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Résumé de l'article

Under the guise of decolonizing and modernizing laws, the Bharatiya Janata Party-led National Democratic Alliance government has sought amendments in laws governing every aspect of digital communication in India, such as cellular mobile, instant messaging, news, and entertainment. The government has dramatically expanded its power to control and regulate different forms of digital communications, exerting significant influence over what people watch, read, hear, and think. This extensive authority enables the government to monitor, surveil, censor, and shape public mood and opinion, thus placing communications under siege. In today's world, communication technologies are deeply embedded in our daily lives as we transmit, share, and broadcast information. In India, the enduring legacy of colonial surveillance powers continues to shape and influence the surveillance over digital communications. This Dialogue paper argues that authoritarian surveillance in India is not merely a direct manifestation of the colonial legacy of British rule, but rather a fusion of enduring authoritarian features rooted in the colonial past, and the prevailing authoritarian intentions and practices of the post-colonial present.

Surveillance & Society

Dialogue

Communications Under Siege: Colonial Legacy and Authoritarian Surveillance in India

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Abstract

Under the guise of decolonizing and modernizing laws, the Bharatiya Janata Party-led National Democratic Alliance government has sought amendments in laws governing every aspect of digital communication in India, such as cellular mobile, instant messaging, news, and entertainment. The government has dramatically expanded its power to control and regulate different forms of digital communications, exerting significant influence over what people watch, read, hear, and think. This extensive authority enables the government to monitor, surveil, censor, and shape public mood and opinion, thus placing communications under siege. In today's world, communication technologies are deeply embedded in our daily lives as we transmit, share, and broadcast information. In India, the enduring legacy of colonial surveillance powers continues to shape and influence the surveillance over digital communications. This Dialogue paper argues that authoritarian surveillance in India is not merely a direct manifestation of the colonial legacy of British rule, but rather a fusion of enduring authoritarian features rooted in the colonial past, and the prevailing authoritarian intentions and practices of the post-colonial present.

> *People keep turning the wheel of time,*
> *The ever revolving cycle of the Amrit Kaal (Golden Era),*
> *Everyone's dreams are my own dreams,*
> *Nurturing all the dreams, moving steadily, bravely marching, our youth in stride,*
> *With the right principles, forging a new way, setting the right pace, a new path,*
> *Embrace challenges with steadfast courage, elevate the name of the nation in the world.*
>
> – Prime Minister Narendra Modi's speech on the occasion of the 77th Indian Independence Day on August 15, 2023 (PMO India 2023: 1:24:59; Press Information Bureau 2023)[1]

Introduction

Since 2014, the Bharatiya Janata Party-led government under Prime Minister Modi has repealed 1,562 outdated laws (Press Information Bureau 2024a). In his 2022 Independence Day speech (also called as *Azadi ka Amrit Mahotsav*, it can mean "Festival of the Elixir of Independence"), Modi outlined five resolutions for the next twenty-five years, the period referred to as *Amrit Kaal* (Golden Era). One of the resolutions was

[1] The official translation of the first line states, "As the wheel of time keeps turning" (Press Information Bureau 2023), while the original Hindi speech, "Janta Chalata Kaal Chakra" (PMO India 2023), translates to "People are running the wheel of time."

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to remove any trace of colonial mindset: "In no part of our existence, not even in the deepest corners of our mind or habits should there be any ounce of slavery. It should be nipped there itself…. We have to liberate ourselves from the slavery mind set which is visible in innumerable things within and around us" (PMIndia 2022). However, the legal developments on communications surveillance contradict Modi's claims in a 2023 speech to "forg[e] a new way, [set] the right pace, a new path," but "with the right principles," as I mentioned the beginning.

In December 2023, the law governing communication surveillance—the *Indian Telegraph Act* (1885) (i.e., the telegraph law)—was replaced with the *Telecommunications Act* (2023) (i.e., the telecom law).[2] It was a major historical moment as the Indian parliament overthrew the century-old colonial-era telegraph law. While introducing the new telecom law, IT Minister Ashwini Vaishnaw said it addressed the contemporary needs of the telecom sector and aligned with "the aspiration of citizens of today's India which is a big pioneer of this digital era" (Lok Sabha Debates 2023). The telecom law was passed with minimal discussion in Parliament, during which one-fourth of the opposition members were suspended.[3] Only twelve parliamentary members participated in the discussion, and a total of just two hours and fifteen minutes were spent deliberating in both houses (PRS 2023a).

To understand the Modi government's persistent efforts to end the colonial hangover through legal amendments passed in the Indian Parliament, we can turn to Ann Stoler's *Imperial Debris* (2013) and *Duress* (2016). Stoler (2016: 4) urges us not to limit ourselves to the obvious connections between the colonial past and the postcolonial present but to explore the less visible connections, including the "tenacious presence" of "colonial constraints and imperial dispositions." She emphasises the importance of focusing on the long-term effects of imperial influences, particularly on "what people are 'left with'" and "what remains... [of] the aftershocks of imperial assault" (Stoler 2013: 9). Building on Stoler's (2013, 2016) suggestions to study surveillance in Pakistan, Ahmed and Mehmood (2017) also call for the exploration of "imperial effects" and "imperial presences." They argue that such an exploration is necessary to avoid "unstated assumptions or unintended conclusions" on authoritarianism and surveillance in the Global South as merely a "shadow" or "bad copy" of practices in the West, including "counter-surveillance and anti-authoritarianism" (Ahmed and Mehmood 2017: 512).

Instead of viewing the passage of the telecom law as an isolated case or simply as a phenomenon of discarding colonial legacies or embracing decolonised discontinuity, this Dialogue paper explores the "imperial effects" and "imperial presences" of the recent legal developments on surveillance and modern digital communications. In colonial India, British authorities developed surveillance powers with authoritarian features, primarily consisting of unfettered and unchecked powers in the executive branch to maintain sovereign control over the colonial territory.

This Dialogue paper highlights a historic moment when post-colonial India attempts to move away from its colonial legacy but remains tethered to it. In recent years, the democratically elected Modi government has made significant efforts to appropriate colonial-era surveillance mechanisms, further modernizing and extending them over evolving digital telecommunications. These efforts aim to entrench its hold on electoral office by consolidating power and exerting influence over what people watch, read, hear, and think.[4] Similar to the study of post-authoritarian societies (Samatas 2014), when studying post-colonial societies,

[2] Besides digital communications, the century old colonial era laws governing postal communications, newspapers, and magazine were amended. The *Indian Post Office Act* (1893) was replaced with the *Post Office Act* (2023). The *Press and Registration of Books Act* (1867) was replaced with *Press and Registration of Periodicals Act* (2023).

[3] From December 14–21, 2023, one-hundred members from the Lower House and forty-six members from the Upper House were suspended from the Indian Parliament (PRS 2023b).

[4] Scholars have examined the interplay between authoritarianism, constitutionalism, and democracy through concepts such as "authoritarian constitutionalism" (Tushnet 2015), "autocratic legalism" (Scheppele 2018), and "democratic authoritarianism" (Bajpai and Kureshi 2022).

"Surveillance Studies simply cannot avoid history and politics" (Samatas 2005: 190). Authoritarian surveillance is not an isolated arbitrary exercise; rather, it exists at the intersection of "the continuities, disjunctions, and frictions amongst these different aspects" (Akbari 2021: 102).

In India, a decade ago, Modi's government "could not do away with the authoritarian surveillance practice" but succeeded in their "despotic and authoritarian push… to digitise mundane lives" in the largest democracy (Arun 2017: 456). A decade later, authoritarian surveillance is becoming "necessary or more attractive than the alternatives" for Modi's government (Murakami Wood 2017: 366). This dialogue paper examines how the recent legal developments on digital communications have placed communications under siege, as the government continues to enhance and consolidate its power to monitor and control the flow of information. To understand these developments, the focus is to understand the systemic features of surveillance and evaluate how they strain commitments to the rule of law and democracy. As Lisa Austin (2015: 295) observes, "Surveillance activities can be 'lawful' in a narrow sense but still violate the rule of law in this more robust sense." This paper examines how surveillance, despite being lawful, embodies a fusion of authoritarian features from both the colonial past and the post-colonial present, particularly in contemporary India. In doing so, it focuses not only on the law's words—its rules, principles, and procedures—but also on its deeds and effects, as Ujjwal Kumar Singh (2007: 15) argues, especially in relation to justice, people's lives, governance, and state structures.

Surveillance Powers from Colonial Telegraph Law to Decolonised Telecommunications Law

By replacing the telegraph law with the telecom law, the government claimed to modernise surveillance powers, but these were merely extensions of colonial era surveillance powers. Hence, they were called a "system upgrade of colonial laws for a digital authoritarian state" (Gupta 2023). During British rule, telegraph communications served a crucial purpose in connecting and mobilising people in the freedom movement and anti-colonial struggle. For colonial authorities, such communications facilitated monitoring and intelligence gathering on colonial subjects and anti-colonialists, as their messages were deemed objectionable, alarming, seditious, and anti-colonial. The telegraph law granted sweeping powers to "intercept," "detain," "disclose," and "not to transmit" telegraph messages, exercised on vague grounds of "public emergency" and "public safety" (*Indian Telegraph Act* 1885: Section 5). It granted colonial executive authorities with the discretion to maintain their rule and suppress dissent, with no external oversight, while maintaining strict secrecy surrounding their actions.

In post-colonial India, the government retained and expanded these surveillance powers. The new telecom law replaced the word "telegraph" with "telecommunications," extending colonial-era powers to modern communication technologies, including wired telephones, cellular networks, and the internet, which earlier under the telegraph law was broadly interpreted to include telecommunications (*Telecommunications Act* 2023: Section 20). Despite the adoption of a democratic system, the authoritarian features under the colonial era telegraph law continue to appeal the government, leading to an undermining of the privacy, free speech, and due process guaranteed by the Indian Constitution. The executive holding the power to both authorize and review surveillance orders, outlined under earlier Rule 419-A of the *Indian Telegraph Rules* (1951), was retained under the new *Telecommunications (Procedures and Safeguards for Lawful Interception of Messages) Rules* (2024) without making any radical change.

The fundamental reason for not relinquishing the colonial era surveillance powers is the unfettered and unchecked powers granted to the executive. Surveillance is authorized and reviewed exclusively by the executive without judicial or legislative oversight, resulting in a lack of transparency, accountability, and safeguards. Citizens are neither informed of surveillance nor provided remedies or access to information,

contravening democratic principles.[5] As George Orwell (1961: 6) said, "There was of course no way of knowing whether you were being watched.... It was even conceivable that they watched everybody all the time.... But they could plug in your wire whenever they wanted to."

The new telecom law also grants the government the power to suspend telecommunications services. Alongside it, the *Temporary Suspension of Telecommunication Services Rules* (2024) were introduced to replace the earlier *Temporary Suspension of Telecom Services Rules* (2017), which outline the composition of both the authorizing and reviewing authorities. These rules replaced the earlier *Temporary Suspension of Telecom Services Rules* (2017). Similar to the previously mentioned interception rules, the new rules grant unchecked executive authority, enabling frequent and unaccountable shutdowns. Despite Supreme Court recommendations to publish and periodically review suspension orders (*Anuradha Bhasin v. Union of India* 2020), compliance remains weak, with suspensions often going unwarranted and unaccounted for, enabling government overreach. Suspensions are employed indiscriminately as precautionary or preventive measures to address fake news, communal tensions, protests, and other issues, often based on "speculative benefits" (Internet Freedom Foundation 2021). Between 2012 and 2024, India recorded 848 shutdowns, with Jammu and Kashmir having the longest with 433 shutdowns and the longest duration of 552 days of no or low internet access (Software Freedom Law Center, India 2025). Such shutdowns curtail free speech and press freedom and disrupt economic activities. Moreover, they disproportionately harm the poor and marginalised, as they prevent access to social welfare schemes such as food, work, and health, as they are digitised and mandatorily require internet connectivity (Human Rights Watch 2023).

Power to Seize Control over Platforms: Surveillance under the Intermediary Law

The Modi Administration further extended existing frameworks of colonial authoritarian surveillance over digital platforms. Under the *Information Technology Act* (hereafter, *IT Act* 2000), digital platforms like Facebook, X, Instagram, and YouTube are governed as intermediary, and they are protected from liability for user-generated content. However, they risk losing their safe harbour protection and facing penalties under Indian law if they fail to comply with due diligence requirements. Safe harbour protections were revised in 2021 by replacing the *Information Technology (Intermediaries Guidelines) Rules* (2011) with the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules* (hereafter, *Intermediary Rules* 2021), further amended in 2023 (hereafter, *Intermediary Rules* 2023). The government claimed these rules provided a "harmonious, soft-touch oversight mechanism" for social media and digital platforms (Press Information Bureau 2021), but they raise significant concerns.

First, between 2018 and 2020, the Supreme Court and the Upper House of Parliament directed the government to address issues like child pornography, misuse of social media, and fake news, mandating the "traceability" of the first originator of such content. This mandate was introduced in the *Intermediary Rules* (2021: Rule 4[2]), which require "significant social media intermediaries"[6] to "enable the identification of the first originator of the information" under a court or executive order. WhatsApp challenged this traceability clause in the Delhi High Court in May 2021, arguing it was unconstitutional and violated privacy and free speech by forcing platforms to track billions of daily messages (Rajan 2021). The Ministry of Electronics and Information Technology defended it and claimed it was limited to serious offences such as

[5] As per the data released by the government a decade before on the parliament floor and requests under the *Right to Information Act (RTI)* (2005), approximately 7,500–9,000 interception orders were issued by the executive branch. Besides these approximate statistical figures, any information requests under RTI were denied on grounds such as national security, ongoing investigations, and deletion of records.

[6] Under Rules 2(v) and 4 of the *Intermediary Rules* (2023), a significant social media intermediary is a type of intermediary with a certain number of registered users in India along with additional due diligence measures.

national security threats and grave criminal acts (Ministry of Electronics and Information Technology 2021). In an ongoing case, WhatsApp has stated it would exit India if encryption were compromised (Xavier 2024).

Second, the regulation of online journalism, OTT platforms, and other digital media entities has undergone significant changes with the introduction of the Digital Media Ethics Code and grievance redressal mechanisms under the *Intermediary Rules* (2021). These rules, to be administered by the Ministry of Information and Broadcasting (MIB), were supposedly intended ensure a level playing field between digital and offline media (Press Information Bureau 2021). Under these rules, publishers of news and current affairs must adhere to journalistic norms[7] and Indian laws to avoid prohibited content. For online curated content like films and television shows, publishers must exercise discretion to prevent material threatening national security, public order, or diplomatic relations.

The rules also establish a three-tier grievance redressal mechanism, which involves self-regulation by publishers and publisher bodies at the initial two levels, while the third level involves an Inter-Departmental Committee (see Figure 1). This committee, to be established by the MIB, is comprised of representatives from all Ministries, including organisations and domain experts. The committee can make recommendations such as issuing warnings, censuring, seeking apologies, displaying warning cards or disclaimers, and deleting or modifying content. Atop of this grievance redressal mechanism is the MIB, which holds the ultimate authority to block public access to information, even bypassing recommendations from the committee in emergencies. These procedural safeguards and grievance redress mechanisms may seem to democratize surveillance; instead, they reflect "command-and-control regulation" (Nayak 2024), with the government maintaining complete command and control over digital content.

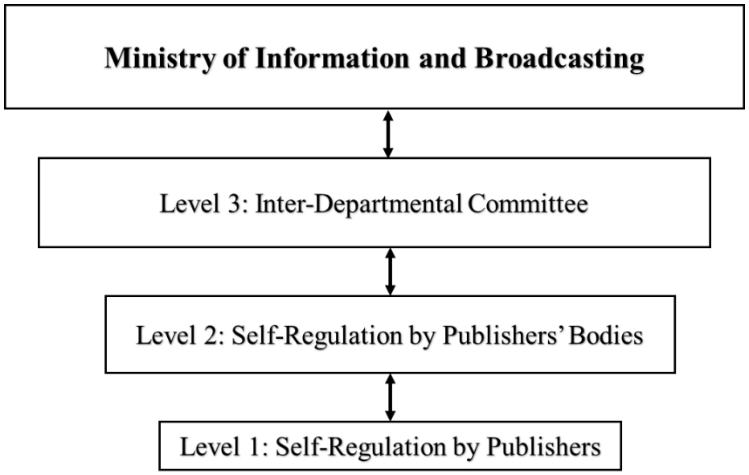

Figure 1: *The three-tier grievance redressal mechanism under* the Intermediary Rules *(2021).*

Third, in April 2023, the government amended the *Intermediary Rules* (2021), introducing guidelines requiring digital platforms to remove content related to the "business of the Central government" that was identified as "fake, false, or misleading" by the government-established Fact Check Unit (FCU). Non-

[7] These norms are prescribed under the Code of Ethics in the Appendix of the Intermediary Rules (2021). The Code of Ethics includes norms of Journalistic Conduct issued by the Press Council of India under the *Press Council Act* (1978) and the Programme Code under Section 5 of the *Cable Television Networks (Regulation) Act* (1995).

compliance would result in losing their safe harbor protections.[8] For Modi's administration, FCU was deemed essential to countering false/fake narratives and offering correct information: "Correct narratives need to be given and false narratives should be countered with all the facts and figures" (Ministry of Electronics and Information Technology 2021: 52). For the government, FCU serves their goal of "ideational capture," legitimizing their ideology, delegitimizing opposition, and consolidating political control (Bajpai and Kureshi 2022: 6). The government aims to become the arbiter of truth, and FCU closely resembles George Orwell's (1961) Ministry of Truth. In September 2024, the Bombay High Court struck down the FCU, ruling it unconstitutional. The court found the rules vague, arbitrary, and coercive, resulting in a chilling effect on individual rights and freedom.[9] Despite ongoing legal challenges, the government constituted the FCU in March 2024 (Press Information Bureau 2024b),[10] However, the Supreme Court stayed this notification, granting interim relief to the petitioners and emphasizing the need for judicial scrutiny of the FCU (*Kunal Kamra v. Union of India* 2024).

Besides the aforementioned changes in intermediary rules under the *IT Act* (2000), the government also holds the power to access personal and sensitive information from digital platforms and intermediaries under the newly enacted *Digital Personal Data Protection Act* (2023). As India's first privacy law, it provides no safeguards for citizens against the state, granting broad exemptions on vague grounds for data processing, retention, and erasure of personal data (*Digital Personal Data Protection Act* 2023: Section 17; Draft of the *Digital Personal Data Protection Rules* 2025: Section 22).

Communications were under siege under the British colonial surveillance system; however, in the post-colonial contemporary era, this system is undergoing a significant transition with its pervasive integration into modern telecommunications. Legal developments in post-colonial India have embedded "surveillance at the roots of communications" (Ogasawara 2017: 484). While colonial continuities persist, allowing overreach, lack of transparency, and accountability, post-colonial innovations have emerged. These include the state's authority to seize control over digital platforms, which are justified as lawful and legitimate in the context of India's growing digital economy and the need to safeguard citizens' rights. This trend is further evident in the proposal to regulate broadcasting services.

Broadcast Transmission under Siege

On November 10, 2023, the MIB introduced the *Broadcasting Services Regulation Bill* (hereafter, the *Broadcasting Bill*) to replace the outdated *Cable Television Networks (Regulation) Act* (1995). This bill aims to regulate broadcasting services across platforms like cable, satellite, internet, and radio under a unified framework, covering content such as news, current affairs, films, and live performances. Though the bill is on hold due to its broad scope and regulatory burden (Barik 2024), its passage would significantly increase government overreach and control over India's broadcasting services.

A key provision of the broadcasting bill is the broad and vague definition of "news and current affairs programmes," which includes any content addressing socio-political, economic, or cultural issues (*Broadcasting Bill* 2023). It mandates that all individuals or entities broadcasting such content, including online newspapers, news portals, and social media platforms comply with the government-prescribed

[8] Under Section 79(3) of the *Information Technology Act* (2000), intermediaries must remove content upon receiving a notification from the Union Government. Under Rule 7 of the *Intermediary Rules* (2023), the non-compliance of such notification leads to losing safe harbour and shall be liable for punishment under any law.

[9] See *Kunal Kamra v. Union of India* (2023). It was the tie-breaker decision, as earlier, on January 31, 2024, the Bombay High Court delivered a split verdict, with one judge ruling in favour of the FCU and another judge upholding it.

[10] In a press release, the government held, "The FCU is mandated to counter misinformation on Government policies, initiatives and schemes either *suo motu* or under a reference via complaints. The FCU actively monitors, detects, and counters disinformation campaigns, ensuring that false information about the Government is promptly exposed and corrected" (Press Information Bureau 2024b).

programme code. This mandate extends government oversight to digital content creators, including independent journalists and YouTubers. The bill requires broadcasters to register and adhere to specific terms and conditions, including financial guarantees, which may be forfeited for noncompliance. Failure to comply can result in cancellation, suspension, or revocation of registration, though government entities and political parties are exempt from these requirements.

The *Broadcasting Bill* (2023) grants the government significant control over content, including authority to prohibit programmes, enforce compliance with the Programme and Advertisement Codes, and impose fines or imprisonment on broadcasters. The government holds extensive enforcement mechanisms, such as the power to seize communication equipment, conduct inspections without notice, lawful intercept at the broadcaster's expense, and impose penalties for violations, including programme deletions, suspensions, and fines ranging from ₹5 lakhs to ₹50 crores ($6,020–$6,020,000). These powers reflect the government's intent to suppress dissent and "neutralise" those who write against them.[11]

The post-colonial *Broadcasting Bill* (2023) echoes the repressive colonial-era *Vernacular Press Act of 1878*, which granted the British government sweeping powers to censor and suppress dissent and the growing anti-colonial sentiment in Indian vernacular newspapers. Additionally, publishers and printers were required to provide financial guarantees against potential violations. For journalists, the *Broadcasting Bill* (2023) and the previously mentioned *Intermediary Rules* (2023) would embed "surveillance at the roots" of their outspoken interactions and spontaneous conversations, thereby reinforcing state authority (Ogasawara 2017). This intricate broadcasting regulation system has been described as a "public-private labyrinth to enforce censorship" (Gupta 2024), where the government collaborates with private entities such as digital platforms and broadcasters to uphold censorship.

Finally, similar to the *Intermediary Rules* (2023), the *Broadcasting Bill* (2023) also proposes a three-tier regulatory mechanism, involving self-regulation in the initial two levels and a third level that involves the Broadcast Advisory Council. This council is headed by an independent member from the media industry, five government officers representing five different ministries, and five additional government-appointed eminent independent persons. Such a composition ensures that the government holds ultimate control over broadcasting services.

Conclusion

In recent years, legal developments related to digital communications reveal that the Modi Administration seeks enhance and consolidate its power to monitor and control the flow of information. In India, authoritarian surveillance is rooted in an inherited colonial legacy and is defined by two key characteristics. It not only embodies the "imperial presences" of colonial authoritarian power but also reflects the "imperial effects" of such power in a democracy (Ahmed and Mehmood 2017), enabling the Modi Administration to achieve contemporary authoritarian objectives over modern telecommunications. This authoritarian surveillance power operates with the unfettered and unchecked authority of the government, permitting overreach without any democratic oversight. There are some severe consequences of employing authoritarian surveillance by holding communications under siege. It severely undermines privacy and the freedom to communicate. The chilling effect of authoritarian surveillance is self-censorship and leaving the individuals on tenterhooks. It stifles the core elements of human communications—spontaneous expressions, vitality, and eccentricity, leading to sombre interactions. To maintain its dominant ideology,

[11] In 2021, in a report by the Group of Ministers (2021) on "Government Communication," Mukhtar Abbas Naqvi, a Minister of Minority Affairs, said, "We should have a strategy to neutralise the people who are writing against the Government without facts and set false narratives / spread fake news."

the government reacts to public opinion by imposing authoritarian surveillance to suppress dissent. They are used to counter narratives, challenge competing facts, and delegitimise opposing truths.

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