

TWITTER'S PETITION ON SECTION 69A OF THE IT ACT

Relevant for: Science & Technology | Topic: IT, Internet and Communications

The microblogging platform states that it respects user expression while also taking into consideration applicable local laws | Photo Credit: Getty Images

The story so far: On July 5, microblogging platform Twitter moved the Karnataka High Court seeking to set aside multiple blocking orders of the Central government as well as to alter their directions to identify specific violative content than imposing a blanket ban on individual accounts. According to Twitter, the blocking orders were “procedurally and substantially” non-compliant with Section 69A of the Information Technology Act (IT Act).

The U.S.-headquartered tech company had been speaking to the Ministry of Electronics & Information Technology since May about a reconsideration of some of the blocking orders. However, in June the Ministry gave it a last opportunity to comply with the orders, setting out serious consequence for non-compliance. *The Hindu* learnt from a source privy to the development that it was owing to the seriousness of these warnings that Twitter filed the current writ petition challenging several of the blocking orders. Responding to the development, Minister of State for Information and Technology Rajeev Chandrasekhar stated that while all foreign intermediaries have the right to judicial review, they also have the unambiguous obligation to comply with Indian laws.

Section 69A of the IT Act empowers the government to restrict access to any content in the interest of sovereignty and integrity of the country, security of the state, friendly relations with foreign states or for public order. All directions to restrict information or content in circulation must be recorded in writing. Social media intermediaries failing to comply with the regulations are liable to be monetarily penalised along with an imprisonment term which may extend up to seven years. The procedures for executing the provisions of the act are enlisted in the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. It entails that a government-designated officer along with an examination committee assess the content in question within 48 hours of receiving the takedown request. It must enable an opportunity to the author or originator of the content to provide clarifications. The recommendations are then sent to the Secretary of the Dept of Information Technology for approval to forward a request to the social media intermediary for restricting access. Emergency provisions stipulate that the clarification be sought after the content has been blocked for specified reasons, but within 48 hours. They can be revoked after due examination. Internet advocacy groups have been particularly critical of Rule 16 that suggests strict confidentiality be maintained on all requests and actions taken thereof — often attributed to be the cause for lack of transparency. The mentioned legislations are to be read under the purview of Article 19 of the Indian Constitution guaranteeing freedom of speech and expression. However, Clause 2 of the article permits the state to impose ‘reasonable restrictions’ for the same reasons as those for Section 69A.

The microblogging platform states that it respects user expression while also taking into consideration applicable local laws. The disparity in assessment of what constitutes ‘free expression’ and harm to public order among the two entities is the premise of the entire contestation. Twitter restricts access to an allegedly violative content only based on a “valid and properly scoped request” from an authorised entity. However, the curtailment is limited to the jurisdiction that has issued the legal demand. Its policies stipulate that the author of the content must be informed if such a request is received or acted upon.

As per its transparency report for January to June 2021, India accounted for 11% of the overall legal requests received globally by the micro-blogging platform for moderating access to certain content. Moreover, during the period, internationally it received 43,387 legal demands to remove content specifying 1,96,878 accounts — the greatest observed spike since it started writing the transparency reports in 2012. It attributed the spike in accounts withheld to blocking orders issued under the IT Act. Its petition points to two structural problems, firstly, the absence of a case-specific rationale for blocking content and accounts, and secondly, not according the originators of the content the mandatory hearing.

Twitter holds that the government has been merely reproducing the words of Section 69A as reasons for blocking URLs and accounts. The government has allegedly not shown why the restrictions were necessary in the interest of public order or for any other reason. The Supreme Court's ruling in *The Superintendent, Central Prison, Fatehgarh vs Ram Manohar Lohia* (1960) had held restrictions made in public interest must possess reasonable connection to the objective being achieved. They need to be set aside should the co-relation be "far-fetched, hypothetical or too remote", in other words, bearing no proximity to public order.

The concerns are further aggravated when the directions are aimed at blocking individual accounts (in other words, temporary or permanent revocation of an individual's presence on the platform) and not the specific content. Therefore, the contestation now extends to interrogating if the scope of the legislation is restricted to already-existing content or content that could be potentially generated in the future (by the censored individual). One of the prime reasons why the Supreme Court had upheld the constitutionality of Section 69A in *Shreya Singhal vs Union of India* (2012) was its adherence to accord a hearing to the author of the content as well as the intermediary. It is guaranteed under Rule 8 of the procedural norms but Twitter stated that the government has neither provided any notice nor any hearing.

Between February 2, 2021 and February 28 this year, Twitter received directions to block 1,474 accounts and 175 tweets in India. Of these, it is challenging 39 URLs with its latest petition. Several of these URLs had journalistic or political content. Previous judgments of the Supreme Court have suggested the content must be viewed from the standards of a "strong-minded, firm and courageous" person. The assessment must not be from the standpoint of a "weak" and "vacillating" individual who may sense danger in every hostile point of view. It is in this light that Twitter has argued the blocked content does not meet the "threshold" for restricting access. Twitter has also argued that the vast majority of people who consume the content under scrutiny are necessarily literate and can reasonably perceive the full context of the content.

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