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

Draft

A unique challenge in the area of Internet governance and policy making is that the Internet is so many different things to actors in different domains. The intersection of telecommunication and information technology (IT) gave birth to the Internet. It is not surprising therefore that the Internet often gets caught between the remits of the departments of telecommunication and IT of government of India. The inherently global nature of the Internet also brings in global strategic interests and thus a strong role of the Ministry of External Affairs. Meanwhile, as the Internet transforms so many social realms and systems, its governance also begins to relate closely to many other distinct policy domains; like the ones dealing with content and information, media, privacy and data protection, security, commerce and other economic issues, as well as development, along with its various sub-domains like education, health, public service delivery, community development, and so on.

As India's Internet governance regime gets shaped, one of the foremost questions is whether Internet governance (IG) is one distinct policy space requiring a specific approach and dedicated institutional mechanisms, or it simply straddles many existing policy spaces with some issue-based inter-connectedness. If the latter, 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. It is important for India to sort out this key question as it fumbles along trying to deal with the growing social role and implications of the Internet in the Indian society. (This question includes the relationship between, on one hand, how the emergent domestic Internet related issues are dealt with and, on the other, the international triggers that motivate numerous Internet governance related activities in India.) This question corresponds to what is also a very significant issue internationally, whether (a) Internet requires a converged global policy space for specialized work and outputs, and close coordination across sectoral approaches or (b) Internet's different aspects are adequately and best dealt with by existing sectoral policy spaces like the WTO, WIPO, UNESCO, ICANN, ITU, UNDP and so on, without the need for any Internet-specific policy and governance anchor point.

This paper will explore the Internet policy space in India employing the hypothesis that whereas specific emergent issues have hitherto been addressed in existing policy silos without any coherent overall sense of a single field of Internet governance, as the issues become deeper and more pronounced, there is an emerging but yet not well-formed tendency of epistemic and institutional convergence towards a distinct field of Internet governance. Such a convergence also plays out across domestic and international considerations of Internet-related policy issues. Building on the current scenario and the evident directions of change, in the last section, the paper provides a very brief projection of what such a converged institutional space can look like.

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 that was set up in 2004 after the first summit[1] undertook a mapping of Internet policy issues which still remains very relevant[2]. Internet governance (IG) emerged as a major geo-political issue during the WSIS preparatory process. The Tunis Agenda[3], which is one of the key WSIS outputs, laid out the field and some key principles of Internet governance. It still remains the base global document for defining this policy field.

At the national level, meanwhile, for much of the last decade and a half, 'Internet governance' has either meant nothing, or just the very narrow domain of technical governance and the management of the addressing system of the Internet[4]. It is hardly surprising that this narrow technical remit has not attracted much interest for most policy actors, both within and outside the governments. The current definition of Internet Governance on the website of Department of IT testifies to this narrow technical vision[5]. (In a way, the Tunis Agenda had circumscribed the Internet public policy space as excluding the day to day technical management of the Internet.[6]) It can therefore be said that, till very recently, India has had no clear articulation of what could be called as Internet policy space. The situation has only begun to change now.

Dealing with the Internet – A 'plug the gap' approach

Even though not specifically identified as such, a number of policy developments in India over the first decade of the new millennium could be understood as concerning Internet governance, as it is defined in the international arena. One 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 of the government of India. 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". Such a legislation was found necessary and urgent to support, and provide a legal basis for, transactions involved in e-commerce, trade in IT-based services (in which India had begun to carve out an international niche) and e-governance. *Inter alia*, the Act carried some basic provisions on cyber-security and data protection, which issues are of course germane to its primary purpose. It also had a provision to protect intermediary liability, and another one on censoring pornographic content on the Internet, which was already being recognized by many as a key social problem. Evidently, the attempt was to try and plug in one go all the important legal gaps that were emerging as the Internet got adopted by more and more people, for more and more purposes. Most of these provisions in the Act however were rather elementary and often vague. This is perhaps understandable given that those were really early days for the Internet in India.

In the 14 years since the passing of the IT Act, the Internet and its social impact has moved on at an unimaginable pace. We are now undoubtedly at the cusp of an Internet-mediated society. Most actors involved with Internet governance today consider it untenable that India still only has that elementary IT Act, with a few patchwork amendments, to govern India's Internet. Over the years, the Indian policy

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 http://www.itu.int/wsis/docs2/tunis/off/6rev1.html
4 It must be said here that there are a number of influential actors globally, especially from the so called 'technical community', who also take such a narrow view of Internet governance.
5 http://deity.gov.in/content/internet-governance
6 Paragraph 69 of the Tunis Agenda
7 http://deity.gov.in/content/information-technology-act

establishment has mostly only acted in reaction 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 (business process outsourcing) industry which sought strengthening of data protection provisions. The biggest trigger for change however was the Mumbai terror attack in 2008[9], during which terrorists are reported to have used the Internet for communication. Following this incident, the 2008 amendments to the IT Act added stronger provisions for content regulation, new data protections measures, and attempted to provide greater clarity on intermediary liability protection by laying out safe harbor mechanisms through the Information Technology Rules (Intermediaries Guidelines), 2011[10].

The new provisions for regulating the content of communication over the Internet are so vague that they "can be used to criminalize almost any behavior on the Internet (including that which would not constitute a crime in the physical world)..."[11] Similarly, 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[12]. However, those intermediaries whose very business models consist in people speaking out against powerful actors, like mouthshut.com[13], cannot simply accept most take-down requests that they receive. But then they risk exposing themselves to a great amount of litigation, which can make such businesses unviable. Apart from its many vague provisions, leaving it open to misuse, the IT Act 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 online space as per their judgment. The legality of such private censorship is doubtful, apart from it being questionable on other counts. This is especially so when many of these intermediaries are monopolies in their respective service segments. Further, certain provisions in the IT Act that give an overriding effect to the relevant copyright and patent laws can mean that intermediary protections may not apply for intellectual property infringement cases. Through various judgments, the courts have been putting onerous responsibility on the ISPs to police content for possible intellectual property infringement[14], 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 inadequate[15], although they have been strengthened by the 2008 amendments, and by the notification of applicable Rules in 2011[16]. They still do not comprise a comprehensive privacy and data protection legislation, and have many serious gaps[17]. The rules just cover certain kinds of sensitive information

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8 http://www.webpronews.com/arrest-of-avnish-bajaj-ceo-of-baazeecom-is-deplorable-2004-12
9 http://en.wikipedia.org/wiki/2008_Mumbai_attacks
10 http://deity.gov.in/sites/upload_files/dit/files/GSR314E_10511%281%29.pdf
11 http://www.thoughtworks.com/insights/blog/information-technology-act-and-internet-censorship-india
12 http://cis-india.org/internet-governance/chilling-effects-on-free-expression-on-internet
13 http://www.mouthshut.com/freedom-of-expression
14 http://www.mondaq.com/india/x/337668/Copyright/Indian+Regulatory+Framework+For+Internet+Service+Providers+Onerous+Yet+Inadequate
15 http://www.gala-marketlaw.com/77-gala-gazette/gala-gazette/261-india-data-protection-and-the-it-act-india
16 http://www.mondaq.com/india/x/337668/Copyright/Indian+Regulatory+Framework+For+Internet+Service+Providers+Onerous+Yet+Inadequate
17 http://cis-india.org/internet-governance/blog/comments-on-the-it-reasonable-security-practices-and-procedures-and-sensitive-personal-data-or-information-rules-2011

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 for social, economic and political control in the emerging digitally-mediated context. Further, often the impact of problematic big data practices can be at a social rather than personal level. Therefore issues of social ownership and impact of data forms a connected but different layer for the consideration of policy-makers. In the circumstance, what is needed is a specialized legislation in this area, which is derived from clearly articulated privacy and data protection principles[18].

Cyber-security has a close relationship with content regulation as well as with privacy and data protection. The IT Act 2000 contains some basic provisions regarding cyber-security, which were strengthened by the 2008 amendments. However, some overall principles of cyber-security need to first be defined in relation to other IG issues, like the right 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. Most experts feel that India urgently needs to move beyond its hold-all IT Act in this regard. The cyber-security policy issued in 2013[19] is a good start. However, it seems to lack a larger cyber-security vision[20] , and cross-connections with allied areas of Internet policies, while also being short on implementation details.

As mentioned, the IT Act had the primary purpose to provide the legal basis for electronic transactions, including and specially of an economic nature. While the Act has provided the minimal basis for e-markets and e-commerce, the range of economic issues concerning the Internet are becoming rather complex. They are also increasingly of a qualitatively different nature than the IT Act was ever envisaged to handle. To give just two instances; the Competition Commission of India is dealing with a few cases brought against global Internet companies alleging anti-competitive practices[21], and the government of India is internally considering ways to address the problem of enforcing and collecting taxes with respect to digital commercial activities. A complete new look at the economics of the Internet may be warranted. Such an undertaking would obviously need to be closely informed by other fields and aspects of Internet governance.

An important mandate of the department of IT is to develop technical standards for e-governance, pursing a policy of open standards[22]. A lot of work has been done in this regard, the very progressive policy on open standards for e-governance of 2010[23] being especially noteworthy. 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 ever more important. Standards adopted by e-governance initiatives become an important determinant of the overall technical standards in the society. This in turn will determine how open and 'even-leveled' will be the techno-social infrastructure that increasingly provides the 'playing field' for much of social, economic, cultural and political activities and opportunities. As IT becomes an intrinsic

18 http://www.legalserviceindia.com/article/l406-Does-India-have-a-Data-Protection-law.html
19 http://deity.gov.in/content/national-cyber-security-policy-2013-1
20 http://www.indexoncensorship.org/2013/10/india-challenges-cyber-governance-cyber-security/
21 http://timesofindia.indiatimes.com/tech/tech-news/Google-faces-up-to-5-billion-fine-from-Competition-Commission-of-India/articleshow/31724382.cms
22 https://egovstandards.gov.in/
23 http://opensource.com/government/10/11/open-standards-policy-india-long-successful-journey

part of more and more social systems, 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, promoting democracy, cultural diversity, etc, are easily evident here.

The technical administration of the Internet's naming and addressing system is done by the Internet Exchange of India, or NIXI, in close relationship with the ICANN and the Regional Internet Registry for the Asia Pacific, APNIC. NIXI also facilitates Internet Exchange Points to try and keep the domestic traffic within the country which is obviously much more efficient, and helps create a level-playing field for smaller ISPs. The activities of NIXI are also expected to get more connected to the developmental and political scene in India as the demand for multi-lingual domain names and new general top level domains (as well as community-owned ones, like for different cities of India) rises.

Mostly developed in the geo-political North, the current popular conception of Internet governance is dominated, even largely exhausted, by five sets of issues; (1) freedom of expression and content regulation, (2) privacy and data protection (3) cyber-security, (4) facilitating e-commerce, and (5) technical administration of the Internet and technical standards. 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. This class happens to be in considerable alignment with a certain cosmopolitan global culture. It also has high purchasing power to be able to relatively better influence the emerging digital systems towards serving their interests. It is, therefore, largely content with just the protection of, what can be described as, 'negative rights'[24] in relation to the Internet, plus the provision of the basic enabling elements for digital markets and architecture. As a consequence, it is almost entirely these five sets of 'Internet governance' issues that till now have made news in India. The contours of the Internet in India has thus far followed dominant global trends, and, to a large extent, so have its policy perspectives and approaches as well.

India, however, is a very large developing country with deep socio-economic inequalities and a huge cultural diversity. As the Internet usage moves to its hinterlands, an inflexion point for which appears imminent, 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 quite unique to the Indian contexts. Understanding Internet governance in the Indian context requires a close examination of this emergent reality.

Internet governance issues that uniquely arise from a development context

Many conceptions of Internet governance tend to differentiate issues on and about the Internet from what they consider as basically matters of infrastructure development. They would like to consider only the former as strictly being about Internet governance. There is some logic to this assertion. Structure of the Internet (Internet governance) can be treated at a different level from its reach or coverage (infrastructure policies). Here, it is assumed that the geographic and social spread of Internet connectivity by itself does not significantly impact Internet's structural issues. This may be true for countries like India in its early phase of growth of the Internet, when the user base is relatively

24 http://en.wikipedia.org/wiki/Negative_and_positive_rights

homogeneous with respect to the global user base in many key characteristics. It therefore admits of similar policy challenges. However, in taking the Internet beyond this relatively small upper-class user-base, both the nature of policies required to bring about this larger coverage, and the *nature of the Internet* that is required to cater to the new users, and also as co-created by them, can be vastly different. In such a context, issues of Internet proliferation and its governance[25] can become closely linked.

Most governmental meetings on Internet governance in India are characterized by a somewhat seamless overlapping of 'infrastructural and developmental' issues related to the Internet with those which are more traditionally recognized as IG issues, and have been discussed in the above section. It is this unique mix and inter-connection of issues and policy challenges that most characterizes the IG scene in India, especially in its emerging next phase. It is impossible to form a picture of IG in India without a good understanding of the manner in which the Internet is being sought to be taken to the next scores of millions of Indians, and how of they are beginning to use it. Most outside commentators miss this most significant point, and keep viewing Indian IG from a rather partial global lens.

The perspectives of those involved with developing Internet-related infrastructural policies have to a very large extent been based on the successful mobile revolution in India. It is assumed that, with a certain time lag that is natural, Internet access will similarly get carried by the market to far-flung corners of India. The facts however may not justify such optimism. While mobile subscription figures, over the last more than a decade. almost always surpassed the most optimistic projections, 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 the Internet outside certain socio-economic demographics has been quite poor. As early as mid 2000s, two states, Andhra Pradesh and Rajasthan, announced 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 built a network based on wireless technology to feed its rural e-governance centres, which had a limited success. Gujarat runs a captive network for a similar purpose, which provides connectivity to the village self-governance offices, but not to the general public. It is becoming increasingly apparent that taking the Internet to the majority of Indians may require different kinds of thinking and strategies than just allowing a free run to the market.

Under its new Digital India program[26], the government has declared its plan to reach broadband connectivity as a utility to a quarter million village self-governance units in India by 2019 through a National Optic Fibre Network (NOFN)[27]. However, it is still not clear who will carry the connectivity from the NOFN backbone to the end users. Right now, the expectation seems to be that commercial telcos will step up to do it[28]. But, given the low existing demand in rural areas, there may not exist a good basis for such an expectation. Modifying India's telecom policy to allow and encourage very small-scale retailers will be one useful measure to address this challenge. Still, in many if not most

25 The concerned section of the Ministry of Electronics and Information Technology is in fact described as dealing with 'Internet proliferation and governance'.

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

27 http://www.bbnl.nic.in/content/page/national-optical-fibre-networknofn.php

28 http://myiris.com/newsCentre/storyShow.php?fileR=20140924122646717&secID=sector&dir=2014/09/24&secTitle=Sector%20Stories

places, local governments and/ or community groups will have to come forward to provide local public or community networks. Even in countries like the US, with a long record of private provisioning of utilities, local governments have begun to get directly involved with providing connectivity to its citizens, as a means for overall social and economic development.[29] 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, on a public library model. Further, subsidized or free basic data quota on personal devices can also be considered, which can be based on certain eligibility criteria. Such free quota may be applicable for all Internet services, or just for some specific social and developmental services.

The cost of user-end device has been cited as a major roadblock in spreading Internet connectivity. This is hoped to be overcome with sub 75 dollar smart phones becoming available, which will make a major difference. Recently, the government declared that it will ensure a smart phone for every citizen by 2019[30]. India is among a few countries where the number of those who access Internet on mobiles far exceed those who do so over stationary devices. An even larger proportion of the growth is coming from mobile users. Mobile data plans however remain very costly, although ISPs are actively exploring low cost data plans for mass, bottom-of-pyramid markets to attract users with low purchasing power.

Beyond, affordable Internet connectivity and user devices, there are two other very significant factors that constrain the spread of Internet connectivity. First, if the Internet's real developmental and empowerment potential has to be realized, Internet in India must be socio-culturally diverse, in terms of its content and applications. With mobile telephony, the 'content' is simply the spoken language, which almost everyone is comfortable with and ready to contribute volubly. The Internet, on the other hard, is is not culture-neutral like a telephony platform is. This is a significant difference, and a challenge. Market dynamics will certainly play a major role here, including through organizing user contributions. However, it will still require a huge amount of policy and programmatic support. Second, even with simplified interfaces, using Internet requires a considerably higher level of skills than that is needed for telephony. Intensive programs for building universal digital literacy will be required.

Digital India's current focus on reaching Internet connectivity to all parts of the country – whether through the market or by public-funded means – and providing it at affordable costs, therefore, addresses just one part of the problem. Although some measures like the 'IT for masses'[31] program and support from Indian language interfaces have been taken by the government, the important issues of socio-cultural specificity of the Internet and the need for special skills are yet to be conceptualized and articulated well enough.

The Digital India plan claims that services like e-governance, e-education, e-health and e-banking will be made available over the newly laid networks. It, however, seems to lack a really good grasp over the issues of local content, application and services, as also of digital skills and local community involvement. Very similar, sweeping, statements were made almost 10 years ago, in relation to the Common Service Centre scheme of the National eGovernance Plan, which has had a rather limited

29 http://www.muniwireless.com/category/city-county-wifi-networks/
30 http://articles.economictimes.indiatimes.com/2014-08-25/news/53205445_1_digital-india-india-today-financial-services
31 http://deity.gov.in/content/it-masses

success till date. The Chairman of the Telecoms Regulatory Commission of India recently made a very relevant observation; 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[32].

It has been felt since almost the very first few years of the Internet in India that an Internet for rural India would centrally involve development and governance services. Many local, district level, initiatives based on such a thinking sprung up as early as the first few years of the new millennium, of which Drishtee[33] and Nlogue[34] are especially notable. Although they folded up in a few years, they were able to demonstrate significant possibilities, which laid the basis for the Common Service Centres[35] scheme of the government of India. These Common Service Centres have been the first Internet experience of a very large part of rural India, at-least in terms of hearing about the Internet and its possibilities if not directly using it. It is now time to go beyond concept demonstration to active building of Internet-mediated social systems that serve the developmental needs of people of India. This certainly is not going to be an easy task.

The central government is planning a huge digital literacy drive[36]. 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 marginalized groups would be a good strategy to take the Internet to most difficult to reach areas and people. Some such efforts, like the mentioned IT for masses scheme of Department of IT already exists.

Recent statements about the Digital India initiative do suggest that the government recognizes the importance of (1) an active-push based infrastructural approach (2) the need to pro-actively develop Internet-based development and governance services, applications and content and (3) providing enabling support like building digital literacy, hardware provision, language interfaces, etc. All these are expected to be areas of major attention and investments for the government in the next few years.

In such a context, the field of Internet governance in India will take a unique shape, involving policy and programmatic initiatives addressing a mix of relatively universal negative rights issues (freedom of expression, privacy, security and enabling fair markets) and rather more contextual positive rights (access, welfare entitlement, livelihood support, enhancing democratic participation, right to information, cultural rights, and so on). It is such a composite Internet policy and governance approach that will determine the nature of the Internet in India, as it evolves into a central paradigm of social-wide transformations.

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 domestically in India till now. In this section, we will briefly trace how this imported concept of IG

32 http://articles.economictimes.indiatimes.com/2014-08-26/news/53243926_1_digital-india-rahul-khullar-trai-chairman?intenttarget=no
33 http://www.itforchange.net/sites/default/files/ITfC/Drishtee.pdf
34 http://www.itforchange.net/sites/default/files/ITfC/TeNet.pdf
35 http://deity.gov.in/content/common-services-centers
36 http://csc.gov.in/cscblog/?p=108

transversed through the Indian policy establishment during the last decade or so.

At the WSIS, the core Internet governance issue was the US government's unilateral oversight over the addressing system[37] of the Internet. 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.[38] This meant that they were subsidizing countries of the North in their connectivity to the South, which reversed the earlier model of international telecommunication 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 officials who did most of this work, and India's position on the key issues derived considerably from the traditional Southern geo-political standpoints. Officials from the Department of IT who turned up at WSIS showed rather less enthusiasm about major IG issues, which appeared somewhat esoteric to them. They had developed strong working relationships with the ICANN[39] 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, and advertising its IT industry abroad.

The Tunis Agenda[40] from 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 around with regard to global IG contestations. India especially became very quiet. A major hiatus in terms of India's political involvement with global IG is evident till after the end of the decade when India again begun to pick up the pieces. India had a very low key presence in the early Internet Governance Forums (IGF), a policy discussion forum that came out of the WSIS in 2005. The lead here was taken by the Department of IT, which employed these occasions to showcase their e-governance program, now the flagship activity of the department. The Ministry of External Affairs largely stayed away from these meetings. 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.

During this entire period, up to quite late, the triggers for IG related activities would always come from some international events and exigencies which were therefore first faced by External Affairs officials. These were then communicated to the Department of IT as the concerned line department. The responses were mostly 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 any specific 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. Within the country, however, as we have seen, Internet's inexorable march through the Indian society was being addressed

37 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.

38 "Inter-connections costs", Mike Jensen, http://www5.apc.org/fr/system/files/interconnection_costs+en.pdf

39 Internet Corporation for Assigned Names and Numbers, the apex body dealing with Internet's addressing system.

40 http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

in a variety of disparate ways. But the connections among them, and with global developments, as encompassing a new field of Internet governance, was not being made. As will be evident from the following analysis, the external triggers and the responses to them have certainly contributed towards what has begun to emerge as a kind of converged field of thinking and action of Internet governance and policy making in India.

It was the towards the plus five review of the WSIS at the UN Commission on Science and Technology for Development[41] (CSTD) in 2010 that the un-addressed mandate of 'enhanced cooperation' begun to be raised hotly by developing countries. 'Enhanced cooperation' was accepted as 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. At the CSTD, 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 2010. In a very significant move, India worked with the two other IBSA countries (India, Brazil, South Africa) to make a joint statement seeking a UN based inter-governmental platform to take up Internet-related global public policy issues[42]. This statement also listed a set of international public policy issues, including net neutrality.

Taking 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 some 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[43]. 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 which was to "develop and establish international public policies with a view to ensuring coordination and coherence in cross-cutting Internet-related global issues". Another function 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[44]. The Rio meeting was such an important international development that the IGF in Nairobi in late September of 2011 was greatly 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 that were held in December 2010 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[45], which corresponded to what was contained in the Rio Recommendations. It also described how this Committee will be constituted, and proposed separate civil society, technical community and business community advisory groups for this Committee. This model of multistakeholder participation mirrored the

41 This body was mandated by the WSIS to oversee WSIS follow up.
42 http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan043559.pdf
43 http://www.itforchange.net/sites/default/files/ITfC/rio_recommendations.pdf
44 http://sistemas.mre.gov.br/kitweb/datafiles/Berlim/de/file/Tshwane%20Declaration.pdf
45 http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf

arrangement at the OECD's Committee for Information, Computer and Communications Policy, which is OECD's Internet policy development body.

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. It therefore caused a lot of flutter globally. 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 particular trajectory owing to the authoritarian nature of these regimes, it was just Brazil that had been really active on the developing country side demanding a more democratic global IG order. India joining in marked a major shift in the balance of the geo-politics in this area.

Almost immediately after India made this proposal, the IG scene inside India hotted up. Till this moment, almost all non-governmental engagements were about specific domestic issues, chiefly, the misuse of the provisions of the IT Act for censorship. In this new debate on India's strong move on the global scene, there were views both against and in favour. But there was a relatively uniform demand that Internet governance issues being important for the people of India, there must be wide-ranging consultations before India takes key policy decisions in this area. There have been some press reports about some disquiet within the Department of IT on India's new global stance[46]. (It is worth mentioning here that the UN statement on CIRP was made with the Department of IT's explicit concurrence[47].) 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 on 'enhanced cooperation' in May 2012[48], in the presence of senior officials from the Department of IT. This showed that 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[49]. In this statement of May 2012, India also made the demand for a CSTD Working Group on 'enhanced cooperation' in order to explore the way forward on this issue. Owing a good part to India's efforts, such a Working Group was set up by the UN General Assembly in late 2012. 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 the criticism against the CIRP demand 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 such a platform was also supposed to exercise 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” as is mentioned in the Tunis Agenda for the 'enhanced cooperation' process to undertake. It appears that India is currently flexible about the actual oversight mechanism. However, in its response to the current process of proposed changes to US government's oversight role over ICANN, India has made it clear that any new mechanism “should have international legislative authority for it to have legitimacy, credibility

46 http://www.thehindu.com/news/national/on-internet-rules-india-now-more-willing-to-say-icann/article3994985.ece
47 http://pib.nic.in/newsite/erelease.aspx?relid=86727
48 http://www.mea.gov.in/Portal/CountryNews/598_UNCSTD_FinalStatement18May2012.pdf
49 Ibid

and acceptability by the International community"[50].

In dealing with all these rapid international developments, the Ministry of External Affairs and the Department of IT have been routinely thrown together in order to develop India's positions. At times, 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 specific developing country interest. Such exercises have contributed to outlining what is beginning to emerge as the sphere of Internet governance 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. They obviously approached it mostly from a security angle, but taking a holistic view which included the international dimensions of the Internet, 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 acute 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. This is a clear evidence that a certain conception of a new convergent policy space of IG has begun to take shape from a domestic perspective even if the triggers till date have mostly come from abroad.

A good example of such strong external influences can be seen in India's participation in the ITU's World Conference on International Telecommunications (WCIT) in 2012. Ever since the 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 telecommunication. 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 includes the Internet and IT or not. WCIT was of course hyped by many actors, mostly US based ones, as a fight to save the Internet and keep it free from governmental regulation.[51] 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 an 'apprehension' that the latter term brings in IT and the application layer of the Internet into the definition of telecommunication. Meanwhile, both the 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). India had also voted with most of those who finally signed the ITRs in favor of the controversial provision on 'the right of the member states to access telecommunication networks', which was the only time a vote was called during the process of negotiating the ITRs. In the circumstances, there appeared to be no evident reason for India not to sign the final ITRs. In a very ambiguous post WCIT statement[52], India declared that it agreed with the ITRs proper but needed time to study an appended resolution on the Internet. It was evident 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. The point being made here is of showing

50 http://mm.icann.org/pipermail/ianatransition/attachments/20140507/8a49e95f/2014-4-16-India-Ministry-ICT.pdf
51 Op-ed in 'The Hindu', 'Hyping one threat to hide another', http://www.thehindu.com/opinion/lead/hyping-one-threat-to-hide-another/article4140922.ece .
52 http://pib.nic.in/newsite/erelease.aspx?relid=90748

how external triggers have been a major impact on India's growing consciousness of the policy area of Internet governance, and its deep contestations.

In the immediate aftermath of India's CIRP statement, one of the largest industry associations in India became very active in the IG space, led by some US-based companies working in India. In the middle of 2012, the industry association 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) has been set up for this purpose. Apart from planning for the annual India IGF, the mandate of the Group includes providing 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 sometime in early 2015. Interestingly, as the MAG set upon to develop the agenda for the first India IGF, starting with a template that largely mirrored high level policy categories employed by the global IGF, over intense discussions, the categories and their sub-descriptions swerved much more towards domestic issues. These discussions, and the actual deliberations expected to take place at the India IGF, can be seen as greatly contributing to the development of IG as a new policy space in India.

As another significant influence from the global thinking on the issue, especially as gathered by the 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 in India. A multistakeholder working group was set up for this purpose in 2013. It has held two meeting. There was a universal acknowledgement during these meetings 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.

Even in the supposedly technical and thus apolitical area of addressing and technical administration of the Internet (issues related with ICANN and its family of 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 other countries in the ICANN's Governmental Advisory Committee to express reservations on many aspects of of the new general top level domains (gTLDs) program. It has submitted written reservations against two new proposed gTLDs, .Ram[53] and .Indians. In response to the new move of the US government to give up its oversight authority over the ICANN, India has asked for any new arrangement to be rooted in international legislative authority. Incidentally, this does not at all accord with the current plans of the US government or the ICANN.

Converging over an Internet policy and governance space

53 The name of an Indian god.

In earlier sections. we have discussed how policy responses to the phenomenon of Internet are emerging in India in different sectors like content regulation, privacy and data protection, cyber-security, e-commence, infrastructure, e-services, community development, cultural rights and so on. It is increasingly being felt that Internet-related policies in each of these areas require taking allied areas into considerations, or even be developed co-jointly. The Internet as a complex new social artifact, that cuts across social systems, joins up these disparate policy spaces in some unique ways. While all these different sectors continue to have their own specific nature and demands, Internet related issues within these sectors are increasingly seen as also requiring some kind of a common overview and treatment. The Internet also brings up some entirely new policy issues which do not seem to have any clear existing home. At the same time, the global thinking and terminology of Internet governance is having a growing influence on India. Evidently, an imminent convergence over a specialized policy and governance space related to the Internet is beginning to show.

It is no longer possible to mind the Internet's growing nexus with various social systems and structures through a weak, stop-gap legislation like the IT Act. It is quite likely that the content regulation provisions of the Act may not even meet constitutional requirements, regarding which a case is pending before the Supreme Court of India[54]. These provisions figures in the IT Act simply as accompanying the Act's main intention of providing an enabling environment for electronic transactions. The Department of IT should perhaps not have been developing 'content' related provisions on its own, which is not an area of its core expertise. The issue of content and freedom of expression on the Internet has become much more blown out and complex today that it was when the IT Act was first envisaged. The Internet as a convergent 'content space' or medium for much of private as well as 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. In what is clearly an anomaly, audio-visual expressions on TV today are dealt with by the Ministry of I & B, while the same audio-visuals on Youtube are subject to the IT Act, under the purview of the department of IT. An issue-area that clearly straddles across the IT/ telecom and broadcast sectors is Internet Protocol TV or IP TV. Another indication of the 'convergence challenge' is the existence of two separate sets of guidelines for IP TV, one each issued by the telecommunication regulator and 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[55]. 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 have earlier mentioned that India may be close to an inflexion point with an impending explosion

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

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

of Internet connectivity figures (at a projected compound annual growth rate of 44 %[56]). It may therefore not be possible to postpone for too long, as the above document does, a serious consideration of the Internet as a mainstream media from a legal and regulatory point of view. 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 simply be cut-pasted on to the new context. Whereas it is also equally evident that the IT Act, or the general thinking underpinning such stop gap measures, is dated and needs to be superseded.

A major problem about developing policies, laws and regulation with respect to the digital realm is the issue of their enforcement, since this realm consist of billions of daily transactions, granularly spread over the often unfathomable space of the Internet. It is for this reason that enforcement is often left or outsourced to Internet companies, which is evidently a rather problematic practice. Such private policing itself violates people's right to free expression, when private entities decide what content is appropriate and what not on platforms that are often monopolies, and thus people may have no real option to take their views and expressions elsewhere.

The issues of freedom of expression and content/ media regulation on the Internet are therefore quite complex and has many unique new features. They will need to be addressed taking into account many other Internet policy/ governance issues such as technology standards and architecture, competition law, privacy, access and infrastructure, and so on.

Similarly, privacy and data protection take up completely new dimensions in a pervasive digital context. The requirements for enabling and protecting India's booming BPO (business process outsourcing)[57] industry can be quite different from looking at data access and manipulation as a new means of social, economic, political and cultural control, some vistas of which were provided by Snowden. This is not just a quantitative shift but a huge qualitative change with immense structural implications. Data underpins the very structure and power relationships of the new emerging social systems. Data is today also a key economic resource; some call it the oil of the Internet economy. Similar to what was discussed the case of content regulation, very new thinking and concepts are required around issues such as, what is private and what public, and what determines ownership over data as a social and economic resource. Deep new understandings of the nature of the digital space, with its immense and evolving complexities, are required to provide the basis for a comprehensive legal and regulatory treatment of privacy and data protection.

Issues of cyber-security are strongly linked *inter alia* with those of content regulation and privacy as well with the technical and business architectures of the Internet. Concepts related to security and threats in and through the cyber-space, like the controversial concept of 'information security', require to seen in conjunction with so many other Internet policy issues. The security establishment normally tends to be develop its approaches and actions in a silo, keeping just what they see as 'security situations' in their line of sight. Lately, however, the office of the National Security Advisor has begun to closely get involved in generic Internet governance discussions, which is sign of a growing understanding of Internet governance as a converged cross-sectoral space. This is a also evident in the growing tendency towards convergence between cyber-security meetings and cyber governance

56 http://articles.economictimes.indiatimes.com/2013-06-04/news/39740674_1_traffic-internet-access-indian-mobile-data
57 Business Process Outsourcing

meetings[58].

The convergence between telecommunication and Internet/IT spaces is rather more obvious, which is getting accentuated rapidly. Recently, telcos appealed to the telecom regulator, TRAI, to help them obtain a share from the profits made by OTT (over the top) services providers[59] that use their networks. In response, TRAI held a consultation on the subject[60]. Voice and text communication, the staple of telco revenues, would soon move to Internet platforms/ applications in a mainstream manner whereby a deep re-thinking is required about what policy logic informs the separation between the infrastructural layer (currently, with the Department of Telecommunications) and application/services layer (Department of IT). Better 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 earlier, an India-specific development approach to Internet's growth into the rural and semi-urban areas of India would mean that policies that determine the shape and structure of the Internet must connect with approaches and policies concerning the proliferation of the Internet, and its 'effective use'[61] by people and communities in India. 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 free of any data charges (specific services only, and not to the 'full Internet')[62]. Such practices constitute 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 goal, 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. This, it can be soundly argued, will pave the way for a variety of other empowering uses of the Internet. Conversely, those focused on the application, standards and content layers of the Internet may need to come to terms with the fact that, as the Internet spreads to India's hinterland, with its great economic, social and cultural heterogeneities, the same approaches and policies that worked earlier 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 brief reconnaissance of the contemporary terrain of Internet policy related thinking, processes and institutions in India does show how things appear to be moving in the directions of a certain convergence. Significantly, the Minister for Communication and IT, who supervises both the departments of telecom and IT, recently announced the intention of the government to bring in a Communication Convergence Bill[63]. It is likely to install a single regulator across the content, IT and telecom space, the Communications Commission. The bill is also expected to supersede and/ or amend

58 http://samirsaran.com/2013/12/13/cyfy-2013-outcome-statement/
59 http://en.wikipedia.org/wiki/Over-the-top_content
60 http://www.medianama.com/2014/08/223-trai-ott-internet-regulation-telecom-opertors/
61 “Effective use: A Community Informatics strategy beyond Digital Divide” by Micheal Gurstein, http://firstmonday.org/article/view/1107/1027
62 http://news.slashdot.org/story/14/04/06/0514210/facebook-and-googles-race-to-zero
63 http://www.hindustantimes.com/india-news/a-super-regulator-for-tv-internet-mobile-services-in-offing/article1-1261292.aspx

a host of existing laws related to content regulation, communication interception, IT transactions and telecom infrastructure. If and when it comes to pass, this would be the first real Internet governance legislation of India. It is important that various actors in the Internet governance space, and in allied areas, contribute to this important exercise which would a major determinant of the future of the Internet in India.