

Opinion

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Regulating WhatsApp not easy, but govt concerns real

IT minister Ravi Shankar Prasad's stance vindicated by US officials writing to Facebook on lawful access to it

THE FACT THAT the US Attorney General William Barr has written to Facebook chief Mark Zuckerberg, asking him to ensure, among other things, that police officials get "lawful access to content in a readable and usable format" must come as a shot in the arm for India's IT, and telecom minister Ravi Shankar Prasad, who has also been trying to get social media firms to agree to giving lawful access to Indian officials; the UK secretary of state, the US secretary of Homeland Security, and Australia's home minister were other signatories to Barr's letter. While firms like Twitter and WhatsApp/Facebook argued that they had no control over what was posted as they were just platforms or, on other occasions, that they did not have access to information—such as on WhatsApp—as it was encrypted, the issues raised by Prasad are real. If WhatsApp is used to spread rumours that fan communal passions, or by terrorists to communicate, surely the government needs access to this? Indeed, that is precisely what Barr's letter asks for.

The argument of Facebook/Twitter etc being just public platforms has, in any case, been contradicted by the behaviour of these firms. If they are the virtual version of the public square, where anyone can say anything, these social media firms cannot be censoring, and blocking people as they do now. Barr's letter, as it happens, details some of this work that Facebook is currently doing. More than 90% of the 18.4 million reports to the US National Centre for Missing & Exploited Children in 2018, the letter says, were those made by Facebook (based on what it gleaned from people's posts/messages); the UK's National Crime Agency, Barr etc say, arrested more than 2,500 persons last year, and safeguarded 3,000 children as a result of the information provided by Facebook. Facebook's transparency report said it acted against 26 million pieces of terrorist content between October 2017 and March 2019. So, if Facebook does end-to-end encryption of its messaging services as it plans, the letter says, 70% of Facebook's reporting will no longer happen; keep in mind, the bulk of Facebook's reports for child sexual exploitation and terrorism come from what its algorithm detects as objectionable, not from reports by users.

It goes without saying that social media firms have to protect the privacy of users, and end-to-end encryption is one way to do this; this is why there is an outcry against India's 'intermediary guidelines' that want a Twitter/WhatsApp to "deploy technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing or disabling public access to unlawful information or content". But, the lawmakers' concerns are equally valid. How the two conflicting issues are to be resolved is not clear, but given that social media amplifies messages like never before—within a day of the New Zealand white supremacist attack on a mosque that left 50 dead, the attack video had been uploaded 1.5 million times—it needs to come up with a solution as well. It is obvious that, if India were to try to get information from a WhatsApp, people will start using a Telegram, or a Signal, but it is in WhatsApp's interests to come up with workable solutions if it doesn't want to lose a lucrative Indian market. Also, as the Barr letter suggests, if countries work together, it will be easier to get social media to come up with acceptable solutions; by way of example, when most countries decided to act against tax havens, several such jurisdictions started falling in line. It is not clear that the Indian regulator Trai's plan to regulate players like WhatsApp in the same way as it does telcos will help—like telcos, WhatsApp will also have to comply with lawful intercept rules—but it will be interesting to see what solutions/offers firms like WhatsApp come up with to satisfy the authorities.

Criticism isn't sedition

Govt should have come out against court-ordered FIR

CHARGING 49 EMINENT citizens, who voiced concern over incidents of lynching and mob violence in an open letter to prime minister Narendra Modi, with offences that include sedition is fundamentally outrageous. Such crackdown signals that no dissent will be brooked, and makes communal faultlines more pronounced, helping the politics of polarisation that mainline political parties are recklessly indulging in at the moment. The present instance is particularly alarming, however, because it is not a political party—more specifically, the party in power—that is behind the action. While many were quick to blame the Modi government, and the BJP, it is the district court in Muzaffarpur, Bihar, that ordered for the case to be registered, in response to a petition by an advocate seeking penal action against the letter's signatories.

Prima facie, there seems little legal basis for the charges. The Supreme Court, in a clutch of judgements, has held that Section 124A of the Criminal Procedure Code, or the sedition charge, is only applicable to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence, and not to speech that is critical of the government. Yet, governments—whether at the Centre or in the states, a BJP-led one or that led by a different party—have been quite trigger-happy with the charge. But, the open letter that came in July doesn't seem to contain anything that could invite a sedition or even a public nuisance charge. That a court has chosen to intervene in this manner, without regard for whether the charges would hold, or for how such action threatens the constitutional freedoms of the letter's signatories is a dangerous turn. But, the Bihar court is hardly alone in having taken such judicial missteps. Earlier this year, a lawyer petitioned a district court in Delhi to register a sedition case against then Congress president Rahul Gandhi for a political statement against Modi; the case is still pending closure.

The more tangible damage from such cases is that they add to the backlog of cases in courts. While a total of 3.1 crore cases are pending at the district/taaluka court level, the Muzaffarpur court has over 1.4 lakh cases pending. While private complaints against public figures are common, the courts should have refused to entertain these in the present instance, and quite a few in the past, where the grounds for filing charges are manifestly shaky. Such complaints weigh heavy on an already-overburdened lower judiciary, and are a drain to both resources and time. It is time the courts, if not individuals or political parties, exercised better judgement on such issues. While, in the present instance, it was for the court to decide on the FIR, the government should have clearly denounced any such action.

Not NEET

TN fraud exposes shortcomings, Aadhaar-linking can be a solution

THE NATIONAL ELIGIBILITY cum Entrance Test (NEET) for medical education in the country was meant to guard against monied candidates buying up seats while better-qualified candidates are left in the cold. But, thanks to gaps that remain, not much seems to have changed. An expose by *India Today* last year showed that colleges were using the mop-up round, where admission is based on screening of applications, to collect capitation. Now, media reports from Tamil Nadu point to a larger scam. A preliminary investigation revealed that students were using impostors to appear for the test. Only six such cases have been discovered for now, but the Madras HC has ordered an enquiry, which may bring more cases to light. The order further states that the scam itself may not be limited to the state.

Madras HC's observation that Aadhaar verification could help avoid such impersonation is interesting. Biometric verification was mandated for the Common Admission Test (CAT) in 2009 to check against impersonation. The government had made Aadhaar mandatory, hoping to replicate the same for other examinations, but the SC last year ruled against compulsory linking. However, the Madras HC is right, Aadhaar linking, along with a mix of digital solutions, can curb such fraud. Take the case of mark-sheet forgery. CBSE has already linked marksheets to students' digital lockers, from where colleges can pull them at request. Also, a CAT-style online examination, where the paper is only available on closed-loop servers and a question-by-question basis, is needed for all examinations. Otherwise, similar cheating cases could crop up.

THE REAL MAINSTREAM

EVEN AFTER ENACTING FOUR MAJOR LEGISLATIONS IN THE LAST 20 YEARS, WE HAVE NOT BEEN ABLE TO ELIMINATE EVEN ONE SINGLE-USE PLASTIC PRODUCT

A roadmap to eliminate single-use plastics

I AM GLAD that the Union government didn't announce any ban on single-use plastic products on the October 2, 2019. It is not that I don't want these environmentally harmful products to be banned; it is just that I don't think we have done the groundwork to implement a successful ban.

The history of plastic waste management in India is replete with hastiness; we have brought in regulations, but never prepared the market or the local government for the transition.

The first major regulation came 20 years back, in 1999. The Plastics Manufacture, Sale and Usage Rules, 1999, essentially tried to eliminate single-use polythene bags by specifying the size, and thickness of bags that could be sold in the market. It mandated that no carry-bags made of virgin, or recycled, plastic that are less than 8 x 12 inches in size, and less than 20 microns in thickness can be sold in the market.

The 1999 rules were amended, and the Recycled Plastics Manufacture and Usage (Amendment) Rules, 2003, was enacted to exempt export-oriented industry, and to improve enforcement. Alas, nothing much changed on the ground, and thin polythene bags continued to be sold widely in the market. During this period, no effort was made to promote an alternative to these carry-bags.

Then came the Plastic Waste (Management & Handling) Rules, 2011. In this, the minimum thickness of plastic carry-bags was increased to 40 microns, and municipal authorities were given the responsibility to set up systems for plastic waste management. Municipalities were also supposed to set up plastic waste collection centres, with financial support from the manufacturers, in line with the principle of Extended Producer's Responsibility

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(EPR). But, EPR was vaguely defined, and never got implemented. The ban on less than 40-micron thickness carry-bags was also executed poorly, and municipalities were not capacitated to implement the rules.

The most comprehensive (and somewhat complicated) law came in 2016. The Plastic Waste Management Rules, 2016, came with a slew of provisions for everyone in the plastic supply chain. The rules:

- Increase the minimum thickness of plastic carry-bags from 40 to 50 microns;
- Expanded the jurisdiction of applicability from the municipal area to rural areas, and made gram panchayats responsible;
- Defined a very complicated system of EPR for producers/brand owners that needed multiple registrations, and multiple payments;
- Introduced plastic waste management fee through pre-registration of producers, importers and vendors. For example, the shopkeepers and street vendors willing to provide plastic carry-bags were asked to pay a hefty plastic waste management fee of a minimum of ₹48,000 per year.

Three years hence, hardly any of the above provisions have been implemented satisfactorily.

Then, in June 2018, on the occasion of World Environment Day, the prime minister vowed to phase-out single-use plastics by 2022. Before

that, in March 2018, Maharashtra became the first state to implement a ban on single-use plastics. Telangana followed suit in June, and Himachal Pradesh and Uttar Pradesh in July 2018. Tamil Nadu, on January 1, 2019, became the fifth state, and Odisha, on October 2, 2019, the latest to implement a ban on single-use plastics. Today, at least 18 States and UTs have imposed a ban on plastic carry-bags, and some sort of ban on single-use plastic products. But, report after report indicates that after a spurt in enforcement at the beginning of the ban period, things are back to normal. Take the case of Uttar Pradesh, which has implemented the bans in phases.

On July 15, 2018, Uttar Pradesh banned single-use polythene bags, glasses, cups, and cutlery. From August 15, 2018, it imposed a blanket ban on the manufacture, stocking, sale, and transport of all disposable plastic and thermocol items. In the last phase, from October 2, 2018, disposal of all types of non-biodegradable polythene was banned to make Uttar Pradesh a plastic-free state. One year down the line, the bans have not been very successful in reducing single-use plastic despite penalty conditions like imprisonment

of one year, or fine of up to ₹1 lakh.

Maharashtra paints a similar picture. Because it hastily enacted the law, it had to grant multiple relaxations. The enforcement challenge is so great that despite Brihanmumbai Municipal Corporation collecting about ₹4 crore in fines, and seizing more than 75 tonnes of banned plastic items in the last year, reports show that plastic plates, spoons, cups, and polythene bags are back in the market.

Please, don't get me wrong. It is not that these rules and regulations have not made a dent in our fight against plastic pollution. They have; people are more aware, civil society is taking autonomous actions, producers are more cautious, and the industry has been forced to think about the alternative. But, because we enacted these regulations in haste, we failed to prepare the market, or the municipal authorities for the transition. The result has been that we have not been successful in eliminating even one single-use plastic product (not even the single-use polythene bag of less than 20 microns thickness) in 20 years of trying.

If there is one thing to learn from the experience of the past 20 years, it is that regulations, and penalties are not sufficient to eliminate the use of single-use plastics. We need a transformation in the market and the municipal services to achieve this. What this transformation should look like, I will discuss in the next column.

This is the first part of a series on strategies to eliminate single-use plastics in India

LETTERS TO THE EDITOR

Debating sedition

Apropos of "CPM demands sedition case against celebs be revoked" dated October 7, 2019, during Constituent Assembly debates on Article 13 in which sedition was initially incorporated, KM Munshi expressed concern about the way "notorious Section 124A of the Penal Code was sometimes construed" and how the public opinion was changing. TT Krishnamachari argued that even the word "sedition" needed to be "resented". While welcoming the amendment moved in regard to the deletion of the word sedition, Sardar Bhopinder Singh Man recalled to the mind of honourable members of the first occasion when section 124A was included in the Indian Penal Code, and specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. This timely intervention prevented the incorporation of sedition as an instance of an exception to freedom of speech. The Supreme Court in *Shreya Singhal vs Union of India* (2015), while striking down the Section 66A of the Information Technology Act, observed that the "open-ended" and "vague" terminology in the penal provisions could be even deceptive, for it might "trap the innocent". Therefore, "vagueness" in itself is a ground to invalidate a statute. The over-enthusiastic involvement of the State and its intolerance to ideologically different ideas is against the spirit of democracy. The politics of intimidation being carried out against scholars and opposition is outright condemnable and the government, in no way, can escape responsibility for containing this deep current of majoritarianism by drumming up nationalist fervour. It is time flagrant instances of misuse of the sedition law and the tendency to invoke it against those involved in strident forms of dissent, political or ideological, and scathing criticism of governments were taken into consideration. Instead of scrapping the provision altogether, its definition should at least be narrowed down to prevent its potential misuse.

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When should health officials panic?

Exaggerators in public health fields or in the media are wrong in thinking they can do no harm by issuing alarming warnings. There are costs to such tunnel vision

FAYE FLAM

Bloomberg



NEW AND SCARY diseases have always made good headlines, but if they are very rare, is it ever justified to tell people to be afraid? Exaggerators in public health fields, or in the media may not think they can do any harm by issuing alarming warnings about things like mosquito-borne illnesses, vaping, or eating meat. But, there can be costs to such tunnel vision.

It is OK to make a big deal about something that is small when there is a reasonable chance it might become a lot bigger, said risk communication consultant Peter Sandman. Think of the H5N1 bird flu scare of the last decade, he said. The disease was much more likely to kill those who got infected than was the 1918 pandemic flu, which killed about 50 million people. The new bird flu hadn't evolved the ability to spread from person to person, but in the very real possibility it did, it could have been the worst pandemic ever.

That never happened, but it was still good public health procedure to warn people, said Sandman, because it genuinely looked like it was the tip of an iceberg. The same goes for SARS, a viral disease that broke out in 2003, and was contained before it could become the global pandemic some feared.

Today, the big scare in some US states is eastern equine encephalitis (EEE). It is exceedingly rare, but can be deadly. There are usually about seven cases a year in the US, but this year, there have been 28 cases, and nine deaths.

The important question is whether this is just a bump, or whether there is reason to think something has changed that has made this disease more easily spread. That question remains unanswered, though the answer is critical in deciding how to talk about the threat.

Stoking fear can lead to responses that are, at best, a misallocation of resources. In 2016, the mosquito-borne disease that had people scared was Zika virus, and this was used, said Sandman,

to justify spraying in New York, though there were never any cases attributed to local mosquitoes there.

By far the biggest scare story of 2019 has been the small rash of acute lung illnesses associated with vaping. The media reported that cases were "surging" when they reached a possible 450 incidents with five deaths. The numbers have now edged over 1,000, with at least 18 deaths, but there is no mechanism by which this will likely explode into a pandemic. And it is not a big number compared to the number of people who have been vaping without incident. Although the exact cause has yet to be pinned down, which is worrisome, from the start the evidence has pointed to THC (the active ingredient in marijuana), flavouring or other additives as the primary risk.

There are lots of reasons for people to worry about the exploding popularity of vaping among young people. It is highly addictive, and the long-term effects remain unknown. But for older people who are already addicted to nicotine, is this disease enough of a threat to warn smokers against switching to vaping? Is it better for someone who has switched to vaping to go back to cigarettes?

More than 480,000 people die every year from smoking in the US, many from lung cancer. There is good reason to think vaping won't cause cancer because users don't inhale the carcinogenic tar that comes from the combustion of tobacco. Which opens up the possibility that scaring people over this rare new disease could have the unintended consequence of increasing the incidence of something much more common—and known to be deadly.

Similar unintended consequences have come from scaring people away from certain foods, like meat and dairy. Last week, a new paper in published in the *Annals of Internal Medicine* reported that the available evidence points to no statistically significant risk from eating red meat.

Some nutrition researchers objected, but the scientific evidence never pointed to more than a small risk associated with eating meat. A few years ago researchers claimed to find a link between cancer and processed meats, such as ham, sausage and bacon. People who ate a lot of these had an elevated risk of colon cancer, but the risk was small—a 5.3% lifetime risk for those who ate consumer processed meat every day, as opposed to a 4.5% risk for the general population.

The links between disease and heavy consumption of unprocessed meat—steaks and hamburger and such—are even weaker and smaller, which is to say that occasional indulgence is probably not particularly dangerous.

There are environmental reasons not to eat meat—the raising of livestock does increase greenhouse gas emissions. And there may be ethical problems, especially in light of a new scientific understanding that cows, sheep and pigs have feelings and complex social lives.

But people have to eat something. When we were told that eggs and meat would kill us, many substituted cereal, pancakes, bagels, pasta and syrupy non-fat yogurt. Such high-carbohydrate foods have since been associated with obesity and type-2 diabetes. Scaring people can have its own dangers.

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