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NET LOSS

Unless the IT Act is amended and the definition of 'offensive' online content clearly set out, attempts to gag the Internet will continue in our country, argues **Abimanyu Nagarajan**



Kapil Sibal

Lately, the Indian government seems to be trying its best to control the Internet. In the past few weeks, dozens of file hosting or sharing sites have been blocked by court order. Earlier this year Union human resource development minister, Kapil Sibal, came down heavily on social networking sites and the Internet and waxed eloquent on the need to weed out "offensive" content there.

In fact, this week Google said that there was a 49 per cent increase in requests for content removal from India in the second half of 2011 compared to the first half. Of the 101 requests to take down 255 items, only five were made by the courts. The rest were by politicians and policemen.

In the now infamous cartoon case, a professor of Calcutta's Jadavpur University was arrested for circulating a cartoon relating to chief minister Mamata Banerjee via email. One of the charges levelled against him was that he was culpable under Section 66A of the Information Technology Act, 2000.

Indeed, experts feel that the IT Act and its vague and loose definition of what constitutes "offensive" content on the Net or on a social networking site can easily be abused by those who wish to control online content.

Everything related to the Internet comes under the purview of the IT Act. As cyber law expert Pavan Duggal says, "The IT Act, 2000, covers all aspects pertaining to the use of computers, computer systems, computer networks, computer resources, communication devices as also data and information in the electronic format."

Social networking sites and what gets posted there also come under the act. Section 2(1)(w) of the act uses the term "intermediary" to mean any legal entity that receives, stores or transmits a message, or provides any service with respect to that message on behalf of another person. By this definition social networking sites are "intermediaries" and there are strict sets of rules and guidelines listed under Section 43(a) of the act that they have to follow if they want to operate in India.

But what infuriates IT experts most is Section 66A of the IT Act, which leaves the term "offensive" utterly vague and fluid. It states: "Any person who sends, by means of a

computer resource or a communication device (a) any information that is grossly offensive or has menacing character; (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device; (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages shall be punishable with imprisonment for a term which may extend to three years and with fine."

In addition, Rule 3 of the IT Intermediaries Guidelines, 2011, lays down that all Internet service providers, telecom companies, email and blogging services must take down

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content that is "harmful, harassing, blasphemous, defamatory...". In fact, this provision allows you to send a takedown notice for any content that may have offended you and the item has to be deleted within 36 hours.

This is draconian, say IT experts. As Prashant Mali, a cyber law expert and president of Cyber Law Consulting, puts it, "The problem is that the offences listed under Section 66A are non-bailable, cognisable offenses. Technically speaking, since nothing is specific, you can always be arrested."

Adds advocate Apar Gupta, a partner at law firm Advani and Company, "Section 66A is vague and stringent at the same time."

The extent to which these provisions in the IT Act can be abused was recently demonstrated by the Bangalore-based Centre for Internet Society (CIS). Sunil Abraham, executive director of CIS, talks about how the group flagged content as being offensive on a variety of sites, even though they weren't so.

"We sent takedown notices to e-commerce, content hosting, and news media sites," recalls Abraham. "And in most cases, we found the intermediaries were very risk averse. For example, there was one site that was talking about game theory — a mathematics model on decision making. As part of the article, they had linked out to a few gambling sites to support their research. We sent notices saying that the site promoted gambling and was therefore offensive. They didn't just remove the links, they took the whole site down."

Mahesh Murthy, CEO of Pinstorm, a digital advertising firm, points out that this means individuals are being allowed to do what should ideally be done by a court of law. "People who are not part of the judiciary, who are not elected officials, are taking decisions on censorship."

Gupta reveals that the sites are not even required to inform a user that their content is being taken down. "The content vanishes into a black hole. All they have to do is remove the flagged content within 36 hours of it being reported," he says.

IT experts have been crying themselves hoarse demanding that the government amends the IT Act and clearly sets out definitions for what constitutes "offensive" content. As Duggal says, "It will do immense service to the nation if the IT Act, 2000, is amended so as to provide more definitions, illustrations and parameters of what constitutes offensive content. Since the act is silent on what constitutes offensive material, the scope for abuse of Section 66A remains wide open."

So will the government heed the demand of cyber law professionals and other experts and amend the IT Act? That remains to be seen. But unless the government changes its posture vis-à-vis the Internet, and shifts from its position that it's something that needs to be controlled, few believe that an amendment in this regard will be forthcoming any time soon.

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