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IN PERSPECTIVE

Cyber cafes and security problems

By Pavan Duggal

The recent reports in the media about the proposal of the Mumbai police to crack the whip on cyber cafés has begun generating a lot of debate. The Mumbai police are planning to bring cyber cafés under their scrutiny. It is proposed to put in place stringent measures to prevent the misuse of cyber cafés for terrorist purposes.

The proposal of Mumbai Police includes the following features: a) Customers would be required to show photo identification cards and give their home addresses. b) Cyber cafés would have to retain such records for one year and disclose them to the police on request. c) Cyber cafés would have to pay an annual licence fee and obtain clearance from at least five government departments. d) Cyber cafés must install software filters to block pornography and other material deemed offences.

After the Chinese crackdown on cyber cafés a couple of years back, it is now the turn of the largest democracy in the world to start regulating them. The need for regulating cyber cafés arises from past experience, which shows the repeated and frequent use of Internet by terrorists and other criminals in planning and executing their terrorist and illegal designs.

However, the proposed scheme does not come as a legal surprise at all. This is so because of the draconian power that has already granted to the Indian police under the Indian Cyberlaw, which came into effect on October 17, 2000. By means of these powers, police officials not below the rank of Deputy Superintendent of Police have been empowered with unheard of powers.

Major discretions

Section 80 of the Information Technology Act has granted major discretions to police officials not below the rank of Deputy Superintendent of Police. This provision empowers that such a police official may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under the Indian Cyberlaw.

The law has defined the words "public place" to include any public conveyance, any hotel, any shop or any other place intended for use by, or accessible, to the public. Clearly, for the first time, we have seen Indian legislature criminalising intention to commit an offence.

The intention behind the proposal of the Mumbai police is indeed laudatory. However, it is

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likely to throw up numerous challenges. The most important point that emerges is that such a proposal is likely to be in direct infringement of the privacy of netizens and users of cyber cafés. The cyber cafe culture in India has found popularity with people because one could to go visit a cyber cafe without any restrictions of any sort whatsoever. Placing of restrictions, like the ones envisaged by the proposal of the Mumbai police, is likely to place a brake on the further growth of the cyber cafe culture, which in turn is likely to have an impact upon Internet penetration in India. This is all the more relevant since computer density in India has reached a chapter of slow growth and till such time, the prices of computers further come down, greater penetration is unlikely.

Complicating the present scenario in India is the lack of any law on data protection. Today, no law in India mandates people to protect the confidentiality of data collected by them. Thus, even corporate database collected by insurance and car companies are offered for sale.

Not savvy enough

India has also not yet become that technologically savvy enough to crack cybercrimes committed using cyber cafés. It is feared that the trend, which has started in Mumbai, may spread over to other parts of the country. Further, the monitoring of cyber cafés indeed violates the fundamental right to freedom of speech of citizens of India as it seeks to lift the veil of anonymity.

It is indeed true that under the Constitution of India, the enjoyment of such a fundamental right under Article 19 of the Constitution does include thereunder the inherent right of the State to place reasonable restrictions on the enjoyment of such a right. While reasonable monitoring may come within the model of reasonable restrictions, absolute monitoring may be struck down by courts as violative of the Constitution.

With the current generation of the Indian netizen population becoming extremely conscious of their privacy, the said proposal of the Mumbai police is likely to be not popular and is further likely to receive opposition from the cyber cafe industry. This is so as such proposals are likely to increase the costs of compliance for cyber cafe owners who are already operating on thin margins.

The Government is required to work out a fine balance between the interest of the State and the protection of the fundamental freedoms and rights of citizens. Clearly there are legal challenges in moving ahead. It will be interesting to see how the Government seeks to achieve this balance.

(The writer is a Supreme Court lawyer)

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