en/pubs/release-human-rights-impact-assessment-facebook-india> (January, 3, 2022); Niha Masih, *Rights Groups Push Facebook to Release India Human Rights Assessment*, WASH. POST, <https://www.washingtonpost.com/world/2022/01/19/india-facebook-assessment/> (Jan. 19, 2022).

¹⁹³ *Meta Human Rights Report: Insights and Actions 2020-2021*, META, July 2022, https://about.fb.com/wp-content/uploads/2022/07/Meta_Human-Rights-Report-July-2022.pdf

¹⁹⁴ *Id.* at 59.

¹⁹⁵ *Id.* at 60.

¹⁹⁶ *Id.*

¹⁹⁷ *Government Data Requests: India*, TRANSPARENCY CENTER, <https://transparency.fb.com/data/government-data-requests/country/IN/> (last accessed October 21, 2022).

restricted based on local Indian law¹⁹⁸, however it has not shared country specific data regarding the volume of content that is deleted for other reasons, such as violations of Facebook’s Community Guidelines.

iii. Twitter Trust and Safety Council

Twitter established a Trust and Safety Council in 2016, a group of 40 civil society organizations to advise on “products, policies, and programs.”¹⁹⁹ However, there is little transparency as to the activity of this group, and as Twitter itself has stated, “[they] haven’t done enough to share that externally.”²⁰⁰ Furthermore, there have been concerning reports that the Trust and Safety Council goes unheard and that there is little in the way of collaboration, let alone oversight.²⁰¹

In December of 2021, Twitter released an update on their work with the Trust and Safety Council.²⁰² However, the update represents a snapshot of “some of the work [they’ve] accomplished hand-in-hand-with these trusted partners”²⁰³ and does not represent the level of transparency that even the Facebook Oversight Board meets.

Furthermore, since the takeover by Elon Musk, Twitter has downsized substantially. Allegedly, on November 3, 2022, the entire Human Rights team at Twitter was fired.²⁰⁴

¹⁹⁸ *Content Restrictions Based on Local Law: India*, TRANSPARENCY CENTER, <https://transparency.fb.com/data/content-restrictions/country/IN/> (last accessed Oct. 21, 2022).

¹⁹⁹ Patricia Cartes, *Announcing the Twitter Trust & Safety Council*, TWITTER (Feb. 09, 2016), https://blog.twitter.com/en_us/a/2016/announcing-the-twitter-trust-safety-council.

²⁰⁰ Nick Pickles, *Strengthening our Trust and Safety Council*, TWITTER (Dec. 13, 2019), https://blog.twitter.com/en_us/topics/company/2019/strengthening-our-trust-and-safety-council.

²⁰¹ Louise Matsakis, *Twitter Trust and Safety Advisers Say They’re Being Ignored*, WIRED (Aug. 23, 2019), <https://www.wired.com/story/twitter-trust-and-safety-council-letter/>.

²⁰² Twitter Safety, *Our Continued Collaboration with Trusted Partners*, TWITTER, (Dec. 17, 2021), https://blog.twitter.com/en_us/topics/company/2021/our-continued-collaboration-with-trusted-partners.

²⁰³ *Id.*

²⁰⁴ Shannon Raj Singh, @ShannonRSingh, TWITTER (Nov. 4, 2022, 1:58 PM), <https://twitter.com/ShannonRSingh/status/1588591603622772736>.

IV. Action Items and Methods for Human Rights Defenders

Despite India's and SMCs' nominal acceptance of international human rights law and norms, their flagrant violations demonstrate a lack of actual commitment to such standards. The available facts point to consistent and rampant violations with such commitments serving primarily as a marketing technique to deflect attention from violations and neutralize potential outrage at their conduct.

Obvious mechanisms for accountability for these violations do not exist. It is unreasonable to expect India or the SMCs to voluntarily respect human rights laws and norms or voluntarily submit to any substantive accountability for their violations – they appear to be at pains to avoid any such accountability. Therefore, to seek accountability for human rights violations by these parties in IAJK and of Kashmiris, non-traditional and creative tactics are required. We offer here a non-exhaustive list of such actions that might be taken.

1. Establish a wide reaching social media campaign regarding social platform non-neutrality

Data philanthropy efforts,²⁰⁵ the use of social media data on financial platforms like Bloomberg terminals,²⁰⁶ and projects based on data from social media to use analytics to draw scientific conclusions²⁰⁷ create an illusion of neutrality. The choices made by Facebook, Twitter and other SMCs are not neutral, no matter their attempts to hide behind algorithms, policies and data. Users of SMCs' platforms may not realize that such choices amplify certain content and suppress other content, or the extent of or implications of such non-neutrality or their personal

²⁰⁵ *Twitter for Good*, About, TWITTER, <https://about.twitter.com/en/who-we-are/twitter-for-good> (last visited Apr. 12, 2021).

²⁰⁶ Press Release, *Bloomberg Integrates Live Twitter Feeds with Financial Platform*, BLOOMBERG (Apr. 04, 2013), <https://www.bloomberg.com/company/press/bloomberg-integrates-live-twitter-feeds-with-financial-platform/>.

²⁰⁷ *Discovery*, UN GLOBAL PULSE, <https://www.unglobalpulse.org/discovery/> (last visited Apr. 12, 2021).

role in empowering it (by being content-creators for such companies without also demanding substantive reform).

There is significant opportunity to establish a campaign around this generally, which could also expose SMCs' violations in IAJK or affecting Kashmiris. In the U.S., organizations like Color of Change, the Anti-Defamation League, and Common Sense Media have appealed to the U.S. Congress to hold SMCs like Facebook accountable for the ways "the company handled misinformation, hate speech and Trump's efforts to question the validity of mail-in ballots."²⁰⁸ Individuals in the U.S. wishing to increase awareness of and accountability for India's violations in IAJK and SMCs' role in aiding and abetting such violations could approach these organizations with the context and analysis set forth in this report (and other works) to inform the development and deployment of such a campaign.

2. Advocate for scrutiny of social media platforms' pricing schemes for political parties

Evidence of Facebook's uneven price structures for political parties in India and abroad²⁰⁹ are deeply concerning. It is impossible for ordinary users to know what political biases inform the ads that they see. Furthermore, the outsize effect this can have on a political campaign has grave implications for democratic discourse. However, there does not seem to be effective regulation in this area.

²⁰⁸ Naomi Nix and Anna Edgerton, *Civil Rights Groups Pressure Feds for Social Media Reform*, GOVERNMENT TECHNOLOGY, BLOOMBERG NEWS, (July 19, 2021), <https://www.govtech.com/policy/civil-rights-groups-pressure-feds-for-social-media-reform>.

²⁰⁹ Kumar Sambhav & Nayantara Ranganathan, *Facebook Charged BJP Less for India Election Ads than Others*, AL JAZEERA, (Mar. 16, 2022), <https://www.aljazeera.com/economy/2022/3/16/facebook-charged-bjp-lower-rates-for-india-polls-ads-than-others>; Jeremy B. Merrill, *Facebook Charged Biden a Higher Price Than Trump for Campaign Ads*, THE MARKUP, (Oct. 29, 2020), <https://themarkup.org/election-2020/2020/10/29/facebook-political-ad-targeting-algorithm-prices-trump-biden>.

Advocacy for neutrality in political advertising offers an opportunity to draw attention on the human rights abuses that Facebook and other SMCs commit and enable in IAJK. In the U.S., organizations like the American Bar Association have produced reports detailing the implications of political advertising on SMCs.²¹⁰ Advocates wishing to shed light on the human rights situation in IAJK could bring the context and analysis set forth in this report (and other works) to the attention of those, like the ABA, who are already engaged on such issues so that there is more attention paid to, and scrutiny of, the IAJK context. Activists could demand that Facebook and other SMCs release comprehensive reports detailing the advertising and pricing schemes for political parties and elections in various countries. If there are disparities, SMCs should be required to provide detailed demonstration of how such differentiated treatment comports with their commitments.

3. Demand that Facebook release its Human Rights Impact Assessment for India

Facebook has still not released the full version of its Human Right Impact Assessment for India which it commissioned in 2020. It must release this report to the public. The concerns detailed throughout this report about the hate speech against Muslims, the content moderation decisions that silence Kashmiri users, and the relationship between Facebook and the ruling party in India highlight critical concerns regarding Facebook's committing and enabling human rights abuses. The Meta Human Rights Report summary of its finding in India is an insufficient response to the concerns raised about Meta's activities in India. As of January 3, 2022, a coalition of human rights organizations including but not limited to Human Rights Watch, Amnesty International, India Civil Watch International, Defend Democracy, and Accountable

²¹⁰ Laura Nott, *Political Advertising on Social Media Platforms*, (June 25, 2020), ABA, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/.

Tech sent a letter to Miranda Sissons, Facebook’s Director of Human Rights, demanding that this report be released.²¹¹ Human Rights Watch has also criticized the insufficiency of the summary of the report, and also highlighted the fact that it has failed to measure key concerns, such as bias in content moderation.²¹² Advocates could join calls to release this report, and demand transparency on the role of Facebook in enabling human rights abuses in India and IAJK. In doing so, they could help shed light on the human rights abuses occurring in IAJK, and help explain how Facebook’s facilitation of anti-Kashmiri and anti-Muslim hate speech and stifling of Kashmiri activism are furthering such abuses.

4. Demand the revocation of laws that undermine end-to-end encryption

India’s laws authorize the Indian government’s breaking of end-to-end encryption and legalizes the government’s breaching of user privacy, surveilling users and violating users’ rights. The international community must do more to underscore how India’s laws violate international human rights laws and norms. Clément N. Voule, the UN’s Special Rapporteur on freedom of peaceful assembly and association, produced a Human Rights Council report on Internet Shutdowns, and a follow up addendum in 2021, stating how “shutdowns are lasting longer, becoming harder to detect and targeting particular social media and messaging applications and specific locations and communities.”²¹³ That report also suggests the promotion of “strong encryption, including by adopting laws, regulations, and policies in line with international human rights norms and standards.”²¹⁴ Advocates could use the UN’s report, this

²¹¹ APC, *Release of Human Rights Impact Assessment of Facebook in India*, Published January 21, 2022, <https://www.apc.org/en/pubs/release-human-rights-impact-assessment-facebook-india>.

²¹² Deborah Brown & Jayshree Bajoria, *Meta and Hate Speech in India*, HUMAN RIGHTS WATCH (Jul. 21, 2022), <https://www.hrw.org/news/2022/07/21/meta-and-hate-speech-india>

²¹³ Clément N. Voule, *Ending Internet Shutdowns: a path forward*, at 2, A/HRC/47/24/Add.2, HUMAN RIGHTS COUNCIL, (June 15, 2021), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/149/66/PDF/G2114966.pdf?OpenElement>, hereinafter “Voule Addendum.”

²¹⁴ Voule Addendum, *supra* note 157, at 18.

report and other available materials to lobby states to pressure India to pass laws that protect strong end-to-end encryption.

5. Demand that Facebook release its blacklist and whitelist.

There are significant concerns with Facebook’s methodology for content moderation decisions, particularly regarding what constitutes dangerous content.²¹⁵ The silencing of the voices of targeted, marginalized, disempowered people who suffer rampant violations like Kashmiris and the preferential treatment given to powerful, ethnonationalist supremacist parties like the BJP²¹⁶ (even as party members flagrantly violate Facebook’s hate speech rules),²¹⁷ demonstrate that Facebook’s moderation is presumptively discriminatory. The Facebook Oversight Board has already issued a formal recommendation for Facebook to publish the list of dangerous organizations and individuals to make clear the biases inherent in its content moderation decisions.²¹⁸ However, as of November 1, 2022, Facebook has not implemented this recommendation and has shared that there is no attempt being made to implement it.²¹⁹ Because of the concerns in the biases behind these decisions, and the disparate and troubling impacts of Facebook’s moderation, it is critically important for Facebook to release this list. Advocates could cite the suppression of Kashmiri voices and the amplification of BJP hate speech as a compelling example of Facebook’s failures and the importance of Facebook’s promptly releasing

²¹⁵ Sam Biddle, *Revealed: Facebook’s Secret Blacklist of “Dangerous Individuals and Organizations”*, THE INTERCEPT (Oct. 12, 2021), <https://theintercept.com/2021/10/12/facebook-secret-blacklist-dangerous/>.

²¹⁶ See, e.g., Billy Perrigo, *Facebook’s Ties to India’s Ruling Party Complicate its Fight Against Hate Speech*, TIME, (Aug. 27, 2020), <https://time.com/5883993/india-facebook-hate-speech-bjp/>.

²¹⁷ See e.g., Maroosha Muzaffar, *How Facebook’s Rules Allow Pro-BJP Advertisers to Escape Stricter Scrutiny*, THE WIRE, (Sept. 18, 2020), <https://thewire.in/tech/facebook-india-elections-bjp-modi>.

²¹⁸ Recommendations, *Recommendation 3*, TRANSPARENCY CENTER, <https://transparency.fb.com/oversight/oversight-board-cases/nazi-quote>.

²¹⁹ Oversight Board Recommendations, 2020-005-FB-UA-3, TRANSPARENCY CENTER, (last updated April 08, 2022), <https://transparency.fb.com/oversight/oversight-board-recommendations/>.

its blacklists and whitelists. Advocacy around this issue could potentially address the Oversight Board, the UN and members of the U.S. Congress.

6. Demand Twitter provide more information about “Country Withheld Content” in India

Twitter’s help center describes Twitter’s “range of enforcement options” regarding Tweets and Twitter accounts.²²⁰ As a part of this information, they claim that “we may withhold access to certain content in a particular country if we receive a valid and properly scoped request from an authorized entity in that country. We also indicate within the product when content has been withheld.”²²¹ While Twitter provides some information about the process for appealing “country withheld content,” advocates could demand that Twitter release a report detailing “Country Withheld Content” in India and in other countries with authoritarian governments. These reports should provide concrete examples of the content that is removed with clear explanations for why they violate particular country-related laws and policies and how the application of such laws and policies complies with international rules and norms.

7. Demand that Twitter establish an oversight board and more robust human rights policy

Although there are significant issues with the Facebook Oversight Board and Corporate Human Rights Policy, they do provide a useful model for other companies. Because of its global reach and impact on political discourse, Twitter should move beyond its current promises to make decisions “informed by” international human rights obligations, and instead adopt a more formal structure. Furthermore, Twitter should consider bringing in a board of experts, in the format of the Facebook Oversight Board, to provide policy recommendations for company

²²⁰ Twitter, *Our Range of Enforcement Options*, TWITTER HELP CENTER, <https://help.twitter.com/en/rules-and-policies/enforcement-options>.

²²¹ Twitter, *supra* note 159.

decisions that may affect the rights of its users. Advocates could push for such reforms at Twitter.

8. Demand a corporate human rights policy from YouTube

While YouTube has policies on harmful or dangerous content; violent or graphic content; violent criminal organizations; hate speech; and harassment and cyberbullying, YouTube does not have policies in particular on respecting human rights law or norms. YouTube also does not provide oversight or transparency regarding its efforts to respect the human rights of its users.²²² Advocates could push for such reforms at YouTube.

9. Deny social media corporations who contribute to human rights suppression tax credits or other tax breaks

At present, SMCs receive tremendous tax breaks from federal and state governments in the United States. From Facebook's 20-year property tax exemption for its data center to Altoona, Iowa,²²³ to San Francisco's "Twitter tax break," which previously provided tax incentives around \$10 million each year for tech companies to establish themselves in San Francisco, SMCs are reaping tax savings to the tune of millions.²²⁴ Advocates could demand state and federal policymakers to disqualify corporations and their affiliates who are aid and abet human rights violations from receiving these types of credits. In the U.S. Congress, members of the Ways and Means Committee have previously explored ways to limit tax breaks for tech

²²² See YouTube policies, https://support.google.com/youtube/answer/2801939?ref_topic=9282436.

²²³ Amy Osborne, *Facebook's tax breaks are thoroughly undeserved. But local governments think they're worth it*, NBCNEWS, (May 13, 2019), <https://www.nbcnews.com/think/opinion/facebook-s-tax-breaks-are-thoroughly-undeserved-local-governments-think-ncna1004561>.

²²⁴ Joyce E. Cuter, "'Twitter Tax Break' in San Francisco Ends Amid Push for New Funds", BLOOMBERG TAX, (May 15, 2019), <https://news.bloombergtax.com/daily-tax-report-state/twitter-tax-break-in-san-francisco-ends-amid-push-for-new-taxes>.

companies.²²⁵ Advocates could bolster efforts to limit such tax breaks by educating U.S. congresspeople on the ways that SMCs are facilitating human rights violations in IAJK.

While the preceding sections provide actions advocates should be taking immediately, the following sections described long-term strategies advocates can use to promote internet freedom.

Method 1: Utilize Social Media’s Viral Capabilities to Spread the Word

Understanding how social media works, and what social media data can and cannot reveal, can be an effective tool in combatting digital authoritarianism. First, in recognizing the nature of social media virality, and how certain tools like the Facebook “share” button exponentially increase viewership capacity, human rights defenders internationally can seek to counteract viral misinformation with social campaigns detailing what is happening on the ground in IAJK. If more social media users across countries and identities took to social media to shed light on how SMCs are helping digital authoritarianism, particularly in IAJK, there would be increased pressure on these companies to adhere to their aforementioned human rights commitments. To successfully report what is happening in IAJK, and avoid completely censored, users in various countries would have to coordinate their posting campaigns, and to persist posting even after content is being removed.

College campuses, and graduate programs like law and public policy schools, could be a venue to pilot and test such campaigns. Students across universities could also develop intercampus networks to coordinate social media strategies and to produce more reports detailing SMCs’ role in bolstering digital authoritarianism.

²²⁵ Kate Dore, *House Democrats propose limit on a popular tech industry tax break*, CNBC, (Sept. 22, 2021), <https://www.cnbc.com/2021/09/22/house-democrats-propose-limit-on-a-popular-tech-industry-tax-break.html>.

Method 2: Boycott, Divest, or Limit Use

One way to demonstrate opposition to SMCs that are aiding and abetting digital authoritarianism in IAJK and around the globe is to deactivate social media accounts and divest any financial stake in these corporations, whether it be through direct investments or mutual funds. The glaring disadvantage of this approach, however, is that these platforms will persist, unless a divestment movement can garner a critical mass of support or sufficient high-profile support. In addition, given the vigorous misinformation campaigns being put out by digital authoritarian states, like India, fueled and supported by SMCs, deactivating or divesting could result in such misinformation going unchallenged and being even more damaging, at least in the short-term.

Additionally, social media, when providing a genuine platform for individuals around the globe to highlight government atrocities, and share their stories, can be an extremely powerful tool. For example, Stand With Kashmir (SWK),²²⁶ a diaspora-driven grassroots movement spreading awareness and solidarity on India's occupation of IAJK provides a plethora of information on social media for individuals looking to learn more about what is happening in IAJK. For example, SWK's "The Kashmir Syllabus"²²⁷ provides an artfully curated 14-week educational program centering "emerging perspectives by Kashmiri scholars, activists and artists, including women and other often marginalized voices."²²⁸ SWK has produced an affiliate podcast "The Kashmir Podcast with Ifat Gazia,"²²⁹ and has put on live Zoom events to raise awareness about "e-occupation" across oppressive regimes. SWK also has an Instagram account with 56,000 followers, post easy to read Instagram posts that provide high level updates of

²²⁶ SWK, *The IAJK Syllabus*, STAND WITH KASHMIR, <https://standwithkashmir.org/the-kashmir-syllabus/>.

²²⁷ SWK, *The IAJK Syllabus*, STAND WITH KASHMIR, <https://standwithkashmir.org/the-kashmir-syllabus/>.

²²⁸ SWK, *The IAJK Syllabus*, STAND WITH KASHMIR, <https://standwithkashmir.org/the-kashmir-syllabus/>.

²²⁹ *The IAJK Podcast with Ifat Gazia*, (2020), <https://open.spotify.com/show/5Nv6x1N7sezA2RRpp2lpI2>.

happenings in IAJK that followers can share with their networks.²³⁰ In other words, to build coalitions across the globe to fight against the Indian human rights violations in IAJK, the very social media platforms exacerbating this problem could be critical resources to the resistance.

Method 3: Shareholder and Stakeholder Activism

Instead of divestment, human rights defenders could educate and seek to organize individuals and institutional investors with strong financial stakes in U.S. SMCs regarding the human rights situation in IAJK and the SMCs' role in aiding human rights violations.²³¹ Since institutional investors like Vanguard Group, Inc. and Black Rock Inc. are among the top investors in corporations like Meta, individuals who have any financial stake with these companies should express their strong concern for how SMCs are aiding and abetting digital authoritarianism in IAJK and around the globe.

Those wishing to apply pressure on SMCs to counteract digital authoritarianism could also seek to organize campaigns among employees at Meta and Twitter. Human rights defenders could consider creating materials marketed specifically to employees of SMCs to show how their employers are contributing to human rights violations. If these employees are armed with additional information on how their employers are helping the Indian government and other oppressive regimes commit human rights abuses, human rights defenders can build coalitions that exert pressure on these companies from within.

²³⁰ Stand With Kashmir, @standwkashmir, INSTAGRAM, <https://www.instagram.com/standwkashmir/?hl=en> (last accessed Apr. 20, 2022).

²³¹ For example, according to Investopedia, "the top individual insider shareholders of Meta are Michael Schroepfer, David Fischer, David Wehner, and the top institutional shareholders are Mark Zuckerberg, Vanguard Group, Inc., and Blackrock Inc. Nathan Reiff, *Top Facebook (Meta) Shareholders*, INVESTOPEDIA, (Feb. 4, 2022), <https://www.investopedia.com/articles/insights/082216/top-9-shareholders-facebook-fb.asp#:~:text=The%20top%20individual%20insider%20shareholders,Inc.%2C%20and%20BlackRock%20Inc.>

V. Conclusion

SMCs play an active and ongoing role in aiding and abetting autocratic and oppressive governments around the globe. The Indian administration has utilized SMCs like Meta and Twitter to tighten their chokehold over IAJK, and to suppress and surveil Kashmiris seeking to shed light on the human rights violations in IAJK. U.S.-based SMCs have collaborated with repressive states like India and complied with such states' requests in seeking revenue and growth opportunities. Despite committing to uphold international human rights laws and norms, these companies violate their commitments without any meaningful oversight or accountability. In order to dismantle digital authoritarianism in IAJK and around the world, it is essential for the international community to both shame and proactively pressure SMCs like Meta and Twitter to comply with their purported commitments to human rights rules and norms.