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# Honesty is no excuse: An argument for increased social media intermediary liability in India

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Source for artwork: Disinformation, 2020 by Michael Alan

# Context of our study

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# Literacy and Digital Literacy

- A person aged seven and above, who can both read and write with understanding in any language, is treated as **literate**. (Census 2011; Literacy (Know India) <https://knowindia.india.gov.in/profile/literacy.php>)
- Literacy, as per the Census, stood at roughly 73%, with 80.9% for males and 64.63% for females.
- If at least one person in the household has the ability to operate a computer and use the internet (among individuals who are 5 years of age and older) is defined as Digitally Literate Household. (Dattopant Thengadi National Board for Workers Education & Development, Ministry of Labour & Employment, Govt. of India, 'Digital Literacy' [https://dtnbwed.cbwe.gov.in/images/upload/Digital-Literacy\\_3ZNK.pdf](https://dtnbwed.cbwe.gov.in/images/upload/Digital-Literacy_3ZNK.pdf))

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# Internet use and gap between access and literacy



Of the total population of 1.46 billion, 806 million people have internet connections (roughly 55.3%), and India houses 491 million active social media user profiles (roughly 33.6%) (Simon Kemp, Digital 2025: India <https://datareportal.com/reports/digital-2025-india>)



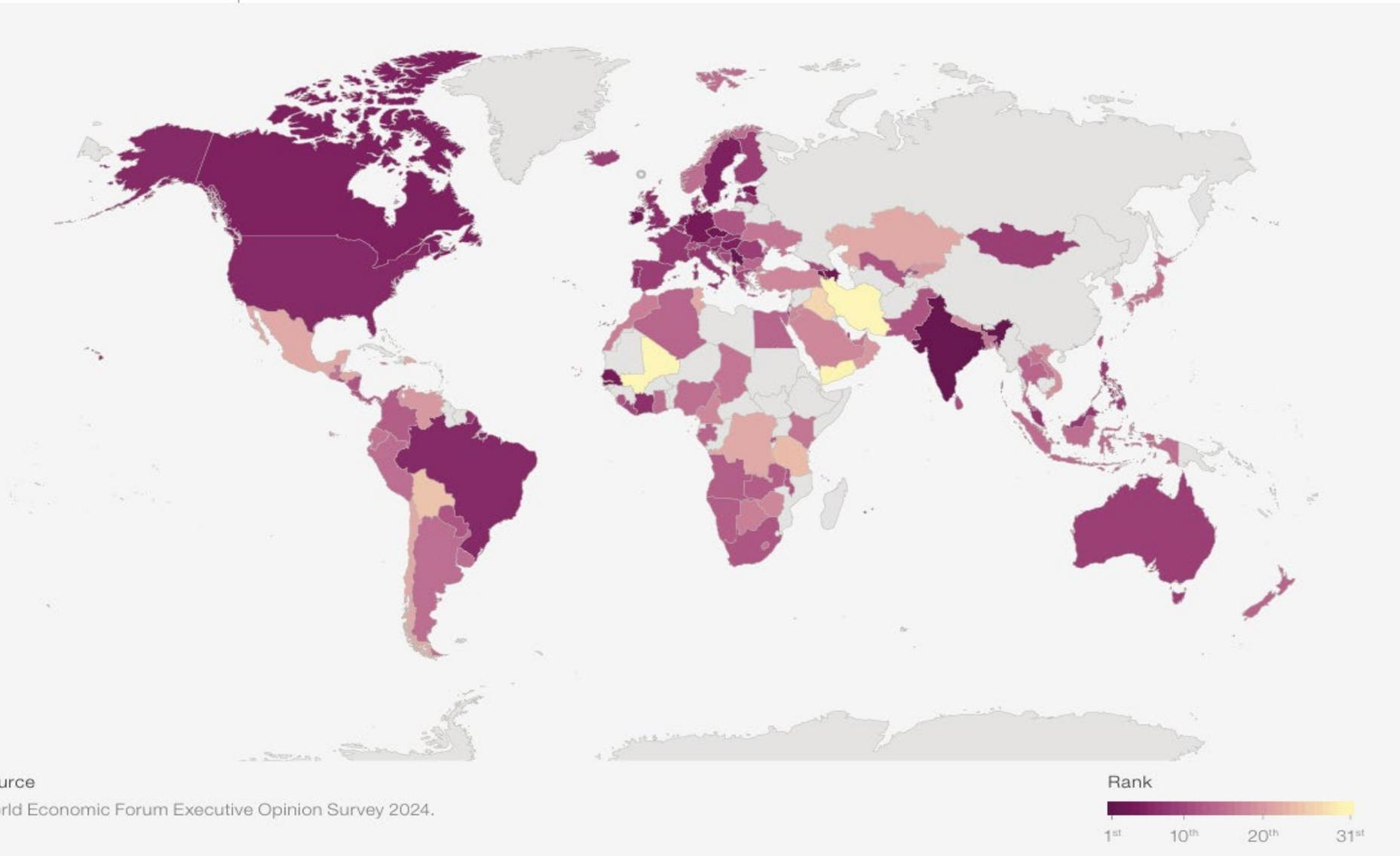
Gap between access and digital literacy - 55.3% of the total population has digital access, but only 38% of Indian households are digitally literate.

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FIGURE 1.23

### National risk perceptions: Misinformation and disinformation

Executive Survey Opinion rank of national risks from the question "Which five risks are the most likely to pose the biggest threat to your country in the next two years?"



Source  
World Economic Forum Executive Opinion Survey 2024.

disinformation i.e. false, inaccurate, or misleading information designed, presented and promoted to intentionally cause public harm or for profit

(Commission, E. (2018). *A multi dimensional approach to disinformation - Report of the independent High Level Group on fake news and online disinformation*)

- Source: Global Risks Report 2025, World Economic Forum - [https://reports.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2025.pdf](https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf).

# कटुआ में बच्ची से नहीं हुआ था दुष्कर्म

## The Dadri lynching: how events unfolded

Updated - December 04, 2021 11:31 pm IST

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Criticles

## Dadri lynching: did the media get it wrong?

There's a critical detail that seems to be concocted in Dadri reports, and it changes Akhlaq's story

By: Manisha Pande 01 Jun, 2016

पोस्टमार्टम रिपोर्ट में सिर्फ जख्मों की बात, **सवालियों के घरे में** क्राइम ब्रांच की चार्जशीट

अवधेश चौहान • जम्मू

### पहली रिपोर्ट

#### शरीर पर छह जख्म, खोपड़ी सतागत

पहली रिपोर्ट में कहा गया है कि बच्ची के शरीर पर छह जख्म हैं, जबकि दूसरी रिपोर्ट में सात जख्म का जिक्र है। एक जख्म फान के पास लगभग दो सेंमी है। ऐसा जख्म आमतौर पर गिरने से होता है। खोपड़ी में कोई फ्रैक्चर नहीं है। क्राइम ब्रांच की चार्जशीट के मुताबिक बच्ची का गला घोटने के बाद सिर पर पत्थर मारा गया। पत्थर मारा जाए तो जख्म की तीव्रता अधिक होती। यह थवोरी पोस्टमार्टम रिपोर्ट से मेल नहीं खा रही।

#### सांस रुकने से हुए हार्ट अटैक से मौत

पुलिस ने 17 जनवरी को जहां शव बरामद किया, क्राइम ब्रांच ने वहां उसे पत्थर मारने का दावा किया है। लेकिन पत्थर पर भी खून का निशान नहीं है। यानी बच्ची की मौत पहले हो चुकी थी। रिपोर्ट के मुताबिक उसकी मौत सांस रुकने से हुए हार्ट अटैक से हुई है। उसके पेट में नशीले दवाई भी मिली है। उसके दाहिने ब्राजू, पेट और निचले हिस्सों पर खरोंच के निशान हैं।

### दूसरी रिपोर्ट

#### जांघ पर खरोंच और खड़मन फटा था

दूसरी पोस्टमार्टम रिपोर्ट में जांघ पर कुछ खरोंच मिले जो गिरने से भी हो सकते हैं। रिपोर्ट के मुताबिक सबसे बड़ी बात यह है कि दुष्कर्म नहीं हुआ है। बच्ची का हाइमन फटा था। श्री महाराजा गुलाब सिंह अस्पताल की स्त्री रोग विशेषज्ञ का कहना है कि हाइमन घुड़सवारी, तेराकी, साइकिलिंग, जोर का काम आदि करने से भी फट सकता है। रिपोर्ट में बच्ची के ब्राइवेट पार्ट और एफएसएल भेजे गए कपड़े पर यीर्ष नहीं मिला है। हालांकि चार्जशीट के मुताबिक एफएसएल भेजने से पहले कपड़े धो दिए गए थे।

#### हत्या कहीं और होने का अंदेशा

पुलिस की बड़ी चूक यह है कि उसने आरोपियों के अंडर गारमेंट्स एफएसएल में नहीं भेजे। बच्ची के गुप्तांग में हल्का खून का दाबा मिला है। यह चोट के कारण भी हो सकता है। रिपोर्ट के मुताबिक शव मिलने से 36 से 72 घंटे पहले मौत हो चुकी थी। इससे लगता है हत्या कहीं और की गई और शव रसाना में फेंका गया।

#### मिते वात पर भी उठे सवाल

बच्ची के बाल देवस्थान से बरामद करने का दावा किया गया है। सवाल उठता है कि क्या देवस्थान की 17 जनवरी के बाद कोई सफाई नहीं हुई। लेकिन ऐसा नहीं है, क्योंकि इस देवस्थान पर लोग रोजाना नतमस्तक होते हैं।



संबंधित खबरें

>> पेज 13

# AI being weaponised for fraud: Finance Minister Nirmala Sitharaman

She gave four messages to the Fintech companies: Focus on fundamentals, grow with... treat regulations like a safety belt and not a brake and to innovate with inclusion and...

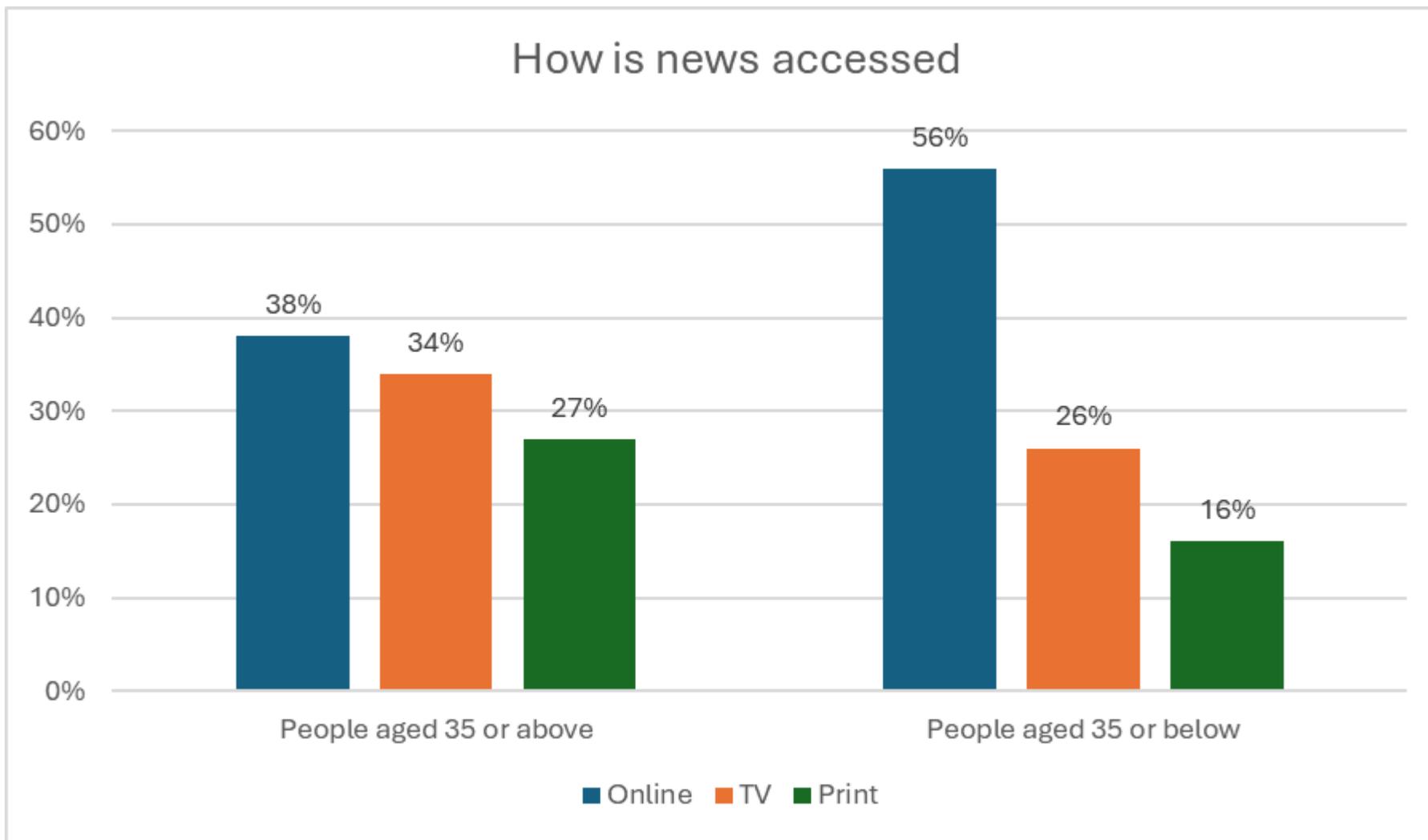
Updated - October 07, 2025 10:13 pm IST - Mumbai

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# Consumption of news trends



- Within online usage – use of social media
- Facebook and WhatsApp used by 52% each for consumption of news

Source: Zeenab Aneez et al, Reuters Institute India Digital News Report, Reuters Institute for the Study of Journalism (2019)

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# Structure of the paper



## Part 1

Trends of news consumption through social media and the concept of opinion power, given disinformation



## Part 2

The current legal landscape in India



## Part 3

Social media v. legacy media, can social media be considered political actors?



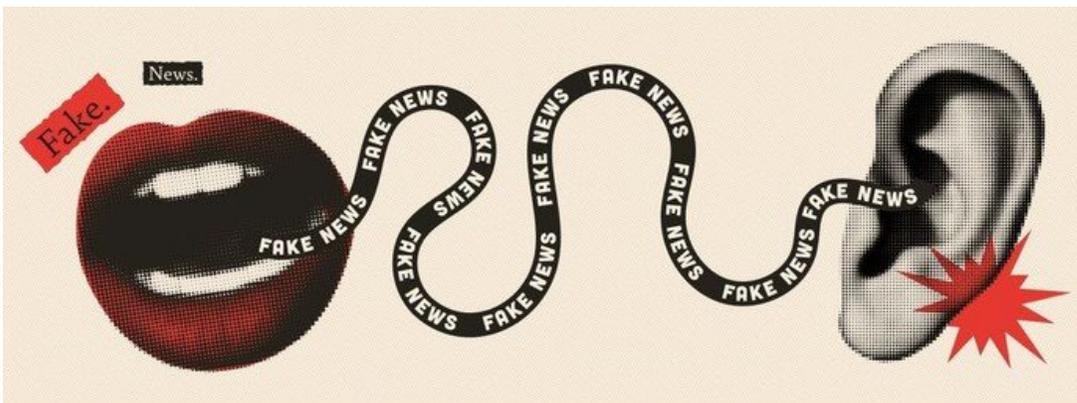
## Part 4

Possible suggestions on increased liability

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# Opinion power and SMI

- Opinion power - Borrowed from the German concept of 'Meinungsmacht' (Theresa Josephine Seipp, 2023)
- “the ability to successfully influence processes of public opinion formation (public opinion) and individual opinion formation (political attitudes and actions of the public, i.e., citizens and other political actors), i.e., to achieve intended effects in the sense of the forms of power”(Neuberger, 2018).
- Pluralistic opinion power – obligation of the state and the need for maintenance of free media
- Social media platforms acting as "microcosms of democracy", providing citizens with an alternate news outlet but also expression of dissent, information sharing patterns (specific to India – limits on forwards)
- Insights from our own survey: a majority of the users, especially users who are Millennials or younger (aged 35 or lower), reported using social media apps such as Instagram, X and Reddit as places where they read the news, if not the place “where the first brush with news happens” (Interview with Project Management Specialist, 2025). Users belonging to Gen X or older (aged 45 or older), who still prefer to access their news via legacy/traditional media sources such as newspapers.



# The Law

- Effectively, no legislation that governs disinformation, actionable only when harm to public order in which case penal provisions apply
- For disinformation on social media – the information technology act and corresponding rules applicable.
- Social media platforms, in India, are categorized as intermediaries - any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record ...(includes) internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes (section 2(1)(w) of the IT Act, 2000)
- ‘social media intermediary’ - an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services (section 2(1)(w) of IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021)

# Relevant provisions

- Section 69A - Power to issue directions for blocking for public access of any information through any computer resource - Central Government or its officers issue an order for an intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.
- Section 69A(3) - refusal to comply - an imprisonment for a term which may extend to seven years and also be liable to fine.
- Section 71 - Exemption from liability of intermediary in certain cases - an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.
- Section 71 (3)(b) - upon receiving **actual knowledge**, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.
- Compliance window - 36 hours from receiving actual knowledge - actual knowledge shall arise only in the manner prescribed under the rule, which includes a court order or an order from an officer authorised to make such an order (latest amendment to IT Rules)

in the interest of  
sovereignty and integrity  
of India,

defence of India,

security of the State,

friendly relations with  
foreign States or

public order or

for preventing incitement  
to the commission of any  
cognizable offence  
relating to above

# Cases of Relevance

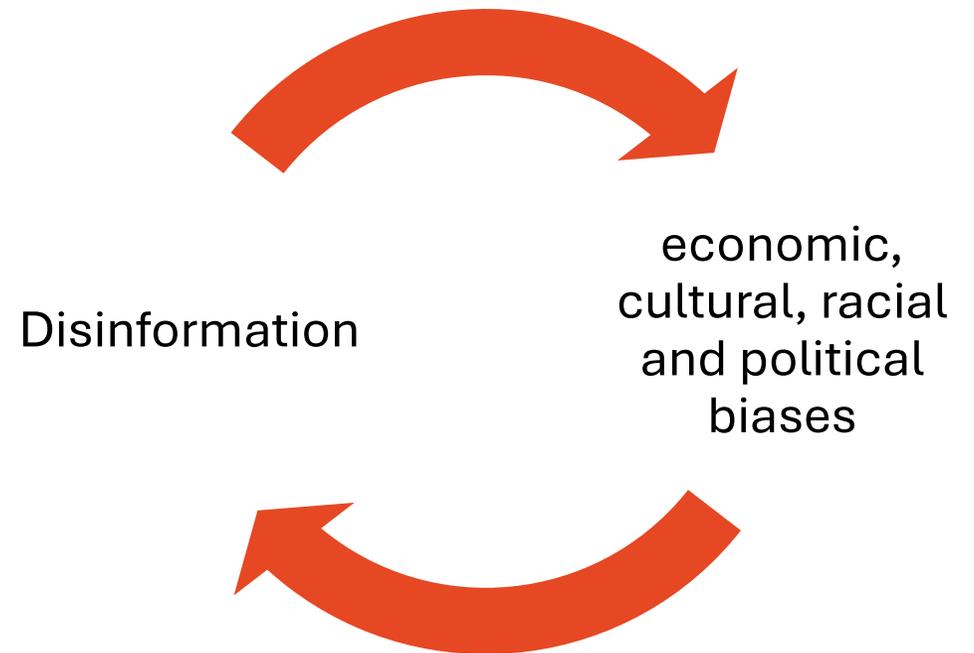
*X v. Union of India* - challenging the portal issuing blocking orders under section 79, Karnataka HC

*Ajit Mohan and Ors. vs. Legislative Assembly National Capital Territory of Delhi and Ors* – Riots in Feb 2020, fact-finding committee receives several complaints about various postings being made on Facebook followed by one publication that prompted investigation on the issue. Summons issued to MD who challenged writ authority, Supreme Court

- In *Ajit Mohan*, the Court strongly stated that “it is difficult to accept ... that [Facebook] is merely a platform posting third-party information and has no role in generating, controlling or modulating that information. The Court also considered the “increasing concentration of power in platforms like Facebook”, especially given their “**business models that are privacy-intrusive and attention soliciting**”. In support of this argument, the Court highlights the fact that the algorithms used by intermediaries like Facebook are **not entirely devoid of human intervention aimed at content personalisation and opinion influence**, ultimately serving their business interests. Finally rejecting Facebook’s claim of being merely a host of third-party information, the Court stated that “Facebook has the power of not simply a hand but a fist, gloved as it may be”
- In *X v Union of India*, where the Court recognised that **algorithms are not made out of air; the intermediaries always have an element of control over the algorithms and thus, they cannot wash their hands of the responsibility that comes with the interventions that they carry out in curating a feed/content for their users**. The Karnataka HC, while further strengthening the argument for regulation, emphasises that algorithms today are “instruments of power, and they can amplify voices or silence them... therefore every algorithm has a human imprint”

# Can Social media be considered political actors?

- Political actors, as per one definition (Wolfsfeld, 2015), are "individuals who have obtained at least some measure of political power and/or authority in a particular society who engage in activities that can have a **significant influence on decisions, policies, media coverage, and outcomes associated with a given conflict**". Another definition (Political Actors, 2015) states that political actors are "individuals or groups involved in the political process, including politicians, government officials, and **entities that engage in the transmission of information and influence public opinion.**"
- Geopolitical climate of today - A sharp decline in reliance on not just legacy media channels and distrust regarding reporting but also that contemporary governance structures are ineffective (Freelon, 2020).



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# Differences with legacy media



CONTENT AGGREGATION  
AND ALGORITHMIC BIASES



MONETIZATION AND  
PROFITS



PURPOSE OF THE  
PLATFORM ITSELF



REGULATION AND  
EDITORIAL RIGOUR

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# Increased liability argument

Segregation between personal and public blurred



Access and virality, targeted content-based packages



Enabling increased communication between political actors



Fact-checking mechanisms?

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# Possible solutions



So far, the approach has been court-centric – taking platforms to courts for violations of laws and their terms and conditions



a) increase liability on behalf of the SMI – do not consider them intermediaries under the IT Act and devise an alternative mechanism of governance. Perhaps self regulating body and collective governance.



b) shared liability – either labels itself (similar to Covid 19 labels) or segregation of news feed itself



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**Have social  
media platforms  
democratized  
news  
consumption?**

