

INDIA'S JUGGERNAUT OF CENSORSHIP

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'There has been an increased use of emergency powers on questionable grounds' | Photo Credit: Getty Images/iStockphoto

The Ministry of Information and Broadcasting has [blocked over 50 tweets on Twitter](#) that carried a link to the [BBC documentary, *India: The Modi Question*](#). In an order on January 20, 2023, the government used emergency powers under the Information Technology Rules, 2021 and Section 69A of the Information Technology Act, 2000 to direct Twitter and YouTube to disable access to the documentary within India and prevent its re-upload. Limited information about the blockage is available coming primarily from statements made by officials and reporting by Twitter to the Lumen Database that tracks takedown requests. There are concerns over natural justice, the constitutionality of the direction, and how the IT Rules that are in a perpetual state of proposed amendment.

Natural justice is a fundamental principle in public law when decisions affect fundamental rights such as the freedom of speech. The Supreme Court of India, in the case of Cricket Association of Bengal, recognised that, "[t]he right to receive and impart information is implicit in free speech".

Therefore, any restriction must ordinarily issue a show cause notice, provide the opportunity of defence to the author, and record reasons in an order that is made publicly. Providing reasons allows for the author or publisher, as well as the recipient of the information, to seek judicial remedies and act as a check for constitutionally permitted censorship. So, was such a procedure followed for the 45 people whose tweets were blocked? Were they provided a chance for a hearing, or a copy of the blocking order? Has it been made public? No.

Such practice is contrary to the directions of the Supreme Court in the case of *Shreya Singhal vs Union of India*. In the case it upheld that blocking powers under Section 69A subject to "reasons have to be recorded in writing in such blocking order so that they may be assailed in a writ petition". However, blocking orders are marked as "secret" or "confidential", then transmitted directly to service providers, making it difficult for the authors an opportunity of defence and the general public to challenge them.

This is why Twitter has approached the High Court of Karnataka. This is also why movie critic Tanul Thakur, whose satirical website was blocked, approached the High Court of Delhi and was able to obtain a copy of the blocking order. Instead, press releases are selectively issued

instead of disclosing the text of orders. This type of “transparency when convenient” becomes a form of opacity. This writer’s colleague, Prateek Waghre, looked at eight press releases over a period and discovered that the tally within them is far lower than the one provided for by the Union Minister for Information and Broadcasting in Parliament in July 2022. The disclosures when made have been related to populist issues such as blocking Pakistani content related to the armed forces, or on Jammu and Kashmir. Notably, there has been no official press release for the online blocking of the BBC documentary.

The blocking has been made under Rule 16(3) of the IT Rules and Section 69(A) of the IT Act, 2000 that allow for “emergency blocking”. However, the term “emergency” itself is not legislatively defined, but following the dictionary meaning would mean “a dangerous situation requiring immediate action”. It permits an expedited process that weakens the already minimal checks by bypassing a committee and also eliminating the opportunity to be heard. It is important to note that these rules have been challenged in courts. In August 2021, the Bombay High Court, in a petition by The Leaflet and Nikhil Waghle, suspended Rules 9(1) and 9(3) that establish a code of ethics for online news platforms and a three-tier grievance redress mechanism headed by the central government. In its interim order it counselled, “it is healthy to invite criticism of all those who are in public service for the nation to have structured growth”.

A month later, on September 17, 2021, the Madras High Court in a petition by musician and author T.M. Krishna noted, “there is substantial basis to the petitioners’ assertion that Article 19(1)(a) of the Constitution may be infringed in how the Rules may be coercively applied”. The central government’s response to the more than 20 challenges filed in High Courts was to seek their transfer to the Supreme Court. On May 9, 2022, the top court issued notice, even stayed existing proceedings, but refused to interfere with these interim orders. It means that the directions of the High Courts still hold the force of law. Given this, we would imagine officials to be prudent and avoid undermining their letter and spirit.

However, we have witnessed an increased use of emergency powers, as seen in the eight press releases referred to earlier on questionable grounds. For instance, the BBC documentary has been described by public authorities as “propaganda” reflecting “a colonial mindset”. Even on accepting such an assertion, it cannot be understood how it qualifies as an emergency.

The IT Rules first notified on April 11, 2011 by the Ministry of Electronics and IT (MeitY) have undergone a radical change. This can be attributed to a centralisation of executive power rather than a rapid metamorphosis of the subject matter for regulation. On February 25, 2021, the rules were amended drastically to increase government control over online platforms and news publishers. Other changes included the creation of grievance officers for social media companies and traceability requirements to increase censorship and break privacy-protecting technologies such as encryption. It also required news publishers to follow a vague moral code of self-censorship that permitted grievances to be escalated to the government, leading to stay orders by High Courts.

On October 28, 2022, rather than address such constitutional concerns, another set of amendments created a government censorship body sitting in appeal of all content moderated by social media companies. This year started with more proposed changes. On January 2, 2023, MeitY wanted to create a self-regulatory system for online gaming and gambling companies, which is illegal on several grounds, including federalism, given that legislation on it is a State subject. Despite reasoned criticism, MeitY pushed ahead. A new provision was proposed on January 17, 2023, which was the last date of this public consultation and modelled as an extension. Another week was provided to respond to a draft that gave the Press Information Bureau a general mandate and any central government ministry as per their allocated area of business, the power to fact-check and take down any online content without

defining the term “fake”. This led to swift condemnation by journalist associations and editorial positions were taken against it by most national newspapers. Only three days later the BBC’s documentary was blocked. Here, events bear witness to the inexorable expansion of IT Rules into the ‘everything law’.

Also read | [13 Jamia students detained by police ahead of planned BBC documentary screening](#)

Today it clothes violations of fundamental rights by creating the pretence of a procedure which permits unlimited censorship powers that are often left to an unbounded imagination and capriciousness. On Republic day, it leaves us to ask a wider question: where do we place free debate and expression in a digital and democratic India?

Apar Gupta is an advocate and Executive Director of the Internet Freedom Foundation

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