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Internet Neutrality: A Battle Between Law and Ethics

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Abstract In 2016, the Telecom Regulatory Authority of India issued the Prohibition of Discriminatory Tariffs for Data Services Regulations. It favours the principle of internet neutrality. This principle suggests that all data on the internet should be treated equally without discrimination by user, content, site, etc. The objective of this paper is to justify the idea that internet neutrality cannot ensure equality in the ethical sense. Net neutrality can only maintain technological equality. The author proposes the argument that technological equality is not the same as ethical equality. Treating all content, which is not homogenous, equally leads to unethical activities. It hampers an individual's relationship with his or her society and, thereby, blocks the foundation for social justice. Accordingly, the neutrality principle ignores the idea of social justice and fails to protect human rights. Hence, it cannot be ethically justifiable in its present form.

Keywords Internet neutrality · Equivocation · Technical equality · Non-discrimination · Right

1 Introduction

In the present digital era, where many are tech-savvies, it is important to explore whether they are ethically sensitive or using technology responsibly. The idea of 'internet neutrality' is one of the hottest topics discussed across the world in this regard, and the agenda behind the concept is to empower the users. Although there is a need for the responsible use of computers, the authorities have not provided any proper

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guidelines with which to monitor users. The existing laws are for regulating internet service providers. In February 2016, the Telecom Regulatory Authority of India (TRAI) issued the Prohibition of Discriminatory Tariffs for Data Services Regulations. According to the regulation: "No service provider shall offer or charge discriminatory tariffs for data services on the basis of content … content includes all content, applications, services and any other data, including its endpoint information, that can be accessed or transmitted over the internet … prohibition of discriminatory tariffs for data services is necessary to ensure that service providers continue to fulfil their obligations in keeping the internet open and non-discriminatory" [28]. The internet neutrality principle acts as the foundation for this rule. The principle suggests that all data on the internet should be treated equally without discrimination by user, content, site, etc. Through the internet, one can access newspapers, magazines, videos, books, articles, and so forth. This shows the varied nature of content available on the internet. The motive behind the concept of net neutrality is to avoid discrimination against all its users, both in applications and available content. Accordingly, as per the principle, these varied or heterogeneous contents are treated as equal.

The objective of this paper is to justify the idea that internet neutrality cannot ensure 'neutrality' in the ethical sense, and it raises three propositions. (1) Internet non-neutrality can fall into the category of unfair ethical marketing practices. However, an internet user cannot claim that accessing all data equally is a human right. The reason for this is that the contents of data sets are not homogeneous. People use internet data for unethical and illegal purposes. This can hamper an individual's relationship with his or her society and thereby blocks the foundation for social justice. This is a threat to the concept of social justice. Accordingly, the neutrality principle ignores the idea of social justice and fails to protect human rights. Hence, it cannot be ethically justifiable in its present form. (2) The issue of 'net neutrality' cannot be solved by bringing the concept of 'equality' into the picture. There is an ontological difference between the use of the word equality in a 'technical sense' and in an 'ethical sense'. (3) Defining 'technological equality' as 'ethical equality' to ensure nondiscrimination invites the fallacy of equivocation. In short, through neutrality, equality in technology can be secured.

As stated by Welch [33], there are various issues regarding net neutrality, such as regulatory practices, privacy, encouraging future innovation, free access to users and start-ups, etc. All these general issues have ethical implications and the related queries arising from them have not been solved. Ethical questions, such as 'who decides what a user should browse through the internet?', 'who decides what is good for users?' or 'why data cannot be treated as equal?' and so on, have not been answered. Hence, it is significant to examine in such a context, questions like 'can we justify net neutrality ethically apart from its legality?' and 'on what grounds can it be justified?'

2 Net Neutrality and Ethics

'Internet' is the term given to a group of computers connected to each other and is used as a medium for information sharing and communication. It is considered to be 'networks of networks' [4]. The idea of 'internet neutrality' is of recent origin. The

world's largest internet companies, such as Google, Skype, Facebook, etc., introduced the concept of internet neutrality in 2009, assuming that 'data neutrality' would help businesses to compete on the grounds of content alone, cites [8]. In other words, the principle allows users to use the internet according to their choices or personal preferences. To clarify the idea of neutrality, it is necessary to interpret the word 'non-neutrality'. In a condition of non-neutrality, content providers and users have to pay for the facilities provided by internet services in order to access content. In this context, the word 'neutrality' means treating all applications and content equally, thereby providing the service to all customers in an equal way. Users can choose content and service providers freely, without being subject to any control.

Some countries (such as Chile and the Netherlands) have introduced net neutrality regulations. The argument of those who support net neutrality is that it challenges the traditional hierarchies of power and promotes democracy [1]. It safeguards a user-centric system and this open architecture is essential in order to enjoy fundamental rights within an interconnected societal context and, hence, needs to be protected [5]. Net neutrality promotes fair competition and blocks the monopoly of companies and, thus, adopting non-net neutrality is an unethical and discriminatory marketing practice. TRAI regulation is based on the postulation that accessing the internet and receiving information are human rights. It includes two rights: the right to express oneself and the right to receive information.

At this point, two questions arise: 'What constitutes human rights?' and 'Is accessing all content equally, as part of net neutrality, a human right?' A fundamental right is that one can make a moral claim. It is different from a privilege provided by the authorities in return for fulfilling particular criteria or requirements. Human rights ensure the well-being of individuals. Concerning the first question above, there are two answers. First, human rights are universal and unconditional, possessed by all persons and alienated from any particular practices or institutions in society [6], and they ensure human dignity [20]. Second, according to the Universal Declaration of Human Rights, "all human beings are born free and equal in dignity and rights," quotes Gaete [12: 149]. The appeal of the concept of human rights lies in its universality [21]. Every individual has human rights.

Here, the underlying assumptions are (a) all agents can claim their rights without any restriction, and (b) every individual respects the human dignity of others while claiming their own human rights. (Mentally challenged people and small children are exempt from the above obligatory act as they may lack the ability to understand the concept of human dignity. By default, it is the moral obligation of people who do not belong to this category to ensure the human rights of such individuals are upheld.) Related to the second question, net neutrality as a 'right' is comprised of certain other rights: (1) the right to choose service providers, (2) the right to use the medium in order to access the internet, and (3) the right to use data and content, accessed equally through this medium. The mediums are www, email, messenger, etc. The content application providers are Yahoo, Google, Facebook, and so forth.

There may be no problem in claiming one's right, so long as the government ensures its fulfillment. Nonetheless, considering net neutrality to be a human right requires that the user respects the other users' and non-users' human dignity. The issue in the Indian context (or in any country, for that matter) is that all internet

users do not have the necessary education needed in order to understand their ethical obligations with respect to the dignity of others. Studies show that there are fraudulent practices on the internet, namely security sales and trading, electronic commerce, and so forth [3]. Moreover, the varied nature of content makes things more complicated.

The content available on the internet is heterogeneous and contains both unethical and ethical aspects. Websites provide such content without filtering it to its different users. Some internet content providers (ICPs) offer educational and informative content. At the same time, there are other ICPs which provide unethical content. For example, the content in porn sites and the websites which promote violence and terrorism are unethical. The sites containing pornography question the dignity of individuals, especially that of women and children. Research shows that internet pornography not only draws the attention of people with paedophiliac tendencies, but also contributes to the crystallisation of such interest in people who have not shown prior sexual interest in children [35]. There are countries which control the dissemination of such content, for example, Hong Kong [29].

Some ICPs support a certain ideology and provide religiously biased content which can harm the sentiments of others. Often, users do not assess whether the available content is authentic or not. Furthermore, 'a content provider is anonymous or merely has a virtual identity' [31: 214]. Many religious people support the idea of neutrality, saying it is a 'fundamental right'. According to them, neutrality helps to express their religious ideas and communicate them to their followers [15]. There are sites which promote religious extremism and, consequently, it can lead to social injustice.

Any living being is a subject of justice. 'Justice', in this context, means fair treatment. 'Social justice' ensures that these living beings "have the dignity that deserves the respect and support of laws and institutions" [20: 86]. It is "fair access to rewards for all individuals and groups within a society" [11: 23]. Social justice requires that everything be treated with respect that is equally distributed. Providing free access to the internet, as a right, and treating all content, sites and medium in an equal manner can lead to an imbalance in the rights between (1) ethically non-sensitive users and sensitive users, and (2) non-sensitive users and non-users. Here, only some groups of people receive the right to use internet content to satisfy their personal desires, which calls into question the human dignity of the latter. It can harm the 'right to well-being' of the latter group. Accessing content from pornographic sites, or other illegal sites, through a right to receive information, blocks the 'right to privacy' of others. The saddest aspect of this is that there is no initiative from the part of the authorities to educate these non-sensitive users. It indicates the need for providing basic ethics' education, which should start at the lower school level. Moreover, as there is an absence of any controlling mechanism, the principle of internet neutrality facilitates the misuse of internet medium and content and, thereby, curtails the other agents' moral right of 'being respected'. It fails to make possible a harmony of rational wills, as stated by Linden [16: 20]. Besides, it invites the issue of marginalisation, as stated by Youngs [36]. Research shows that online communication has a tendency to increase hostility [7]. Although

the internet can play a significant role in communicating social justice globally, lack of ethical sensitivity in users can create injustice.

As stated by Weckert [32], the websites containing prohibited material can be shut down. However, there is no mechanism to prevent a new site containing similar material from being established. For instance, a user can create new sites with offensive content. It is impossible for the government to block illegal sites, as many servers are located outside India and about forty million such websites exist on the internet [2]. Besides, the implementation of law needs a supportive society, one which understands that accessing offensive material on the internet is a serious issue and that the use of filtering software can help solve the problem [23]. There is no monitoring mechanism to control and block the above-mentioned contents and to ensure that only information which is ethical and legal is provided by the sites. In some cases, blocking can be useful in order to prevent unwanted use by children and those who are engaged in anti-social activities. However, filtering content is not possible within the condition of net neutrality, as mentioned above. In the absence of net neutrality, ICPs could block various speeches or content. Besides, ICPs publish their own ideologies through the medium. As stated by Vedder [30], ICPs have the responsibility of blocking the content of their sites if, in their efforts at profit making, certain people in society are at risk of being harmed or offended.

An ethical problem related to this, is that if there is no proper regulatory system, such providers can publish their views as supportive/opposed to any issue, irrespective of its ethicality, depending on their ideological stand. For example, when Facebook introduced Free Basics into India to ensure internet literacy amongst people, the major question raised was: "through the free websites what if Facebook campaigns for some political party during election time"? [24]. Also, according to the regulations of the literacy campaign, only a few websites were available for learners, which in itself is discriminatory. TRAI has asked Facebook and Reliance Communications to stop their free basic service in India, citing the same reason.

To control and regulate the content of a site, it is useful to confirm who owns it. Accordingly, protecting the data and ownership of information are other related issues concerning the principle of internet neutrality, which can result in unequal distribution. It occurs in different ways. First of all, after sending or uploading information or data by the user (first party) in a second-party website on the internet, it becomes part of the second party (an organisation or website, e.g. Twitter, Facebook) who has accepted the data. Even if the second channel does not publish the data, the first party cannot possess it because the data goes from the user's computer to the second-party system. Regarding the second party, the ownership goes to a third party (service device, e.g. Apple), which is the medium for connecting the two parties. The 'universal' nature of the internet raises the issue of uncontrollability. Unless ownership is clear, it is difficult to protect data and this 'un-owned' or 'many-owned' property cannot be distributed equally.

In brief, as a right, the principle is equally applicable to every moral agent who is in a similar situation. Nonetheless, net neutrality can be a human right and universal if, and only if, all contents are homogeneous, and the principle brings benefit to everyone. It is not possible for any agency to unify all heterogeneous data on the

internet. However, the agency can regulate or introduce a mechanism to control data which are harmful. That is mainly a technical issue. Retrieving all data from the internet is not an ethical issue. Instead, accessing the contents of the data sets, which are not homogeneous, is an ethical issue. The ethical responsibility of the agency is to check which contents are harmful. The ethical aspect lies in deciding 'who owns the right to decide what is harmful to the user'. Although software is protected by copyright, online interactive communications are not protected by any law [22]. If a user has the capacity to distinguish harmful content from non-harmful content, then he or she has the right to make that decision. Available data do not support that this is actually the case, and the evidence shows that there is an increase in cybercrime rates [26, 27], especially in developing countries [14]. The author states that the main reasons for people in those economies engaging in cybercrimes are high unemployment and low wages. Studies show that adolescents use the internet to carry out illegal activities, to bully and cheat others, and to engage in illegal gambling [17].

Another point to bear in mind is that the regulatory system itself can misuse the medium or use it unethically. For instance, the government, guided by vested interest, can intrude into the privacy of others by collecting their data, which is meant to be private, claiming it is an important part of national security. This is only possible because the government has access to greater freedom on the internet, as stated by Welch [33]. As Thomas, Forcht and Counts [25] have highlighted, the internet cannot simply rely on the law to maintain order. As one can see, the issue of how to regulate the net has clearly not been solved [18].

3 Technological Equality Versus Ethical Equality

The issue of 'net neutrality', which is technical in nature, cannot be solved by bringing the concept of 'equality' and 'non-discrimination' into the picture. There is an ontological difference between 'equality in technology' and 'equality in an ethical sense'. To guarantee the equal rights of everyone in a group, all members of that group need to have a common quality, which is ethically justifiable. From the technological perspective, the common quality shared by all is only 'those who use the internet' or 'those who know how to use the internet', not 'all those who are ethically sensible in their use'. Net neutrality, as a human right, is based on the proposition that 'technical equality is identical to ethical equality'. Defining 'technological equality' in terms of 'ethical equality' commits the fallacy of equivocation. When an argument is constructed, the meaning of the terms used in the argument must be consistent throughout the argument. An argument uses equivocation if any of the terms employ more than one sense in different parts of the argument [10].

The present argument, on which the regulation is established, goes like this:
Equality helps to ensure nondiscrimination.
Transmission of data through open and free internet traffic helps to ensure equality.

Therefore, transmission of data through open and free internet traffic helps to ensure nondiscrimination.

In this argument the term 'equality' is ambiguous. It is ambiguous in the sense that in the first proposition the word 'equality' is used in an ethical sense. In the second proposition, the term 'equality' is used in a technical sense.

Accordingly, the principle leads to inconsistency and, thus, it cannot constitute an ethical law. Through net neutrality, equality in technology can be established since everyone is able to access it equally. Equality in technology can satisfy its economic function or can bring equality in an economic sense. The principle stops websites charging more for a faster service, and thereby avoids discrimination. However, ethical equality is ensured when people recognise the rights of each other and treat others with dignity and respect. Sites with illegal content do not promote this ideal. A person who wishes to access unethical or illegal content ensures his or her own human right, but can cause harm to another individual, which is discriminatory. Internet neutrality prohibits ICPs from blocking sites or censoring or prioritising content. Moreover, 'equality as inclusion' emphasises certain rights and responsibilities which may also include concerns around social justice, as stated by Cook [9: 71].

4 Conclusion

Advancement in information and technology, without understanding its ethical implications, is disastrous. Net neutrality can be a privilege, but not a right. It becomes a right when (1) all users are properly educated to recognise their ethical responsibility in using the internet in a responsible way, without harming the rights of others, and (2) all content displayed through ISPs is legal. In short, being able to access all data equally is not the basic human right of an internet user, because it does not guarantee equality in the 'ethical sense'. Moreover, validating a new human rights' claim needs to show how it is linked to other rights that have already been registered as 'justified' in a contemporary canon of international human rights law, as stated by Winston [34]. Net neutrality as a right infringes other basic existing human rights, such as the 'right to well-being' and the 'right to privacy' and so on, and, thus, it does not guarantee social justice.

It is clear that the time has come to review and develop proper regulations for technological innovations, especially that of the internet. Implementing new rules and regulations without foreseeing the consequences or ethical implications will hinder progress, rather than support it. Available data shows that cybercrimes are committed by educated youths [19]. There is a need to create awareness amongst educated young people about the ethical implications of internet use. Whatever the intention, violating someone else's property without permission cannot be ethically justifiable. Hence, before introducing new rules and regulations, there is a need to educate young people about the 'rights' and 'wrongs', or ethical implications, of the internet. It is the government's responsibility to make the law appear reasonable to the general public [13]. This affirms the point that the issue of accessing data from

the internet needs to be solved technically, not ethically. It is a technical issue and the government should provide technical regulations instead of trying to solve the problem by providing internet users with a new right.

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