

Key issues that will drive 2019 policy debate in India

Intermediary liability, government surveillance, digital taxation and data governance and sovereignty will dominate the debate on tech policy making in India in the run-up to the general elections this year

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Intermediary liability, [government surveillance](#), digital taxation and data governance and sovereignty will dominate the debate on tech [policy](#) making in India in the run-up to the general elections this year as the turf war between Indian and foreign technology companies intensifies, according to policy makers and lawyers.

Big technology companies Google, Facebook, Twitter and Amazon will be the most affected as they will face greater tax scrutiny and may be forced to host Indian [user data](#) within the country. Indian companies including PayTM and Reliance Jio Infocomm support some of these tighter guidelines, which will give them a level playing field.

“2019 will see a dynamic shift in the tech policy due to multiple issues covering the change in the regulatory framework for the protection of personal data, intermediary liability and powers of government of surveillance of [internet](#) in view of encryption technology,” said Tejas Karia, a partner at Shardul Amarchand Mangaldas & Co., a law firm.

Another issue that may gain momentum is taxation. Most foreign companies providing



digital services escape the Indian tax net because they don't have a corporate office here.

“Taxation of digital services will be an issue and we're also seeing elements of this come up in other regulations. For example, the requirement to set up an Indian entity under the proposed amendment to the intermediary's rules creates a permanent establishment for the purpose of tax law,” said Nehaa Chaudhari, public policy lead at Ikigai Law.

Experts expect continued momentum on policy-making over the next few months, even with general elections likely to start in March-April. The debate, they said, will become more nuanced in the coming year. After the general elections, policy positions might vary, depending on the outcome, they said.

More changes may be proposed to the Information Technology Act to reflect technology advances and challenges, a government official said.

“The amendments to the intermediary guidelines which we have issued are a first step towards some regulation. They are reactive because if episodes of lynching, etc., had not happened, we would not have worked on them,” the official said. “We expect 2019 to be a year when the IT Act will be itself updated a lot to bring it at par with the current issues.”

Over the past two years, India has witnessed some landmark judgements and controversial government proposals that have spurred debate among policymakers, technology giants and consumers. While the Supreme Court's ruling that privacy was a fundamental right was considered a landmark moment, its judgement upholding Aadhaar with curtailed applications led to collective groans from the government, fintech startups and activists for opposing reasons.

In December, 10 government agencies were allowed to snoop on any computing device in India and it was proposed to amend the Information Technology Act to force intermediaries such as Facebook and Google to intercept data on the government's request and take down content deemed unlawful. The government said these steps will curb the menace of fake news and make the internet safer.

Kartik Maheshwari, leader at law firm Nishith Desai Associates, expects populist measures against foreign tech companies to slow down once the elections are over.

“A lot of firms are trying to make it us versus them - seeking protectionism under the garb of nationalism. This will continue until elections but once the new government comes in, whatever the combination, that rhetoric hopefully will slow down as every new government wants to attract foreign investment,” said Maheshwari.

Not everyone is convinced, though. The recent FDI policy made it tougher for foreign funded e-commerce companies to offer discounts and cashbacks to online shoppers, curbed their

ownership or control over inventory and required them to provide services such as warehousing, logistics and advertising to all sellers in a fair and non-discriminatory manner.

This may hurt Amazon and Walmart-backed Flipkart the most as both have used cash to win market share.

“I don’t think the government’s stand on e-commerce will change after the elections. It’s more of a clout issue than an election issue. India tech and telecom for the first time have clout in the government. It is also a matter of digital sovereignty. It can’t be ignored anymore,” said Nikhil Narendran, a partner at Trilegal.

Lobbying efforts from both sides will remain charged in the coming year. The Indian government has seen how China’s restrictive policies fostered some of the world’s biggest and most innovative tech brands, such as Alibaba Group Holding Ltd. and Tencent Holdings Ltd.