

Publisher-platform imbalances need fixing

How can our news media be safeguarded against the market power of domineering search engines, social media giants, and other so-called 'big tech' players mediating the digital economy? This is a classic public interest matter since the quality, diversity, and sustainability of publishers is of direct and immediate consequence to a user of digital news.

The numerous imbalances and fractures that scar the relationship between news publishers and technology platforms, are captured in two baskets of concerns: the absence of Fair Valuation (a matter of compensation), and that of Enumerative Accountability (a matter of transparency).

No doubt digital advertising revenues are jointly produced by publishers and platforms. However, publishers are hampered by a fair valuation of the share of such revenues generated by their journalism. Moreover, they are entirely dependent on the terms imposed by platforms operating under monopolist or duopolistic conditions. Such dependencies arise from platforms straddling multiple roles in digital news markets, especially as mediators in the search for online news content, and as providers of infrastructure to publishers to participate in the online advertising market.

The second imbalance stems from the lack of Enumerative Accountability. Platforms unilaterally define the measures of the quality and popularity of online news; they arbitrarily change measures to suit their own priorities, often after imposing them on publishers in the first place. Further, they refuse to share relevant data on advertising and viewership with stakeholders in the news economy, including with regulators and others assessing the health of digital markets.

Mitigation

In 2021, Australia tackled this by proposing a mechanism to govern the interaction between publishers and platforms. But the platforms retaliated. Facebook blocked its Australian users from accessing thousands of news sites, which included vital sources of public information during rampant wildfires and the COVID-19 pandemic. They only 'turned the news back on' after winning major concessions from the Australian government that were enshrined in the final draft of the News Media and Digital Platforms Mandatory Bargaining Code, 2021.



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Due to the conduct of global big tech, imbalances that are harming news publishers are in turn hurting readers, listeners, and viewers of digital news

Since then, other governments have initiated different mechanisms to fix the imbalance between publishers and platforms. Last month, Canada's Online News Act warranted fair compensation for publishers and the sustainability of local news. The United Kingdom plans to introduce legislation to regulate the relationship between big tech and news outlets.

Even in the Global South, where publishers in some countries are vulnerable to big tech that also provide access to the online world, things are moving. While steps are underway in Brazil and South Africa, Indonesia's proposed Digital Platform Responsibilities for Quality Journalism is set to materialise through a presidential decree. The United States, which is the home of big tech, has yet to reveal its cards. In California, the den of big tech, the Journalism Preservation Act, where platforms are obliged to pay publishers for news content, has been put on hold until 2024, despite bi-partisan support from the State's lower house.

The vocabulary of these regulations – varied and fascinating in itself – refract different motivations and priorities. Nevertheless, their overarching aim is to correct the twin imbalances: ensure news outlets sharing their content through search engines, social media, or aggregators get a fair share of digital advertising revenues, and get visibility over the data generated by platforms from selling and distributing online news. Otherwise, news publishers will be forced to continue accepting unfair, and perhaps unsustainable, terms from platforms. They will hesitate to invest in producing high-quality journalism and ground-reportage, thereby ceding space in the digital public sphere to purveyors of misinformation and disinformation.

India's sluggish response

Unfortunately India has been slow in thinking, talking, and acting on mitigating these twin imbalances.

In December 2021, the Union Minister of State for Electronics and Technology denied in Parliament any desire to make big tech pay for news. He revised his position the next year, and in recent months has been increasingly talking about the disadvantages news publishers face in their dealings with platforms.

In 2021, the Digital News Publishers Association (DNPA) had filed a plea against Google in the Competition Commission of India (CCI). The DNPA, which is an association of print

and broadcast publishers, accused Google of unfairly valuing their digital advertising share, not remunerating them for the snippets used by Google in its search results, and unilaterally deciding and arbitrarily altering the mutually agreed revenue sharing model.

The DNPA also pointed out Google sidestepping its enumerative accountability, neither sharing granular data pertaining to advertising revenue nor disclosing the basis for calculating such revenues.

The facts presented by DNPA, relevant for most, are however not quite fruitful for evidence-based policy making. In January 2022, the CCI rightly asked its office to investigate the matter in a report to be submitted within 60 days. In February 2022, The Indian Newspaper Society (INS) filed a similar plea; it also highlighted Google's search results not being based on the relevance of news content, thereby creating an uneven playing field among various publishers. It was no surprise that the CCI clubbed the investigations in both cases.

The report of the Standing Committee on Finance, in December 2022, on 'Anti-Competitive Practices by Big Tech Companies' echoed the concerns of the DNPA and the INS. It underscored that some digital markets are prone to dominance by one or two players, and within a very short span of time – that is, before policies can be formulated and anti-competitive practices are adjudged. The Standing Committee recommended the urgency of evaluating competitive behaviour before digital markets become monopolised. This is in contrast with the current practice of the ex-post, or retrospective, evaluation which is both time consuming and stretches state capacity. Had the CCI's report been submitted on schedule, the Standing Committee would have been better informed about the imbalances between publishers and platforms. This may have even motivated it to propose more concrete policy options, or at least be less generic in its observations.

It is almost 60 weeks for the CCI report which was to have been submitted in 60 days. The imbalances harming news publishers concomitantly harm readers, listeners, and viewers of digital news. This then becomes a matter where the interests of national news outlets clearly overlap with public interest. At this moment, both these interests are in tension, if not under stress, due to the conduct of global big tech.

An Internet ban will not restore peace in Manipur

Manipur is burning but the rest of India did not care. The violence in the State began on May 3, 2023, but the nation was in deep slumber till July 19. It took a video clip of sexual violence by a mob to surface and go viral on social media that day and 78 days for the Prime Minister of India to break his silence. During this period an Internet shutdown has continued in the northeast State. What was its propriety and its role in our national apathy?

Blanket order, no supportive data

Data from the Telecom Regulatory Authority of India show that the people of Manipur access the Internet primarily through their smartphones; and wired Internet users primarily constitute institutional, commercial and higher socio-economic groups. Out of a total pie of 0.05 million wireline and 2.36 wireless million users, about 2.2 million connect to the Internet. The Internet shutdown in Manipur, first enforced on May 3, is a case of blanket prohibition. The entire State is affected, and it is not a case of some of a total of 16 districts being affected; it covers all web traffic and mediums of connectivity.

The orders issued by the Commissioner (Home) of Manipur under the Telecom Suspension Rules use vague language in order to "thwart the design and activities of anti-national and anti-social elements... by stopping the spread of disinformation and false rumours, through various social media platforms". There is an absence of data or specific instances of violence being prevented due to the jamming of Internet connectivity. Before the weekly deadline lapses, a fresh order is passed, where each order is a mere reproduction of the earlier one but with minor changes in dates, thus making it clear that this could be indefinite. One may wonder about compliance following the reported Supreme Court of India judgment on Internet shutdowns in Jammu and Kashmir. There is a breach of directions that was made clear in *Anuradha Bhasin vs Union of India*.

In this period, reports have filtered in – these are besides the protests in Delhi and the information flow here – that document the injury being caused to the people of Manipur. The news



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is of extremes – from students from Manipur pursuing their education in the metropolitan cities running out of money to residents being unable to apply for their evacuation to relief camps. Around May 19, petitions challenging these orders – such as *Aribam Dhananjay Sharma vs State of Manipur* – were filed in the High Court of Manipur. This case in particular is vital to understand evolving jurisprudence of "limited internet shutdowns" not only in Manipur but also the rest of India. After 10 dates of hearing on July 7, a direction was issued for partial restoration. The primary objective as framed by the High Court has been to assess "whether it is possible to provide limited usage of internet service to the public". This is constitutionally incongruent to judicial review for it avoids determining the legality of impugned orders. However, this follows an institutional grammar on Internet shutdowns.

In *Anuradha Bhasin vs Union of India*, the Supreme Court failed to adjudicate on even one Internet shutdown order. The decision by itself did not result in restoration of access but for "State/competent authorities to review all orders suspending internet services". Its directions for transparency (such as publication of orders) have not been implemented as yet – as seen in the flurry of cases and recent joint report by Human Rights Watch and the Internet Freedom Foundation. Bringing lasting damage, this case carved out greater flexibility for, "limited internet shutdowns", with the possibility of access only to, "government websites, localized/limited e-banking facilities, hospitals services and other essential services, in those regions, wherein the internet services are not likely to be restored immediately".

Judicial response

The High Court of Manipur has acted in congress with judicial doctrine and practices by its order on July 7. It directs provisional access for leased lines (primarily used by public departments and corporate offices), wired line services (with signed undertakings, a ban on social media, virtual private networks or VPNs and physical monitoring), and a technical trial for whitelisting

of mobile Internet determined by the Home Department. There are no clear definitions on terms such as "social media" or examining continuing prohibition for Internet usage primarily through smartphones. Hence, in effect, a ban on Internet access continues in Manipur. The response of the Supreme Court has been one of judicial avoidance. The top court had an opportunity twice to adjudicate when a petitioner challenged the Internet shutdown and later when the State government itself appealed the order of the High Court for partial restoration. Even otherwise, it is peculiar as the Supreme Court is examining a broader issue regarding violence in *Dinganglung Gangmei vs Mutum Churamani Meetei*. In this case, Internet shutdowns are an inherent element. For instance, the State government has in its Status Report dated July 10 before the Supreme Court, cited the Internet suspension as a security measure. Also, the Chief Minister on July 20, 2020, has in a media interview, stated, "[t]here are hundreds of similar cases and that is the reason why the internet is shut off in the state."

The vital role of information flow

In an Internet ban, misinformation spreads rather than abates. For instance, a press report dated June 1, by Hoinelthing Sithou, and published by the online portal, NewsClick, points out in chilling detail that disinformation served as a pretext for the perpetration of sexual violence against Kuki-Zo women. For Manipur, the video clip is a vital moment for a national awakening that must be achieved without any reputational and social harm to survivors of sexual violence and communal hatred. Information flows are also necessary to ensure the accountability of the State and central governments in taking steps to ensure truth, justice and reconciliation. Accountability can only come when the courts improve on the precedent of the *Anuradha Bhasin* case and demand it from the State and central executive. So the question that needs to be asked again is: what was the propriety of the Internet shutdown and role in our national apathy? We will never have these answers till we hear the voices of Manipur.