

A New Mexico judge has seen Meta for what it is

Slow poison

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Arguing before a court in New Mexico earlier this year, Meta's lawyers used the image of a polluting factory. If a factory fouls the air, they submitted, the proper remedy is to make it cease its emissions and to clean up what it has already spoilt. It is neither to demolish the plant, nor to burden its owner with every ailment in the town downwind. It was a lawyerly attempt to limit the damage in the event Meta lost to the state of New Mexico in a case where the state claimed that its platforms, specifically Instagram, were responsible for the mental health crisis amongst youth.

In his ruling last month, Judge Bryan Biedscheid took the image and turned it elegantly against its author. Meta's platforms were the factory, the content they served was what the factory produced, and the psychological harm to, and sexual exploitation of, children was the pollution that had to be abated. On that reasoning he did something no court anywhere had done before — he declared certain activities of the social media company to have caused a public nuisance.

Dwell on the judge's picture a little and the smoke from the factory acquires a name. Two names, in particular: the infinite scroll and the push notification. Neither is an accident of engineering; both are its object. The infinite scroll exists, amongst other things, to keep a child's thumb moving. The push notification seeks to reignite a child's attention long after the child has wished to stop. The disease that settles in the lungs is by now familiar and backed up by evidence — anxiety, sleeplessness, depression, self-harm. This is the first thing to be said plainly, and Judge Biedscheid said it: the harm is not incidental to the design, it is the design itself. Addiction is the product; the anxiety is its exhaust.

Days after the ruling, Meta reached for its chequebook. To end other litigations on youth mental health claims, it agreed to pay a staggering \$18.2 billion to 52 American states and territories in the largest technology settlement in American history. However, on reading the document, a familiar sleight of hand appears. Meta admits nothing — not a single whiff of wrongdoing. That is at once the genius and the vice of the settlement: one pays, precisely, to make the question disappear. American law permits a company to purchase silence and keep its conscience unexamined, and then calls that transaction justice. This isn't justice, it is a cash memo.

Were a factory's effluents to poison a town's water supply, would we let it write a cheque to pay the municipal council, at the same time not admit it had poisoned anyone, and keep its pipes running? Yet, where the contaminated thing is a child's mind, this is exactly the absurd bargain the settlement endorses



— pay, deny, continue. The wrong is not undone, it is merely priced.

The price too is at a heavy discount. Sample this — of the \$18.2 billion, only some 70%, around \$12.7 billion, is committed; the balance is contingent and turns on Meta's rivals falling into line. Spread that committed sum across the 10 years it is owed and it comes to roughly \$1.3 billion a year, levied on a company that clocked \$201 billion in revenue and \$60 billion in profit last year alone. It is less than 1% of a single year's takings. Meta will possibly spend more on data centres this coming year than it will ever pay these children. No wonder its share price in the stock market surged after the settlement, investors presumably relieved by the relatively small size of the payout.

Worse, the settlement leaves the engine largely untouched. Admittedly, some adjustments have been ordered in relation to teen users — night curfews, daily time limits, and an "option" to switch to a non-personalised feed. But the basic feature of infinite scrolling and notifications continues undisturbed. The factory continues operating, the content continues to be produced, just that the shifts get a little shorter.

What this means for India begins with a platitude — the mental health of an Indian child is worth no less than that of an American one. The arithmetic follows readily enough. The American payout approximates to \$250 per child. India has some 430 million children and valued at the same rate, for the same injury, at the hands of the same company, the figure exceeds \$100 billion — half a year of Meta's global revenue, a sum large enough to be felt in Menlo Park.

It is time for a well-crafted litigation to hold Meta and similar companies liable for public nuisance in Indian courts. Our law of tort is no stranger to public nuisance; our children are no strangers to the injury; and the factory, it bears repeating, is the very same factory that exists in the United States of America. To be clear — this is not about Meta. The principle indicts every so-called platform that sends engineered content to the young by design,

harming them often irredeemably.

While contemplating legal action, it is equally important to reflect on how we arrived at this pass. It all started with a simple error of nomenclature. Long ago we agreed to call these enterprises 'platforms' — neutral, passive noticeboards upon which others pinned their notices. Having so named them, we clothed them in immunity for what others post on it. In America it was Section 230 of the Communications Decency Act; in India, it is the safe harbour of Section 79 of the Information Technology Act. The intermediary, we solemnly held, was a conduit, and not a publisher, the post office and not the printer. That was the original sin. Today, Instagram no more hosts content than a chef at a restaurant hosts a meal. It prepares, it chooses, and it decides what is served to you.

Consider, by contrast, a factory that makes cakes and jams. We hold it answerable for its product — for the recipe, and for the provenance of its sugar. We do not entertain the plea that the ingredients assembled themselves. Why should a firm that manufactures a child's attention be held to a gentler standard than one that manufactures marmalade? Get the noun right and the law follows: Instagram is not a platform but a product, and it should be regulated as one.

The lesson, moreover, is not confined to either Instagram specifically or social media generally. We are now in the throes of precisely the same argument over Artificial Intelligence — what to call it, and who shall answer when it does harm. Nomenclature is not branding; it is destiny. Misname the thing today and a generation will pay to clear the smoke.

A New Mexico judge has today seen the factory for what it is. Other states in America, on the other hand, chose to fine it and avert their gaze. India has never lacked laws to tackle pollution, just the will to enforce them effectively. One hopes that when it comes to content that pollutes the mind of children, India will have both the will and the capacity to place the interests of an innocent Indian child over those of a rapacious foreign algorithm.