

BIG TECH GIANTS: EXCURSION FROM DEMOCRACY TO DICTATORSHIP

- **MS. RADHIKA GUPTA AND MS. NIKITA PARIHAR***

ABSTRACT

Every once in a while, we come across this time where Instagram, Facebook, and literally every social media site knows exactly what's going on in our minds. Be it the perfume you were talking about or the scrolling dresses. Their algorithms have figured it all out, and in one of those moments you scroll and the exact product is bombarded on your social media handles, that's the very moment when you should be acquainted with the fact that you are being monitored. Your data footprints are being traded and used for profits generated from advertising and marketing. These big tech giants have not only used your data for gains but have also created a dominant position in the digital economy, which has created a dependency of other entities on these giants, which is a direct threat to our competition-driven economy. There are concerns as these giants are crippling competition and threatening democracy globally. This paper aims to analyze what powers big tech possesses, what governments have planned to do with big techs, how they affect us, and some possible solutions and regulations.

* Ms. Radhika Gupta and Ms. Nikita Parihar are 3rd Year Students of B.B.A., LL.B.(Hons.) at Lovely Professional University, Punjab.

I. INTRODUCTION

The biggest tech companies are wielding a lot of power these days. These are some of the most valuable companies globally, but it's easy to forget how quickly and meteorically they had risen globally. Big tech companies refer to those four or five companies dominating the market and are the most prestigious companies in the information technology sector in the world. These four companies include Alphabet (Google), Amazon, Facebook, Apple, popularly known as (GAFA) – and Microsoft, adding to this list. These companies are dominant players in their respective fields, namely e-commerce, online advertising, cloud computing, Artificial intelligence, social networking, etc. While Facebook, Google, and Amazon were founded after 1994, other fellow giants like Microsoft and Apple seem to be around us forever, founded in the mid-1970s.

As money brings power, this breed of global leaders has much more than money or power; they have our data, the most valuable asset today. Data is relatively a new commodity. The rise of technology has given these companies unprecedented information about us, giving them an unfair advantage to create a monopoly by eliminating the competition unjustly. As per a report by StatCounter, Google owns 90% of the total search engine market share⁸⁴, which is humongous. Shifting online has broadened the horizon for these tech giants. They have acquired enough market to run the digital economy as per their whims which may be disastrous. Among the growing concerns, the target question is whether these companies can responsibly handle our data and they take up their liability amenably.

Regulations regarding Data protection bills have been introduced in many countries and in a few countries, it is still in progress. India along with many other countries has realized the importance of regulating these big tech giants and, therefore, making stringent laws and regulations in this aspect. The immense control of cyberspace stays broadly a limited group of tech giants running the digital ecosystem, which has given them tremendous power in different spheres. India doesn't have any explicit laws to protect personal data and therefore, it is the necessity of the time to have some definite laws governing these privacy issues.

¹ 'Search Engine Market Share Worldwide' (StatCounter Global Stats, 2022) <<https://gs.statcounter.com/search-engine-market-share>>accessed 25 January 2022.

II. POWERS POSSESSED BY BIG TECH GIANTS IN DIFFERENT SPHERES

A. Economic Sphere

The big tech companies, including GAFAs, have become so puissant that they have gained a lot more leeway in so many spheres of the inequitable market. The first and foremost sphere in which these giants have gained a competitive advantage over all other companies is the economic sphere. These companies facilitate a platform for suppliers and consumers to concatenate. The facilitation includes connectivity among advertisers- social networking sites, app developer- device owner, vendor- online shoppers, etc. Because of this direct connectivity, more and more customers get captivated by these kinds of big tech companies, which are in the estimations of these companies.

During this process, as their customer base is broad and the customer indulges in many activities with these companies, they get essential information of consumers like their preferences, taste, behaviour, etc. by using which they manufacture or customize their products and services, which provides a competitive and unfair edge to them over all other competitors in the market. As a result, these big tech giants become lawmakers and trendsetters for their competitors.

Moreover, these companies disrupt traditional businesses with the help of their physical infrastructure. For instance, Facebook by inducing a virtual currency named “Diem” (formerly libra), the token which was initially intended to be the universal currency in the basket of sovereign currencies like the U.S dollar and euro.⁸⁵ But had made digital currency market volatility unending and, they can even make more digital and cryptocurrencies like this shortly.

B. Technological Sphere

The second power which big tech giants retain is in the technological sphere. They have started administering social and political processes using their powerful algorithms. Has anyone ever wondered that whatever apps or websites people are using for political purposes can be designed by private companies that can take advantage of that and control the whole process? This can be grievous for any economy and can pose a question mark on democracy. For instance, in the USA,

² Editorial, ‘Facebook Diem (Formerly Libra) Price Today, Diem to USD Live, Market Cap and Chart’ (*CoinMarketCap*) <<https://coinmarketcap.com/currencies/facebook-libra/>> accessed 25 January 2022.

the vote-by-mail process and consumer product designing are done by these big tech giants as they are designed and controlled by these companies only, which automatically puts these companies on upper footing as they can create them as per their boons, whims and fancies without considering the market, competition, etc.

Whatever we do, wherever we go, we will eventually use technology created by any of the GAFAs companies, be it Google maps, Instagram, or WhatsApp, which is owned by Facebook, Amazon, which includes its AI products, Audiobooks, Cloud services, and other services, which are extremely powerful even more than any government. Amazon has a plane and drone fleet. It's Amazon's version of delivery, implying that the company is responsible for much of the physical environment around them.⁸⁶ Not only one firm, but these four companies have encircled the globe, thus blanketing the entire society in their ineluctable technology.

C. Political Sphere

The political sphere is crucial for any country, directly impacting the economy. Big techs even govern this sphere of countries by lobbying heavily with the political leaders and parties with their erroneous financial power to maintain their dominance over the nations as by doing this, they can easily escape from legal liabilities and compulsions which would otherwise create hurdles for them to enter and establish dominance in the country. According to the New Statesman's report, the technology sector is the fourth highest lobbying sector. They spent 436 million dollars in political lobbying in the year 2020.⁸⁷

These big tech giants threaten and cloud the democracy of countries by using political power and harnessing the media to influence news and reports by singling out which information will be shown and which will be suppressed to be more privileged. To put it in other words, these big companies have a nexus with media platforms and influence them according to their needs. With the help of their economic minds, the big tech giants have entered the political arena. Recently, Steve Sisolak, the governor of Nevada, has proposed a plan to establish "Innovation Zones" to attract new investments. As per this idea, these big tech giants can form their local Government,

³Associated Press, 'Amazon's Delivery Drones: An Idea that May Not Fly', (*Business Today*, 04 December 2013) <<https://www.businesstoday.in/technology/news/story/amazon-delivery-drones-will-it-work-42819-2013-12-04>> accessed 1 June 2022.

⁴Katharine Swindells, 'Revealed: The Army of Big Tech Lobbyists Targeting Capitol Hill' The NewStatesman UK Edition, (15 February, 2021) <<https://www.newstatesman.com/business/companies/2021/02/revealed-army-big-tech-lobbyists-targeting-capitol-hill>> accessed 25 January 2022.

which will be governed by themselves and can create laws, taxation regulations, governance systems, etc. which will increase the power of these companies as they will stand directly with the Government resulting in even more abuse of the law, Government, and competition.⁸⁸ If the Government's policies will not favour these companies, they might leak the unpublished price-sensitive information, which can be dangerous for any economy.

III. WHY GAFA IS A CONCERN FOR COUNTRIES ALL OVER THE GLOBE?

A. Privacy Concerns

As the big tech giants are already facing the heat of the Government globally, it has become inevitable to be ignorant of how these companies are breaching our privacy and personal data and, as a customer and regular users, how it can impact our lives. On a daily basis, we are using services furnished by these companies. It is pretty inescapable not to use their services as they have racked up their ecosystem around us in which we have stepped in but now can't step out as we are so contingent on these technologies for everything. It all surrounds us, we use it to communicate, get information, acquire knowledge, buy things, or even when we are in our own space with our mobile phones. There have been enormous instances when these companies have breached our data and even been charged for it. In 2019 there was a massive data breach of over 533 million users whose personal information was posted online⁸⁹, and that's not the only instance, Cambridge Analytica breached the data of 50 million users. This data analytics firm was working with Donald Trump in presidential campaigns. The unauthorized data here was used to manipulate the ballot box choice and was divulged later how the firm used the data harvested from Facebook to influence millions of people in the presidential campaign this was a case that directly threatened democracy.⁹⁰ The question here is whether Facebook was exploited or was its full-fledged planned trading done by Facebook willingly to generate more profits?⁹¹ The answers

⁵ Katya Maruri, 'Nevada Governor Pulls Controversial Innovation Zone Bill' (*GovTech*, 04 June 2021) <<https://www.govtech.com/smart-cities/nevada-governor-pulls-controversial-innovation-zone-bill>> accessed 25 January 2022.

⁶ Editorial, 'Facebook Data Breach Explained: What Implications Does It Have on the End User?' (*The Economic Times*, 13 April 2021) <<https://economictimes.indiatimes.com/news/india/facebook-data-breach-explained-what-implications-does-it-have-on-the-end-user/videoshow/82044094.cms>> accessed 25 January 2022.

⁷ Carole Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach', (*The Guardian*, 17 March 2018) <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>> accessed 1 June 2022.

⁸ Carole Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach' (*The Guardian International Edition*, 17 March 2018) <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>> accessed 25 January 2022.

remain well-hidden as these companies escaped and were sometimes charged with fines even after multiple forfeits.

We have perceived various instances of these companies harnessing our data and manipulating our minds. This is violating and exploiting our rights and liberty they are controlling the customer's minds and using them as per their whims. These companies have compromised the personal data of millions of users; however, they have always defended the allegations and used their arms to elude accountability. We cannot expect these big tech giants to be benevolent as they are more engrossed in profits which can be anticipated by the hike in their stock prices even when the world was juggling with the pandemic; these companies' stocks prices skyrocketed when other businesses were shutting down due to lockdown caused by COVID-19 Pandemic when the whole economy was moving downwards as people were restricted to their home and were doing everything virtually, most of the economic activities halted, millions of people lost jobs, GDP contracted globally in spite of all that these tech giants became more gigantic.

B. Taxation Aspect

Tax is something which helps in the functioning of a country which every individual and company pay as per regulation laid by the laws in that particular country, and when we talk about tech giants, they have been engaged too long to take advantage of the loopholes of the system to evade and escape from tax liabilities. It has concerned many countries as these tech giants are de routing themselves through developing nations like India to avoid their tax liabilities. The silicon six (Facebook, Apple, Amazon, Netflix, Google, and Microsoft) were accused of invading approximate \$100 billion of tax globally for over a decade from 2011 to 2020, and the amount itself charts the ferocity of the manipulating power they have in the market⁹² which is the hideous reality behind the success of these companies. Tech giants have made low-tax countries like Luxemburg, Bermuda, and Ireland their base and have absconded their tax liabilities in the United States of America (USA).⁹³

⁹ 'Silicon Six End the Decade with \$100 Billion Tax Shortfall' (*Fair Tax Foundation*, 31 May 2021) <<https://fairtaxmark.net/silicon-six-end-the-decade-with-100-billion-tax-shortfall/>> accessed 25 January 2022.

¹⁰ Chloe Taylor, 'Silicon Valley Giants Accused of Avoiding Over \$100 Billion in Taxes Over the Last Decade', (*CNBC*, 02 December 2019) <<https://www.cnn.com/2019/12/02/silicon-valley-giants-accused-of-avoiding-100-billion-in-taxes.html>> accessed 1 June 2022.

Apple recently hit a 3 trillion market, making it the first company with this huge market cap.⁹⁴ These companies are not only endlessly creating profits by dominating the market globally but are also burglarizing the money of the country by not paying the tax amount which they should, which is another problem which these companies are creating for the global economy, they are constantly empowering themselves in the digital world and impacting lives of millions of people globally, they are now not confined to the United States (US) where they were originated, but now, they have worldwide existence with ensconced monopoly.

C. Anti-Trust Abuse

As seen in recent years, these tech giants are now facing a plethora of regulations and proceedings brought up against them for their anti-competitive strategies and competition-killing approach. Since its inception, Facebook has been involved in numerous acquisitions which started from the year 2007 when it made its first-ever acquisition by taking over Parakey⁹⁵ and ever since then, it has been in news headlines for acquisitions of booming companies and its biggest competitors like Instagram and WhatsApp with mammoth amounts. The most significant disadvantage other entities have is that two primary digital distribution services are owned by Google & Apple and no entity can enter without their approval and terms, Apple hurts the businesses by restricting them from using their in-app purchase system and creating its dominance, on the other hand, Google has also entered in extorting commissions from the apps listing on Google play store. The commission of up to 30% is charged from the apps however Google has defended this move by stating that it is restricted to only some kinds of apps also most of the apps are already using Google pay services so it won't affect them. Two of the most dominant companies in the smartphone market i.e., Google and Apple decide on which app will stay on their digital service-providing store and the criteria for taking them down which is creating threats to its competitors and the market. In 2020 Paytm, one of the biggest competitors of Google Payments, was taken down by Google from the play store for violating rules replying to which Paytm alleged that Google is restricting its services and acquisition of new users and that intensified the amount of power these companies have.

¹¹ Nivedita Balu & Noel Randewich, 'Apple Becomes First Company to Hit \$3 Trillion Market Cap, then Slips', (*The Economic Times*, 4 January 2022) <<https://economictimes.indiatimes.com/tech/technology/apple-becomes-first-company-to-hit-3-trillion-market-cap-then-slips/articleshow/88679454.cms>> accessed 1 June 2022.

¹² The Associated Press (ed), 'Facebook Buys Startup Parakey' (*CBC News*, 20 July 2007) <<https://www.cbc.ca/news/science/facebook-buys-startup-parakey-1.686171>> accessed 25 January 2022.

Professor Jack Fontanel of the University of Grenoble Alpes has classified these giants as progressive and dangerous to human civilization. He also called these giants “quasi-monopoly” Domination.⁹⁶

D. Whose Liability, Is It?

Liability starts with the long-asked question of who’s responsible for what’s being done on the platforms owned by these big tech giants?

In his European Union testimony, CEO of Facebook Mark Zuckerberg said that they were liable for the protection of data of their users after a massive data breach in Cambridge Analytica Scandal,⁹⁷ but are they concerned about it because now a customer needs to protect himself from these companies as they use personal data for soaring profits? Another aspect is when any fake or unlawful material is posted on these platforms whose responsibility is it to make that good? We can classify liability in two ways: when personal data is transferred or unauthorized access is given to a third party and second when any illegal or unlawful content is posted on these platforms.

Two years before the Cambridge Analytica scandal Facebook signed a deal that immunized it from Federal Trade Commission (FTC) fines for breaches for the time before June 2019, if the scandal was done after that time Facebook could have faced action for the infringement⁹⁸ this tells us how these companies can even escape the liability by signing the deal with the authorized body itself. In the scandal, Facebook alleged that it was an unauthorized act done and was not a data breach if it had been a data breach Facebook should have taken up the liability but, in the scandal, it was an unauthorized act done by the people which relatively protected Facebook from the liability.

The second type is when illicit data or content is posted from the user accounts on these platforms in such cases the user is made liable if negligence is established and if he fails to prove that there was any hack or unauthorized use of his account. These social media intermediaries were

¹³ Cf Cadwalladr (n 6).

¹⁴ Ian Sherr, ‘Facebook, Cambridge Analytica, Data Mining and Trump: What You Need to Know’ (*CNET*, 18 April 2018) <<https://www.cnet.com/news/facebook-cambridge-analytica-data-mining-and-trump-what-you-need-to-know/>> accessed 25 January 2022.

¹⁵ Charlotte Jee, ‘What You Need to Know About the Facebook Data Leak’ (*MIT Technology Review*, 7 April 2021) <<https://www.technologyreview.com/2021/04/07/1021892/facebook-data-leak/>> accessed 25 January 2022.

provided harbour protection under section 11⁹⁹ as these intermediaries do not have complete control over the content posted on these platforms by their users which is also highlighted in the new Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021¹⁰⁰ in India.

IV. GAFAs AS AN INTERNATIONAL THREAT: FROM LIBERALIZATION TO REGULATION

Competition is good because companies keep innovating, producing better products, and competing to attract more customers, ultimately benefiting the customers. But the problem lies when only a few companies hold the majority of the market share and that too by killing its competing startups and companies. The countries have given these big techs ample power and autonomy as they were appreciated for contributing to the growth and development of the country. But now, these companies' frauds and scams got unwrapped, which are broadly related to breaches of data privacy and antitrust abuse. Countries have liberalised them so much that they have started blackmailing the Government. Therefore, it is now time to make stringent laws and regulate these companies as not controlling them will eventually lead to disruption of competition from the market.

A. Action Taken By the USA

In 1998, for the first time, a lawsuit was instituted against Microsoft for using its dominant position in the market to abuse its competitors. The judgment was passed by judges using the Sherman Act, 1890.¹⁰¹ Still, there was no control and regulation on the activities of these big tech companies. Even, the USA always backed these big tech giants and has always used a liberalized approach while dealing with them. Barack Obama threw his trust in technology in 2008, which led him to deliver his presidency. There was some skepticism by government agencies, but Facebook and Google were still given autonomy to run their course without any interference from the Government. In 2011, FTC settled the charges against Google for alleged deceptive devices

¹⁶ Information Technology Act 2000, s 11.

¹⁷ 'Notification dated, the 25th February, 2021 G.S.R. 139(E): the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, (*Ministry of Electronics and Information Technology, Government of India*, 25 February 2021) <<https://www.meity.gov.in/content/notification-dated-25th-february-2021-gsr-139e-information-technology-intermediary>> accessed 25 January 2022.

¹⁸ 'Justice Department Files Antitrust Suit Against Microsoft for Unlawfully Monopolizing Computer Software Markets' (*Department of Justice*, 18 May 1998) <https://www.justice.gov/archive/atr/public/press_releases/1998/1764.htm> accessed 25 January 2022.

and breaching data privacy.¹⁰² After a year, FTC also settles with Facebook for misleading users about using their data.¹⁰³ The 2012 elections in the USA were primarily based on technical devices designed by Amazon web.

By the middle of the decade, the concerns regarding tech industries were starting to bubble up. The white house began ensuring fair competition hampered by these big tech giants. Council of Economic Advisors released an issue brief suggesting, “Regulators may wish to assess whether this “big data” is a key resource, as new entrants may struggle to sell to or otherwise attract customers without it.”¹⁰⁴ In September 2019, Attorney Generals for all states launched an investigation against Google and Facebook for creating a monopoly in the market.¹⁰⁵ On the other hand, FTC has started investigating Amazon and Facebook for illegally maintaining social networking monopoly and anti-competitive conduct.¹⁰⁶ In October 2020, the US House Judiciary has concluded that these big tech giants, including Google, Apple, Microsoft, etc., have gained so much power that they are leading the destruction of the American economy through political speech censoring, fake news spread, etc. For regulating these big tech giants, US Congress recently has passed various antitrust laws under which the big companies will not be able to sell their products on their websites so that all other competitors get equal opportunity, for example, Amazon and Apple won’t be able to sell their Amazon basic and Apple music respectively on their platforms.

B. Action Taken By Other Countries

Along with the US, other countries have also started taking action against these big tech companies for ensuring their regulation in their respective countries. In 2017, the European Union

¹⁹ ‘FTC Charges Deceptive Privacy Practices in Googles Rollout of its Buzz Social Network’ (*Federal Trade Commission*, 30 March 2011) <<https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz>> accessed 25 January 2022.

²⁰ ‘FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook’ Federal Trade Commission, 24 July 2019 <<https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions>> accessed 25 January 2022.

²¹ ‘Benefits of Competition and Indicators of Market Power’ (*Obama White House*, May 2016) <https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160502_competition_issue_brief_updated_c_ea.pdf> accessed 25 January 2022.

²² ‘AG Paxton Leads Multistate Coalition in Lawsuit Against Google for Anticompetitive Practices and Deceptive Misrepresentations’ (*Texas Attorney General*, 16 December 2020) <<https://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-multistate-coalition-lawsuit-against-google-anticompetitive-practices-and-deceptive>> accessed 25 January 2022.

²³ ‘FTC Sues Facebook for Illegal Monopolization’ (*Federal Trade Commission*, 9 December 2020) <<https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization>> accessed 25 January 2022.

launched an antitrust lawsuit against Google for anti-competitive practices. The European Commission has charged them with a penalty of 2.4 billion euros.¹⁰⁷ The EU has also addressed monopoly concerns through the “Digital service and Digital Markets Act” under which these companies were held liable for content on their platforms, and for its non-compliance they will be penalized up to 10%. On the other hand, on 1st January 2019, France became the first country to impose GAFA Tax.¹⁰⁸ As per this legislation, a 3% digital tax has been imposed on these companies operating in France. Similarly, the United Kingdom (UK) has directed big tech giants to remove harmful and illegal content from their website; non-compliance will result in a penalty of £18 million (\$24 million) or 10% of their annual global revenues, whichever is higher.¹⁰⁹ Australia in the direction of regulating these companies has investigated advertisement practices of Google and Facebook in 2018, findings of which were that on every \$100 online advertisement, Google and Facebook acquire \$53 and \$28 respectively, and the remaining was allocated among other companies. For removing this revenue imbalance, Australia has introduced the “News media and Digital Platforms mandatory bargaining Code”, which mandates that digital companies to share their revenue with local news agencies.¹¹⁰

C. Response of Big Tech Giants

In response to these accusations, companies have maintained a diplomatic silence. They have hardly taken any steps to change the current scenario. These big tech giants face constant and heated competition from new, existing, and established companies. Google in its defense has taken a stand that even though it is the most used search engine, still 50% of Americans use Amazon for searching their product.¹¹¹ Similarly, Facebook has said that they are getting stiff

²⁴ James Vincent, ‘Google Loses Key Appeal Against €2.4 Billion EU Shopping Antitrust Case’ (*The Verge*, 10 November 2021) <<https://www.theverge.com/2021/11/10/22769823/google-eu-antitrust-shopping-comparison-loses-appeal#:~:text=The%20EU's%20second%2Dmost%20senior,demote%20those%20of%20its%20rivals>> accessed 25 January 2022.

²⁵ ‘GAFA Tax: A Major Step Towards a Fairer and More Efficient Tax System’ (*Gouvernement.fr*, 11 April 2019) <<https://www.gouvernement.fr/en/GAFA-tax-a-major-step-towards-a-fairer-and-more-efficient-tax-system>> accessed 25 January 2022.

²⁶ Ryan Browne, ‘Social Media Giants Face Big Fines and Blocked Sites Under New UK Rules on Harmful Content’ (*CNBC*, 15 December 2020) <<https://www.cnbc.com/2020/12/15/uk-online-harms-bill-tech-giants-face-big-fines-and-blocked-sites.html>> accessed 25 January 2022.

²⁷ ‘Australia News Code: What’s This Row with Facebook and Google All About?’ (*BBC News Australia*, 18 February 2021) <<https://www.bbc.com/news/world-australia-56107028>> accessed 25 January 2022.

²⁸ Spencer Soper, ‘More Than 50% of Shoppers Turn First to Amazon in Product Search’, (*Bloomberg*, 27 September 2016) <<https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>> accessed 25 January 2022.

competition from Snapchat, TikTok, and Twitter.¹¹² Amazon took up their defense that providing goods and services to many customers ensures that customers are given good choices.¹¹³ Therefore, by providing these irrational arguments, these companies had tried to establish that they used no illegal and unethical means.

V. “BIG TECH” COMPANIES: CONCERN & REGULATION BY INDIA

These big tech giants are now feared as we address the abundance of power they have accumulated from the past. These companies have created a dependence on any other sector, and any innovation coming up in any industry is advancing these companies in one way or another. One of the unknown things about Amazon is that it is highly indulged in AI other than online shopping, which is their cloud storage services which is also used by famous OnTheTop (OTT) platforms like Netflix, which is also its competitor when we talk about Amazon Prime and how they can impact their competitor just by disrupting the services which are provided to their competitors. They have created connections all over the AI world, and anyone entering there cannot resist these tech giants as they will have to avail their services to survive the market. These are threatening the economy with their dominance and cheap market tactics they either acquire their competition or copy what these competitors are providing, just as Facebook did with Snapchat copying its story feature on Instagram and making it more popular, Amazon also faced probe in India for using the seller data processed on its platform and use it to produce its products and sell it on their online shopping site with a higher preference which created a threat for local seller registered with it, it was suppressing and hurting small businesses registered with it by using their data in the Indian market.

In 2019, Google faced multiple probes in India. CCI mentioned how Google was using its dominant position in the Android market and mandating its apps to be pre-installed on the Android device, violating India's competition. In the report, the play store policies of Google were also termed vague, ambiguous, and arbitrary for Indian users and developers as they impose

²⁹ IANS, 'Facebook Worried as TikTok Set to Eclipse Twitter, Snapchat Ad Share' (*Business Standard*, 10 April 2022) <https://www.business-standard.com/article/technology/facebook-worried-as-tiktok-set-to-eclipse-twitter-snapchat-ad-share-122041000250_1.html> accessed 1 June 2022.

³⁰ Shirin Ghaffary and Jason Del Rey, 'The Big Tech Antitrust Report Has One Big Conclusion: Amazon, Apple, Facebook, and Google are Anti-Competitive', (*Vox*, 6 October 2020) <<https://www.vox.com/recode/2020/10/6/21505027/congress-big-tech-antitrust-report-facebook-google-amazon-apple-mark-zuckerberg-jeff-bezos-tim-cook>> accessed 1 June 2022.

unnecessary conditions and commissions on the apps.¹¹⁴ India needs to have stringent provisions and laws to regulate these internet intermediaries the Government has taken measures to protect the data of users, after various instances of violating public morality on these platforms the Government has also taken up the command to restrict these nuances and breaches. In 2021 the Government has ameliorated the Act and brought up new Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021¹¹⁵ to enhance the regulation laid previously in the Information Technology (IT) Act, 2000. In new rules, the Government notified the intermediaries platforms of multiple changes which are:

- Due diligence has to be followed by these entities and if not done properly the safeguard of harbour provision may be taken back hence the entity will be made liable for the content published on it.
- The grievance redressal mechanism has to be followed and a Chief compliance officer, a nodal contact person, and a resident grievance officer shall be appointed who are residing in India.
- The content originator has to be identified by the entities and shall be surrendered in the offence against the state.
- Intermediaries shall not post any unlawful information and take down any unlawful information ordered by a court or appropriate Government.

These IT rules enforced brought up many controversies as these intermediaries opposed them and alleged that these were against rules and would hurt users' privacy and freedom of speech & expression. These IT rules also notified rules for digital news which were to be followed. The main point of contention was that these rules somehow were restricting fundamental rights of privacy provided under the Article 21- Right to Life¹¹⁶ and Article 19 - Freedom of Speech and expression¹¹⁷ as these mandated companies to collect and deliver information about its users secondly it was empowering Government to take down any content which it believes is unlawful however the scope of unlawful was not made clear.

³¹ Pankaj Doval, 'Google Abusing Position, Playing Unfair: CCI Probe', (*The Economic Times*, 18 September 2018) <<https://economictimes.indiatimes.com/tech/technology/google-abusing-position-playing-unfair-cci-probe/articleshow/86311991.cms>> accessed 1 June 2022.

³² Ministry: Electronics and Information Technology, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (*PRS India*, 25 February 2021) <<https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>> accessed 1 June 2022.

³³ *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors* [2017] 10 SCC 1, AIR 2017 SC 4161.

³⁴ The Constitution of India, 1950.

A. Analyzing Data Protection Bill

India presently does not have comprehensive data protection legislation. In 2019 Ministry of Electronics and Information Technology (MeitY) presented a draft of a personal data protection bill. After the world was hard hit by the pandemic, the penetration of the internet has been in a paramount position and people adopted the change and shifted online to surpass the hindrance generated by the pandemic and lockdown. More proliferation of digital platforms, software, gadgets, and the internet was used and with this data revolution, there was also an increase in data breaches, cyber-attacks, hackers, and all kinds of threats to our data which we used online to operate addressing the spike in such threats this bill was introduced to safeguard the interest of every user producing data footprints online and to make these data collectors accountable. This bill provides the framework for the protection of personal data and also classifies a category of sensitive personal data under which financial information, biometric data, etc. were covered. This bill shall apply to the Government of India, any company incorporated under India, and any foreign company that is dealing with personal data in India and also establishes a regulatory body for data protection; it also renders rights to individuals to protect their data and authorizes them to give consent for their data being used by any entity with certain exceptions under which consent will not be required one of which is in case of a medical emergency. The bill also empowers data fiduciary to collect the data without consent when an offence is done by an individual or an entity. Data fiduciaries are given powers that may demolish the bill's purpose, which will eventually lead to infringement of rights. Section 35 of the bill is the most controversial part which empowers the Government or any of its agencies to circumvent the laws and its provision to safeguard public order, sovereignty, friendly relation with foreign states, and the security of the state. The bill is expected to contain 98 clauses and will be introduced at the end of the parliament's winter session, which will be a bodacious event to look into.¹¹⁸

B. The Competition Act, 2002

The Competition Commission of India (CCI) is established under this Act to curtail any unfair practice done to cripple the competition in the market. As per section 4(1) of this Act, no enterprise shall abuse its dominant position and impose unfair or discriminatory conditions on

³⁵ Ministry of Electronics and Information Technology (MeitY), 'Data Protection India' (*State IT Secretaries Conf*, 12,13 February 2018) <<https://digitalindia.gov.in/writereaddata/files/6.Data%20Protection%20in%20India.pdf>> accessed 1 June 2022

the purchase of service¹¹⁹. These tech giants have created a prominent place in the market and they do have a hidden monopoly that is not there on paper but will be apparent with time. They own a dominant share in the market, they control the market and any player entering into it, they are manipulating the market as their wants overall, they own the market which is a threat to healthy competition in the economy. They are violating various rights of people in India as well as around the globe and they are trying to nullify the competition which is atrocious for any country. Provision of the Act shall be exercised with utmost sincerity and rigidity to regulate these companies more efficiently. In India, CCI has imposed penalties upon entities multiple times if they are found to be violating laws. For instance, in a very popular case of future retail and Amazon, after giving a decision in favour of Amazon, CCI withdrew it and imposed a penalty of 2 billion rupees¹²⁰ on Amazon to conceal the real fact and to suppress the actual scope due to which deal between future retail and reliance industry was long pending and obstructed.

VI. HOW TO DEAL WITH BIG TECH COMPANIES?

Several cases are going on against these big tech giants and many investigating authorities across the globe like FTC, CCI, Department of Justice (DoJ), etc. are investigating them for alleged anti-competitive practices, privacy data breaches, and other unfair practices. There are many possible outcomes of these investigations but the most realistic one is that these companies will hire an army of lobbyists and lawyers for any resulting cases, and in case any wrong would be found then they will be slapped with penalties and some new regulations will be put in place but all these will be forgotten in a few more years. Nevertheless, something more has to be done to make sure that they don't grow in size in the future and become uncontrollable. Various possible solutions which can be used are as follows –

A. Break-Up Big Tech Giants

In past, the companies used to be relatively simple and they use to operate with much clarity. Therefore, breaking up big companies into smaller and separate segments to operate independently without using any network or connection with the parent company was easier. E.g., Standard Oil, a US-based company, use to produce and sell oil and had a massive share of the

³⁶ The Competition Act 2002 (Act 12 of 2002).

³⁷ Reuters, 'CCI Suspends Amazon's 2019 Deal with Future Group Citing Suppression of Information', (*The Times of India*, 17 December 2021) <<https://timesofindia.indiatimes.com/business/india-business/cci-suspends-amazons-2019-deal-with-future-retail-citing-suppression-of-information/articleshow/88342430.cms>> accessed 1 June 2022

market so when it was broken up in 1911 it was simply divided up into 34 smaller each with their production facilities and networks.¹²¹ But how do you break up a company that doesn't do just one thing, take an example of how you break Google or its parent company Alphabet when they do a search, advertising, consumer electronics, cloud computing, online services, and much more. Well, FTC Chief Joe Simmons has recently said that, if necessary, he is ready to break these big companies. He also said a quote, "It's not ideal because it's very messy, but if you have to, you have to." His agency has started an investigation against Facebook and undoing previous mergers and acquisitions may be a reality which means letting go of WhatsApp and Instagram.¹²² Undoing these mergers will be complicated but this might reinvigorate competition allowing consumers to benefit. Messaging domain is today's most prevalent and engaging area, including WhatsApp messaging, Messenger, and Instagram messaging, which are all owned by Facebook. Now, if these all will be separate companies then have to try and compete by spending more money on either innovating their products or decreasing the number of advertisements, they are showing to capture the good market. In a competition between companies, consumers win.

This idea is great but it may result in some disruptions as well. Imagine if YouTube has to be split off from Google which right now isn't much profitable it's just breaking even as it stands, so YouTube as a standalone company might collapse on its own. No current litigation is focusing on a monopoly on video sharing but it's an example of how landscapes can change. So, there are two sides to Breaking up these companies and both are equally important, therefore, while making any decision governments and authorities have to think from both perspectives. It's now has become extremely important to stop these companies from creating a monopoly in the market for reasons already discussed.

B. Building Alternative Platforms

Big tech companies are this huge because they provide not only a single service but several services that have resulted in capturing a massive share in the market. Google is providing so many services, which include maps and payment systems through Google Pay and Google Maps and in case of international disruption or tussle, many sectors of the Indian economy directly or indirectly will get affected. The cab market largely relies on the services of Google Maps.

³⁸ The Editors of Encyclopedia, 'Standard Oil', Encyclopedia Britannica 24 March 2020 <<https://www.britannica.com/topic/Standard-Oil>> accessed 25 January 2022.

³⁹ 'The War on Big Tech - Everything is About to Change' *YTReads* <<https://youtuberead.com/the-war-on-big-tech>> accessed 1 June 2022.

Similarly, now many businesses are dependent on Google's payment system which will get disarranged causing unemployment of lakhs of people. If the US under their Patriot Act, orders all US companies to stop dealing in the Indian market, then, in that case, the Indian economy will get disrupted economically and impact strategy and defense sector.

All the countries have relied too much on these companies concerning every service. So, one of the solutions can be building alternate platforms that will provide similar services to these big tech giants, which will decrease the dependency on these companies, leading other companies to have a level playing field. For instance, Paytm has launched its mini-app store, and it will choose to use preferred payment options, unlike the Google play store. More than 300 firms, including Ola, Freshmenu, Netmeds, etc., have already joined this initiative.¹²³ Along with this, the idea of the Indian Government to launch its play store is also a much-appreciated initiative. Likewise, other similar apps should be created as an alternative that will prevent anti-competitive behaviour with which eventually customers will win.

C. Enforcement and Regulation of Competition Act and Other Laws

There is the ongoing discussion of changing antitrust laws in which there may be restrictions on sweeping changes in the US. One of the critical and immediate actions needed in this direction is to change or regulate existing competition laws in India like in other countries to protect local and small businesses from this unjust competition. The legislation will need to harmonize the competing policy objectives, notably privacy and anti-trust laws, encouraging competition while also giving sufficient protection to individuals while interacting with digital markets. More transparency and accountability needed to be ensured at the earliest stage.

According to a paper prepared by the European Commission, possibly anti-competitive behaviour should be forbidden, and corporations should have the responsibility of proving that their actions are pro-competitive.¹²⁴ Except for the competition act, many countries suggest making a separate law for regulating these big techs altogether. The draft of the EU digital markets Act chose this path and was described as a fast-acting particular tool of regulatory law rather than competition

⁴⁰ Tarush Bhalla and Prasad Banerjee, 'Paytm Launches Its Own Mini App Store', (*Livemint*, 5 October 2020) <<https://www.livemint.com/technology/tech-news/paytm-launches-its-own-mini-app-store-11601830976822.html>> accessed 1 June 2022.

⁴¹ Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer, 'Competition Policy for the Digital Era', (European Commission, 2019) <<https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>> accessed 1 June 2022

law, and it includes many unique features. So, there are many ways to make laws more effective, and therefore, we should consider changes to provide our competition watchdog with additional tools and resources.

VII. CONCLUSION

No matter how much power these tech giants have gained in different spheres, the most concerning is the political sphere which gives these giants power to hinder the democracy of a country which is not acceptable. These giants are potentially advanced in every way to hamper the privacy of an individual and whole country by invading taxes imposed on them which belong to the government. After enumerating and analyzing all the facts and materiality of the paper, it can be reasonably concluded that the data revolution has started and tech giants have become gigantic. No doubt, they have made our lives easier, but that also comes at the cost of our data, subconscious mind, and liberty. These companies have only made us dependent and delve into their ecosystem without protecting against the breaches buzzing on their platforms. Competition is anytime good but when it is diverted by some companies it hurts others which ultimately hurt the whole economy which in turn eliminates fairness and justice from it.

It is now a need of time that privacy protection shall now become part of corporate social responsibility and these tech giants shall follow that. Privacy and security in cyberspace shall be declared human rights. Any violation in these shall invite hefty fines and punishments that will ultimately stop these giants from any infringement. Even after having IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 which laid down rules to protect personal data, we have seen various data breaches, and it has its nuances. Data protection bill is seen as light in the dark and India is hoping to cater the need of protecting data and privacy with it and hoping to overcome the devastating state it is in. With regular advancements in the laws and their enforcement, anything can be overpowered, as the law is the most powerful tool to serve justice.