Intermediate crisis

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Come clean: The Election Commission has imposed a norm on candidates to disclose their social media campaigns - THE HINDU / RV MOORTHY

The regulation of hate speech and fake news remains nobody's responsibility

Complexity and flux in the media ecosystem present unique challenges for oversight bodies of India's democracy. Till not far back, the main hazard was identified as "paid news", or candidates obtaining media coverage in exchange for a cash payout.

A legal loophole enabling third parties to incur expenses on behalf of a candidate added to the oversight problems. That ill-defined boundary where a candidate's volition yields to actions he can credibly disclaim has acquired mutant forms in the social media world.

In notifying the schedule for the general elections to the Lok Sabha, the Election Commission of India (ECI) made a special mention of the twin menaces of fake news and hate speech. Days later, the three-member commission summoned a meeting of telecom operators and social media platforms, to urge a "voluntary" code that would ensure high standards of integrity. Introspection by technology firms, which had proven themselves formidable "force multipliers", the ECI urged, would obviate the need for "more stringent provisions of law".

For its part, the ECI has imposed a norm on candidates to disclose their social media campaigns, which have a way of flying under the radar of its scrutiny. The

ECI has also created an app that enables individuals to record complaints where offences over social media are detected.

Social media firms and internet operators drafted a three-page code in just over a week. Among its operative parts are a commitment to sustain a channel with the ECI to process matters of priority, submit all featured political advertising to certification by an empowered body and ensure the transparency of promotional material using relevant “disclosure technology”.

These commitments are prefaced with what seems an advance alibi in the event of any transgression. Participants to the voluntary code plead for recognition of their special status as neither “authors nor publishers”. Though running on user-generated content, the services and products offered are diverse, with very distinctive “business models”. This diversity would condition each participant’s compliance with the voluntary code.

On another track, the ministry of electronics and information technology (which goes by the quirky acronym MeitY) has initiated public consultations on the contentious issue of “intermediary liability”. Section 79 of the Information Technology Act already specifies a certain number of situations in which the “intermediary” — a telecom service or social media platform — would be liable for content transactions. Exemptions are granted where the “function of the intermediary is limited to providing access to a communication system” or where it does not “initiate the transmission, select the receiver of the transmission, (or) select or modify the information contained in the transmission”.

Under existing rules, intermediaries would be obliged to respond when notified about content that could lead to unlawful conduct. In 2015, while striking down Section 66 for its over-broad definitions, which empowered the police to literally create an offence and arrest someone over social media conduct, the Supreme Court (SC) in the matter of Shreya Singhal allowed Section 79 to stand. Its use though could not exceed the free speech restraints mentioned in Article 19 of the Constitution.

The MeitY’s proposals now impose a “due diligence” responsibility. Offences are defined by a broad list of circumstances, several of which find no mention in

Article 19. Intermediaries would be obliged to convey “at least once a month” that any violation of terms of use could lead to termination of services. They would also be obliged to provide information a “government agency” may demand by a “lawful order”, potentially leading to the “tracing out” of particular bits of information by origin.

Telecom companies and social media platforms have attacked the proposals as excessive and prone to abuse. Civil society groups have decried the contravention of the SC’s findings in the Shreya Singhal matter. From official quarters, the response is merely that the many problems posed by the new media ecosystem require multiple approaches.

Questions remain about the optimal pathway towards safeguarding the public utility function, while the platform companies curate content for users to optimise advertising revenue. The nebulous character of the new firms is epitomised by Google, which, in 2009, announced its conquest of the final frontier of “personalised search for everyone”. A complex mix of 57 ingredients went into determining what items would be of most interest to the user. Every user would be given a uniquely curated menu, even with the same search string as his next-door neighbour.

While advancing its claims to guarding consumer sovereignty, Google also felt compelled to argue that search results would attract the free speech protections of the US First Amendment. This protection applied both to what was said, and what was not. Neither Google nor any other intermediary should face legal jeopardy for omitting material from search processes triggered by particular keywords.

Even if it is neither author nor publisher, the intermediary has become a powerful and influential curator of content. The level of responsibility that would come with this territory still remains an unresolved question.

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