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Private sector censors

If business decides what's 'good' and 'bad' speech, it can lead to multiple interpretations and arbitrary decisions

Here, There, Everywhere | Salil Tripathi



In Milan Kundera's 1967 Czech novel, *Žert* (*The Joke*), Ludvik Jahn sends a postcard to an intense classmate who takes herself too seriously. In the card, he makes sarcastic comments against the Communist Party. Unsurprisingly, others don't see the joke. He gets expelled from the party, conscripted and has to work in mines.

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While *The Joke* was a work of fiction, in the real Soviet era as punishment for such actions, many people lost jobs, sometimes their homes; some went to jail, often betrayed by those they trusted. In Czechoslovakia (as the country was then known), the state ran the postal service and those who read the postcard were party members. In India, the private sector provides Internet access and others don't have the legal right to see what's being transmitted, unless they are intended recipients, or if the material is broadcast publicly. The state now wants the private sector to police and censor the Internet.



Under the draconian Information Technology (Intermediaries Guidelines) Rules, 2011, any intermediary (a search engine, a website, a domain name registry, a service provider, or a cyber café) must take down the "offending" material from its website within 36 hours.

The intermediary need not inform the person who posted the material, nor would the creator get the right to respond. As Apar Gupta points out on the Indian Law and Technology Blog, in one recent case, based on these rules, an injunction has been granted.

These rules go significantly beyond the existing restraints on speech. The Constitution limits speech and sections of the criminal code impose further restrictions. To that, add the IT rules' vaguely defined terms of what can't be said—content which is "grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libelous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling or otherwise unlawful in any manner whatever, harms minors in any way, or infringes any patent, trademark, copyright, or other proprietary right". Who decides that? The intermediaries.

These rules make the private sector act like the state. Nobody elected business to play such a role; it does not have the expertise, capacity, legal training, or authority to act as the state. Censorship is bad; whether in state or private hands. If business decides what's "good" and "bad" speech, it can lead to multiple interpretations and arbitrary decisions, without recourse to



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appeal. In a country where those who feel offended have often threatened violence, businesses will understandably take the cautious approach and not allow anyone to say anything that's remotely controversial, even if it is an opinion about a film.

Decisions will be made on opaque criteria. Apple and Amazon have arbitrarily stopped some products from being sold on their electronic stores, citing "community standards". Amazon stopped providing server space to WikiLeaks, even though no government had asked it to do so. Credit card companies stopped processing donations going to WikiLeaks, without any legal order. Even Google, which has admirably stood up to China's bullying, has had to take down content when governments have required that it does so through proper legal channels. India's record is poor: of the 358 complaints India lodged with Google, 255 were about content that was controversial or political, but not illegal.

To demonstrate the reach of the rules, the Centre for Internet and Society in Bangalore sent random notices to seven companies, asking them to take down content. Of them, six complied beyond what they were called upon to do—instead of the three pages that the centre asked for, one company blocked an entire website. A few legally worded letters were enough to get compliance from companies. The centre's executive director, Sunil Abraham, told me recently: "Companies which have no interest in free speech are now taking these decisions. They have the power to do so and they are using it without any sense of responsibility."

Aseem Trivedi knows this well. The cartoonist who ran a website called *cartoonistsagainstcorruption.com*, found that his site had disappeared after a complaint from an individual that the cartoons violated laws. Since then he has been campaigning for freedom on the Internet. Everyone's freedom is at stake—whether you want to see cartoons of Sonia Gandhi, Narendra Modi, Ramdev, Kisan Hazare, Binayak Sen, Arundhati Roy, Sachin Tendulkar, Poonam Pandey and even Mamata Banerjee. And yet look at what happened to Ambikesh Mahapatra, the professor who sent a cartoon mocking Banerjee to some friends via the Internet. He was arrested and later roughed up. These rules chill speech.

Last year, Kapil Sibal, minister for information technology, asked companies to screen content manually and censor the Web. The demand was audacious. It showed lack of understanding of how the Internet works and revealed fundamental ignorance of the state's role: it has to protect the rights of the one who wishes to express and not the one who claims offence.

In Parliament, P. Rajeev, member of Parliament (Rajya Sabha), wants to annul those rules. Everyone should support him.

Salil Tripathi is a writer based in London. Your comments are welcome at salil@livemint.com

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