

Research Article

Social Media, Artificial Intelligence and Role of Tech Firms in the Age of Disinformation: Impact on Democracy and Regulatory Challenges in India

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Abstract

Online digital media has become a lifeline for humankind. But it has also become a major source of disruptions just like climate change. During the global pandemic, COVID-19, while the whole world is trying their best to blunt the spread of coronavirus, there is a vile trend of circulation of disinformation, fake news and sharing false data related to the virus on social media platforms creating panic among people. The review paper found that the present online information ecosystem matrix is driven by exploiters with the objective to demean democratic bodies, inflame societal divides, manipulate public opinion and influence citizens' voting choice to distort the democracy. Examination of the current trend led to disturbing reality as the content, discourse, tone and intent of social media interactions have undergone an evolution that threatens not only free speech, privacy, data protection, national security but democracy as a whole. The study also highlighted about the rise of new-age technologies such as Artificial Intelligence (AI), Algorithm, Robotics, and Machine Learning (ML) have exacerbated the problem to new heights as these technologies play a disproportionately impactful role in disseminating disinformation by amplifying it to distort democracy and free speech. The research work resonated with the growing clamour for greater legal regulation to control the menace of social media misuse among democracies around the globe. It addressed the concerns of internet companies and rights activists who fear tight measures would imperil free speech. The paper tried to examine the challenge how to regulate that doesn't stifle the freedom of expression and speech vis-à-vis keeping online content safe and protected. The fact-finding review paper is based on existing laws, regulations, policies, research papers, media reports, articles on instances of disinformation and fake news to find solutions and future developments keeping India in focus. *The subject of study assumes significance in a*

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democracy like India which has recently notified a new regulatory regime - 'The Information Technology (Intermediary Guidelines and digital Media Ethics Code) Rules, 2021,' to strengthen the regulatory architecture to tackle misuse of social media to deal with the fast-growing new communication challenges. The study critically examines these new guidelines and also highlights the patchy policy syndrome of internet content governance in India.

Keywords: *Internet, Social Media, Digital Media, Online News Media, Information Technology (IT), Disinformation, Fake News, Hate Speech, Tech Firm, Artificial Intelligence, Algorithm, Machine Learning, Democracy, Free Speech, Privacy, Data Protection, IT Act, Governance, Regulation*

Introduction

Spread of disinformation and fake news through social media is not a new problem. In India, 2016 Muzaffarnagar communal riots were triggered by fictitious Facebook posts. Spate of lynching deaths have occurred all across country on WhatsApp forwards that circulated rumours about cow slaughter. In 2012, an inflammatory religious post on YouTube caused the famous Benghazi attack on the United States embassy in Libya. Donald Trump's relentless questioning of Barak Obama's birth certificate had over 50 per cent of the Republicans believe that he was a Muslim. Online fake posts influenced American supremacists to believe that Hillary Clinton still runs a child prostitution racket. Bottom line is that manipulation of social media for political dividends has become the endemic problem posing greatest danger of our democracy.

In recent years, democracies all across the world have been grappling with political and social subversion, exploitation of existing tensions within their societies and polarisation on grounds of religion, race and gender which are caused by online disinformation matrix. Present online information ecosystems, which constitute the main focus of this review paper, have been deployed by exploiters with the objective to demean democratic bodies, inflame societal divides, manipulate public opinion and influence citizens' voting choice to distort the democracy. The content, discourse, tone and intent of social media interactions have undergone an evolution that threatens not only free speech, privacy, data protection, national security but democracy as a whole.

The rise of new-age technologies such as Artificial Intelligence (AI), Robotics, and Machine Learning (ML) have heightened the problem to new heights. "The whole paradigm of information and disinformation dissemination have altered with the rapid advancements in information technologies like Artificial Intelligence" (Bentzen, Naja, 2018).¹

Though AI-powered systems have countless benefits, it has raised innumerable ethical questions that impinge free speech and political processes. Analysts and experts raise serious concerns related to AI-boosted algorithmic fairness that leads to discriminatory practices like hate speech against race and gender, privacy infringement, user manipulation (Bruegel, 2018).²

The victory of US President Donald Trump in 2016, reinforced the impact digital information dissemination could have on political process and democracy. "World witnessed how the use of AI-propelled algorithms boosted disinformation campaigns impacting opinion formations and voting judgements of American people" (Journal of Information Technology & Politics,

2018).³ “As the dependency of artificial intelligence that powers our daily lives grows, algorithms will hold sway, enabling destructive elements to infiltrate government and corporate networks to steal information, compromise individual privacy and distort electioneering without much of a trace” (Fly; Laura; and Salvo 2018).⁴

The role of disruptive technologies will intensify manifold in future as these online services’ only rely on personal data which will cause increase in erosion of privacy. Gartner predicts that “by 2022, the majority of people residing in mature economies will consume more false information than true information” (Gartner, 2017).⁵

While social media platforms themselves do not generate content, they transmit, organise and amplify it. The terms of service allow them to harness mammoth data profiling that can be exploited through micro-targeting in political campaigns. Innocent users believe that the information is accurate, spontaneous and citizen-generated, while in reality, it may have been political, strategic and micro-targeted.

Unfortunately, social media platforms operate without any liability as the United States and European Union (EU) including India protect them from liability of users’ content. The US Communication Decency Act and the ‘Safe Harbor’ principles protect free speech as well as the carriers of speech i.e. service providers. Section 79 of the Information Technology (IT) Act also protect platforms that enable free speech in India (Bond, 2020).⁶

Democracies are very concerned over the rising online fake news, hate speech, disinformation and anti-national activities through these platforms. They are debating and revisiting these laws which are unable to hold internet firms of its responsibility in the face of menacing and indiscreet use of free speech by the users. Problem acerbates due to tech companies’ non-cooperation as they shy away from taking concrete steps towards content moderation.

Around the globe, online social media services are not well-defined and its liability is also not laid out consistently by the relevant legal provisions since its emergence post 2000. Without regulatory intervention, social media platforms and technology developers exploit human psychological traits and social engineering to new heights. Regulation should set the rules of the game, ideally with the cooperation of a wide range of stakeholders and global cooperation.

The purpose of internet governance and regulation of social media is to check and control the spread of disinformation and fake news that sparked unrest and violence, but tech companies and rights activists fear new measures will be a threat to free speech. The challenge is how to regulate that doesn’t stifle the freedom of expression and speech.

This paper first examines the scale of the threat of AI-propelled disinformation. It then delves into the issue of the monetisation of hate by internet companies for profit motives. Finally, the paper reviews the various regulatory mechanisms adopted by the US, EU, India and authoritarian regimes like China that could be envisaged to combat disinformation and fake news to find solutions and future developments keeping India in focus.

The subject of study assumes significance in a democracy like India which has recently notified a new regulatory regime - the Information Technology Rules, 2021, to plug the lacunas in the Indian legal system. It seeks to strengthen the regulatory architecture to tackle misuse of social media by clubbing digital news media and over-the-counter (OTT) platforms with one single regulatory regime for the first time to be ready to deal with the fast-growing new communication challenges. The study critically examines these new guidelines and also highlights the patchy policy syndrome of internet content governance in India.

Distortion Of Democratic Norms

The world has been witnessing a revival of populism for over the past two decades. A powerful wave of populism is sweeping all across globe, enveloping America, Europe and parts of Asia including India. “What could be viewed as an exceptional undercurrent in 2000, in Europe alone, has tripled its number of votes by today”.⁷ “Today’s identity populism is an internet-fuelled manifestation of malignancies that seemed vanquished in World War II” (Metz, Steven, World Politics Review, 2018).⁸ Since 2016, the year of Brexit and Donald Trump’s election, it has become clear that the global political trend has taken a new turn and this direction has only been reinforced by some of the recent elections in Europe and in Brazil. In India, Narendra Modi’s elections of 2014 and 2019 in particular reinforced the phenomena of populism politics.

The phenomenon is examined and analysed by several research institutions, political and media analysts that – what has caused this to happen and where does it lead us? While the thriving of populism can have diverse causes, one element stands out - the sweeping transformation of the global public sphere. According to European Union Parliament’s document on “Disinformation and propaganda – impact on the functioning of the rule of law in the EU and its Member States, 2019”- public discourse has gone global and been completely restructured as regard its actors, gatekeepers, influencers and audience. Social media created a new public space that can be flexibly utilised to get any message to selected parts of the audience. “It has no national boundaries, a feature that can be used for good or bad purposes”.⁹

Brexit referendum outcome came as a shock for many in the EU and beyond, but bigger shock came when reports about the manipulative elements of the political campaign were came into light. Meanwhile, watching the US political campaign that eventually catapulted Donald Trump to the Presidency and the following revelations about the data abuse by Cambridge Analytics-Facebook nexus, shattered what we had thought about representational democracy and election campaigns.

The epic scandal was broken on 17 March 2018 by the British newspaper The Observer/The Guardian and the American newspaper The New York Times simultaneously.¹⁰ It busted the dark side of the 'Big Data' inside story - the UK based political consulting firm, Cambridge Analytica had harvested the personal data of 87 million American Facebook users without their consent to work on Donald Trump's campaign during 2016 US elections. American news outlet 'Wired' published a piece titled "*How Cambridge Analytica Sparked the Great Privacy Awakening*" and wrote "Cambridge Analytica had purchased Facebook data to build a "psychological warfare tool" (Lapowsky, 2019) which it unleashed on US voters to help elect Donald Trump as President".¹¹

It was a momentous occasion for the issue of privacy protection and how personal data can be misused by tech companies. The scandal busted the scheme and ways to how businesses, big tech companies harness more personal data from people than they need and give away more than they should, often only asking permission in the fine print for profit motive.

Impact On Democracy

Political propaganda and disinformation campaigns interfere with democracy in two ways – first they dominate and distort the public discourse and corrupt the process of democratic decision-making. Secondly, when this process leads to political success, the political force that won the elections through manipulation might capture the state and deconstruct the constitutional system. This process is very difficult to stop once the anti-democratic party is in power.

The emergence of social media marks the beginning of a new age of the public sphere (*Offentlichkeit*)¹². The user-friendly communication interface allows users to publish content without the economic or educational barriers. It facilitates the formation of groups and the creation of a 'global village'¹³. The decentralised and horizontal discussion cannot be supervised with the same instruments as the centrally organised traditional mainstream mass media. This control vacuum has allowed rapid innovations in line with business interests and become exploited by the political opportunists.

The study argues that while the ubiquitous content itself can hardly be controlled but the very architecture of the online communication i.e. algorithms and data flow can be regulated.

In the ‘post-truth era’, the culture of knowledge has completely crumbled and replaced by a culture of risks – a complex web of collective strategies exists through which fear, angst and anxiety are created and recycled. While social media theoretically has given voice to people who were underrepresented earlier by traditional media, their dissatisfaction has been exploited by political grasshoppers. Populist communication uses these people’s ‘comments and likes’ to amplify their manipulative propaganda. The populist rhetoric pretends to represent the underprivileged but in fact it supports the interest of another elite. These interest groups are the real super-spreaders of fake news, the greatest danger of our democracy.

Social Media In Light Of Disruptive Technologies

The role of disruptive technologies will intensify manifold in future as these new services’ only rely on personal data. Algorithm, Artificial intelligence, machine learning, advanced demographic analytics, the Internet of Things, voice and facial recognition will only increase in erosion of privacy. Artificial Intelligence (AI) is named as a primary driver of the future ‘counterfeit reality’, where telling the difference between the original and manipulated content will become close to impossible for people and progressively difficult for machines.¹⁴

Why Disruptive Technologies Need Fixing

Social media tools like algorithms and artificial intelligence govern how we find information online. It is algorithms that control what we can see and what cannot see. No wonder, AI-driven algorithms determine what content billions of internet and social media users read, watch and share. The latest YouTube algorithm changes 2020 reveals it influences search results. The YouTube algorithm decides 70 per cent of the time what users watch on its platform (Cooper, Paige, 2020).¹⁵ According to Pew Research Center, 81 per cent of American YouTube users say they regularly watch videos recommended by the algorithm (2018).¹⁶ These algorithmic recommendations are invisible, opaque, unregulated and uncontestable tools to amplify contents, even when they’re false that can easily spread disinformation, distort elections and cause unrest. They have an immense impact on shaping user’s online experience. Algorithm, like this, needs urgent fixing.

Hence, the technological edge is a vital piece of the problem that drives big tech firms like Facebook, Google, Amazon, Twitter to design algorithm that manipulates online behaviour.

Role Of Big Tech Companies

According to a report¹⁷ published by Oxford University in 2019, Facebook remains the No.1 social network for disinformation. Another survey¹⁸ reported fake news on Twitter travels six times faster than true news. Zeynep Tufekci recently wrote in the Times¹⁹: “YouTube may be one of the most powerful radicalising instruments of 21st century.”

Social media advertising gives anyone the opportunity to reach huge numbers of people with phenomenal ease, giving bad actors the tools to sow unrest and fuel political divisions.

Tech Companies Control and Manipulate Users Data for Profit Motive

Control over users’ data has given service providers extraordinary ability to influence users and make money. “Data is the new oil that works like a currency” rightly described by *The Economist* (2017).²⁰ There are hardly any checks on privacy infringement, user manipulation, audio-video manipulation. Many governments now seek to protect data and privacy are considering proposals to make the internet and technology firms responsible for the use of viewer data.

Big tech giants like Facebook Inc. (owner of Facebook, Instagram, WhatsApp), Alphabet Inc. (Google, YouTube) or Twitter claim that they are mere platforms where people meet and interact freely. But, in reality, they make a great fortune by using AI-propelled algorithms as psychological tools to promote advertising to influence communities susceptible to divisiveness. They don’t want to change their strategy because massive profits flow out of it. The unprecedented scale of the data collected by these online companies and its use to predict and influence our purchases, behaviours, and thoughts has made them the richest in this history of the world, as revealed by the Netflix documentary drama ‘The Social Dilemma’ (2020).²¹

Regulation V/S Censorship And Free Speech

Law enforcement mechanisms dispute social media service provider’s bid to distinguish itself as a “platform” rather than a “publisher” which enables the firm to evade responsibility for content posted on its sites. Print and electronic media can be held to account for anything published in their platforms but there is no such regulation for online platforms. Similarly, there is no clarity about how certain posts are removed by the service providers. Moderation and policies on cooperating with law enforcement do not always reflect a consistent pattern. Therefore, there is a need for accountability for content publishing on online. Policies and functioning of social media outlets leave much to be desired.

The US Communication Decency Act, 1996 and the ‘Safe Harbor’ principles essentially protect free speech and in today’s day and age, when so much of our speech is on the Internet, it is just as important to protect the carriers of our speech, as speech itself. In India, Section of 79 of the Information Technology Act 2000 actually protect the platforms that enable our free speech. And with fake news and deep flakes often having widespread community implications beyond just the internet in the real world it is not only logical but also a legal obligation under IT Act for service providers and social media platforms like Facebook, Twitter to implement mechanisms to prevent circulation of fake news and offer users the option to fact check.

This may not particularly fare well with certain politicians and leaders who campaigns rely on to a big extent on deception, misinformation and circulation of fake news. This was exactly what has happened with Donald Trump during the US Presidential election 2020. It was very frustrating for him when he was caught red-handed of running disinformation campaigns which led Facebook and Twitter to ban him from using their platforms permanently.

But the real issue at this moment is - how can tech companies and governments fix the disruptive technologies such as artificial intelligence and algorithms? Rights activists screaming about censorship and miscasting content moderation as the demise of free speech online doesn’t hold water as political forces have complete sway to twist the medium in their favour.

It would be pertinent to note here that Free Speech does not mean Free Reach (Diresta; & Aza (2018)).²² As tech experts of Harvard and Columbia University’s Renee Diresta and Aza Raskin wrote recently that people are entitled to have free speech and express their own opinions. But, there is a difference between “freedom of speech and freedom of reach”. They rightly argued that there is no right to algorithmic amplification. Indeed, that’s the very problem that needs fixing.

The premise of the study is to hold internet companies accountable—for inconsistent moderation policy and irresponsible tech. There are AI disinformation solutions and algorithmic detection of information, automated fact-checking mechanism available with these companies but they don’t want to change their strategy because massive profits flow out of it.

The regulations are intended to curb the misuse of social media and stop the spreading of fake news that sparked unrest and violence, but internet companies and privacy advocates say the new measures are a threat to free speech.

That is reason the paper argues for a global regulatory mechanism which can enforce transparency into how their algorithms and moderation policies work to control the menace of social media misuse.

Towards Regulation

Social Media Governance: Global Scenario

Globally, various countries have taken very different approaches to regulating social media. There is no one universal model for internet content regulation.²³ Each country has its own specific concerns and regulatory mechanism. This paper answers those questions by analysing the approaches adopted by various countries that have attempted to regulate social media content. The study discussed Indian approach towards regulation besides highlighting instances of regulation in the United States including some leading countries with a special reference to China where the government enforces control in a precise and monolithic manner.

Social Media Regulatory Mechanism in United States

The US Federal Communications Commission regulates all electronic communications including radio, television, wire, satellite, cable and internet. It is responsible for formulating communications laws and regulations. The US idea of regulation flows from the free speech principle expressed in the First Amendment which allows minimal content censorship and regulation. The Bill of Rights under the US Constitution leaves little scope of content filtering and censorship. However, it does not mean that the US has no regulations for the internet and social media in particular. Social media proliferation has been a serious concern in the US and they deal with it accordingly as it has a very sophisticated internet regulation in place.

The US has laws of such broad definitions that even without amendments or specific legislation, the internet can easily be controlled. Apparently as the information technology (IT) including internet were invented and developed in the US, they know how to govern new media.

Safe Harbour Protection for Social Media Intermediaries

The US Communication Decency Act, 1996 known as the 'Safe Harbor' principles protect free speech as well as the carriers of speech. Section 230 of the Act enables social media intermediaries a safe harbour from any content user posts. Section states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any

information provided by another information content provider”. Therefore these platforms are not liable of contents they host.

“This provision effectively means that the service provider platforms are like a bookstore owner who cannot be held accountable for the books in the store, unless it is proven that there is connection between the writer and the publisher of the book and the bookstore owner”.²⁴ (Aryan, Ashish; May 2021; Indian Express).

How US Handles Online Privacy?

Like India, the US is one of only a few countries without a data protection law! Green says the internet is a deregulated territory in America where tech and social media companies have practiced an anything-goes philosophy. “The US doesn't, yet, have a federal-level general consumer data privacy law, let alone a data security law. There is no central federal US laws, like the European Union’s General Data Protection Regulation (GDPR), though, States are finally stepping in their own data privacy laws” (Green, 2020).²⁵

European Union’s data protection laws are some of the strictest in the world, and have long been a thorn in the side of the data-guzzling Silicon Valley tech giants since they colonised vast swathes of the internet (Whittaker, 2020).²⁶

Chinese Model of Social Media Governance

China has a highly restrictive environment where the government control information within. The authoritarian Chinese government imposes heavy restrictions in many areas including free access to the internet and freedom of press. In 2010, China introduced the concept of ‘Internet Sovereignty’ which enabled all the users in the country including foreign social media companies to adhere to the Chinese laws and regulations. The ‘Great Firewall of China’ a nickname for the Golden Shield Project, is country’s online surveillance and censorship centre which blocks voices from outside.²⁷

This Great Firewall of China has long blocked access to major US internet companies and social media platforms including Google, YouTube, Facebook, WhatsApp and Twitter.²⁸ To offset these platforms, China has developed its own state-approved versions of social service networks and apps. Youku and Tudu (YouTube version), Sina Weibo (Twitter version), Douban and Renren (Facebook version), WeChat/Weixin (Facebook crossed with WhatsApp version) are examples of Chinese equivalents.

How is Social Media Censorship Implemented in China?

Unlike the US, Chinese laws require social media network companies to take responsibility for the content published on its platforms. In compliant of the government regulations, tech firms must invest in staff and filtering technologies to moderate contents hosted on their

platforms. Failure to comply can lead to fines or the revocation of operating licenses as the onus of content responsibility lies with the service providers. Internet network operators need to monitor those user-generated contents that are strictly prohibited from publication or transmission under the Cyber Security Law of China. In 2010, China has published its first white paper on internet policy titled “The State of Internet in China”. The document listed prohibited subjects that are vaguely defined ‘disrupting social order’ and ‘damaging state honour and interest’ leave enough room for the state to intervene that often causes over-censorship.²⁹ Censorship is conducted via a mix of human reviews and machine filtering, which helps with pre-emptive and post-hoc content removal (Lai, 2018).³⁰

China Pushing Cyberspace Sovereignty for Internet Governance

“China Model” of social media censorship is often framed as a top-down monolithic system of control which enables the government to target undesirable content effectively. The world has seen how China, in recent past, tried to tighten its grip on the internet and other new media and to centralise control which was decentralised otherwise.

Now China has also increasingly been pushing for its model of internet governance to be adopted internationally. On international forums, China has been reasserting its determination that every country should choose its own internet “governance model” to fight “all forms of hegemony” in cyberspace administration in bid to have “cyberspace sovereignty”. Chinese President Xi Jinping has been pushing the idea of cyberspace sovereignty since 2015 (Gan, 2018).³¹

However, the Chinese government’s system of delegating control to private companies often results in inconsistent outcomes. With a growing number of countries – both authoritarian and democratic regimes – considering adopting China’s model of internet governance practices (Ruan, 2019).³² But, it is important to analyse these practices from an analytical perspective and to assess their actual capacities on the basis of technical evidences.

Social Media Regulation: Indian Scenario

In India, there is ‘no specific/separate legislation’ which deals with digital media, but there is a cross-section of laws that is applicable to govern the online space. In 2015, *the Supreme Court in the Shreya Singhal case (AIR 2015 SC 1523) said Parliament should bring a new law to regulate social media.*³³ But even now the basic law governing the internet and social media is the Information Technology Act, 2000 which is the pre-social media era, enacted before Facebook, Twitter and other platforms came into existence.

Due to the ever expanding evolution of social media, the IT Act was amended in the year 2008 and thereafter the government further brought out the Information Technology Intermediaries Guidelines Rules, 2011, initiating several measures to govern online space including to make intermediaries (online media platforms) more liable towards the content that is published and transmitted on these platforms.

These rules and regulations were woefully inadequate in their ability to deal with issues related to the misuse of the internet. In absence of proper legislation, the use, misuse and abuse of online space have become a huge challenge to deal with. The growing misuse of cyberspace has made the government realize the limitations of existing laws in dealing with such challenges.

India now wants those platforms to be more responsible and regulated. In October 2019, the Ministry of Electronics and Information Technology (MEITY) filed an affidavit in Supreme Court stating the need to regulate content on social media. According to the affidavit, the Indian government is worried about social media and said “*it has emerged as potent tool to cause unimaginable disruption to the democratic polity from unregulated social media content*”. It further added that India wanted to move ahead with its plan to revise the existing rules to regulate intermediaries – social media apps and others that rely on users to create content- as they are causing, “*ever growing threats to individual rights and nation’s integrity, sovereignty and security*”.³⁴

Following repeated instructions from the Supreme Court³⁵ and concerns raised in Parliament³⁵ to bring dedicated legislation to regulate social media, Indian government notified a new intermediary rules, 2021, that still falls under the ambit of subordinate legislation as no new law was being enacted.³⁷ However, the government’s aim to impose accountability on digital media to tackle objectionable content, fake news, disinformation and hatred has given a much-needed fillip to users’ right and empowers victims of privacy violation.

New Regulatory Regime

The new ‘Information Technology (Intermediary Guidelines and digital Media Ethics Code) Rules, 2021, notified by the Indian Government’ on 25 February, have been framed to regulate social media including OTT - online video streaming platforms, digital news and current affairs service providers, bringing them under the purview of specific regulation for the first time.³⁸ Announcing drastic changes in the new rules for social media companies and a code of ethics for OTT as well as digital news media, the government goaded that the new regulatory regime would usher in “*empowering the ordinary users of social media*”.

Recently, India has witnessed a spate of court cases on the issue of regulation of OTT content. The grievances range from wounded cultural and religious sentiments to moral outrage against depictions of sexuality. Petitions seeking strict regulation for OTT platforms conforming to so-called social, cultural and religious values curtailing artistic expression and viewer choice on the rise across the country.

Strict Guidelines

The new guidelines mandate a series of responsibilities on the global internet firms requiring them to be more accountable to “misuse and abuse” of online platforms and to address grievances of people who have been unfairly targeted through hate speech and trolling. The Rules stipulate social media platforms to divulge details of the “*originator*” of objectionable content as and when asked by the government or courts. The new rules empower the government to block, delete, or modify published content/news within 24 hours.

New rules stipulate categories of objectionable contents that the social media platform should not host. The updated Rules seeks to remove objectionable content within stipulated timelines. Platforms mandated to identify the source of objectionable/unlawful content asked by government agencies. Furthermore, intermediaries asked to post a grievance officer based in India who should be held liable of objectionable contents.

But the requirement of tracing out of originator of information comes into a direct conflict with the right to privacy norms that can break existing protocols of protecting users’ end-to-end encryption by platforms that ensures the safety of users’ messages remain intact.

The messaging giant, WhatsApp, which has nearly 40 crore users in India, argues the rules require services to trace every single message since there’s no telling which messages a government would want to investigate in the future. “In doing so, a government that chooses to mandate traceability is effectively mandating a new form of mass surveillance,” WhatsApp wrote in a post.

Loss of Intermediaries Status

Failing to follow the new rules will result in loss of intermediaries’ status protected under Section 79 of the IT Act, 2000. Like the American Decency Act, Section 79 also provides the indemnity to the social media platforms. This Section says “any intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link made available or hosted on its platform”. But, according to new provisions, the protection accorded under Section 79 will not be invoked if the intermediary does not disable the access of content flagged by government. Failing to adhere to the government notification, the intermediary will lose the protection under the Act.

The rules have completely changed the existing norms of social media regulation in India. Significantly, it means, if a Facebook post or a tweet violates these news guidelines, the umbrella protection under Section 79 will not be available to these social media platforms.

Conclusion

The Information Technology Rules, 2021 is focused on the role of social media intermediaries and the reach of Big Tech companies and privacy concerns. The government's aim to impose accountability on social media to tackle fake news, hatred, and unlawful content and to control undesirable and objectionable content from digital news media was imminent in the face of challenges the new-age media posing. The new guidelines are in a response to the growing realisation of the immense power wielded by big internet companies and concerns that the governance of public spheres cannot be left in the hands of a few techie companies. With provisions of withdrawing legal immunity to internet companies for unlawful content shared on their platforms, the battle lines have been drawn between Big Tech giants and the Indian government.

The changes in the IT Act, 2000 may seem well-intentioned and desirable which tried to fix some loopholes related to governing online space, however, these new rules will have far-reaching consequences on online privacy, free speech and access to information because of the legal overreach of some of the provisions by clubbing digital news media and OTT platforms with social media. Rights activists screaming about censorship and miscasting content moderation as the demise of free speech due to overreaching provisions in the new guideline in absence of dedicated Parliamentary legislation for online space.

With this new regulations in place, India has joined an ever increasing list of countries that regulate social media, including recent regulators such as Australia, Britain, European Union, Singapore and regressive regimes like China. Debates over internet and social media regulation are highly contested globally as an issue that both governments and netizens are concerned about. There is a little agreement over what constitutes illegal content, what part of such content should be regulated by law and where to draw line between freedom of speech and the content that is deemed illegal. This paper tried to explain the paradoxical dichotomy to trace the legal and regulatory debates that have emerged in response to regulation of social media in India, situating these developments in global context.

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