

INDIA AND TWITTER LEGAL IMBROGLIO: AUTHORITARIAN STATE VERSUS PLATFORM FREEDOM

By

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



The debate about bringing social media platforms under stringent scrutiny and accountability is on the rise globally. The enhanced role of these platforms in the daily lives of their users is problematic for cyberspace largely remains an uncharted territory free from the constraints of law and regulations. In this milieu, India has once again hit the headlines over its tussle with different social media platforms.

Last year WhatsApp sued the Indian government when they introduced the new Information Technology¹ regulations which asked WhatsApp to allow tracing the original creator of the post.² WhatsApp had reservations about it because they have an end-to-end encrypted service and promises privacy to billions of its users. WhatsApp's general security and privacy guidelines clearly state that "technology and privacy experts have determined that traceability breaks end-to-end encryption and would severely undermine the privacy of billions of people who communicate digitally."³

Furthermore, there is an ongoing rift between India and Twitter. The Indian government's antagonism against Twitter mainly stems from the critical nature of space for alternative voices and

- 1 "Information Technology (intermediary Guidelines and Digital Media Ethics Code), Rules, 2021," April 21, 2021, https://www.india.org.pk/adminpart/Backgrounder_DM.pdf.
- 2 Manish Singh, "WhatsApp Sues Indian Government over New Internet Rules," Tech Crunch, last modified May 25, 2021, <https://techcrunch.com/2021/05/25/whatsapp-sues-india-government/>.
- 3 "WhatsApp Help Center - What is Traceability and Why Does WhatsApp Oppose It?," WhatsApp.com, accessed July 6, 2022, <https://faq.whatsapp.com/general/security-and-privacy/what-is-traceability-and-why-does-whatsapp-oppose-it>.

opinions provided by the platform. Even before enforcing the new IT regulations, Twitter and the government of India were at war with each other.

Previously, the Indian government asked Twitter to remove a few posts and to ban accounts posting in favor of the farmer's protests in India.⁴ Same authoritarian tools were deployed to remove posts criticizing the Indian government's handling of the Covid pandemic.⁵ Consequently, Twitter blocked 250 accounts for a brief period, only to restore them within six hours saying that there was "insufficient justification" to remove them.⁶ However, in the aftermath of this incessant tussle, Twitter India's head Manish Maheshwari left the country.⁷

Furthermore, on 18th May 2022, the BJP spokesperson Sambit Patra shared screenshots of the "Congress Toolkit."⁸ Using the screenshots, he claimed that Congress had tried to discredit Prime Minister Modi and his handling of the Covid crisis.⁹ However, on 20th May 2022 Twitter flagged the toolkit as "manipulated media"¹⁰ which was responsible for disseminating false and fake news. As a reaction, on 25th May 2022, few Delhi Police officers visited twitter offices in South Delhi and Gurugram, to serve notice for the investigation into the "toolkit case."¹¹

The enforcement of the new regulations has further aggravated the situation. By virtue of these guidelines, Twitter was expected to appoint a Grievance Officer, a Chief Compliance Officer, and a Nodal Contact person by 25th May 2022.¹² However, Twitter failed to meet the deadline. This was taken as a violation of law by the Indian government. Twitter, on the other hand, contends that these new regulations curb the freedom of speech of its users. On 27th May 2022, Twitter accused

4 Soutik Biswas, "The Indian Government's War with Twitter," *BBC News*, last modified February 12, 2021, <https://www.bbc.com/news/world-asia-india-56007451>

5 "India Covid: Anger As Twitter Ordered to Remove Critical Virus Posts," *BBC News*, last modified April 26, 2021, <https://www.bbc.com/news/world-asia-56883483>.

6 "Twitter Challenges India"

7 "Twitter Decides Not to Have Country Director in India; Manish Maheshwari Gets New Role in US," *India Today*, last modified August 14, 2021, <https://www.indiatoday.in/business/story/twitter-decides-not-to-have-country-director-in-india-manish-maheshwari-moves-to-us-1840565-2021-08-13>.

8 Regina Mihindukulasuriya, "Why Tech Experts Think BJP's Sambit Patra's Claim About Congress Toolkit Could Be Fake," *The Print*, last modified May 19, 2021, <https://theprint.in/tech/why-tech-experts-think-bjps-sambit-patras-claim-about-congress-toolkit-could-be-fake/661447/>.

9 Ibid.

10 "Twitter Adds 'Manipulated Media' Warning to BJP Spokesperson Sambit Patra's 'Toolkit' Tweet," *The Wire*, accessed July 21, 2022, <https://thewire.in/politics/twitter-adds-manipulated-media-warning-to-bjp-spokesperson-sambit-patras-toolkit-tweet>

11 "Delhi Police Visits Twitter Office to Serve Notice over Toolkit," *The Economic Times*, last modified May 24, 2021, <https://economictimes.indiatimes.com/tech/technology/toolkit-row-delhi-police-sends-notice-to-twitter-over-flagging-patras-tweet-as-manipulated-media/articleshow/82911828.cms>.

12 "OTT Rules Take Effect on 26 May: Twitter, Facebook Yet to Comply," *The Quint*, last modified May 25, 2021, <https://www.thequint.com/cyber/policy/ott-rules-take-effect-on-26-may-twitter-facebook-yet-to-comply>.

India of withholding portions of free speech.¹³ Twitter further removed the verified badge from the Vice President M. Venkaiah Naidu's Twitter handle and a few other Sangh functionaries.¹⁴

On 27th June Twitter was sent a final legal notice to comply with the new IT regulations till 4th July or face the consequences in court by losing its "intermediary status."¹⁵ Twitter, once again failed to meet the deadline. Consequently, Twitter lost immunity over third-party content on its platform. It means that Twitter can now be legally held liable for the content posted or shared by its users.¹⁶ In response, Twitter has taken the matter to Karnataka High Court and is seeking a judicial review of the content that the government wanted it to block.¹⁷

This recent issue highlights the underlying problem with excessive state regulation of the content online. India's new IT regulations leave little to no space for any criticism to be hurled against the government. Moreover, the new guidelines create hurdles for any content that affects the "sovereignty of the state," "its security," or "public order."¹⁸ These ideas are too vague to be quantified and almost everything can fall under their ambit if not deemed appropriate by the government. Furthermore, the recently enforced IT regulations were fast-tracked without public and pre-legislative consultation, a process of taking recommendations from all the relevant stakeholders.¹⁹ By doing so, it allows greater surveillance ability to the government to curb online dissent.

Crackdown on dissent is not a new phenomenon in India. Previously, the Indian government has been criticized for its Pegasus scandal and the use of NSO spyware for surveillance of prominent

13 Karan D. Singh, "Twitter Calls on Indian Government to Respect Free Speech," *The New York Times*, last modified May 27, 2021, <https://www.nytimes.com/2021/05/27/technology/india-twitter.html>.

14 "Twitter Removes Blue Badge from Venkaiah Naidu's Personal Verified Account," *Business Standard*, accessed July 21, 2022, https://www.business-standard.com/article/current-affairs/twitter-removes-blue-badge-from-venkaiah-naidu-s-personal-verified-account-121060500119_1.html.

15 Manas Tiwari, "Twitter Loses Its Intermediary Status in India, Here is What It Means," *India Today*, last modified June 16, 2021, <https://www.indiatoday.in/technology/features/story/twitter-loses-its-intermediary-status-in-india-here-is-what-it-means-1815491-2021-06-16>.

16 Trishee Goyal, "Why Twitter-govt Court Fight Matters for Your Free Speech Too," *The Times of India*, last modified July 11, 2022, <https://timesofindia.indiatimes.com/india/why-twitter-has-taken-indian-government-to-court/articleshow/92800405.cms>.

17 "Twitter Challenges India Order to Take Down Tweets," *BBC News*, last modified July 6, 2022, <https://www.bbc.com/news/world-asia-india-62057167>

18 Katitza Rodriguez, Sasha Mathew, and Christoph Schmon, "India's Strict Rules For Online Intermediaries Undermine Freedom of Expression," Electronic Frontier Foundation, last modified January 24, 2022, <https://www.eff.org/deeplinks/2021/04/indias-strict-rules-online-intermediaries-undermine-freedom-expression>.

19 Ibid.

political leaders and opposition members.²⁰ This further undermines the already deteriorating condition of the state of democracy in the country²¹ under the Modi regime.

India and Twitter's legal tussle is now subjudice. However, from the above analysis, it is safe to deduce that India is heading towards greater state control of social media platforms, ushering an era of digital authoritarianism in the country where even laws, which are the custodians of basic freedoms like opinion and expression, are being weaponized by the government to alter narratives in its favor.

²⁰ Misbah Mukhtar and Saria Shahzad, "Is India Headed Towards Digital Authoritarianism," Institute of Strategic Studies Islamabad, last modified September 13, 2021, https://issi.org.pk/wp-content/uploads/2021/09/IB_Misbah_and_Saira_Sept_13_2021.pdf.

²¹ Dr. Gareth Price, "Democracy in India," Chatham House, last modified April 12, 2022, <https://www.chathamhouse.org/2022/04/democracy-india>.