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Tangled Web

Government and social networking sites at loggerheads as debate rages over freedom of expression, writes Kumar Anshuman and Nikita Doval in this story published in the Week on Saturday, 21 January 2012.
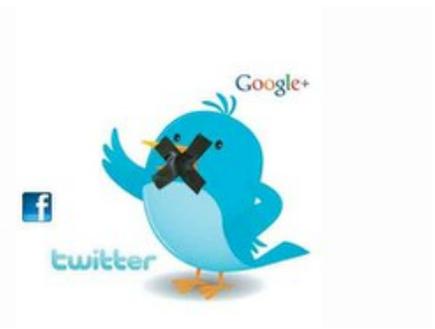
Journalist-turned-activist Vinay Rai has succeeded where Information Technology Minister Kapil Sibal failed—putting the fear of law in the minds of India's bloating community of bloggers, surfers, plain e-wayfarers and inter(net)lopers.

Blogs haven't yet been blocked, but a Delhi High Court bench asked 21 internet firms, including Google, Facebook and YouTube, to look at China and have stringent checks on their content on January 19. It was enough to set the net on fire. Compulsive tweeter Shashi Tharoor, who lost his ministerial berth for over-tweeting, wondered whether phone companies could "be sued if someone sends a defamatory, obscene SMS". Said IT expert Niyam Bhushan: "If you fall on the ground and hurt your nose, you can't sue gravity. At a time when people in autocratic countries are using social media to bring in democracy, a democratic country like India is trying to restrict it!"

When the summons for the case was first sent to the companies in December, a number of respondents who were based outside India failed to answer. Said cyber crime expert Pavan Duggal: "Companies are observing the IT Act more in breach than in observance."

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The debate was originally kick-started by Sibal last December when he summoned the chiefs of social networking sites and showed them offensive material from their sites. However, they pleaded helplessness. Sibal's subsequent press conference drew more flak, and he retreated saying, "The government does not believe in interfering in the freedom of the press, but we have to take care of the sensibilities of our people."

It was then that Rai petitioned a Delhi criminal court, accusing 21 social networking sites of hosting objectionable and inflammatory content which would create enmity and violence among religious communities. In a sealed envelope, he presented 62 items downloaded from different web sites and got three witnesses.

Though the companies were ordered to appear before court on January 13, they challenged the order in the Delhi High Court, saying that curbing the content is technically impossible. "Human interference is not possible, and it is not feasible to check such incidents given that billions of people across the globe are posting articles and other material on their web sites," argued Mukul Rohatgi, former additional solicitor general, representing Google India. "Certain keywords can be blocked or not allowed," said Yogesh Bansal, founder and CEO of ApnaCircle.com. "However, filtering or having 100 per cent control over the content posted is technically not possible."

According to the Information Technology (Intermediaries guidelines) Rules, 2011, if the companies receive complaints about unlawful or objectionable online material, they have 36 hours to remove it, failing which the aggrieved party can approach court or the Cyber Law Appellate Tribunal. "The rules purportedly try to regulate and control the intermediaries like interactive web sites and social media sites, but, in effect, regulate content generated or posted by users," said Prasanth Sugathan, legal counsel, Software Freedom Law Center.

The 'intermediaries', as defined in the Information Technology Act, 2000, include a broad list of players ranging from internet service providers like Airtel and MTNL to blogging platforms like Blogspot and WordPress to auction sites like eBay and search engines like Google to cyber cafes. The new rules mandate the intermediaries to impose a set of rules and regulations on users.

The rules specify the terms of regulations, which include a broad list of unlawful content—information that is grossly harmful, harassing, blasphemous, defamatory, obscene, related to paedophilia, libellous, invasive of privacy, hateful, racially objectionable, disparaging, encourages money laundering or otherwise unlawful in any manner whatever.

"These are very broad terms which have not been defined very well," said Duggal. "The service provider is not even required to come to a judgment. Only after they receive a complaint or are notified by the government can they act." According to Delhi-based cyber law consultant Karnika Seth, it will be helpful if illustrations are given to explain the nature of the crime, as in the Indian Penal Code. "This is missing in the IT Act which leaves terms like 'blasphemy' and 'obscenity' open to wide interpretations."

The companies claim they stick to the rules. "We have a review committee, which decides on complaints in case of any content posted on our sites," said a representative of one of the accused companies. In the current case, the official claimed that they were not shown the content presented before court. "The current accusation is baseless," he said.

There have been several instances in the past when social networking companies acted on

complaints. In 2009, a young Keralite was booked for posting offensive remarks against Shiv Sena leader Bal Thackeray and his party on a social networking site and the material was removed. In May 2010, the controversial 'Everybody Draw Mohammed Day!' in Facebook was blocked in India, following protests from Muslims.

In August last year, the cyber wing of the Punjab Crime Branch charge-sheeted a Sunny Dhiman for allegedly uploading a pornographic video of a female student from Chandigarh on YouTube. Following complaints, the video was removed.

According to Sunil Abraham of the Centre for Internet and Society, the companies are over-compliant. "We did a policy sting operation wherein we sent fraudulent notices to big web sites," he said. "They never bothered to check the veracity of the complaints, but complied with everything we asked for. In one case where we asked for the removal of three comments, they removed all 13. So there is already a private censorship underway. The existing IT Act is draconian and has led to great dilution of privacy."

According to Google Transparency Report, Google received government requests for removing 358 items from its services between January and June last year. Fifty-one per cent of the requests were partially or fully complied with. "In addition, we received a request from a local law enforcement agency to remove 236 communities and profiles from Orkut that were critical of a local politician. We did not comply with it as the content did not violate our community standards or local law," said the report.

Both Duggal and Seth said the government's demand for pre-screening and monitoring content was not feasible. "In the IT Act there is not a single phrase which requires pre-screening or moderation under the law," said Duggal. The government has a right to stop a company from displaying content which it deems perverse to Indian standards. But, as Seth said, "How do you define Indian standards? They are ever changing."

Web sites can put certain filters in place, but even they have limitations. As the counsel for the companies argued in court, the word 'sex' even comes up in documents like ration cards and passports. So blocking them is not feasible.

Though freedom of expression is a fundamental right, it is not absolute. Article 19(2) states that the state may make a law imposing "reasonable restrictions" on the right to freedom of speech on eight grounds mentioned in Clause (2)—security of state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, incitement to an offence and sovereignty and integrity of India.

The evidence presented before court clearly points to violation of some of these rules. "Freedom of expression doesn't mean mutilating or morphing pictures of leaders of different religious beliefs," said Zafaryab Jilani, a lawyer. "This is a crime and the persons responsible should be accused under Section 153(A)."

Said BJP leader Shahnawaz Hussain: "Anything hurting religious sentiments should not be allowed. But the government is trying to stop certain political viewpoints, which is wrong." Senior Congress leader Shakeel Ahmed said freedom of expression should be "in a proper, democratic way without demeaning anyone."

Team Anna member Kumar Vishwas blamed social networking sites for hosting his videos without

consent. "The main part of my speech has been deliberately removed and hence it doesn't present the fact which I said." Though he has complained, the videos have not been removed. However, he said that social networking was the voice of young India and it shouldn't be curbed in any way.

According to columnist and social analyst Syed Mubin Zehra, "There should be a check or verification process to have an internet identity." However, she is against a total ban. "We are not China, and think about the good things which the internet has contributed to society."

The corporate sector is increasingly using social networking sites to build stronger ties with consumers. For brands like Airtel, having a Facebook page meant reaching out to Generation Y, who spend a large amount of time with computers. "With Facebook there is dialogue, it becomes a barometer of customer satisfaction level," said Marzin Shroff, CEO (direct sales) and senior vice-president (marketing), Eureka Forbes, which started using Facebook in 2010 and has more than 1.6 lakh 'likes' on its page.

Cleartrip.com, a major online travel company, heavily uses the social networking platform. "We have always been early adopters of social media tools with a blog, customer forum, Twitter presence and a Facebook page," said Hrush Bhatt, co-founder and director (product & strategy), Cleartrip. "There are multiple cases where extremely irate customers have been vocal on their blogs or Twitter and our team has successfully reached out to them, taken care of their problems and turned them from complainers to evangelists."

Corporate honchos are worried over the ongoing controversy. "Banning social networking sites will hurt business as social media is now becoming a source of business for many," said Mohandas Pai, former director (HR) at Infosys Ltd. The worry is equally troubling a real estate company like Prestige Group. "As we have a very strong NRI customer base, such sites also make it possible for us to address their every need and give them an opportunity to clarify their queries with us," said Uzma Irfan, executive director, corporate communications, Prestige Group. "Hence, ban of any free media such as Facebook shall only create a void in the marketing efforts of companies."

Some experts, however, are of the opinion that a ban or restriction on social networking sites will only have a short-term impact on some companies as many of them will change their online advertising strategy to deal with the situation. "Companies are smart enough to design new innovative advertising strategies," said Sridhar Ramanujam, CEO of brand-comm, a Bangalore-based brand communications consultancy. "Take, for instance, the liquor companies. Though liquor advertisements are banned in different places, such companies are doing more and more of surrogate advertising in the form of mineral water."

The only kind of censorship that can work on the net is self-imposed and, perhaps, a few guidelines in netiquette might not be out of line, said Seth. "Netiquette culture needs to be developed. The common man has to be explained what is legal and illegal. Otherwise there will be rampant cyber crime without people even realising that they are indulging in it."
with Abhinav Singh and Sharmista Chaudhury

Sunil Abraham was quoted in this story.

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In general, we offer financial support for collaborative/invited works only through public calls.

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About Us

The Centre for Internet and Society (CIS) is a non-profit organisation that undertakes interdisciplinary research on internet and digital technologies from policy and academic perspectives. The areas of focus include digital

accessibility for persons with diverse abilities, access to knowledge, intellectual property rights, openness (including open data, free and open source software, open standards, open access, open educational resources, and open video), internet governance, telecommunication reform, digital privacy, and cyber-security. The academic research at CIS seeks to understand the reconfigurations of social and cultural processes and structures as mediated through the internet and digital media technologies.

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