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FREE SPEECH ON TRIAL: SOCIAL MEDIA, CENSORSHIP, AND THE INDIAN IT ACT

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INTRODUCTION

For the digital age, social media is believed to be the ultimate leveler of free speech. The Internet offered an unprecedented space for dissent, debate and discussion in India, a country where Article 19(1)(a) of the Constitution guarantees freedom of speech and expression. Today, however, the nature of Internet expression is much more complicated. Nation security, public order and morality are increasingly being invoked and used as common tools for targeted control in the name of the constitution. The Information Technology Act, 2000 (IT Act) is the core of this conflict, and in many cases, it is the instrument through which the state exercises control and, in many cases, oppresses expression in online content.

The Weaponization of Section 69A

For a deeper understanding of the architecture of digital censorship in India, it is necessary to read carefully Section 69A of the IT Act. This was added as the 2008 amendment to the Act, which gives the central government the authority to instruct any information on the Internet to be unavailable to the public. Reasons for such blocking are defense of India, sovereignty and integrity, friendly relations with foreign states, and public order.

These grounds are similar to those that are permitted under Article 19(2) of the Constitution, but the working of Section 69A is opaque. Blocking orders are frequently issued with complete confidentiality, so that the content creators and users remain completely in the dark. Legal platforms such as Live Law often cite data and analyses from the Ministry of Electronics and Information Technology (MeitY) that it has issued blocking orders for tens of thousands of posts on platforms like X (formerly Twitter), YouTube, and Facebook over the past decade. These orders shield free speech from public review and scrutiny, and they have a chilling effect on free speech in an implicit systematic way, that is, turning it from a fundamental right into an arbitrary privilege.

The Intermediate Liability and the IT Rules.

The pressure on digital free speech has been picking up by leaps and bounds with the enactment of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The IT Rules of 2021 have brought about a significant change in the

"safe harbor" provisions given to social media firms under Section 79 of the IT Act. Strict grievance redressal mechanisms and traceability requirements, and even strict compliance deadlines, delegated to private corporations the responsibility of policing speech. The government has been increasingly using Section 79(3)(b) of the IT Act in conjunction with Rule 3(1)(d) of the 2021 IT Rules, to force intermediaries to take down content. The draft law actually aimed at clarifying the liability of social media platforms for users' content after its "safe harbour" status was lifted. As per Section 79(3)(b), if an intermediary, upon receiving "actual knowledge", or on being notified by the appropriate Government or its agency that any information hosted by the intermediary is being used to commit "the unlawful act", and fails to remove such content, then the intermediary will lose the legal immunity for such content. The Court, in Shreya Singhal, read down Section 79(3)(b) and held that 'actual knowledge' of intermediary would imply a direction from the Court and that the acts referred to in Section 79(3)(b) should be understood as acts mentioned in Article 19(2)[1].

If an intermediary always has to fear losing safe harbor immunity, one would expect them to become over-compliant.Intermediaries' instinctive corporate reaction to the constant possibility of having their safe harbor immunity taken away is to be over-compliant. Content is removed from platforms many times at the first sign of governmental displeasure, and not to open themselves up to civil or criminal liability. This puts the responsibility for censorship in the hands of private companies, leading to a cleaned-up online environment in which opposing perspectives, satire and criticism of political issues are pushed to the edge, purely for their own gain.

The Fact Check Unit: a step too far?

Online censorship issue reached a raging pitch when the IT Amendment Rules, 2023 were introduced. This amendment gave the government access to create a "Fact Check Unit" (FCU)

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[1] https://www.livelaw.in/articles/how-it-act-powers-are-killing-online-dissent-528338

to find fake, false, or false information related to the "business of the Central Government. This would pierce the safe harbor protections for intermediaries of social media if they failed to remove content that is marked for removal by the FCU.

It was a huge blow to free speech advocates, and an obvious effort to control the truth. The Bombay High Court recently announced a landmark decision in the case of Kunal Kamra v. Union of India, which was extensively covered by the legal media, including Bar and Bench. The court concluded that the amendment infringes on freedom of speech and equality as enshrined in Article 19(1)(a) and Article 14 of the Constitution. The metaphorical "illusions of choice" posed by the centralization of fact-checking authority in the State, the ruling pointed out, are undermined by the ambiguity and over-breadth of terms such as "fake" or "misleading. The court strongly argued that the state cannot classify speech as false, and force its non-publication, without committing a violation of the fundamental reasons behind the nature of a democratic republic.

A review of the historical context of control.

Digital censorship is not a new concept, but a continuation of India's media regulation legacy. Over the years, the citizens of India have suffered from different levels of censorship and surveillance in the media, especially as "the need of the hour" to preserve "national security" and "communal harmony" has been used as an excuse. The Internet was a major catalyst for the dissemination of information to the public, but it also made large-scale government censorship easier using practices that were already established before the Internet (Subramanian, 2024). The use of network technology to ensure compliance is a political economy that continually attempts to control the flow of information to ensure the maintenance of narratives.

CONCLUSION

The convergence of IT Act, social media and free speech in India is a cautionary tale of how statutory orders can be used for restricting constitutional freedoms. The government has argued that measures such as Section 69A and the IT Rules are essential to tackle malicious content and maintain order, but the rules have been implemented in a way that is opaque. The recent court challenge against the Fact Check Unit is a glimmer of hope that the state should not be the only judge of truth.

But the issues of structure persist. But as long as the government has the ability to impose secret limitations on what can be shown online, and the ability to punish platforms for the content that users actually use, the right to freedom of expression will continue to be put to the test. The democratic nature of the internet must be retained and India needs comprehensive reforms, which are more transparent, more proportional and more subject to independent judicial oversight than to administrative convenience[2].

[2] R. Subramanian, Media and Internet Censorship in India: A Study of its History and Political-Economy, 33 J(1-47). Int'l Tech. & Info. Mgmt. 1 (2024).