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# The Limitation of Freedom of Expression by State as a Crime during Pandemic Covid-19 in Indonesia

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## Abstract

*Freedom of expression (FE) is a pillar of a democratic society. Various democratic nations promote freedom of expression (FOE) to increase self-reliance and self-assurance among individuals by affording them diverse possibilities to share their thoughts. Hence, continual technological advancement has led to the use of various social media platforms to express one's ideas and opinions. Thus, during global crises, FOE is typically constrained in light of public interests. During the covid-19 epidemic, for instance, many governments implemented restrictions on FOE to avoid disseminating false information about covid-19, which could influence public views and lead to public uproar. Indonesia has similarly criminalized FOE. As a result, numerous human rights advocates and journalists have been assaulted for expressing their opinions in public, which may harm society. These laws are press and media constraints on freedom of expression. Thus, the Indonesian government rationalized these actions as national and regional laws violations. To justify restrictions on FOE, the Indonesian government highlighted common interests, such as public health and public order. The primary objective of this study was to legitimize the state's restrictions on freedom of expression as a criminal during the covid-19 pandemic in Indonesia. The present study employed a justificatory technique within the context of legal and normative regulations for this goal. According to the findings of this study, FOE was classified as a criminal offense during the covid-19 epidemic. In this manner, all FOEs in public and media spheres were criminalized, restricting the FOE. Thus, the present study suggests that Article 127 of the "Electronic Information and Transactions (EIT) Law" in Indonesia be repealed to encourage the treatment of FOE activities as "civil litigation."*

Keywords: Freedom of Expression; Limitations; Crime; Covid-19 Pandemic; Indonesia; Media

## 1. Introduction

Every democratic nation encourages citizens' freedom of expression (FOE) or free speech to strengthen their opinions, voices, and differences. This contributes to the prosperity of a democratic nation. FOE is not limited to exchanging opinions or ideas; it also promotes sharing beliefs and convictions in many public and private venues (Altshuler, 2021). It is effective in determining a nation's democratic system. FOE is

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also considered a necessary condition for developing a civil society. This encourages inhabitants of a country to speak out against any breach of state operations. Article 19 of the United Nations Human Rights Council (2017) grants all people of a nation the right to express their views without external or internal constraints (Vese, 2022). Hence, any organization or individual that defends the FOE primarily advocates several democratic concepts, such as non-discrimination and equality, regardless of the gender, skin color, political affiliation, or race of the people (Wiratraman & Lafrance, 2021). Yet, democracy has evolved into a political system that is widely accepted by nations around the world.

Similarly, various democratic ideals have been adopted in Indonesia, encouraging individuals to express their views and beliefs. Figure 1 illustrates Indonesia's democratic performance during the past five years (Schenkkan & Repucci, 2019). This score has been found to have steadily declined over the years, causing alarm among the Indonesian authorities.

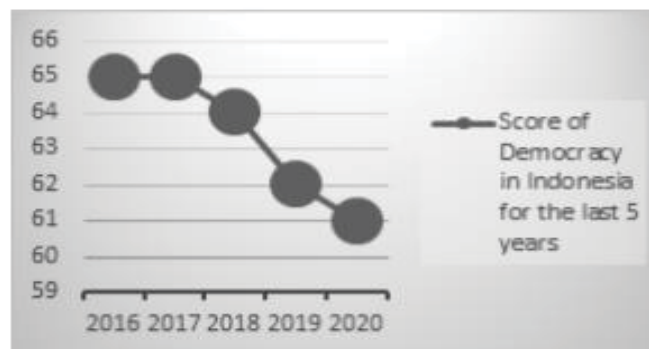


Figure 1. Democracy score in Indonesia (2016 to 2020)

Source: freedomhouse.org

The 1945 Indonesian Constitution focuses primarily on the rights of all humans and incorporates the FOE. Thus, the Indonesian government is required by its constitution to preserve and respect human rights. To comply with the constitution's requirements, many laws have been enacted that facilitate FOE's direct or indirect fulfillment. For instance, Human Rights (HR) statute no. 39 promotes the application of human rights extensively (1999). Similarly, law no. 40 of HR encourages FOE, the right to information, and the protection of press people and media.

In addition, the "Electronic Information and Transactions (EIT) Law" is responsible for safeguarding individual rights and online data. Additionally, it incorporates cyber privacy and protection from online risks (Wiratraman, 2020). In a civil society, the Indonesian government has always protected the FOE of all its inhabitants. The Indonesian Constitution guarantees everyone's right to freedom of expression, creating a safe and productive workplace for everyone, including those who work in the media (Altshuler, 2021). Nonetheless, the state may limit the FOE for grounds of public interest or national security. This clause is primarily based on the Indonesian Republic's ratification of "the Covenant on Civil and Political Rights." According to this ratification, the state may restrict or limit some of the fundamental freedoms or rights of the people, such as the First Amendment or free expression.

At the time of covid-19, then, all Indonesian residents were required to adhere to particular regulations and policies to deal with the issue. Several laws and regulations were imposed on the general public to prevent covid-19 transmission if the public lacked legal knowledge and participation regarding covid-19 restrictions (Boulos, 2022). In general, the Indonesian government imposed criminal sanctions on those who influenced others to protest against the government's policies in the context of covid-19 since they prohibited them from exercising their First Amendment rights (Bolsover, 2020). These people are regarded as non-compliant. This study's primary objective is to use a justificatory approach within the context of legal and normative norms to justify the restrictions on FOE during the covid-19 outbreak in Indonesia.

Yet, during covid-19, several governments imposed limits on commercial and social activities, as well as FOE, to safeguard the safety and well-being of individuals by preventing any conflicts during the current state of emergency. For instance, a journalist's assertion regarding the lack of transparency in the covid-19 data sowed confusion among the public, leading to a rise in despair and anxiety among the populace, which affected their overall performance. Thus, there is an urgent necessity to consider the restriction of FOE by the state as a crime during the covid-19 pandemic in several developing nations. During the COVID-19 pandemic in Indonesia, this study successfully provided grounds for the state's restriction of FOE as a crime.

## 2. Method

This study employed a justificatory technique within the context of legal and normative regulations. This qualitative study focused mostly on the arguments for and against criminalizing FOE during covid-19 in Indonesia. This supports the study's interpretivism viewpoint. To determine the severity of criminal sanctions imposed by the government of Indonesia on individuals who used FOE to resist the covid-19 policies developed by the government in the context of public interests, data was collected from various online sources, including JSTOR, Hein Online, West Law, Springer, Wiley Online, Taylor & Francis, and other associated online databases for this study. Several laws or regulations, the Indonesian Constitution, and Human Rights were considered for this purpose. Certain legal documents were also explored to obtain the desired objectives and justify the restrictions on FOE during a global disaster such as the covid-19 pandemic.

## 3. Literature Review

### 3.1. Democratic view of freedom of expression

A democratic culture is one in which everyone has an equal opportunity to participate in the meaning-making processes that define their identities as persons (Chisom, 2021). Everyone can participate in the development and diffusion of culture (Bychawska-Siniarska, 2017). In Republican or progressive views of free speech, the relevance of nonpolitical expression, popular culture, and individual liberty is typically underestimated (Abbas & Zubair, 2020). On a personal level, when it contributes to a person's overall development and as a pillar of a democratic society, international law considers the right to express

one's thoughts and beliefs to be fundamental freely (Howie, 2018). From a republican concern with sustaining democratic procedure and democratic debate, some earlier studies have proposed a greater problem with keeping and fostering a democratic culture (Balkin, 2017). Digital technologies alter the socioeconomic difficulties of speech in the digital era, resulting in new social disputes over ownership and control of informational wealth (Karin, Laxamanahady, & Hidayat, 2022). Personal participation in creating and disseminating culture is significantly enhanced in the digital era (Karin et al., 2022), significantly raising the likelihood of achieving a truly democratic culture.

Conversely, the same technology can result in innovative control tactics that may restrict democratic cultural participation. Some previous studies have argued that the democratic approach acknowledges individual and group autonomy, the right to know the information of public interest, and the need for knowledge for effective democratic control of government as the basis for the right to freedom of expression (Bontcheva et al., 2020; Carlsson, 2019). O'Reilly (2016) and Restrepo (2013) have argued that it is appropriate for the government to offer a venue for a serious conversation on accomplishing the goals of these pillars at a time when private powers gravely threaten them. A democratic constitutional order cannot survive without freedom of expression, which is necessary to protect individual rights effectively (Biłgorajski, 2022). A previous evaluation of the influence of fake news on Nigeria's democracy while preserving the right to free speech. Nigeria practices democracy, joining other nations globally in providing a forum for its citizens to establish, hold, and express their views to promote participation in good administration (Wilson & Umar, 2019). A study conducted in Indonesia revealed that although moderate Muslim leaders in West Java defend and value freedom of expression as one of the fundamental human rights, they oppose its use to spread hate speech (Husni, 2019).

### *3.2. Limitations of freedom of expression*

Freedom of expression is necessary for full participation in democracy and for expressing our thoughts (Kamali & Rasool, 2016). Nonetheless, the state may restrict communication freedom for reasons such as public morality, population health, or national security (Voorhoof, 2020). But, instances worldwide demonstrate that freedom of expression is susceptible to arbitrary restrictions (Geiger & Izyumenko, 2018; Gunatilleke, 2021). Some historical research has shown that restricting the freedom of expression of minorities and dissenting voices could hinder the state's ability to achieve majoritarian goals or fulfill its beneficent obligations (Goodin, 2017; Gunatilleke, 2021). The European government has put unwarranted limits on internet speech freedom. The majority of these measures violate the African Charter. Freedom of expression constraints includes internet shutdowns, laws banning hate speech and disinformation, repressive legislation, and internet censorship (Ayalew, 2020).

### *3.3. Limitations of freedom of expression during covid-19*

Many hazards to journalists' safety have emerged due to new technology. Moreover, due to the Covid-19 pandemic, media workers have increasingly

transferred their job online, leaving them more susceptible to cyber threats and attacks. Some regimes employ coordinated intimidation methods against political opponents, resulting in self-censorship and a chilling effect on freedom of expression in general (Cendic & Gosztonyi, 2020). Some countries prioritized disseminating truthful information to limit the spread of COVID-19 misinformation (Karanicolas, 2021), while others jailed and prosecuted residents and media who spoke out about the virus or the government's response to the epidemic (Spadaro, 2020). Nonetheless, international law protects the right to free speech, and reprisal for expression raises human rights concerns (Pomeranz & Schwid, 2021). Some persons who are furious about politics or the implications of COVID-19 are presently threatening to weaponize and distort the concept of freedom (Isaacs, 2022). During the COVID pandemic, freedom of expression was criminalized in most nations, including Indonesia. Such moves were considered evidence of press and media freedom constraints. As justification for the restrictions on freedom of expression, the Indonesian government cited collective concerns such as public order and health (Utomo, 2021).

## **4. Results and Discussion**

### *4.1. FOE in Indonesia*

FOE refers to the fundamental rights that encompass societal and individual elements. To create a safe and healthy environment for its residents, these rights are essential for any nation. As a democratic nation, Indonesia promotes the ideals of FOE vigorously. Yet, continual advances in industry 4.0 technologies have encouraged social media platforms and the internet to promote FOE among the general public. According to the Ministry of Communication and Information, the number of internet users in 2020 rose to 175.5 million (Junius Fernando et al., 2022). This affords these persons several options for free speech. According to Sander (2019), the internet has assisted in making knowledge more available to people, encouraging them to share their views and thoughts. Despite the presence of positive material on social media platforms, a variety of negative information is also there, which influences users' overall perceptions.

In addition, cyber privacy provides a secure atmosphere in which individuals can freely express their views and opinions. Individuals typically feel liberated and constructive when presenting themselves on social media. Law number. 19 of the EIT Law (2016) primarily supported the freedom of speech of persons on the internet and other social media platforms (Aziz et al., 2022). This has also promoted an ethical, healthy, clean, and productive digital environment for users. Over 800,000 websites in Indonesia are determined to disseminate fake news or hate speech, prompting the Indonesian government to take significant steps to combat these issues. Figure 2 depicts several instances of FOE in Indonesia from 2020 to 2021. (Abhipraya, Pahlevi, & Amrurrobi, 2020). The internet arena in Indonesia gives more options for individuals to communicate their thoughts and ideas than media, scientific discourse, public opinion, and judicial testimony. In addition, the Indonesian constitution promotes freedom of expression to ensure the fulfillment of human rights and to establish a successful democratic state.

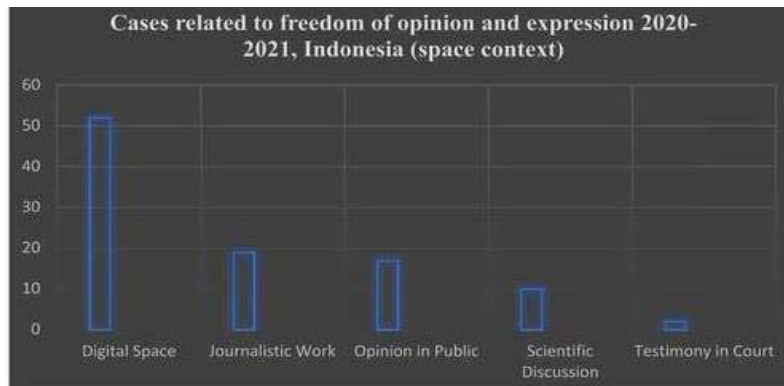


Figure 2. FOE in the context of Indonesia (2020 to 2021)  
Source: "National Commission on Human Rights"

#### 4.2. Indonesian Law and FOE during Covid-19

The analysis of various legal documents for this study contributed to identifying several laws or statutes that promote restrictions on FOI in the context of public interest. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) permits the state to restrict the right to freedom of expression in the context of public health or collective interests. In addition, Article 10 of the European Convention on Human Rights (ECHR) has advocated for restricting FOE in times of global catastrophe or public health emergency (Indrayanti & Saraswati, 2022; Pratiwi, 2022). In addition, Indonesian law has enacted certain criminal measures for social actions that may affect the dissemination of defamation, hate speech, or false information on social media platforms. These limitations are outlined in the "Criminal Code Law" (CCL) (Articles. 310 and 311). Yet, Article 27(3) of the EIT Law also emphasizes societal limits in the context of public health order and public interests. Yet, Indonesia has not been effective enough to justify these restrictions following international norms (Rohman, 2021).

During the covid-19 pandemic, however, a major increase in criticism, threats, and internet attacks against government policy was recorded, further complicating matters for several government and corporate institutions. Similar conditions have also prompted government personnel to engage in drug trafficking, resulting in detrimental consequences (Sa'diyah, 2021; Zysset, 2019). There were digital attacks on independent media organizations that advocated for the rights of minorities and women. In some media outlets, journalists were harassed for expressing their opinions online. Similarly, the digital hacking of two news websites in Indonesia (including Tirto. id and Tempo. co) constituted a restriction on FOE in the context of the covid-19 emergency. Several news networks were responsible for disseminating false information regarding the outbreak of covid-19 and related data, inciting public confusion (Pomeranz & Schwid, 2021; Regus, Tapung, & Jelahun, 2022). This significantly impacted the mental health of the Indonesian population, compelling the government to take significant steps to outlaw these channels. Another instance of Ravio Patra was observed in this environment: a human rights activist and political scholar. He was humiliated for speaking out on social media platforms about many social-political topics. Later, it was discovered that his Whatsapp account had been

hacked, which led to criticism of the government's efforts to prevent the spread of covid-19. Thus, these instances were prosecuted under the treason statute (mostly focusing on Articles 110 and 106 of the CCL) (Cosentino, 2021; Tampubolon, 2022). This generated additional concerns for Amnesty International and other HR organizations. These violations of the Freedom of Expression were related to EIT law. Hence, the Indonesian government considered that these examples contributed to criticism of government policies designed to protect public health and interests during the covid-19 pandemic, thereby negatively damaging public perceptions during the covid-19 epidemic.

Under Article 207 of the Computer Crimes Law, those who insulted the president of Indonesia and committed cybercrimes will be imprisoned for six to twelve months. This assisted in the prevention of various digital attacks. Yet, Indonesian foreign policy also asserted that different social media platforms (such as Twitter, Instagram, and Facebook) were responsible for promoting anti-Chinese theories, thereby impacting the relationship between China and Indonesia (Al-Fatih & Kurniawan, 2021). This helps legitimize promoting various FOE regulations in Indonesia during covid-19.

#### *4.3. Justification for Restrictions on FOE during Covid-19*

The emergence of the covid-19 pandemic has prompted several nations to take significant measures to shut down the internet and other social media links to prevent the spread of covid-19 hoaxes. These restrictions provide the public with reliable information (Zysset, 2019). This strategy has also helped keep journalists from propagating fake news. This discourages the breach of FOE by preventing persons from expressing their opinions regarding the circumstance (Khramova, 2020). Unfortunately, many countries lack a specific statute or rule to legitimize these prohibitions. Hence, governments must justify their activities within these limits to convince the public that these limitations are in their best interest. Yet, when a state cannot justify such restrictions and no meaningful requirements are observed in the context of constraints on FOE, public discontent increases, exacerbating the situation for the government and the people (Prahassacitta & Harkrisnowo, 2021; Volk, 2021). Hence, the tribunal or court should determine the rationale in such circumstances. The tribunal or court may employ an alternative justification strategy to explain these restrictions on FOE (Priyanto & Sardi, 2020).

From the perspective of collective and public interests, nations other than Indonesia also campaigned for FOE curbs. These arguments frequently have judicial or normative flaws. Regarding normative procedures and whether they are adhered to when establishing such restrictions, this situation raises numerous problems (Amat et al., 2020; Pyrzynska & Skoczylas, 2020). Other reasons can also be noticed in the context of restrictions on FOE, regardless of whether or not they serve the public good. Gunatilleke (2021) states two concerns are associated with state discretion-based restrictions on FOE. Suppose, to begin with, that the state's discretion was utilized solely to meet the interests of majorities. In such a scenario, it could encourage minorities and other political opponents to demand justifications for restrictions on FOE imposed in the name of public order, morals, national security, and public health. Unjustly restricting a person's freedom of expression could pose

national problems. This risk can occur when there is insufficient evidence of an individual's participation in harmful behavior. In this case, the state must explain its measures against the associated individual by demonstrating his involvement in the alleged violent activities (Olivia, Gibson, & Nasrudin, 2020). This also helps support the government's decisions to restrict FOE in specific cases.

Thus, the Indonesian government has taken necessary action against various media people, human rights advocates, and others who promoted false rumors about covid-19 data. During covid-19, the Indonesian government established an "emergency policy" restricting numerous individuals' FOE. Yet, this policy was adaptable enough to accommodate the nation's political activities.

## **5. Conclusion and Recommendations**

FOE is among the most widely espoused democratic ideals in various democratic nations. Protection and application of this principle are essential for fostering an effective connection between the government and the public. It also aids in promoting government openness. Yet, the quality of democracy has deteriorated significantly over the years due to various political and economic factors, particularly in emerging nations (Bulman-Pozen & Seifter, 2020). Thus, during a global crisis such as covid-19, countries place certain restrictions on FOE in the public's interest.

Similarly, the Indonesian government established several limits on FOE, particularly under Article 127 of the EIT statute and Articles 110 and 106 of the CCL. During covid-19, all media professionals and journalists were subject to strict surveillance to avoid disseminating false information about covid-19, which could cause a public uproar. This paper offers various grounds for the prosecution of FOE during covid-19. For example, propagating anti-Chinese theories on social media could provoke worldwide conflict. In this instance, the FOE restriction is deemed effective in preventing harmful results.

In addition, the present study suggests that the government take significant steps to enhance transparency regarding the benefits of restrictions imposed on the FOE during a crisis in the context of public interests and public order. In this regard, the government and other public and private organizations should promote various awareness campaigns to achieve positive results. To motivate the people and the government to work together for the state's growth during a time of crisis and to achieve effective results, it is also necessary to promote human rights without any disregard.

## **6. Research Implications**

This study provides more beneficial results than previous research. Theoretically, this study is significant since it emphasizes limits on free speech in a developing nation. It also contributes to the literature on the limitations of free speech in democratic states. This paper examines the significance of freedom of expression in the context of Indonesia, as the management of the Covid'19 Epidemic in Indonesia merits thorough consideration. The study informs the Indonesian populace about restrictions on freedom of expression during the pandemic, as participation and legal understanding are limited. This was done to curtail freedom of speech and expression and quiet government policy opponents. This study demonstrates that the right to

know the information of public interest and the necessity for knowledge for efficient democratic government control are the foundations for the right to freedom of expression. During a crisis, this study focuses on the solutions that can aid in the future for the repercussions mostly related to economic and social factors and the right to enjoy the freedom of speech. For the government to create additional policies on the control of granting individuals the right to freedom of expression for their beliefs, additional research must be conducted.

## 7. Limitations and Future Research

Practically every research has both benefits and drawbacks (including different shortcomings). Similarly, even though the present study adequately justifies the limitations of FOE during covid-19, it also has significant drawbacks that can be addressed in future research. This study, for instance, only concentrated on implementing restrictive measures in Indonesia during Covid-19, and no global perspective was emphasized to comprehend the global scenario better. This study focused primarily on the role of the Indonesian constitution in the context of FOE; other relevant laws and regulations received little attention. So, future research should concentrate on more rules and regulations in this context to better comprehend FOE's limitations during a global crisis.

Because of researcher bias, this study concentrated mostly on the constraints of FOE during covid-19 and gave little attention to global concerns such as terrorism, war, etc., in this setting. Future research must therefore concentrate on the limitations of FOE in the context of many global problems, such as economic, financial, terrorism, and war-related crises.

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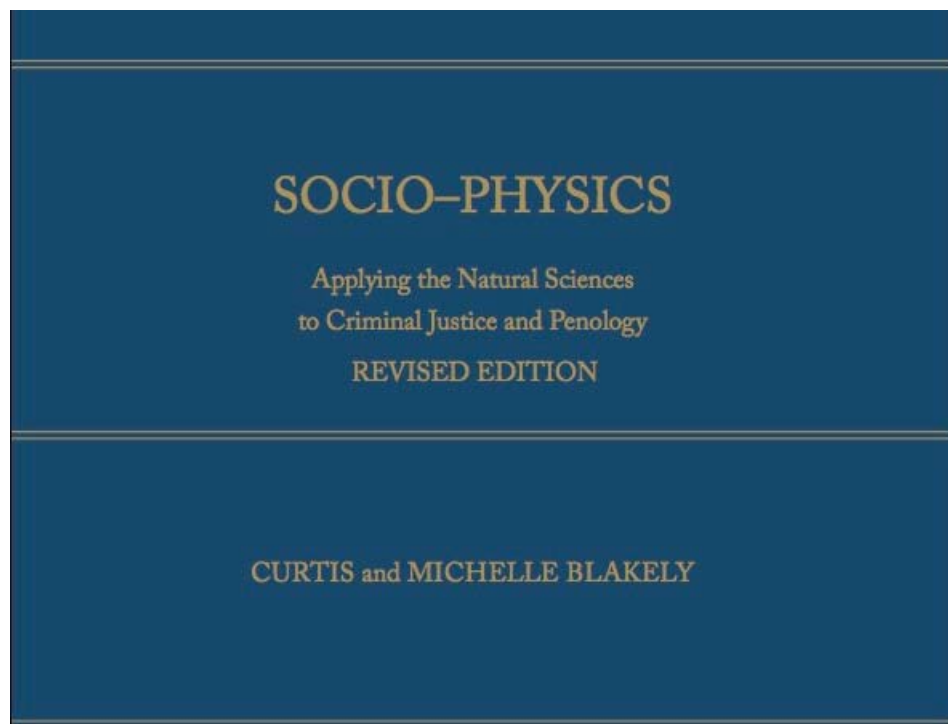


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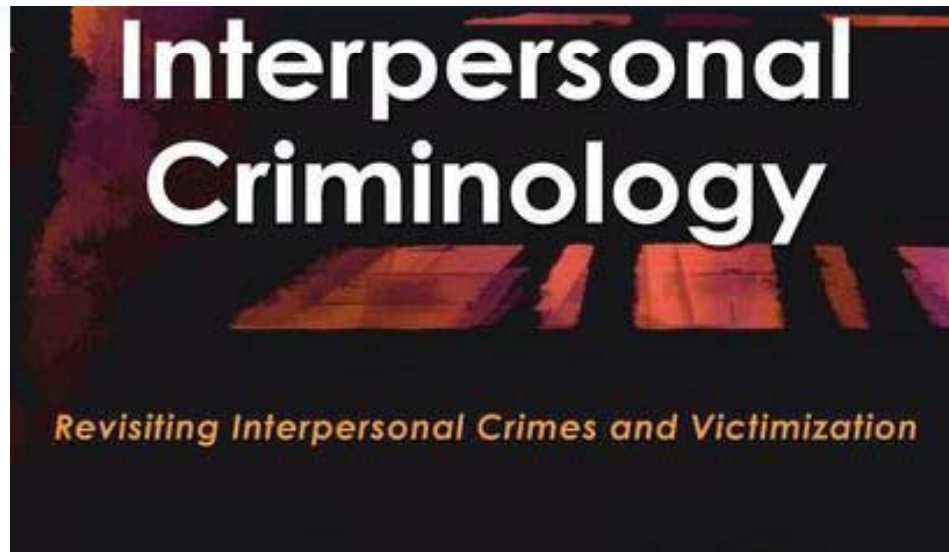


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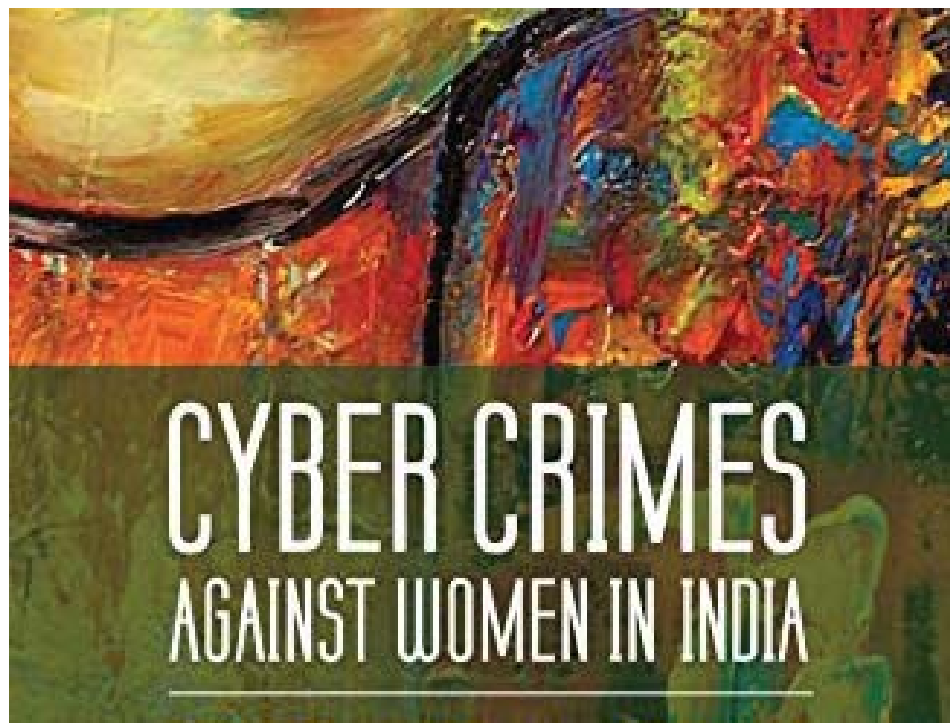


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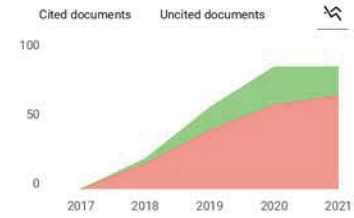
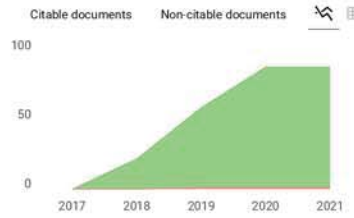
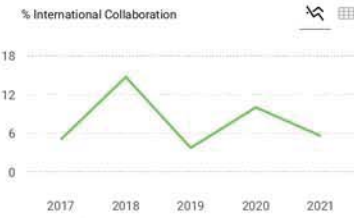
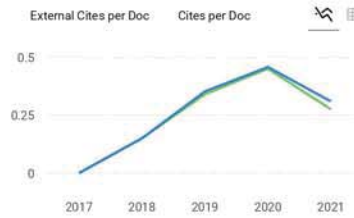
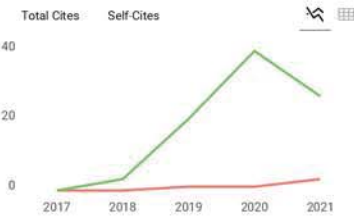
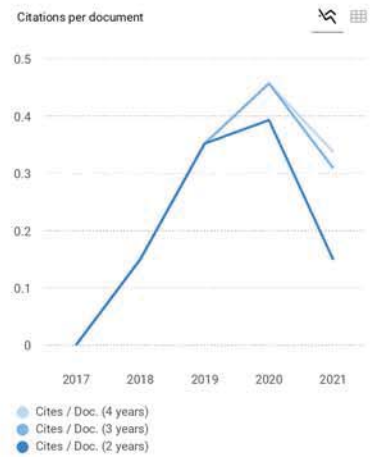
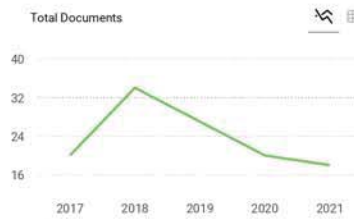
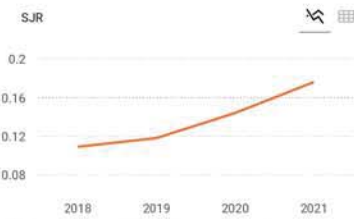
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