



Incorporating limits

Targeting Hate Speech:

1. Speech is free, but it is a freedom that comes with responsibility. And responsible speech is not just something that does not contain abuse, defamation or incitement to violence.
2. It is increasingly seen as an expression that tends not to discriminate against or incite hatred towards groups based on race, gender, caste, religious belief, sexual orientation, nationality or immigration status.
3. The world has moved away from a free speech doctrine based on formal equality among different viewpoints to one that discourages the targeting of any vulnerable section.
4. The term 'hate speech' and calls for laws that specifically seek to punish it arises from this inclusive understanding of the basis on which speech is restricted in modern democracies.
5. Against this backdrop, the proposal to incorporate provisions against hate speech in penal law is quite welcome. A committee appointed by the Union Home Ministry, tasked with recommending changes in criminal law, is now seeking to formulate new provisions that will make hate speech a separate offence.
6. The term hate speech may not be used, but the panel is examining recommendations made by the Law Commission and the Expert Committee headed by T.K. Viswanathan, on adding Sections 153C and 505A to the IPC.

If at all new sections are to be introduced, it should be clear that what is sought to be punished is incitement to violence or advocacy of hatred, posing an imminent threat to public order or a targeted group. Only then will it be a valid curb on free speech.

Weathering storms

Highlights:

1. India's capacity to withstand multiple, near-simultaneous shocks is being tested, with a Very Severe Cyclonic Storm, Yaas, striking Odisha, just a week after an even stronger Cyclone Tauktae wreaked havoc along the west coast.

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2. Yaas smothered the north Odisha coast as it made landfall, but the preparatory mass evacuation from habitations appears to have limited the loss of life.
3. All coastal States facing the Bay of Bengal have always been in the path of severe cyclones, the majority following the withdrawal of the monsoon, but their vulnerability may be growing as pre-monsoon and post-monsoon storms increase in frequency and strength.
4. The 2021 season comes as another reminder that India will have to improve its resilience to cyclones. Governments are, no doubt, more sensitive to loss of life today and are raising the capacity of the disaster response forces, but much work needs to be done when it comes to protecting assets and creating fiscal instruments to help people rebuild their lives.

Humanitarian and economic disaster:

1. The World Meteorological Organization in its State of the Global Climate 2020 report described Cyclone Amphan that hit Bengal in May last year as the costliest cyclone on record for the North Indian Ocean, with economic losses to India of the order of \$14 billion.
2. In human terms, the extreme event displaced 2.4 million people. What stood out in its aftermath was corruption in the distribution of relief.
3. The Amphan experience should convince Chief Ministers that they must insure people against losses from catastrophes using a system of documentation that makes relief and rehabilitation funds non-discretionary.
4. Half a century of economic wisdom postulates that governments are best placed to compensate people since they can spread the cost of the risk of disasters across the population.
5. But the challenge is to address the risk of cyclones and other extreme weather events using specific funds, making citizens members in a social insurance model.
6. Moreover, considering the negative climate change impact on tropical cyclones, rebuilding should use green, build back better approach. Cyclones will otherwise take the shine off economic progress.



Nine-pin bowling aimed at free speech, privacy

The subject of concern now is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which threaten to deprive social media platforms of their safe harbour immunity in the event of non-compliance with the said rules.

Positives:

1. While there are positive aspects about the said guidelines, there are, equally, glaring ambiguities and stifling susceptibilities that should render these contrary to past Supreme Court of India precedents such as K.S. Puttaswamy.
2. The Rules must be credited for they mandate duties such as removal of non-consensual intimate pictures within 24 hours, publication of compliance reports to increase transparency, setting up of a dispute resolution mechanism for content removal and adding a label to information for users to know whether the content is advertised, owned, sponsored or exclusively controlled.

Gagging a right

1. However, the Supreme Court, in the case of Life Insurance Corp'n. Of India vs Prof. Manubhai D. Shah (1992) had elevated 'the freedom to circulate one's views as the lifeline of any democratic institution'.
2. It went on to say that 'any attempt to stifle, suffocate or gag this right would sound a death knell to democracy' and would 'help usher in autocracy or dictatorship'.
3. And so, it becomes increasingly important to critically scrutinise the recent barriers being imposed via these Rules against our right to free speech and expression.

Issues:

1. They were framed by the Ministry of Electronics and Information Technology (MeiTY). The Second Schedule of the Business Rules, 1961 does not empower MeiTY to frame regulations for 'digital media.' This power belongs to the Ministry of Information and Broadcasting.
2. In the given case although MeiTY has said that these rules shall be administered by the Ministry of Information and Broadcasting, however this



action violates the legal principle of ‘colourable legislation’ where the legislature cannot do something indirectly if it is not possible to do so directly.

3. To propound the problem at hand, the Information Technology Act, 2000, does not regulate digital media. Therefore, the new IT Rules which claim to be a piece of subordinate legislation of the IT Act, travel beyond the rule-making power conferred upon them by the IT Act. This makes the Rules ultra vires to the Act.

Fair recourse, privacy issues

1. An intermediary is now supposed to take down content within 36 hours upon receiving orders from the Government. This deprives the intermediary of fair recourse in the event that it disagrees with the Government’s order due to a strict timeline.
2. Additionally, it places fetters upon free speech by fixing the Government as the ultimate adjudicator of objectionable speech online.
3. The other infamous flaw is how these Rules undermine the right to privacy by imposing a traceability requirement. The immunity that users received from end-to-end encryption was that intermediaries did not have access to the contents of their messages.
4. Imposing this mandatory requirement of traceability will break this immunity, thereby weakening the security of the privacy of these conversations.
5. This will also render all the data from these conversations vulnerable to attack from ill-intentioned third parties. The threat here is not only one of privacy but to the extent of invasion and deprivation from a safe space.
6. These regulations in the absence of a data protection law, coloured in the backdrop of a recent data breach affecting a popular pizza delivery chain and also several airlines highlight a lesson left unlearnt.

On fake news

1. The problem here is that to eliminate fake news — rather than defining its ambit as a first step, the Rules proceed to hurriedly take down whatever an arbitrary, ill-decided, biased authority may deem as “fake news”.



2. Lastly, the Rules create futile additional operational costs for intermediaries by requiring them to have Indian resident nodal officers, compliance officers and grievance officers. Intermediaries are also required to have offices located in India.
3. This makes profit-making a far-fetched goal for multinational corporations and start-up intermediary enterprises. Therefore, not only do these Rules place a barrier on the “marketplace of ideas” but also on the economic market of intermediaries in general by adding redundant financial burdens.

Democracy stands undermined in direct proportion to every attack made on the citizen’s right to have a private conversation, to engage in a transaction, to dissent, to have an opinion and to articulate the same without any fear of being imprisoned.