Examining the current moorings and future directions of Internet governance in India

Internet governance and policy making have this unique characteristic and challenge that the Internet is so many different things to different people, groups, and actors in different domains. It is easy to see the Internet as arising from the intersection of IT revolution and telecommunication revolutions, and thus Internet governance getting caught between the remits of what are two different departments of IT and telecommunication in India. Further, Internet governance relates to many other distinct policy domains as well; like those dealing with content and information, media, privacy and data protection, cyber-security, e-commerce and other economic issues, as well as development, along with its various sub-domains like education, public service delivery, community development and so on. From time to time, all these policy domains have dealt with issues related to the Internet. The typical approach has been to narrowly address a given context, whether an emergent challenge or opportunity, without looking at it as a larger Internet policy or Internet governance issue.

It is an interesting and key question whether Internet governance is one distinct policy space requiring its dedicated institutional mechanisms, or it is a set of policy spaces which at times may show some interconnections. In the latter case, it may be enough that these different policy spaces connect and coordinate on an issue-specific basis, as indeed happens in most areas of policy making. In this paper, we will explore the Internet policy and institutional space in India employing the hypothesis that whereas policy responses have developed in silos addressing specific emergent issues, without an strong overall sense of a single field of Internet governance, as the issues become deeper and more pronounced and the policy responses to them require and/or show more maturity, there is an emerging but yet not well-formed tendency of epistemic and institutional convergence towards a distinct field of Internet governance. In the last section of the paper we provide a brief projection of what should such a converged institutional space look like, building on the current scenario and the directions in which is is changing.

The idea of Internet governance as a policy field came into the consciousness of India's policy circles through the World Summit on the Information Society or WSIS (2003-2005). The Working Group on Internet Governance set up in 2004 after the first summit[1] did some important mapping of Internet policy issues which is still relevant[2]. During the WSIS preparatory process, Internet governance (IG) emerged as a major geo-political issue, shaped largely by the traditional North-South divide. The core issue was the control over the addressing system[3] of the Internet by the US government. Such unilateral control over what was clearly emerging as a strategic global and national resource was considered untenable by almost all non-US countries. Another important IG issue was international interconnection regimes which were considered unfair to developing countries who were forced to pay for both up and down connectivity. This meant that they were subsidizing countries of the North in their connectivity to the South, which reversed the earlier model of international telecommunication

1 World Summit on the Information Society consisted of two summits, one in 2003 and another in 2005.

2 http://www.wgig.org/docs/WGIGREPORT.pdf

3 The system of administering how Internet traffic gets routed and allocation of numeric and alphabetic addresses for this purpose. The apex body for this purpose is the Internet Corporation for Assigned Names and Numbers, which is under the oversight of the US government.

payments system where North subsidizing Southern telecommunication infrastructure. India took strong positions on both these key IG issues and was an important party to the WSIS negotiations. It were the Ministry of External Affairs people who did most of this work, and India's position on the key issues came naturally to them deriving from the traditional Southern geo-political standpoints that they were well-versed with. Officials from the Department of IT who turned up at WSIS seemed to show rather less enthusiasm about major IG issues, which appeared somewhat esoteric to them. They had developed strong working relationships with ICANN[4] and the Regional Internet Registries, key global bodies involved with technical and addressing system administration, and were more interested in ensuring the proliferation of the Internet in India.

The Tunis Agenda[5] that came out of the WSIS is an elaborate document that was hotly negotiated, with some typical on-the-side deal-making. With the end of the WSIS, temperatures came down rapidly all over with regard to global IG contestations. India especially became very quite and there can be seen a major hiatus till after the end of the decade when it again begun to pick up the pieces. India had a very low key presence in the early Internet Governance Forums (IGF), that came out of the WSIS. The lead here was taken by the Department of IT, which used these occasions to showcase their e-governance program, which had become the flagship activity of the department. Even at the IGF that was held in India in 2008, India was remarkably silent vis a vis any global IG issue. Meanwhile, India kept strengthening its relationship with the ICANN, and hosted the secretariat of its Governmental Advisory Committee for many years.

Domestically, 'Internet governance' either meant nothing, or, at the most, just the vary narrow domain of technical governance and the management of the addressing system of the Internet. The current definition of Internet Governance on the website of Department of IT testifies to this narrow technical vision[6]. Interestingly, the Tunis Agenda had, on the other hand, circumscribed the Internet public policy space as excluding the day to day technical management of the Internet. It can therefore safely be said that India, till very recently, had no clear articulation of anything that could be called specifically as 'Internet policy' thinking or space.

Internet governance by other names

There were a number of policy developments in India over the first decade of the new millennium which would be understood as concerning Internet governance, as it is defined in the international arena. One piece of legislation that can be considered as 'the' current Internet law in India is the IT Act, first passed in 2000 and then amended in 2008[7]. It comes under the purview of the Department of IT. The Act's primary purpose was to "provide legal recognition for the transactions carried our by means of electronic data interchange and other means of electronic communication". This was found necessary and urgent to support transactions involved in e-commerce, trade in IT based services (in which India was begun to carve out an international niche) and e-governance. The Act provided the necessary legal basis for such transactions. While doing so, it added some basic provisions on cyber-security and data protection, which issues are germane to its primary purpose, but also one on censoring pornographic content on the Internet, which was already being recognized a key social

4 Internet Corporation for Assigned Names and Numbers, the apex body dealing with Internet's addressing system.
5 http://www.itu.int/wsis/docs2/tunis/off/6rev1.html
6 http://deity.gov.in/content/internet-governance
7 http://deity.gov.in/content/information-technology-act

problem. There was also a provision to protect Intermediary liability. All these provisions however were extremely elementary and vague, which is perhaps understandable since those were really early days for the Internet in India.

What is however difficult to understand is that even after 14 years of passing the IT Act, over a period when the Internet and its social impact has moved on at an unimaginable pace, and we are at the cusp of an Internet-mediated society, we still only have that elementary IT Act, with a few patchwork amendments, to govern India's Internet. India's policy establishment has moved only in a reactive manner to serious issues and crises that routinely prop up as the Internet induces structural transformations in our society. The high profile arrest in 2004 of the owner of Baazee.com, an Indian e-commerce portal, for hosting and transmission of an 'obscene' MMS posted by a third party, drew widespread criticism[8]. A few data breach incidents greatly alarmed the BPO industry which sought strengthening data protection provisions and making them more stringent. The biggest trigger however was the Mumbai terror attacks in 2008 where Internet based communication was reported to be used by the terrorists. The 2008 amendments to the IT Act added stronger provisions for content regulation, new data protections measures, and provided clarity on Intermediary liability through providing for safe harbor provisions, especially through the Information Technology Rules (Intermediaries Guidelines), 2011[9].

The new provisions for regulating the content of communications over the Internet are so vague that "it can be used to criminalize almost any behavior on the Internet (including that which would not constitute a crime in the physical world)..."[10] At the same time, while giving some relief to the Intermediaries, the concerned rules are again so broad that Intermediaries react by automatically responding positively to almost all take-down requests[11]. Meanwhile, those intermediaries whose business models consist in people speaking out against powerful people or companies, like mouthshut.com[12], cannot just take down most of take-down requests they receive, whereby they risk exposing themselves to countless court cases. While the IT Act draws the line as vaguely as it can on most issues, which leaves it open to misuse, it is also quite unimaginative about implementation vis a vis the very unique nature of the digital space and interactions. Intermediary companies are forced or facilitated to police the online space as per their judgment, which kind of private censorship can be very dangerous, especially when many of these intermediaries are monopolies in their respective service segments. Further, by including provisions in the IT Act that gives the relevant copyright and patent laws an over-riding effect, Intermediary protections may not apply for intellectual property infringement cases. Through various judgments the courts have been putting an onerous responsibility on the ISPs to police content for possible intellectual property infringement[13], disregardful of the very unique situation and characteristics of the online space.

Provisions regarding privacy and data protections in the IT Act are also quite elementary and

8 http://www.webpronews.com/arrest-of-avnish-bajaj-ceo-of-baazeecom-is-deplorable-2004-12
9 http://deity.gov.in/sites/upload_files/dit/files/GSR314E_10511%281%29.pdf
10 http://www.thoughtworks.com/insights/blog/information-technology-act-and-internet-censorship-india
11 http://cis-india.org/internet-governance/chilling-effects-on-free-expression-on-internet
12 http://www.mouthshut.com/freedom-of-expression
13 http://www.mondaq.com/india/x/337668/Copyright/Indian+Regulatory+Framework+For+Internet+Service+Providers+Onerous+Yet+Inadequate

inadequate[14], throgh they have been strengthened by the 2008 amendments and then the notification of applicable Rules in 2011[15] It still does not comprise a comprehensive privacy and data protections legislation and has many serious gaps[16]. The rules just cover certain kind of sensitive information whereas, in the current digital context where people live a good part of their life online, almost every personal transactional data has privacy implications. Personal data is a key basis of social economic and political control in the emerging context. What is needed is a specialized legislation in this area, which is derived from clearly articulated privacy and data protection principles[17].

Cyber-security has a close relationship with content regulation as well as privacy and data protection. The IT Act 2000 contains some basic provisions regarding cyber-security, and these were further strengthened by the 2008 amendments. However, principles of cyber-security need to first be defined in relation to other IG issues, like rights to free expression and to privacy, within a good understanding of the emerging pervasive digital context. Many countries have come up comprehensive cyber-security principles, policies and legislations and India too would need to go beyond its hold-all IT Act in this regard. The Cyber- security policy issued in 2013 is a good first effort. However, on one side it lacks a larger cyber-security vision[18] , and cross-connections with allied areas of Internet policies, and, on the other hand, it also seems short on implementation details.

The current conceptions of Internet governance, mostly developed in the North, are dominated, even largely exhausted, by three sets of issues, (1) freedom of expression and content regulation, (2) privacy and data protection and (3) cyber-security. With Internet connectivity figures hovering between 10 percent to 20 percent, depending on what kind and intensity of connection is admitted in the counting, Internet in India is still only accessed by a relatively small upper class. With this class having considerable purchasing or market power, and being also aligned to a global culture, it is not surprising that it is almost entirely these three sets of 'Internet governance' issues that have till date made the news in India. India is however a large developing country with deep socio-economic inequalities and wide cultural diversity. As the Internet usage moves to its hinterlands, it may not just be a matter of quantitative extension but significant qualitative changes with regard to the Internet in India. It is expected that a very diverse set of IG issues will arise in this process, some unique to the Indian contexts.

Internet governance issues that arise from a development context

Many conceptions of 'Internet governance' tend to differentiate issues on and about the Internet from what they consider as matters of infrastructure development. They would like to consider only the former as strictly about Internet governance. There is some logic in this assertion. Structure of the Internet (Internet governance) is different from its coverage (infrastructure policies). This may be true even for countries like India in its early phases on growth of the Internet, when the user base is relatively homogeneous to the global user base in many key characteristics, and, as an connected point,

14 http://www.gala-marketlaw.com/77-gala-gazette/gala-gazette/261-india-data-protection-and-the-it-act-india

15 http://www.mondaq.com/india/x/337668/Copyright/Indian+Regulatory+Framework+For+Internet+Service+Providers+Onerous+Yet+Inadequate

16 http://cis-india.org/internet-governance/blog/comments-on-the-it-reasonable-security-practices-and-procedures-and-sensitive-personal-data-or-information-rules-2011

17 http://www.legalserviceindia.com/article/l406-Does-India-have-a-Data-Protection-law.html

18 http://www.indexoncensorship.org/2013/10/india-challenges-cyber-governance-cyber-security/

a good part of the spread takes place through a pull rather than push process, whereby market forces, with some soft regulation, are mostly good enough to get the work done.

Taking the Internet to the majority of Indians may, however, require different kinds of thinking and strategies than just allowing the market a relatively free run, a strategy that succeeded eminently for mobile telephony. (Although appropriate regulatory action had an important role in this regard as well.) For long, the successful mobile revolution in India has colored the perspectives of policy makers in developing Internet related infrastructural policies. It is assumed that, with a certain lag that is natural, Internet access will similarly get carried on the back of the big telco companies to far-flung corners of India. The facts however speak otherwise. While mobile subscription figures almost always surpassed the most optimistic projections over the last more than a decade, Internet figures have always fallen woefully short, even in current times. Evidently, something about the Internet is quite not like the mobiles. The demand pull for Internet outside certain socio-economic demographics has been very poor. Even in mid 2000s, two states, Andhra Pradesh and Rajasthan, announced public funded fibre to village projects but then quietly abandoned them in face of not enough demand or enthusiasm in any concerned constituency. The state of Kerala actually built a network based on wireless technology to feed its rural e-governance centres, which had limited success. Gujarat still runs a captive network for a similar purpose, which only provide connectivity to the village office but not to the general public.

The cost of user-end device has been cited to be a major block in spreading Internet connectivity which is hoped to be overcome with sub 80 dollar smart phones becoming available. This will make a major difference. Recently, the government declared that it will ensure a smartphone in the hands of every citizen by 2019[19]. India is already among a few countries where those who access Internet on mobiles has by far exceeded those who do so on stationary devices. A very larger proportion of the growth is coming from mobile users. Mobile data plans remain very costly, although ISPs are actively exploring lost cost data plans for mass bottom-of-pyramid markets to attract users with low purchasing power. However, there are two other factors that constraint the spread of Internet connectivity. One is that unlike mobile telephony, where the content is simply the spoken language, which almost everyone is comfortable with, and ready to contribute volubly, Internet is a highly diverse cultural phenomenon. Second, it does require a considerably higher level of skills, even with simplified interfaces, including a good degree of literacy. Reaching Internet connections to all parts of the country and sufficiently lowering data costs is therefore just one part of the problem. The other is to create an 'Indian Internet' in terms of its content and applications. Rather, many sub-Indian Internet as well, such in India's internal diversity. This is a significant challenge. User contributions and market dynamics will no doubt work on it, but it will require a huge amount of policy and programmatic support as well. Similarly building up digital literacy will be required. This side of the Internet policy space has still not been conceptualized well, but its need will be felt very soon as the plan to reach fibre as a utility to a quarter million village self-governance units in India by 2019 has been declared with great resolve and firmness in the Digital India program of the new government[20].

Although, it does announce that e-governance, e-education, e-health, e-banking etc will flow over these networks, the Digital India plan seems still not to have a really good grasp over the issue of local

19 http://articles.economictimes.indiatimes.com/2014-08-25/news/53205445_1_digital-india-india-today-financial-services

20 http://pib.nic.in/newsite/PrintRelease.aspx?relid=108926

content, application and services. Very similar, sweeping, statements were made, almost 10 years ago, for the Common Service Centre scheme of the National eGovernance Plan in 2005, which have had a rather limited success till date. As the Charmian of the Telecoms Regulatory Commission of India wondered recently, when one still cannot get a birth or death certificate online in New Delhi, how can such a facility be miraculously made available in far-flung rural areas[21].

Even if it is not very clear on the specifics, the declared priorities of Digital India do recognize the important point that has been felt almost since the beginning of 2000s, that Internet for rural India would centrally involve development and governance services. Many local, district level initiatives based on this thinking had sprung up even in early 2000s, of which Drishtee[22] and Nlogue[23] are notable. Although they folded up in a few years, they laid the basis for the Common Service Centres[24] scheme of the government of India which is the first Internet experience of a very large part of rural India, in hearing about the Internet and its possibilities if not using it. The important point here is that Internet for a large part of India may qualitatively be very different from what is the Internet today as used by a relatively small group. Not only the manner in which they will get introduced to the Internet, and the reasons that they will begin using it for, but also the ultimate structure and characteristics of the Internet may be quite different.

It is evident from the current policy pronouncements around the Digital India initiative, that the government recognizes the importance of both (1) an active-push based infrastructural approach and (2) the need to develop a lot of Internet-based development and public services. Further, enabling support like providing digital literacy, hardware provision, language interfaces support, etc will we key. This means that the field of Internet governance in India will take a unique shape, involving policy development with regard to a mix of relatively universal negative rights issues (freedom of expression, privacy and security) and rather more contextual positive rights (access, right to information, and other social, economic and cultural rights). These together will determine the nature of the Internet in India, and the policies that govern its evolution into a central paradigm of social-wide transformations.

A National Optic Fibre Network[25] (NOFT) plans to collect all villages (at the village self-governance unit level) by fibre by 2019. It is still not clear who will carry the connectivity further to the end users. Right now, the expectations is that commercial telecos will do it[26], but there is not any good basis for such an expectation given the low demand in rural areas. If government is really serious about providing connectivity to all, it may have to do it itself, or encourage the state or local governments to do it. Local community groups may also be roped in. Even in countries like the US, with a long record of private provisioning of utilities, local governments are increasingly providing connectivity to its citizen, as a means for overall social and economic development.[27]
The time of reckoning will be faced very soon as the NOFT, as per its mandate, reaches wholesale

21 http://articles.economictimes.indiatimes.com/2014-08-26/news/53243926_1_digital-india-rahul-khullar-trai-chairman?intenttarget=no
22 http://www.itforchange.net/sites/default/files/ITfC/Drishtee.pdf
23 http://www.itforchange.net/sites/default/files/ITfC/TeNet.pdf
24 http://deity.gov.in/content/common-services-centers
25 http://www.bbnl.nic.in/content/page/national-optical-fibre-networknofn.php
26 http://myiris.com/newsCentre/storyShow.php?fileR=20140924122646717&secID=sector&dir=2014/09/24&secTitle=Sector%20Stories
27 http://www.muniwireless.com/category/city-county-wifi-networks/

connectivity to many villages but then willing retailers not are found in most areas. Even if the telecom policy is modified to allow and encourage very small-scale retailers, in many places it will still be required for local governments and/ or community groups to step in. The present government's Digital Agenda has been pitched in too high a profile for the government to baulk at this crucial issue, as the previous governments have done. Without very cheap connectivity that is actually affordable for all, there will be no Digital India. It may even be required to provide free public connectivity at community centres, as well as subsidized or even free basic data quota based on certain eligibility criteria. Such quota may be applicable for any and all Internet services, or just for some specific social and developmental services.

Apart from the need decentralize infrastructural plans and policies, as local and state governments see immense popular benefits that can be reached in the form of and through the Internet, they are likely to get into supporting local content, application and services as well. As discussed, the e-services element of Internet policies is extremely important in India. Much of it, like the infrastructural part, is currently driven from the central government. The Common Service Centres program has succeeding in developing a certain social consciousness in rural areas across the country about the Internet as a vehicle for delivery of public services, and as an enabler for general development. Within the ambit of the larger National e-Governance Plan, it has also begun laying the basic back-end and other enabling systems. Such a public e-services push is a very unique basis over which the Internet will shape in India, although the role of market forces in meeting a variety of individual need will certainly be no less. As soon as the Internet takes enough traction and reaches a critical mass in rural India, local and state governments would want a greater role in all these aspects. Wherever public service delivery over the Internet has shown good success – for instance in Kerala and Gujurat, the state and local governments have wriggled themselves into a position of becoming the key actors. This element of local-state-central government relationships is therefore expected to add to the already quite kaleidoscopic Internet policy scene that is emerging in India.

The central government is planning a huge digital literacy drive[28]. Numerous initiatives are also afoot for providing language support for hardware and software interfaces. Integrating Internet into the work of local development agencies that have the most regular touch with the most marginalized would be a useful strategy to take Internet to most difficult to reach areas and people. Some such efforts, like the IT for masses scheme[29] of Department of IT already exists. Such initiatives will have to be further de-centralized. By and by these must move from the IT department to departments directly concerned with development activity.

An important mandate of the department of IT is to develop technical standards for e-governance, pursing a policy of open standards[30]. A lot of work has been done in developing and notifying many such standards, although implementation process is still often quite tardy. With the Internet becoming a key infrastructure for most social systems, and the advent of cloud computing and Internet of things, the need for developing and maintaining open standards for the Internet in public interest becomes even more important. Standards adopted by e-governance initiatives will be an important determinant of the overall technical standards in the society. This in turn will determine how open will be the

28 http://csc.gov.in/cscblog/?p=108
29 http://deity.gov.in/content/it-masses
30 https://egovstandards.gov.in/

techno-social infrastructure that provides the playing field for much of social, economic, cultural and political activities and opportunities. As an extreme 'socialisation' of IT takes place, standards development does not remain an isolated technical function. The connections to various other policy areas like cyber-security, market competition, access, privacy and data protection, free expression, cultural diversity, etc, are easily evident here.

Lastly, deep Internet-induced structural changes are taking place within different sectors, dealt by different ministries. Some of these are more rapid, like in the area of media and education, and others slowly but surely, as in areas like health, urban development, and so on. The relationship of digital developments and policies in these sectors to what are seen as core Internet policy areas is also an important piece of the Internet governance puzzle. To take a simple example, whether IT literacy relates to the ambit of the Department of IT or that of the education ministry is not a question that can be answered easily. It will become even more complex as digital skills become a basic requirement for all, as well an ever evolving space.

The imported concept of Internet governance

We mentioned earlier how the the term and concept of IG was an import from the global scene, never quite integrated into the diverse manners in which Internet related issues have been treated till date in India. In this section, we will briefly trace how this concept transversed through the Indian policy establishment over the post WSIS period. The triggers would always come from some international events and exigencies which therefore were first faced by the External Affairs people and communicated to the Department of IT as the concerned line department. The responses, till quite late, seemed tailored just to meet the external demand 'in the best possible and the least problematic way' without any active expectation of a possible gain, or defending against a possible loss, for India. Both ministries checked their bottom-lines to see that the response confirmed to their general policy outlooks in allied areas, that is all. Basically, this is to make the point that there has not been a well-formed view of the strategic interests of India at the global IG stage. Internally, however, as we have seen, Internet's inexorable march through the Indian society was being addressed in a variety of disparate ways. But the connections among them, and with global developments, as encompassing a new field of Internet governance, have not been made. As will be evident from the following analysis, the external triggers and the responses to them did have an important part to play in what has begun to emerge as a kind of converged field of thinking and action. of Internet governance and policy making.

There was a marked lull in India's engagement with global IG for at least 5 years after the WSIS ended in 2005. India participated in the IGFs, and even hosted one, with a markedly apolitical stance, mostly showcasing its e-governance programs and the IT industry. The Ministry of External Affairs largely stayed away from these meetings. It was the towards the plus five review of WSIS at the UN Commission on Science and Technology for Development[31] (CSTD) around 2010 that the undressed mandate of 'enhanced cooperation' begun to be raised hotly by developing countries. 'Enhanced cooperation' was the compromise term at WSIS that left open the debate on what was to be done regarding global Internet-related public policies, as well as the specific issue of US's unilateral oversight over the ICANN. India joined other developing countries in seeking clear progress on this issue. In response, the UN conducted an open consultations on the issue in New York in December

31 This body was mandated by the WSIS to oversee WSIS follow up.

2010. In a very significant move, India joined the two other IBSA (India, Brazil, South Africa) countries to make a joint statement seeking a UN based inter-governmental platform to take up Internet-related global public policy issues[32]. The document also listed a set of international public policy issues, including net neutrality.

In order to take forward the momentum generated by this joint IBSA statement, the Brazilian government, in cooperation with some international civil society players, called for an IBSA meeting on global Internet governance issues in Rio de Janeiro, in September 2011. This was attended by governments representatives of all the three IBSA countries and by a few civil society actors from these countries. At the end of the meeting, the government representatives met among themselves and came up with a set of Rio Recommendations[33]. These recommendations called for setting up of a new UN based body for Internet-related global public policy issues. It also laid out in detail the functions of this body. One of the functions was to undertake oversight over ICANN and other technical administration bodies. The 2011 IBSA summit that took place in South Africa a few weeks after the Rio meeting took a positive note of the Rio Recommendations and encouraged the three countries to work together on global Internet governance issues[34]. The Rio meeting was such an important international development that the IGF in Nairobi in late September of 2011 was dominated by discussions around it.

Just a week or so after the IBSA summit, the UN Secretary General's report on open consultations on enhanced cooperation held the earlier year came up for discussion at the UN General Assembly. It is during this discussion that India tabled a proposal for a new UN Committee on Internet-related Policies (UN-CIRP) with fully elaborated mandate and functions[35], which corresponded to what was contained in the Rio recommendations. Further, it laid out details about how this Committee will be constituted. It suggested separate civil society, technical community and business community advisory groups for this Committee. This model of multistakeholder participation mirrored the arrangement at the OECD's Committee for Information, Computer and Communications Policy, which is its Internet policy development organ.

There had been a lot of talk since the WSIS about a platform for addressing global Internet policies, but a clear proposal on the table was a major headway, and caused a lot of international flutter. It also marked a turning point in terms of India's assertiveness at the global IG scene. Since the WSIS, apart from China, and a few West Asian countries, both of whose engagements follow a somewhat different trajectory, it was just Brazil who was really active on the developing country side demanding a more democratic global IG order.

Almost immediately after India made this proposal, the IG scene within India hotted up. Till this moment, all engagements were about specific domestic issues, chiefly, misuse of the provisions of the IT Act for censorship. There were stances both against and in favour of India's new move on the global scene. And there was a relatively uniform demand that Internet governance issues are important for the people of India and there must be wide-ranging consultations before India takes key policy decisions in this regard.

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32 http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan043559.pdf
33 http://www.itforchange.net/sites/default/files/ITfC/rio_recommendations.pdf
34 http://sistemas.mre.gov.br/kitweb/datafiles/Berlim/de/file/Tshwane%20Declaration.pdf
35 http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf

There have been some press reports about some disquiet within the Department of IT on India's new stance[36]. (It is worth mentioning here that the UN statement on CIRP was made with the Department of IT's explicit concurrence[37].) In any case, bowing to the widespread demand that such decisions be taken after consulting different stakeholders, the Department of IT begun holding informal meetings or consultations with different stakeholder around IG issues, which continue to this day.

India re-stated its proposal for setting up a UN CIRP at the CSTD meeting in May 2012[38] in the presence of senior officials from the Department of IT, which showed that even if there ever were any inter-ministerial differences these had been resolved. Meanwhile, India also expressed its openness to discuss this issue, and said that it will be flexible and pragmatic in its approach[39]. In this statement, India also made the demand for a CSTD Working Group on enhanced cooperation in order to develop a global view on this issue. Such a Working Group was set up by UN GA in late 2012, owing a good part to India's efforts. In its written submission to the Working Group, India reiterated its demand for "creation of a multilateral body for formulation of international Internet-related public policies". Much of criticism against the CIRP proposal was focused on the proposal for an inter-governmental oversight over ICANN and other technical governance bodies. India's statement in 2012 on the required multilateral platform was less clear about whether it demanded that this platform also had direct oversight over ICANN. It however did seek that "such body should also develop globally applicable principles on public policy issues associated with the coordination and management of critical Internet resources". It appears that India is flexible about the actual oversight mechanisms, although its response to NTIA's recent IANA transition process is clear that any such transition mechanism "should have international legislative authority for it to have legitimacy, credibility and acceptability by the International community"[40].

During, and for the sake of responding to, all these rapid international developments, the Ministry of External Affairs and the Department of IT were thrown together to develop India's various positions. Often, as, for instance, in responding to the questionnaire issued by the Working Group on Enhanced Cooperation, they would have to get into actual listing of Internet-related policy issues, including those which were of spcific developing country interest. Such exercises contributed to outlining what was beginning to emerge as the IG sphere from India's point of view. Meanwhile, especially in the aftermath of the 2008 terrorist attacks, the office of the National Security Advisor and the Ministry of Home Affairs were also getting interested in this area, mostly from a security point of view, but also exploring outward linkages, like the international dimensions, and the role of global Internet and telecommunication companies. The need for consultations across different departments and agencies of the government in developing responses to global IG exigencies become so intense that a Inter-Ministerial Group on IG was set up in 2012. Headed by the Secretary, Department of IT, it has representation from the Department of Telecommunication, National Security Council, and the Ministries of External Affairs, Home, Information and Broadcasting, and Commerce. It is evident that a clearer conception of this new convergent policy space of IG has begun to take shape from a domestic

36 http://www.thehindu.com/news/national/on-internet-rules-india-now-more-willing-to-say-icann/article3994985.ece
37 http://pib.nic.in/newsite/erelease.aspx?relid=86727
38 http://www.mea.gov.in/Portal/CountryNews/598_UNCSTD_FinalStatement18May2012.pdf
39 Ibid
40 http://mm.icann.org/pipermail/ianatransition/attachments/20140507/8a49e95f/2014-4-16-India-Ministry-ICT.pdf

perspective even if the triggers till date have almost all come from the global arena.

A good example of these external pulls is India's participation in the ITU's World Conference on International Telecommunications (WCIT). Ever since Internet was made publicly available in India in the late 1990s, it was in some ways a bone of contention between the department of IT and that of telecommunications. However, there has been no visible tussle or difference of views between them for many years. Developing India's input for the new International Telecommunication Regulations (ITR) that were being negotiated at the WCIT involved getting into definitional issues about whether telecommunication included Internet and IT or not. WCIT was of course hyped by many actors, chiefly US based, as a fight to save the Internet and keep it free from governmental regulation.

Within India, there was a back and forth on whether only carriage of signals, signs etc may be included in the definition of telecommunication or the term 'processing' may also be used. There was a fear that the latter term brings in IT and the application layer of the Internet in the definition of telecommunication. Meanwhile, both departments agreed that security of ICT networks was a key concern for India and this was included in India's input to the draft ITRs. India's final response to the ITRs took many by surprise. The final ITRs were quite a deal weaker than the draft that India had proposed (including on the issue of security), whereby there was no evident reason for it not to sign. In a very ambiguous post WCIT statement[41], India declared that it agreed with the ITRs proper but needed time to study an appended resolution on the Internet. It seemed that India was balancing many a pulls and pressures, not least among them from its Northern partner countries and some key industry associations at home. Without going into any further details or judgments, the point being made here is of showing how external triggers have impacted India's growing consciousness of the policy area of Internet governance, and its deep contestations.

Even in the supposedly technical and thus apolitical area of the addressing and technical administration of the Internet (issues related with ICANN and its family institutions) India is waking up to the need for visiting such issues from a public policy viewpoint, anchored in domestic interests and priorities. India has joined many other countries in the ICANN's Governmental Advisory Committee to express political reservations on many aspects of of the new general top level domains (gTLDs) program. It has given written reservations against two new proposed gTLDs, .Ram and .Indians. In addition, in response to the new move of the US government to shed its oversight powers over the ICANN, India has asked for any transition arrangement to be rooted in international legislative authority. This does not accord with the current plans of the US government or the ICANN.

In the aftermath of India's CIRP statement, one of the largest Indian industry association, led by some US-based companies working in India, become very active in the IG space. In the middle of 2012, it proposed holding an India IGF under its management. It was able to gather some civil society groups and academics to support this move. At the last minute, however, the government of India asked this group not to use the label of India IGF. The planned meeting was then held under the name of India Internet Governance Conference. Meanwhile, in 2013, the Indian Government declared its intention to set up a public-funded India IGF. A Multistakeholder Advisory Group (MAG) was set up for this purpose. Apart from planning for the annual India IGF, the mandate of the Group includes providing

41 http://pib.nic.in/newsite/erelease.aspx?relid=90748

policy inputs to the Inter-Ministerial Group on IG. A few meetings of the MAG have discussed both substantive and process issues related to IG. It is currently developing the program for the first India IGF to take place in November, 2014. Interestingly, as the MAG set to develop the agenda and started with a template that largely mirrored high level policy categories used for the global IGF, over intense discussions, the categories, and their sub-descriptions, swerved much more towards domestic issues. These discussions, and the actual deliberations that will take place at the India IGF, can be seen as greatly contributing to development of IG as a new policy space in India.

As another import from the global thinking on the issue, especially as gathered by a big Indian contingent headed by the Minister that participated in the 2012 IGF at Azerbaijan, the Department of IT initiated a process to develop a set of Principles for Internet Governance for India. A multistakeholder working group was set up for this purpose in 2013. It has held two meeting. During theses meetings, there was a universal acknowledgement of the importance of developing such high-level principles that can then both inform domestic policy making in different areas and guide India's positions at global forums. The fact that no further progress has taken place for almost a year now seems to be owing to the limited bandwidth within the Department of IT that is available for dealing with IG issues, and the change in government in May 2014. The setting up of this initiative, and the views expressed at its meetings, however, do show that there is growing understanding and articulation of the nature and importance of the field of IG from a domestic point of view.

Converging over the Internet as a policy and governance space

In the first section, we saw a snap shot of how policy approaches involving the Internet are emerging in India in different sectors like content regulation, privacy and data protection, cyber-security, infrastructure, e-services, media and so on. Increasingly, it is being felt that policies in each of these areas will need to take other allied areas into consideration, or perhaps be developed co-jointly. At the same time, a canopy thinking and policy space seems to be emerging in the name of Internet governance, whose triggers have till date come from the outside. This, yet tentative, growth from the centre to the peripheries is meeting the converging sectoral development to form an incipient converged space. Indications of such convergence around the Internet as a policy and governance space are evident everywhere.

It is no longer possible to mind the Internet's growing nexus with various social systems and structures through a weak, stop-gap law like the IT Act. It is quite likely that its content regulation provision may not meet constitutional requirements, regarding which a case is before the Supreme Court[42]. Interestingly, 'content' is not really an area which the department of IT specializes in, and it figures in the IT Act simply as accompanying provisions to the Act's real intention of providing an enabling environment for electronic transactions. The issue of content and freedom of expression on the Internet is much more blown out today that it was when the IT Act was envisaged. A space or media that is converging as the central one for most private and public communications needs a dedicated legal and regulatory treatment rooted in the relevant expertise. It is the Ministry of Information and Broadcasting (I & B) which has traditionally dealt with issues of content regulation and freedom of expression. Today, audio-visual expressions on TV are dealt by the Ministry of I & B, while the same ones on Youtube would be under the IT Act, which defies common-sense. As another indication of the

42 http://ccgnludelhi.wordpress.com/tag/information-technology-act/

'convergence problem', there are separate guidelines for IP TV, an issue-area that stands clearly in-between the IT/ telecom and broadcast sectors, from the telecommunication regulator and from the Ministry of I&B. The Telecommunication Regulator of India (TRAI) recently came up with guidelines for media ownership in order to ensure media plurality[43]. The following is an excerpt from the document;

"Restrictions only on the traditional media could be rendered meaningless if simultaneously nothing is done about these new media platforms. The Authority notes that while only twenty per cent of Indians have Internet access, broadband subscription is only at five per cent. Hence, the vast majority of individuals still depends on the television and print for access to news and information. Nevertheless, the impact of the new media platforms on plurality could be reviewed at a later stage when their penetration becomes deeper and usage substantial. "

We mentioned earlier that we may be on an inflexion point with a possible impending explosion of Internet connectivity figures (with projected compound annual growth rate of 44 %)[44]. It is obvious that the time of reckoning of how to treat Internet as a mainstream media from a legal and regulatory point of view cannot be postponed too much. However, such is the unique nature of the Internet, where a good part of the content can be user-generated, and private and public spaces merge easily, that traditional media laws cannot be simply cut-pasted in the new context. At the same time it must be equally evident that the IT Act, or the general thinking underpinning such stop gap measures, cannot be an adequate basis for going ahead.

It is not only required that any law to regulate online content be as per India's constitutional provisions, but also its implementation. Relying on private parties to police content in not at all an acceptable practice. It is evidently being resorted to in the face of complete bewilderment over the new pervasive digital context where millions of digital interactions are taking place at any given time without any clear demarcations of private and public spheres. Such a practice of private policing itself violates people's right to free expression, when private party judgments can decide what content is appropriate and what not on platforms that are often monopolies, and thus people have no real option to take their views and expressions elsewhere.

Similarly, privacy and data protection is an entirely new subject in a pervasive digital context. The need to enable and protect India's booming BPO[45] industry can be quite different from seeing data access and control as a new means of social, economic, political and cultural control. This is not just a quantitative shift but a huge qualitative and structural change. Data underpins the very structure and power relationships of new emerging social systems. Data is today also a key economic resource; some call it the oil of the Internet economy. Very new thinking and concepts around issues like, what is private and what public, as we saw in the case of content regulation issue, and what constitutes and determines ownership over data as an economic resource, are required. On such well-thought-out new understandings of the nature of the digital space should be based a comprehensive legal and regulatory treatment of privacy and data protection that best serves the public interest.

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43 http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Recommendations%20on%20Media%20Ownership.pdf

44 http://articles.economictimes.indiatimes.com/2013-06-04/news/39740674_1_traffic-internet-access-indian-mobile-data

45 Business Process Outsourcing

Issues of cyber-security and general public and human security are strongly inter-mixed with those of content regulation and privacy. Concepts around security in and through the cyber-space, like information security, cannot evolve without seeing them in conjunction with other key Internet policy issues. The security establishment seems to be evolving its approaches and actions in closed silos keeping just what they see as 'security situations' in their line of sight. However, lately, the office of the National Security Advisor seems to becoming a more avid participant in the generic 'Internet governance' discussions, which is the space where these integrations can be worked out. In turn, cyber-security meetings and cyber governance ones are converging[46].

The convergence between telecommunication and Internet is rather more obvious, which is getting rapidly accentuated. Recently, telcos appealed to TRAI to regulate OTT services[47] in a manner that they could share the profits made by the providers of these services, in response to which TRAI held an open consultation. Voice and text communications, the staple of telco revenues, would soon move to Internet platforms in a mainstream manner whereby a deep re-thinking is required about what really constitutes the separation between the infrastructural level (currently, with the Dept of Telecommunications) and application/services level (Department of IT). Clarity is also required about the mandate and role of the telecommunication regulator, TRIA, which floats somewhat uneasily across content, infrastructure and applications related issues.

As discussed in the first section, an India-specific development approach to Internet's growth into the rural and semi-urban areas of India means that policies that determine the shape and structure of the Internet must connect with approaches and policies related to taking the Internet to all people. The net neutrality principle, alluded to in the above paragraph, which requires that network providers treat all content, applications and services equally, is a good case in point. Facebook and Google have begun to enter into special arrangements with telcos in India to offer access to their services (only, and not to the 'full Internet') free of any data charges[48]. Such practices constitutes a net neutrality violation and would structurally deform the Internet, taking away much of its egalitarian potential. However, for a policy maker intent on delivering on the connectivity issue, it may not be easy to understand what harm is caused if people get some of the most popular services free, whereby the user can get familiar with the Internet, which paves the way for a variety of other empowering uses. Conversely, those dealing with the application, standards and content layers of the Internet need to understand that, as the Internet spreads to the hinterland, with its great economic, social and cultural heterogeneities, the same approaches and policies that stood India in good stead when the Internet was adopted by the upper classes might not be adequate. It is evident that IT policies, telecom policies and development policies need to work closely together in the new context to enable the vision of a Digital India, that is empowering and equitable for all.

The above analysis is not meant to give any policy prescriptions, while some biases may no doubt keep slipping in through the choice of examples used to make the point. The attempt is just to highlight the contemporary terrain of the Internet policy and institutional landscape of India, and how it is moving in the directions of a certain convergence. Significantly, The Minister for Communication and IT, who

46 http://samirsaran.com/2013/12/13/cyfy-2013-outcome-statement/
47 Audio, video or other media provided over the Internet
48 http://news.slashdot.org/story/14/04/06/0514210/facebook-and-googles-race-to-zero

supervises both the departments of telecom and IT, recently announced the intention of the government to bring in a Communication Convergence Bill[49]. It is likely to install a single regulator across the content, IT and telecom space, the Communications Commission. The bill is expected to supersede and/ or amend a host of existing laws related to content regulation, communication interception, IT transactions and telecom infrastructure. This would be the first real Internet governance legislation of India.

Some recommendations for the design of the converged institutional space

Reviewing the developments in this space over the last many years in India, coupled with extensive interviews with actors[50] that either work directly in the Internet policy space or in domains that are closely related, we were able to formulate some requirements for an appropriate and effective converged institutional space for Internet governance and policy-making in India. These are listed in brief as below.

(1) This is a very knowledge intensive area, and with the fast pace of changes the required knowledge is not easily available at hand. The policy making processes should therefore be build over a well-established knowledge system. This requires setting up the necessary public research institutions and supporting private ones.

(2) The processes of policy development should be open and participative. While contributing current knowledge from diverse sources, this will ensure that policies do not serve vested interests but are genuinely oriented to public interest, whose determination can be even more complex in this area then most other policy areas. India Internet Governance Form, with its institutionalized relationship with the policy establishment, is a good model to invest in and take forward.

(3) A set of larger policy and legal principles for Internet governance in India must be developed, which can then be flexibly applied to different situations. Trying to micro-legislate anew for everything can quickly result in outdated polices and laws. The Marco Civil framework of Brazil[51] is a good model in this regard, although India's Internet Principles, and a possible omnibus legislation based on it, have to be evolved as per Indian contexts and needs.

(4) The needs of effective Internet governance defy existing policy silos. The institutional space for Internet governance and policies in India must be rearranged, through convergence of overlapping domains and functions. This should be accompanied by corresponding horizontal separations that reflect the layered reality of the Internet. An earlier version of Communication Convergence Bill brought out in 2000[52] sought "consolidation of India's ministries of Information Technology, Communications, and Information Broadcasting"[53]. Merging the

49 http://www.hindustantimes.com/india-news/a-super-regulator-for-tv-internet-mobile-services-in-offing/article1-1261292.aspx

50 As a part of this research we held interviews and discussions with around 25 such actors, and also took note of the deliberations at a few workshops and meetings on issues of Internet governance in India.

51 http://direitorio.fgv.br/civilrightsframeworkforinternet

52 Interestingly, by the same party that has come back to power this year, and has announced its intention to bring up a convergence bill.

53 http://www.mondaq.com/india/x/16955/broadcasting+film+television+radio/The+Communications+Convergence+Bill+

concerned ministries and department, should be complemented with horizontal separation, into at least three department, dealing respectively with (1) content, information and data, (2) media/ digital architecture, which includes the application and services layer, standards development, and also economic structural issues like competition, media plurality, etc and (3) infrastructure, access, and community level issues.

(5) The state's problematic relationship with the society's digital informational space has to be specifically accounted for in all policy making and implementation work, by providing for effective well-institutionalized checks and balances. Independent statutory regulators should exercise the bulk of state's regulatory authority, which should be clearly defined. Separate regulators will be needed to deal with (1) content and data related issues, and (2) infrastructural issues, which can, in this case, include, media/ digital architecture issues.

(6) The digital space involves important elements from almost all sectors, that are governed by different policy domains. As various sectors undergo the inevitable digitalization, a clear mechanism must be set up between the Internet centered policy domain and sectoral domains, which appropriately delineates expertise and authority while enabling collaborative output.

(7) An entirely new (digital) space has been opened up for enforcing the rule of law, which is characterized by innumerable daily digital interactions that are difficult to be separated between private and public, a distinction which is important to much of the existing jurisprudence. This renders implementation of law and policies very difficult, which has resulted in widespread reliance on Internet intermediaries for private policing. Such arrangements are not acceptable, and a violation of people's rights. New paradigms of ensuring the rule of law in digital spaces must be figured out.

(8) Internet is inherently global, as perhaps few other phenomenon (like global climate change). India's IG architecture must remain embedded in global frameworks of IG, as it should inform them. This will require that India is able to democratically participate in determining these frameworks, which begs appropriate global IG mechanisms that allow such participation. India's engagement with global IG forums must arise from its domestic priorities and national interests, which should be formulated in form of larger principles for this purpose.

Indias+Tryst+with+Destiny