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Liberty & Security in Radically Networked Societies: A Challenge for Every Generation[1]

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Abstract

The debate of liberty versus security gains special significance in India with the emergence of Radically Networked Societies (RNSs). A Radically Networked Society is defined as a web of hyper connected individuals, possessing an identity (imagined or real), and motivated by a common immediate cause. The defining feature of an RNS is its scale of operation — wide reach and its ability to evade conventional national security measures.

In the past few years, RNSs have mobilised large groups using the power of the Internet. Some examples include: the flight of Northeast Indians from Bengaluru following circulation of videos over phones that allegedly showed Muslim people being killed in Northeast India, and the lynching of a Muslim man in Dadri following the circulation of three photos of meat and bones of a slaughtered animal via WhatsApp.[2]

Several questions arise as a result. First, how should the hierarchical Indian state respond to the challenges of a networked society? Second, how can the Indian state respond to this challenge in a way that upholds national security while also protecting individual freedoms? Third, what will be the exact nature of the trade-off between liberty and security in an age of radically networked societies? This paper will attempt to answer these important questions of liberty and security in the Indian context.

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Introduction

On December 28, 2014, an improvised explosive device (IED) explosion occurred on Church Street, a popular hangout destination in the city of Bengaluru. Within minutes, Twitter was abuzz with messages to this effect:

1st tweet by @abc: Blast on Church Street in Bengaluru.

2nd tweet by @lmn: Blast near church in Bengaluru.

3rd tweet by @xyz: Blast in a church in Bengaluru.

This rapid spread of misinformation could have potentially escalated into on-street mobilisation and counter-mobilisation, but was prevented by credible online presence of the Bengaluru City Police, which quickly dismissed this malicious information through its Twitter and Facebook social media teams.

While acknowledging that such misinformation might have been a case of online 'Chinese whispers', repeated occurrences of such online campaigns suggest otherwise. This case clearly highlights that technology, specifically the Internet and mobile devices, is seen as an important instrument to enable protests, activism and mobilisation, especially because they are less sensitive to control mechanisms traditionally employed by governments of the world. This is precisely the challenge encountered by a hierarchical state in an age of networked societies.

While the state tries to respond to this genre of online propaganda, the question to be asked, and answered is — how can the state ensure public security while upholding individual freedoms in networked societies? This chapter attempts to answer this fundamental question.

Before we discuss responses to radically networked societies, it is important to contextualise the 'liberty versus security' debate in India. The first section of the chapter does that and takes a look at the normative case for trade-offs between liberty and security in modern liberal states. The second section deals specifically with the nature of these trade-offs in India. The third section is the core piece of the paper, explaining what a radically networked society is, and why it is a challenge for our generation. Finally, the fourth section discusses responses to this challenge. Instead of dealing with specific technological solutions, the attempt is to find approaches that are liberal and effective in countering the challenges posed by RNSs.

1. Normative case for freedom—security trade-off in liberal states

Liberty and national security are often seen as being antagonistic to each other in common parlance. But there is one concept that adds nuance to this narrative of antagonism between liberty and security: the state. To understand the role played by states in bringing together liberty and security, let us begin with an axiom — in modern nation-states, all individuals are entitled to liberty. Every individual possesses free will and he/she will invariably be inclined to exercise this free will.

This axiom leads us to the question: is there a limit to the exercise of liberty? What happens if one's freedom becomes a license and it is utilised to trample over the freedoms of others? In fact, the state of unrestricted liberty, cherished widely today, did exist in the earliest stages of the human civilisation—a time referred to as 'state of nature' by western philosophers and matsyanyaya by Indian philosophers.

In this 'state of nature', the ability to enjoy freedom is bound solely by a person's individual power. Thomas Hobbes, the 17th century English philosopher, describes such a condition as follows,

> "Men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man (bellum omnium contra omnes)".[3]

Life, therefore, is 'solitary, poor, nasty, brutish, and short.' To better enjoy their rights and freedoms, individuals trade off a part of their freedom for the security offered by a political institution called the state. Kautilya's Arthashastra also echoes this trade-off in these words,

> "People suffering from anarchy as illustrated by the proverbial tendency of a large fish swallowing a small one (matsyanyayabhibhutah prajah), first elected Manu, the Vaivasvata, to be their king; and allotted one-sixth of the grains grown and one-tenth of merchandise as sovereign dues. Fed by this payment, kings took upon themselves the responsibility of maintaining the safety and security of their subjects (yogakshemavah), and of being answerable for the sins of their subjects when the principle of levying just punishments and taxes has been violated."[4]

In Western philosophy, this trade-off formed the basis of the social contract theories. In Leviathan, Hobbes argued that individuals cede all their rights in return for protection to a

sovereign who himself is above the law. John Locke, writing after Hobbes, is more moderate. In his view, individuals surrender only some of their rights (liberty) to a government that rules by the consent of the governed.[5] Thus, the primary role of the state then is to prevent the strong from eating the weak and ensure that every person is given an equal opportunity to live freely regardless of their own individual power. In a state, citizens give up the right to violence to the state, so that they may enjoy the right to life, property, free speech and so on.

The exact nature of the liberty—security trade-off varies from state to state. As such, the exact balance between liberty and security is an unsolved problem for all states in the world. However, there are two liberal approaches to striking this balance. First, minimising the number of liberties we need to give up in order to enjoy the rest. For example, North Koreans might have to give up 90 percent of their liberties to enjoy the remaining 10 percent. In contrast, North Americans might have to give up 10 percent of their liberties to enjoy the 90 percent. Any democratic republic that wants to stay true to its name should aim to move towards the North American standard, rather than the North Korean standard.[6] Second, liberal states allow each generation to decide the balance of trade-offs rather than hardcode them. Thomas Jefferson also advocated for this principle of reversibility in codifying laws when he said,

> "We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."[7]

The next section discusses how has the Indian state, in particular managed this liberty-security trade off.

2. Nature of the freedom—security tradeoff in India

As Granville Austin writes,

> "The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement."[8]

It is with this aim that the Indian Constitution explicitly enshrined Fundamental Rights. The motive was to foster a social revolution by giving freedoms to citizens, from coercion by both

the state and the society — an unprecedented attempt in a hitherto hierarchically bound society.

Another goal of the Constitution was nation-building in terms of sovereignty and security. There were fears that without a strong state, the nascent nation would implode. However, since Fundamental Rights were seen as a core part of the social revolution experiment, the aspiration was that the degree of freedoms forgone by the individual in exchange of the protection provided by the state be kept at a minimum.

The subsequent history of the Indian Constitution has been precisely about the strains between this lofty ideal of upholding individual freedoms and the public good of national security. The first strain between these two aims occurred with the First Amendment of the Indian Constitution, which introduced the concept of 'reasonable restrictions', making it easier for the state to regulate speech and expression. The First Amendment was significant because it,

> "signalled the kinds of battles that would take place between the project of nation-building and the sphere of the media. It marked the rather premature end of the vision
>
> of a 'seamless web', with the promotion of national security and sovereignty being prioritised over the promotion of democratic institutions."[9]

Further, the introduction of the word 'reasonable' added ambiguity, locking the media, the executive, the legislature and the judiciary in a four-cornered contest.

The question of the extent and the way in which rights should be limited continues to be relevant today, particularly with the emergence of radically networked societies. The rapid pace of informational technology progress means that striking the right balance between liberty and security becomes even more difficult.

Moving beyond the limitation of rights, the Indian Constitution excels in one area that is specifically important in an age of rapid technological changes - it allows ample scope for reversibility in law making. Subscribing to the views of Thomas Jefferson, the Constitution makers decided that it was of utmost importance that generations be allowed to decide what is good for them. B.R. Ambedkar, in his famous 'Grammar of Anarchy' speech, had this to say about reversibility in the Indian Constitution,

> "I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property

> without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly."
>
> If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and, if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed t o be shared by the general public.[10]

This reversibility offers a template for law-making on questions of liberty versus security in the age of radically networked societies, a concept that is explicated in the next section.

3. Radically networked societies

The dynamics of the liberty — security trade off get complicated further with the emergence of Radically Networked Societies (RNS). A RNS is defined as a web of connected individuals, possessing an imagined identity and motivated by a common immediate cause. The defining feature of a RNS is its scale of operation, its wide reach and its ability to evade conventional national security measures.

The three essential properties of RNS are:

i. The sociological aspect: Members of radically networked societies share a common imagined identity. They undergo socialisation processes such as internalising common myths in order to create and maintain in-group solidarity.

ii. The political aspect: A radically networked society is capable of mobilising people based on a common immediate cause. This cause becomes a rallying point for protecting the group identity.

iii. The network aspect: Perhaps the most important aspect of a radically networked society is its speed and scalability. Creation of an imagined identity and mobilisation for a cause are both proportional to the depth of the network. It is in this aspect that the Internet as a medium has thoroughly altered the way mobilisations occur.

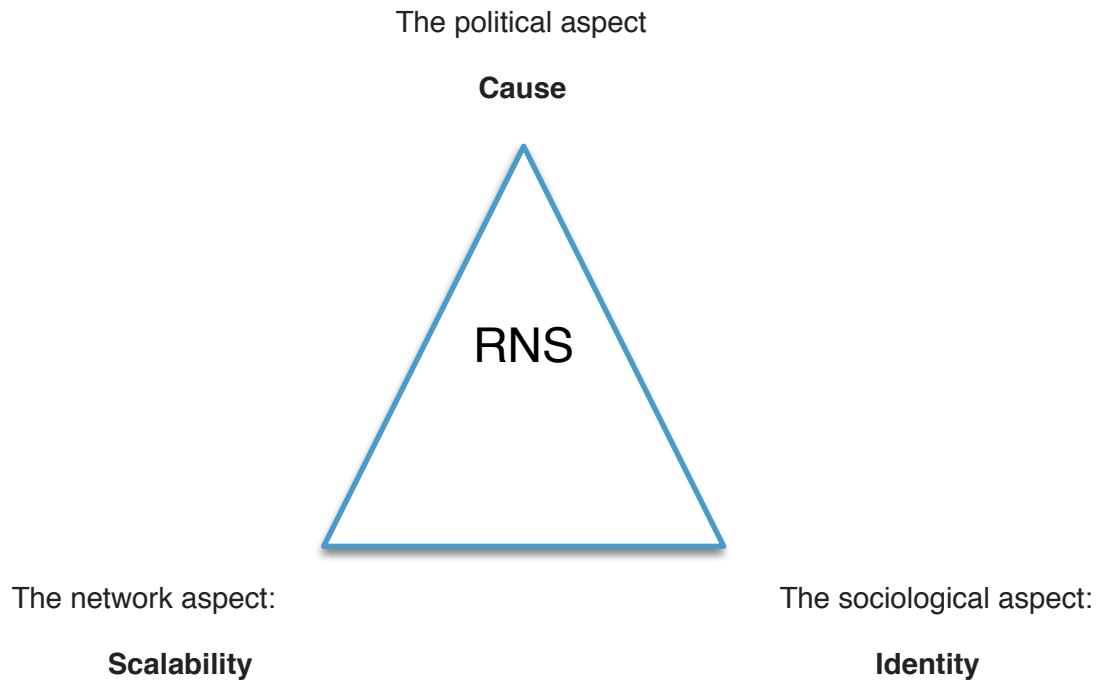

Figure 1: Graphical representation of a radically networked society

This is not to say that RNSs did not exist in the past — such mobilisations have challenged the state in every generation. For example, the Kar Sevak mobilisation that led to the demolition of the Babri Masjid in 1992 possessed all the three properties that make a RNS. Even in that case, the hierarchical state was conspicuous by its slow and inadequate response.

What has changed, however is that the internet has made it far easier to bring latent identities and causes to the fore or even to create entirely new causes and identities. Starting in Tunisia, with what came to be known as the Arab Spring, the clash between radically networked societies and hierarchically ordered states has subsequently become a template for mobilisation in many parts of the world.

This clash means that new questions emerged — should the state restrict online freedoms in the interest of public order? What content online constitutes a threat to the national security? And how should a liberal state respond to the new challenge?

With more than 335 million users of the internet, the Indian state has been at the receiving end of challenges posed by RNSs. Such societies have mobilised not only against the state but also targeted other groups systematically. A few examples below demonstrate how Internet-driven mobilisations work in India.

- **Patidar Reservation Agitation, Gujarat**

Starting in July 2015, members of the Patidar community in Gujarat held public demonstrations, demanding Other Backward Classes (OBC) status for reservation in education and government jobs.

People were mobilised using social media — Patidar Apps, Facebook and WhatsApp. Very soon, there were about 56 WhatsApp groups and 15 Facebook pages. Two applications for Android were created for support, event participation and regular updates of the movement – Patidar and Patidar Anamat. These were interactive apps, which allowed users to upload pictures and share thoughts.[11]

The mobilisation took place in many cities across Gujarat and soon turned violent. Eleven people died in clashes with the police. Citing the role of the Internet in mobilising people, Internet service on mobile phones and certain websites like WhatsApp and Facebook on broadband were blocked for six days from August 26 to August 31 across the state.

- **Protests in Sealdah, Kolkata**

In August 2015, some social media users portrayed a road blockade as a full-blown riot. A number of handles started to tweet about a major communal riot that Kolkata was apparently experiencing right at that very moment. The mobilisation happened as follows,

> "The Railway Police detained 62 madrassa students in Sealdah station and sent them to a child welfare home in Barasat on the outskirts of the city. The children were from Bihar and on their way to a seminary in Maharashtra. The police held them for allegedly travelling without proper identity documents.
>
> Hundreds of Muslims from the Rajabazar area, close to Sealdah station, had mobilised in protest against this police move. By afternoon, a blockade was put into place, shutting off one of the city's major streets, Acharya Prafulla Chandra Road, on a five-kilometre stretch between Rajabazar and Park Circus.
>
> This threw the city's transportation out of gear, leading to major traffic congestion. A heavy contingent of police was deployed in the affected areas and Acharya Prafulla Chandra Road was cordoned off to traffic.
>
> By midnight, just as Twitter was buzzing with rumours of a riot, in fact, the crowd had started to disperse, as the authorities had agreed to release the detained children."[12]

What could have turned out to eventually a riot was prevented by rapid police deployment and the initiation of corrective measures.

- **Flight of people of Northeast India, Bangalore**

Back in 2012, India perhaps witnessed the first example of Internet-driven RNS in operation. Following instances of violence between tribal and Muslim communities in Assam, online rumour mongering over SMSes and mobile videos caused nearly 15,000 North-Eastern Indians to flee Bangalore, even though no incident was actually reported in Bangalore itself.

The Bengaluru City Police responded by banning bulk SMSes for a fortnight. Despite frantic appeals by the Karnataka state government, the exodus could not be controlled immediately.

- **Muzaffarnagar riots, Uttar Pradesh**

In 2013, a WhatsApp video of two boys being beaten fanned the Muzaffarnagar riots. By the time it was determined the video was at least two years old, filmed perhaps in Afghanistan or Pakistan, it was too late — the worst case of violence in the recent history of Uttar Pradesh could not be prevented.

- **Dadri Mob Lynching, Uttar Pradesh**

In September 2015, a mob killed a 52-year old man Mohammad Akhlaq and seriously injured his son Danish. Social media played a role in spreading the rumour that Akhlaq had slaughtered a cow and stored its meat in his fridge. Pictures of the meat and body parts of an animal were shared many times on various social media websites.

The Uttar Pradesh Police in the last two months before the lynching had diffused nearly five incidents of communal tension in various villages of Dadri. Authorities here had received intelligence inputs from multiple sources about village youth, who as the police believe, were having 'conversations' that might have disturbed the peace in the area.

From these examples, one can conclude that mobilisations triggered by RNSs are a challenge to the state in two ways. First, they make upholding the rule of law difficult. This is because the Indian state is yet to strike the right approach to balance between liberty and security in the online space. The governments are also limited by their capabilities to track misinformation being spread over encrypted networks. RNSs find it easy to mobilise large numbers of people. It takes a single text message, video, missed call, or tweet to share information about the time and place of protests. It is possible to create massive rallies like

those at Egypt's Tahrir Square and Bangladesh's 29 Shahbag with the same technology and resources used to create flash mobs.[13]

Second, states find it difficult to maintain their monopoly over violence due to the speed of mobilisations in networked societies. Because these mobilisations take place in a networked fashion, they are many times faster than attempts at counter-mobilisation by hierarchically structured authorities.

Information flows differently in networks, spreading from node-to-node, through various channels. Each entity in a network can receive, modify, and transmit information, limited only by what technology permits. Compared to their hierarchical forebears, RNSs have faster information flows and shorter attention spans.[14]

Given this new challenge, what is the liberty—security trade off in the new setting? This question is explored in the next section.

4. Approaches to national security against radically networked societies

In order to visualise the new national security—liberty trade off, this section proceeds in three ways. The first part deals with the approaches to national security attempted by the Indian government thus far. The second part lays down a few principles that a liberal democratic state should adhere to while dealing with questions on liberty and security. Finally, to appreciate the technical aspects in this debate, the third part presents a summary of views from leading experts in the field of Internet privacy and security from India.

4.1. The Indian government's responses

The most common response of the government is the mass clampdown of Internet services in the aftermath of a mobilisation. This response was executed in several examples highlighted in the last section. Not only is this response illiberal because it is non-selective and has huge negative externalities, it is also ineffective. By the time this response is executed, networks have already formed, and they can quickly move to non-internet based means. An essential feature of RNSs is that networked effects exist regardless of the Internet, such that even if Internet is blocked, communication can still continue over satellite, dial-up, radio or telephone.[15]

The other common response has been to deter inflammatory content from spreading by imposing high costs on those who are involved in such acts. It is with this intent that Section 66A of Information Technology Act was introduced in 2009. This section, termed 'vague' and

'unconstitutional' in 2015 by the Supreme Court, allowed for severe punishment for passing on any information that is 'grossly offensive or has menacing character'. Ill-equipped to deal with the challenge of RNSs, it was the government's desperate attempt to put prior restraints on free speech in the hope that this would prevent spreading misinformation online.

A more evolved response has been to put in place prompt emergency communication systems to refute the misinformation and provide citizens with timely, localised, and correct information through multiple communication channels. The Bengaluru City Police was able to use these capabilities in diffusing tensions post the Church Street blasts, a case that was discussed in the introductory section.

The last category of response has been to increase surveillance capabilities. Through systems such as National Intelligence Grid (NATGRID) and Central Monitoring System (CMS), the intended aim is to increase public safety and security by tackling crime and terrorism.

4.2 Principles from a liberal democratic standpoint

The first two sections briefly described how liberal democratic republics would handle questions of liberty and security. This sub-section applies these principles to the Indian context.

First, regulations that may have an impact on individual freedoms must be preceded by open public discourse. Opinions of various stakeholders must be considered before opinions are made. The debate cycles should be longer to enable a healthy exchange of viewpoints. An example of this type of feedback was seen in the case of the draft Encryption Policy 2015, which mandated the use of encryption algorithms and key sizes as prescribed by the government. After the draft was released, there was widespread opposition from various stakeholders, prompting the government to roll-back the draft.

A second principle to be followed is to not hardcode laws. Instead, having sunset clauses for laws is an approach that can be followed. This is important as technological changes can make government regulations obsolete very quickly. Moreover, it stays true to the constitutional stance of allowing each generation to decide its own trade-offs. One possible solution is to have privacy laws coterminous with the duration of the Lok Sabha.

The third principle is that there can be no prior restraints on free speech. The idea of free speech and expression is to say (write, draw, sing, compose musically etc.) what one feels

without being deterred by government, politicians, social consensus or popular sentiments. The only exception is the "harm principle" where there is incitement to violence. Some free speech can be defamatory, and those defamed can seek legal recourse for the damage caused to them. But there cannot be any prior restraints on free speech.[16]

4.3 Summary of views on liberty versus security from leading experts

This last sub-section presents a summary of views from leading voices in the field of Internet privacy and security from India. Sunil Abraham et al from the Centre for Internet and Society see the tension between security and privacy as an optimisation problem rather than a tradeoff. They say,

> Often policymakers talk about a balance between the privacy and security imperatives —in other words a zero-sum game. Balancing these imperatives is a foolhardy approach, as it simultaneously undermines both imperatives. Balancing privacy and security should instead be framed as an optimisation problem. Indeed, during a time when oversight mechanisms have failed even in so-called democratic states, the regulatory power of technology should be seen as an increasingly key ingredient to the solution of that optimisation problem.
>
> An optimisation approach to resolving the false dichotomy between privacy and security will not allow for a total surveillance regime as pursued by the US administration.
>
> If total surveillance will completely undermine the national security imperative, what then should be the optimal level of surveillance in a population? The answer depends upon the existing security situation. If this is represented on a graph with security on the y-axis and the proportion of the population under surveillance on the x-axis, the benefits of surveillance could be represented by an inverted hockey-stick curve. To begin with, there would already be some degree of security. As a small subset of the population is brought under surveillance, security would increase till an optimum level is reached, after which, enhancing the number of people under surveillance would not result in any security pay-off. Instead, unnecessary surveillance would diminish security as it would introduce all sorts of new vulnerabilities. Depending on the existing security situation, the head of the hockey-stick curve might be bigger or smaller. To use a gastronomic analogy, optimal surveillance is like salt in cooking— necessary in small quantities but counter-productive even if slightly in excess.

> In India the designers of surveillance projects have fortunately rejected the total surveillance paradigm. For example, the objective of the National Intelligence Grid (NATGRID) is to streamline and automate targeted surveillance; it is introducing technological safeguards that will allow express combinations of result-sets from 22 databases to be made available to 12 authorised agencies.[17]

Gautam John, lawyer and technology entrepreneur has this to say regarding regulations,

> Existing laws are more than sufficient to deal with these [security] matters both online and otherwise. The segmentation of online speech only on the basis of medium is unreasonable. Punishment for any real threat to public order or defamation is sufficiently covered under Article 19(2) as grounds to limit freedom.[18]

Raghu Raman, former head of NATGRID has a counter-point on thinking about security,

> Asymmetric threats require a fundamental change in the way we think about our current socio-political scenario. Democracy pivots on civil liberties. But civil liberties are meaningless without civil security. Changing threat scenarios require society to re-think priorities between contradictory requirements.[19]

Conclusion

This chapter demonstrated how radically networked societies — webs of connected individuals, possessing an imagined identity and motivated by a common immediate cause, raise new questions regarding the liberty—security trade-off in the Indian context. As the Indian state tries to frame answers to these new questions, the chapter argued that liberal democratic republics should follow three principles — longer public debate cycles on privacy laws, avoiding the trap of hardcoding laws and avoiding prior restraints on the freedom of speech and expression.

[1] The words 'liberty' and 'freedom' have been used interchangeably in this chapter.

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