

Net neutrality debate: Calm down! India shouldn't jump the gun on net neutrality



Image: Reuters

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By Pavan Duggal

March 2015 was a historic month in the history of independent India in the context of Information Technology, where significant events happened which have a profound long-term impact upon various stakeholders.

On 24 March, 2015, the Hon'ble Supreme Court of India, in the landmark case of "Shreya Singhal v/s Union of India" struck down **Section 66A** of the Information Technology Act, 2000 as being constitutionally invalid. The said judgment hailed the sacrosanct nature of the freedom of speech and expression on the Internet and found Section 66A of the Information Technology Act, 2000 violating the parameters enumerated under Article 19 (2) of the Constitution of India. The said judgment also upheld the issue pertaining to intermediaries' liability in India. The said judgment generated huge response from all stakeholders, because the Internet freedom was being hailed upon.

On 27 March 2015, the Telecom Regulatory Authority of India (TRAI) put up on its website a consultation paper in a quiet unannounced manner. The said consultation paper is titled "Consultation Paper On Regulatory Framework for **Over-the-top (OTT) services**". The said consultation paper was drafted in a manner wherein lot of questions was sought to be asked from specific perspectives. The said paper has since now been known in the public domain as Net Neutrality Consultation Paper of **TRAI**.

At the time of writing, the paper had generated immense amount of debate. Seen from another angle, the paper has brought up certain proposals, which if implemented could have an ultimate impact upon curtailment of online freedoms of Indian citizens and netizen

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The **entire issue of net neutrality** has certainly become very important. When one looks at the existing laws in India, one finds that the issue of net neutrality has not been mentioned in the existing laws of India. India has placed in its mother legislation being the Information Technology Act, 2000. The Information Technology Act, 2000 has been sought to be supplemented by means of various rules and regulations which the Government of India has promulgated from time to time. Neither the Information Technology Act, 2000 nor any rules and regulations made thereunder, have any reference to net neutrality. It is in this context that the entire issue of net neutrality becomes more significant.

The fundamental question that comes up for consideration is what exactly net neutrality is. Net neutrality is a principle that is dedicated to making the Internet a neutral platform for the proliferation of all kinds of services offered by all stakeholders. Wikipedia defines net neutrality as the principle that Internet service providers and governments should treat all data on the Internet equally, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication.

The principle of net neutrality has already begun to engulf therein various complicated legal, policy and regulatory issues. A lot of work has already been done in the US on net neutrality. The FCC has recently in the US ruled in favor of net neutrality by reclassifying broadband access as a telecommunications service. FCC's Open Internet rules are designed to protect free expression and innovation on the Internet and promote investment in the nation's broadband networks.

The TRAI Consultation Paper on Regulatory Framework for Over-the-top (OTT) services including 'Net Neutrality' comes in India at the time when there have been some initial experiments among service providers towards feeling the turf in this direction.

The first thing one needs to appreciate that net neutrality is extremely complicated and complex issue. It is not an issue which can be solved with the press of a button. Various competing claims need to be taken into consideration. All appropriate discussions with all relevant stakeholders offering all kinds of services in the digital ecosystem need to be examined before proceeding forward.

However, India needs to be cautious of the fact that it should not adopt the cut-and-paste approach. The American experience on net neutrality could indeed provide various learnings for the Indian experience. However, the fact still remains that India will need to carve out its own specific way, going forward in the context of the net neutrality.

The conditions in India are dramatically different. India is a Sovereign, Socialist, Secular, and Democratic Republic under the Indian Constitution. India has the second-largest population in the world. India has a constantly growing and evolving Mobile Web where increasing majority of Indian are only accessing the Internet through their mobile devices.

In such a scenario, the entire net neutrality debate has to be seen from the perspective of ensuring that the following principles are safeguarded and complied with:

A. Internet is a global heritage of mankind as a whole. We need the Internet to further contribute to the growth of human mankind in society and not leading to divisions within society.

B. Internet needs to be protected as it is the common paradigm platform that allows creative, innovative approaches of communication, dissemination and transmission of thought processes as also data and information in the electronic form whether in the form of audio, video, image or text.

C. Any initiative on net neutrality should not have impact, to the detriment of the ultimate consumers/netizens of the Internet. Consumer protection issues become critical and most significant in the context of Net neutrality.

D. Initiatives violating Net neutrality should not create an ecosystem of digital haves and have-nots, where the digital haves, by might of their money power can access better quality of services on the Internet at the expense of the digital have-nots, who stand disenfranchised by differential payments for various services and schemes.

E. Today people's lives are dependent on the Internet. People today have a fundamental right to access the Internet. I personally believe that the right to access the Internet is part of the fundamental right to life under Article 21 of the Constitution of India and is sacrosanct in nature and can only be curtailed, in accordance with the procedure established by law. This intrinsically means that any kind of net neutrality has to only come through the legal route in the form of legislation not otherwise.

Image: Reuters

F. The complicated legal, policy and regulatory issues concerning net neutrality need to be examined in great detail, more so given the fact that the Information Technology Act, 2000 and rules and regulations made thereunder are completely silent on the issue of net neutrality.

G. Net neutrality violative schemes should not become a tool of service providers to legitimately deny or violate online freedom including freedom of speech and expression.

H. Net Neutrality, if not handled properly, could prejudicially impact the Digital India Programme of the Indian Government.

I. We need to be consciously careful that the victories obtained for Internet freedom of speech and expression by the Supreme Court in the Section 66A case should not be given up on the table in net neutrality debates.

J. Net neutrality needs to be understood in the context of the lay user of the Internet in India. Any enhancement of billing for a lay Internet or mobile user is not only going to intrinsically harm the financial interests of the Indian consumer but could also impact the further penetration of Internet apart from prejudicially impacting the confidence and trust that users have in the Internet regulation regime.

The aforesaid are some important thoughts that need to be at the back of every stakeholder's mind when they proceed forward in the direction of addressing net neutrality.

There is no reason for India to be hastening up any kind of action on net neutrality. The government needs to be well-informed of the inputs, views and thought processes of various stakeholders and then take a customized approach depending upon the specific customized requirements of Indian nation and the expected growth of the Indian mobile market.

Arguments in violation of net neutrality should not become a handle to derail the Indian mobile web, its growth and to inhibit the unrestricted and unhindered access to the Internet for the common man of India.

These are **still early days yet**. It will be very important that appropriate considerations be examined in the totality as we move forward.



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