

Big Tech confronts India's Internet Governance Framework

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Social media giants, Twitter and WhatsApp, and the Indian government find themselves at odds over the recently enacted IT (Intermediary Guidelines and Digital Ethics Code) Rules, 2021. While the Indian government contends that the rules are required to ensure national security and maintain public order, the companies argue that the rules can erode the fundamental rights of citizens. This battle will, in all likelihood, determine the extent of state power over the internet.

The Indian government [released](#) the IT (Intermediary Guidelines and Digital Ethics Code) Rules, 2021 on 25 February 2021 to better manage the effects big technology companies are having on society. Private enterprises like Facebook, Twitter and Whatsapp were given three months (until 25 May 2021) to comply. Now, shortly after the deadline has passed, foreign big technology companies find themselves increasingly at odds with these new regulations and the Indian government.

Foreign big technology companies in India have stated that they are working with the Indian government to ensure compliance with the new regulations. However, as recent events demonstrate, behind this rhetoric are deep schisms between the government and big technology firms. Two social media giants, Twitter and WhatsApp, are in open legal confrontations with New Delhi over the implementation of these rules. WhatsApp [filed](#) a legal suit in the Delhi High Court challenging the new internet governance regulations. It [claims](#) that new rules would violate users' privacy and could potentially stifle free speech. WhatsApp said that the requirements for traceability stipulated under the new framework would require it to log and "fingerprint" each message sent by a user. Such measures would undermine its end-to-end encryption technology which it uses to ensure privacy. The traceability requirement, according to the company, would create a new "mass surveillance state". The government, for its part, has [termed](#) WhatsApp's actions as a "clear act of defiance" adding that the right to privacy cannot be absolute. Ravi Shankar Prasad, India's Minister for Information Technology, also [countered](#) WhatsApp's statements, calling its position a "double standard".

Prasad also highlighted WhatsApp's own violations of privacy by selling user data to firms like Cambridge Analytica. Similar to WhatsApp, Twitter has also found itself in the cross hairs of the central government. On 18 May 2021, the Bharatiya Janata Party's (BJP) spokesperson, Sambit Patra, [tweeted](#) an image of the Congress toolkit to undermine the central government's efforts to combat the COVID-19 pandemic. The Congress filed a police complaint against BJP leaders stating that the allegations were untrue. Twitter, after receiving a complaint from Congress leaders, tagged this tweet as "manipulated media". This elicited a strong retort from the Narendra Modi government. The Ministry of Electronics and Information Technology demanded that the tag be removed. Following this, on 24 May 2021, the Delhi police [visited](#) Twitter's offices in India and issued the company a notice seeking the explanation behind the "manipulated media" tag. Twitter [termed](#) the

Delhi Police's actions as "intimidation tactics". They further raised implications of these actions on the freedom of speech and expression in India. In its reply, the Indian government [said](#) that Twitter's actions were an "attempt to dictate its terms to the world's largest democracy". On Monday, 31 May 2021, in a separate but consequential [case](#), the Delhi High Court stated that Twitter needs to comply with new information technology (IT) rules.

We are now poised for a battle between both parties that will, in all likelihood, determine the future of the internet in India. The government seeks to expand its powers over what happens on the internet and use existing exceptions, whether national security or public order, to justify its approach. New Delhi defends the new rules by arguing that privacy, which suffers from the new rules, is not an absolute right and that traceability will be used proportionately. Social media firms like WhatsApp reject this assertion, claiming that the new rules embed a general and sweeping obligation to identify users online, which makes it ill-suited and far from proportionate. One critical aspect that gets lost in this debate, which the rules do not cover, is the need for safeguards that could also limit the government given the amount of data or information it will inevitably collect. Government agencies will have the power to obtain user information without constraint. Users online have no anonymity from the government. New Delhi appears to be emphasising the benefits of such rules to the government without grappling with the costs involved for citizens and other organizations.

Politically, New Delhi's intent to pass and enforce the IT rules appear also to be driven by a need to counter foreign technology companies that have acquired immense clout worldwide. Controlling these behemoths through domestic rules situates the government as the arbiter of the digital ecosystem, not companies with the apps and platforms. To be sure, these social media companies or intermediaries need to be reined in but doing so without understanding the implications and consequences for citizens and constitutional norms like freedom of speech appears short sighted. What is required is a strategy and approach that is backed by law, preferably a new law, or a revamped law, instead of relying on the existing IT Act to impose additional obligations on technology companies.

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