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SHORT ARTICLE

INTERNET CENSORSHIP IN INDIA

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INTRODUCTION

Censorship refers to the suppression or restriction of information or ideas that are considered objectionable by authorities. From the burning of books and burying of scholars in imperial China to religious prohibitions during the Inquisition, there are myriad examples in history that highlight the use of censorship as a political tool¹. In the modern context, censorship has taken more nuanced forms. However, it continues to remain a political tool that is used to control the narrative and is often justified under the guise of national security, public order or morality.

Censorship has extended into cyberspace. In modern democracies, the internet is not merely a technological tool, it is a platform for political engagement and free speech. With over 954 million Internet users, India has had to evolve censorship into the digital realm by way of blocking websites, surveilling communication and removing content. A deeply concerning paradox emerges in this regard as the world's largest democracy ranks poorly in global digital freedom indexes. While the Constitution guarantees freedom of speech and expression as a fundamental right², India is facing intense international scrutiny due to its increasing digital authoritarianism. This article examines the legal framework and regulatory practices concerning internet censorship and its

¹ Geoff Kemp ed., *Christianity, Book-Burning and Censorship in Late Antiquity* (Bloomsbury Academic 2014), available at <https://library.oapen.org/handle/20.500.12657/46037>.

² India Const. art. 19.

effect on the freedom of speech and expression. It concludes with a call for reforms aimed at protecting digital freedom in line with constitutional values.

LEGAL FRAMEWORK OF INTERNET CENSORSHIP IN INDIA

The Information Technology Act, 2000 (hereinafter referred to as “IT Act” is the legislation that primarily governs internet regulation and censorship in India³. Its initial objective was addressing cybercrime and promoting e-commerce. Over time, it has gradually become the main instrument used for controlling content online. There are several provisions and rules, often conveniently broad and vague, which have been used to justify censorship. Majority of the concerns about overreach and lack of due process stem from these provisions.

The most controversial aspect of the IT Act had been Section 69 which bestows the power to issue directions for interception or monitoring or decryption of any information through any computer resource⁴. Essentially, the Government is authorised to block public access to any information online in the interest of the sovereignty and integrity of the nation, national security, public order or prevention of incitement to an offense. The wording is intentionally broad. The proceedings of the review committee are confidential which makes challenging any blocking order a difficult task. While the widely accepted notion is that any restriction of a fundamental right must come with absolute transparency, it is rarely so in practice.

Section 79 of the IT Act provides a safe harbour for intermediaries such as X, Instagram, WhatsApp and so on⁵. However, the protection granted to these intermediaries is extremely conditional in that it only exists so long as they comply with the government’s directions and act quickly against supposed unlawful material once they are notified. Non-compliance by the intermediaries can attract a prison sentence as well as fine. This threat has become a key point of control.

³ The Information Technology Act, No. 21 of 2000, India Code (2000).

⁴ Information Technology Act, No. 21 of 2000, § 69, India Code (2000).

⁵ Information Technology Act, No. 21 of 2000, § 79, India Code (2000).

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021⁶ and the amendments in 2023⁷ have complicated matters further. Strict deadlines have been imposed on intermediaries to take down flagged content as part of the IT Rules 2021. The 2023 Amendments have introduced a Fact Check Unit, to be run by the Press Information Bureau, to determine what exactly is fake or misleading content. Obvious concerns are raised as the system of checks is internal and the government is made a judge of itself. In the case of *Kunal Kamra v. Union of India*, the constitutional validity of the IT Rules 2021, the introduction of PIB's Fact Check Unit in particular, was challenged. The rule in question, Rule 3(1)(b)(v), was struck down as unconstitutional by the Bombay High Court owing to the conflict of interest.

Amid these draconian provisions, the judiciary has effectively upheld constitutional morality. A landmark intervention came in the case of *Shreya Singhal v. Union of India*⁸ in which the Supreme Court of India struck down Section 66A of the IT Act⁹. Section 66A of the IT Act criminalised sending offensive messages that contained “grossly offensive” or “menacing” information. The Apex Court ruled that this section was overly broad, vague and subjective in nature. It was held that this section has a chilling effect on the fundamental right to freedom of speech and expression and consequently, struck down Section 66A for its unconstitutionality.

In the case of *Anuradha Basin v. Union of India*¹⁰, the Supreme Court held that an indefinite suspension of internet services would be illegal and that orders for internet shutdown must satisfy the tests of necessity and proportionality. The case revolved around the internet restrictions imposed in Jammu and Kashmir in 2019. While the internet restrictions were not lifted, this case is significant as it mandated any orders imposing such restrictions to be made public and subject to judicial review.

MECHANISMS OF ONLINE CENSORSHIP

⁶ *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, G.S.R. 139(E), Gazette of India (Feb. 25, 2021), under § 87 of the Information Technology Act, No. 21 of 2000.

⁷ *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023*, G.S.R. 275(E), Gazette of India (Apr. 6, 2023).

⁸ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

⁹ Information Technology Act, No. 21 of 2000, § 66A, India Code (amended 2008, struck down 2015).

¹⁰ **Anuradha Basin v. Union of India**, (2020) 3 SCC 637 (India).

One of the most commonly used techniques of internet censorship is the outright blocking of websites. Independent media platforms, political blogs, fact checkers and activists have had their URLs blocked. The government relies on Section 69A of the IT Act to justify these blocks. However, the actual orders are confidential and the exact reasoning is rarely disclosed. This tool of internet censorship has seen an increase in its use since 2020 as revealed in reports of various organisations such as Reporters Without Borders¹¹.

According to Freedom House, India has the highest number of internet shutdowns in the world¹². This mechanism of internet censorship is so disturbingly common that in 2023 India ranked first for the number of internet shutdowns globally for the sixth consecutive year. These shutdowns typically happen in politically sensitive areas such as Kashmir and Manipur or for politically sensitive issues such as the anti-CAA or farmers' protests. A lesser acknowledged form of internet censorship is algorithmic regulation or shadow banning which results in reduction of reach. The government pressurises social media platforms to automatically detect and remove objectionable content. This mechanism is often used around the time of elections, as seen in the case of Dhruv Rathee, a popular influencer.

The government mandates messaging platforms to disclose the "first originator" of a message. This has dangerous implications on the end-to-end encryption and user privacy promised by the platforms. The security of all users is undermined. It is widely known that privacy is of utmost pertinence in repressive environments or among vulnerable communities. There is no clear procedural safeguard established in this regard which opens the door to mass surveillance under the guise of regulation.

EFFECTS ON SPEECH AND DEMOCRATIC DISCOURSE

The expanding digital censorship regime has had a chilling effect on the freedom of speech and expression. The immediate consequence of the same is the rise of self-censorship. Journalists, content creators and even stand-up comedians become extremely cautious about what they post. Many have resorted to avoiding sensitive topics such as Kashmir, Hindutva and government failures simply because of the fear of being deplatformed or prosecuted. FIRs have been filed for

¹¹ Reporters Without Borders, India, <https://rsf.org/en/country/india>.

¹² Freedom House, India, <https://freedomhouse.org/country/india>.

memes and tweets that criticise government policies. Ramifications include the invocation of Section 152 of the BNS¹³ which resembles sedition and serious laws such as Unlawful Activities Prevention Act for jokes and think pieces.

Internet censorship in practice is primarily concerned with suppressing organised dissent. Protests that gain traction on the internet are met with widespread takedowns and blocks. Videos and twitter threads disappear if it is overly critical of the government. Under vague national security justifications, news channels based in Pakistan have been taken down which makes internet censorship a tool for arbitrary silencing.

All of this results in a system where users are conditioned into silence and critical engagement is discouraged, slowly fading away. Further, the burden falls disproportionately on minorities and vulnerable communities. Dalit activists and student protestors find themselves facing legal and algorithmic pushback for speaking out against certain governmental policies. The internet was originally a hub for activism but it has turned into a hostile place now. Democratic discourse is simply not feasible and authoritarian tendencies are ever-increasing.

NEED FOR REFORM AND THE PATH FORWARD

Looking at the current state of internet censorship, it is clear that urgent legal and institutional reform is needed. The IT Act and its subordinate rules must be amended. The terms and language used, such as “decency, “morality” and “public order”, are so vague that it will almost certainly result in overreach. There must be specific and narrowly defined criteria. Academicians note that internet censorship in India fails the three part test established in international rights law. According to the three part test, any restriction must be prescribed by law, in pursuit of a legitimate aim, and necessary and proportionate¹⁴. The censorship regime in India is rarely proportionate to the threat, if ever.

Expression and speech cannot be regulated through secret orders and unchecked executive discretion. The government must ensure that there is transparency and accountability in the process

¹³ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 152, India Code (2023).

¹⁴ Agnès Callamard, *The Three-Part Test: A Framework for Balancing Freedom of Expression and the Prohibition of Hate Speech*, in *Expert Seminar on the Links Between Articles 19 and 20 of the International Covenant on Civil and Political Rights* (2008), <https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Seminar2008/PaperCallamard.doc>.

of censorship. There must be mandatory publication of all blocking orders issued under Section 69A of the IT Act. Additionally, it is of paramount importance that oversight bodies and fact check units must be independent and separate from the government. This transparency will also make it easier for the general public to question or challenge censorship decisions. Such questioning is beneficial for the government as well because if it can be adequately justified, credibility and public trust will increase manifold.

The judiciary's primary function is to deliver justice equitably. At the same time, it also acts as a check against the other branches of government. Hence, judicial review of internet censorship is a must. Courts must be brought into the picture as it is their duty to protect the constitutionally guaranteed fundamental right to freedom of speech and expression. It is not just the judiciary that must be included in the policy making process. Inputs of activist groups, rights organisations and journalists must be taken.

CONCLUSION

The trends that India has been following as part of its censorship raises grave concerns about the erosion of fundamental rights. The use of confidential orders, mass internet shutdowns and algorithmic moderation resembles an authoritarian governance model. Without sufficient legal safeguards and public oversight, these mechanisms result in the creation of an environment where dissent is stifled. Essentially, criticism of state policy is penalised and vulnerable groups disproportionately bear the brunt of the issue. The vague justifications offered coupled with lack of procedural transparency make appeals and challenges a herculean task.

The focus of the government must be on protecting the conditions under which free expression can flourish, not regulating speech. Blocking or takedown orders must be subject to judicial review. India must begin to align its digital governance framework with international standards. Ultimately, ensuring that digital governance is rights based and transparent is essential for democracy to flourish in India.