

India: Censorship is a myopic world vision

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The authorities in India have to wake up to the reality that censorship is not an acceptable norm in today's world. In what could be considered as one of the most controversial proceedings in the country's legal history, 21 companies are to appear in a trial court in New Delhi on 13 March 2012. Unable to prevent users from posting 'objectionable' contents on their websites, they are required to show cause as to why their web content should not be banned in the country. The companies include Facebook, Google, Yahoo, Microsoft and YouTube. Beyond the fact that the complaint seeks worldwide censorship of information and the curtailment of freedom of expression and opinion as relief, the irony is that the complainant in the private petition, Mr Vinay Rai, is reportedly a journalist.

The petitioner had sought and obtained the Government of India's consent to prosecute under Section 188 of the Code of Criminal Procedure, 1973. In fact, the sanction issued by the Ministry of Communication and Information Technology was filed directly in the metropolitan magistrate's court by the government. The respondent companies panicked and approached the Delhi High Court seeking a stay of the proceedings. Not only has this been unsuccessful so far, it has also allowed the Court to indicate its view on the subject, which does not look promising. During the hearing, the presiding judge noted that, "[y]ou must have a stringent check. Otherwise, like in China, we may pass orders banning all such websites". The Court further stated that companies should "develop a mechanism to keep a check and remove offensive and objectionable material from their web pages".

Coming after an opinion publicly expressed by the Union Minister for Communications Mr. Kapil Sibal, in December 2011, this case gains prominence. On a question concerning censorship of contents on the worldwide web, the minister said that the government would soon 'crackdown' on 'unacceptable' contents. He did not elaborate however, as to what contents would be acceptable, since the acceptability of opinions and its forms of expression are subjective. What is acceptable to one person may be objectionable to another. In many ways, what the court is now expected to decide is 'what is acceptable in India'.

The right to free speech and expression, covered by article 19 of the Indian constitution is central to this issue. The constitutional right comes with riders—self censorship—which the country's courts have thus far held as reasonable.

The Information Technology Act, 2000 prescribes a legal framework for internet content and use in India. The government has conveniently used the law to block internet content from users in many cases, most of which challenge common sense. In one such case for instance, the law was used to remove contents from the social networking site, Orkut, criticizing Mr. Bal Keshav Thackeray. A controversial figure in the country, Mr. Thackeray is infamous for his racial, religious and otherwise extremist views. The government chose to demand that Orkut withdraw the comments posted against Thackeray on the grounds that they could harm national security, integrity and public harmony. Meanwhile, it has so far imposed no restraint on

Thackeray's opinions and public calls, many of which are impeccably executed by his fanatic followers, and incompatible with constitutional rights and guarantees.

The government's double standard is visible further in the communications minister's opinion that content in the internet depicting obscenity and violence must be removed. In that case, many of the country's temple sculptures and paintings must also be removed from public view. Furthermore, how could violence in the internet pose greater damage to the country than that witnessed daily by Indians at the hands of their own law enforcement agencies?

The inane and political nature of such restrictions was further visible when they were used for private profit, as happened in July and December 2011 when Internet Service Providers (ISP) blocked file-sharing sites to prevent copyright violations of movies, one of which was produced by an ISP, Reliance. In December 2011, Google revealed that out of an estimated 358 items the Indian government wanted Google to remove from its worldwide web, 255 were those criticizing the government. Asia has umpteen examples of restrictive laws on freedom of expression and opinion being used to silence dissent and opposition. Indians should take heed.

It is in the midst of all this that the court case has come up. It will not however, be an easy proposition for any court to decide. At the same time, it is also not for the ISPs or the government to decide, since the freedom of expression and opinion—a fundamental right that has an arguably higher place among other basic rights—cannot be restricted at the mercy of any company or government.

The maturity of a democratic state and society is seen in its ability to accommodate criticism and accept an individual's right to form and express various opinions. The imposition of any censorship will not only reduce the space for free speech in India, but will also hinder its development. The free space that existed until now places India apart from most Asian countries, where censorship that suits the government is largely the norm.

To seriously opine that India's security, integrity and dignity is based on who says what in the worldwide web is as obtuse as looking down upon its luminous history. The Asian Human Rights Commission expects that India's vibrant civil society and media would not reduce themselves to be observers in a fight that has the potential to change the country's destiny.