



Misplaced concern

Bottom Line: SC should not allow outrage industry to shape moves to tighten OTT content regulation

Highlights:

1. The Court went through the recently notified rules for digital media and intermediaries and observed that these lacked teeth.
2. It is quite unusual and, in fact, gratuitous, that a constitutional court should push for more stringent rules after finding that the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, did not provide for punishment and fine.
3. The Court's very approach is way out of line. The new rules are essentially restrictions on free speech and expression through digital media. Courts generally examine the validity of such curbs on free speech and decide whether they are reasonable or too restrictive.
4. It is unusual that the apex court should seek to go beyond what the executive describes as 'soft-touch monitoring', and press for inclusion of punishment clauses.
5. The Court seems to be concerned about obscenity and uncensored content on streaming services, the ostensible reason for its incursion into regulatory territory, when there was no challenge to the new rules before it.
6. It would be unfortunate if the judiciary lets itself be seen as departing from its record of protecting individuals harassed by those claiming that their religious or cultural sentiments have been hurt by some work of art, or even remarks or gestures by celebrities.

The new norms for regulation of online content have their origin in the Supreme Court voicing concern about child pornography and content that could provoke sectarian violence. While that was a justified concern, the tendency to allow anyone professing a sense of hurt to prosecute anyone anywhere in the country should not be encouraged. The higher judiciary is expected to clamp down on the 'marketplace of outrage', not join it.



Now, an expanded horizon of surveillance

Bottom Line: ‘Citizen watch’ gets a new meaning after the notification on the IT Rules, 2021 — the promotion of lateral surveillance.

Increasing Surveillance:

1. This year, the Indian Cyber Crime Coordination Centre (I4C), under the Ministry of Home Affairs (MHA), launched the Cyber Crime Volunteers Program with the aim to allow citizens to register themselves as “Cyber Crime Volunteers” in the role of “Unlawful Content Flaggers”.
2. As per the official website of the National Cyber Crime Reporting Portal, the programme will help law enforcement agencies in identifying, reporting and in the removal of illegal/unlawful online content.

An explainer

This form of surveillance, which enables citizens to “watch over” one another is called lateral surveillance. The conventional understanding of the term, surveillance, is its use in the hierarchical sense, i.e. the vertical relationship between the person watching and the person being watched, which is usually the state and its citizenry. Lateral or social or peer-to-peer surveillance differs from typical surveillance.

While surveillance of any kind shows an imbalance of power between the person who surveils, and the one under surveillance, lateral surveillance specifically ensures that the imbalance of power no longer exists. Informal watching of communities by their members has been an age-old part of society, and its members view it as a harmless activity. The problem arises when it is organised and state-sponsored.

Tool for exclusion, suspicion

1. If a pattern were to be drawn, one notices that lateral surveillance is used to further emotional objectives such as community building and strengthening relationships with neighbours where emotional and social factors act as a driving force, thus creating a situation where privacy may be undermined for the betterment of the community.
2. However, surveillance technologies not only act as a tool for social control but also as a tool for social exclusion.



3. Lateral surveillance thus makes it easier to discriminate between those who conform to the social norms of the majority. For example, the LGBT community in South Korea came under the scanner after a cluster of novel coronavirus cases were reported from a particular area which had resulted in large-scale circulation of homophobic content and comments against the patients who tested positive from the community.
4. State-sponsored lateral surveillance is harmful as it creates a culture of 'hate', 'fear' and 'constant suspicion' against an 'enemy'. Wherever the state identifies that it "cannot be everywhere", it deploys this mechanism.
5. This culture places a duty on people to 'keep an eye out' for 'their own safety' and this heightens the fear of crime in society. Also vigilantism and majoritarianism will be promoted to the detriment of civil liberties.
6. Such perceived threats have a tendency to increase intolerance, prejudice, xenophobia and casteism in our society, while also violating the fundamental right to privacy, and, consequently, the unfettered expression of free speech and behaviour.

New Regulation and Problems

1. Despite the potential harm, the government, in February, notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which intends to expand "due diligence" obligations by intermediaries.
2. However, this not only substantially increases surveillance but also promotes lateral surveillance. For example provisions pertaining to user directed take downs of non-consensual sexually explicit content or 'any other matters' and even the harsh content take down/data sharing timelines will enable intermediaries to remove or disable access to information within a short period of time of being notified by users, circumventing the "actual knowledge" doctrine given in *Shreya Singhal vs Union of India*.
3. This will further create an incentive to take down content and share user data without sufficient due process safeguards, violating the fundamental right to privacy and freedom of expression. One wonders how long it would be before a neighbour with a "passion to serve the nation on a single platform and contribute in [the] fight against cybercrime in the country" reports you or me on a social media platform or otherwise.



Health first, fiscal prudence later

Subsidised LPG prices have increased by a massive 50% in this financial year alone, consistently capturing headlines. This may impact sustaining the gains of the government's flagship scheme, the Pradhan Mantri Ujjwala Yojana (PMUY).

The Pradhan Mantri Ujjwala Yojana (PMUY)

1. Since 2016, PMUY has provided LPG connections to 8 million poor households to reduce women's drudgery and indoor air pollution.
2. Providing an upfront connection subsidy of ₹1,600, PMUY helped expand LPG coverage to more than 85% of households. In comparison, less than a third of Indian households used LPG as their main cooking fuel in 2011.
3. However, multiple studies assessing PMUY concluded that while access has increased, many new beneficiaries are not consuming LPG in a sustained manner.
4. Large-scale primary surveys by the Council on Energy, Environment and Water (CEEW) suggest that, on average, recent PMUY beneficiaries consumed only about half the LPG compared to long-standing regular consumers.
5. Limited uptake of LPG among poor households has two main reasons. First, the effective price of LPG is not affordable for such households, despite the subsidy.
6. Second, many rural consumers have access to freely available biomass, making it difficult for LPG to displace it. Beyond causing indoor air pollution, biomass use for cooking contributes up to 30% to the ambient PM2.5 at the national level, more than the contribution of transport, crop residue or coal burning.

Changing prices

1. The recent increases in the subsidised LPG price have made it more difficult for the poor to sustain LPG use.
2. India determines domestic LPG prices based on imported LPG price (we import more than 50% of our consumption).



3. As the pandemic set in, the LPG subsidised price began to rise, even when global LPG prices plummeted, contributing to the refiners' margins and government finances.
4. However, now with LPG prices rising globally, a 50% reduction in the LPG subsidy budget for FY22 (versus FY21) does not bode well.
5. The government is either banking on low global prices (wishful thinking) or reducing its subsidy burden significantly, even while offering 1 crore new connections under Ujjwala 2.0 in FY22.
6. The government's lack of transparency in the pricing of subsidised LPG adds further to the citizen's plight.

Better targeting

1. So, can the Central government tread a tight rope to balance LPG subsidies and ensure sustained clean fuel consumption in poorer households? The answer lies in better targeting of subsidy.
2. Currently, the government provides a uniform subsidy per cylinder to all LPG consumers (PMUY or otherwise).
3. Many long-term LPG users, who are also middle- and higher-income households, will continue to use LPG even at a (higher) unsubsidised price.
4. In contrast, economically poor households need a greater subsidy to make it affordable for them to use LPG as their main cooking fuel.
5. Alongside, the deduplication efforts to weed out households with multiple LPG connections must continue to avoid subsidy leakages.

In the post-pandemic rebuilding, the continued support to the economically poor for sustaining LPG use is not merely a fiscal subsidy but also a social investment to free-up women's productive time and reduce India's public health burden. This social investment will yield rich dividends in the years ahead through a healthier and productive population.