

# Phishing the cyber liberty in India

*Anjuman Ara Begum*

With the unprecedented development of information technology, the Internet gave birth to the modern information economy and has become an essential part of everyday life. Cyberspace has created room and audience for the sharing of information and ideas—thus helping wealth growing and intellectual property—which enhances freedom of speech and expression. Social conditions of speech and expressions of opinion have changed with the development of information technology, particularly in the enabling of widely accessible and anonymous privileged communication. As a result of popularity and importance, information flows attract government surveillance and control, often resulting in restrictions of the right to freedom of speech and expression.

India today has 900 million mobile subscribers, 160 million Internet users and close to 85 million citizens on social media. Internet and social media users are expected to double by 2015. India ranks third in the list of netizen population. This rise of internet users in India has simultaneously led to wide ranging restrictions and surveillance by the government.

Internet rights are a part of human rights. Today, access to high speed internet is instrumental in accessing information worldwide to participate in public life. In his April 2013 report, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression opined that innovations in technology have increased the possibilities for communication and protection of free speech, expression and opinion enabling anonymity, rapid information sharing and promoting cross-cultural dialogue.<sup>1</sup> He further noted that multiple measures taken by states to control this digital freedom are a matter of great concern, as are the inadequate measures for protecting the right to privacy online.

## Legal mechanism for protection of free speech and opinion

The right to freedom of speech and expression is guaranteed under article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 17 of the ICCPR also refers to protection from interference with these rights, both online and offline. The Human Rights Committee has voiced concerns at allegations of state monitoring Internet usage and blocking access to some websites, and has recommended that legislation providing the executive with wide powers of surveillance in respect of electronic communications be reviewed. In this year's report, the Special Rapporteur further concluded that apart from increasing public awareness of threats to privacy, states must 'regulate the commercialization of surveillance technology'.

In India, freedom of speech and expression is enumerated as a fundamental right under article 19.1a of the Indian constitution. Moreover, for any breach of this right, citizens can legitimately claim redress from the authority. Liberally interpreted by the Indian Supreme Court, this right also includes freedom of press, freedom of information, the right to know and the right to travel and many more rights required for a life of 'human dignity'. The judiciary has also incorporated the right to privacy as part of the right to life under article 21 of the Constitution (Govind vs. State of Madhya Pradesh, AIR 1975 SC 1378). It was also held that telephone tapping would infringe article 21 of the Constitution unless it is permitted 'under procedure established by law'. The Court also issued guidelines for the exercise of power of interception of telegrams under section 5(2) of the Indian Telegraph Act, 1885 (People's Union for Civil Liberties vs. Union of India, AIR 1997 SC 568).

The Constitution does, however, allow imposing 'reasonable restrictions' over the enjoyment of the right to freedom of speech and expression. Such restrictions can be imposed in the interest of the sovereignty and integrity of the country, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence as enumerated under article 19 (2) of the Constitution.

### **Internet governance in India**

The use of cyberspace in India is regulated through the Information Technology Act 2000, amended in 2008 and 2011. The Central Monitoring System is the surveillance machinery active to meet the 'need' for better, faster and real time interception, surveillance and monitoring.

Surveillance in India is not monitored by an independent judicial authority, as recommended by the Special Rapporteur. Section 5 (2) of the Telegraph Act 1885, and rule 419 (A) of the Indian Telegraph Rules 1951, allow restriction of communication transmissions over electronic devices for public safety purposes. Meanwhile, section 66A of the Information Technology Act (Amended), 2008 prescribes 'punishment for sending offensive messages through communication service,' which is widely held by lawyers and academics to be unconstitutional. This section criminalizes the 'sending' of an offensive message which may not constitute 'publication' as per the Indian Penal Code. Furthermore, its vague nature will allow for wide discretionary power to abuse, which in fact is already evident in several cases reported recently. It should also be noted that there is no similar clause or law for offline communications; books or posters that are deemed 'offensive' or 'annoying' do not carry the same criminal charge or punishment.

Section 69 and 69 B of the Information Technology Act prescribes the procedure and safeguards for the government to request user data from corporations. According to section 69, authorized officers can issue directions to intercept, monitor or decrypt information to protect the country's sovereignty, integrity, defence or public order, as well as preventing incitement to the commission of any cognizable offence relating to the above, or for the investigation of any offence.

Section 69 B empowers authorized agencies to monitor and collect information for cybersecurity purposes, including 'for identification, analysis and prevention of intrusion and spread of computer contaminants'. Additionally, there are rules under section 69 and 69B that regulate interception under these provisions.

Information can also be requested through the Controller of Certifying Authority under section 28 of the IT Act, which circumvents the stipulated procedure. If the request is not complied with, then the intermediary may be penalized under section 44. In 2011, the government amended the IT Act to include identification of the person before accessing Internet at a public cyber cafe.

As noted above, freedom of speech and expression is constitutionally guaranteed in India. However, this protection ceases when the opinion is expressed through cyberspace. If an opinion is published in a newspaper, then it is covered by article 19 (1) (a) of the Constitution. However, if the same is posted online, it will be covered by the IT Act.

### **Shrinking freedoms in cyberspace**

Several incidents of unreasonable restrictions on freedom of expression via the Internet have been reported recently, all under section 66 of the IT Act. A young girl was arrested in November 2012 for expressing her opinion about the economic blockade after the death of a political leader together with her friend, who 'liked' the statement made over Facebook. In West Bengal, a professor was arrested in April 2012 for sending an email containing a cartoon of the state chief minister. In August 2012, the government blocked more than 300 web pages, including those of news websites, claiming that they

contain 'incendiary' material that may spread panic and violence due to some ethnic violence prevailing in Assam at that time.

Tweeting that the finance minister's son, Karti Chidambaram, had amassed a large amount of wealth, led to the arrest of Pondicherry businessman and India Against Corruption volunteer Ravi Srinivasan in October 2012. Ravi was later released on bail. Also in October, an associate professor of the National Institute for Fashion Technology in Chennai was arrested after a complaint of Internet harassment by a singer.

Restrictions over mobile phone use also came into light. In August 2012, economic migrants to South Asia, especially those hailing from Assam, started heading home after apparently receiving threatening messages over the phone, warning of dire consequences over the mass displacement of Muslims and Bodos after an ethnic clash in Assam. The Indian government restricted mobile phone usage by capping the number of SMS sent over cell phones at five.

There are several modalities used for internet surveillance in India, including communication surveillance, communication data, internet filtering and internet site blocking. According to Google's latest Transparency Report, India generated the second highest number of user information requests, with the number increasing annually. The report notes that between January to June 2012, Google complied with a court order and removed 360 search results linking to pages with adult videos that allegedly violated individual personal privacy.

Corporations were also targeted in India, apparently in an attempt to impose greater control over online communication. In 2011, Yahoo! was slapped with a penalty of 11 lakh INR (18 thousand USD approx) for not complying with requests calling for email information of a person on the grounds of national security. However, this decision was subsequently stayed by the court.

Google informed that between July to December 2011, the number of content removal requests by the government of India increased by 49 percent compared to the previous reporting period. Law enforcement agencies also made requests to Google to remove videos displaying protests against political leaders and to remove 236 communities and profiles from social network site Orkut that were critical of a local politician. The number of content removal requests received increased by 123 per cent compared to the previous reporting period.

In December 2011, the government instructed internet sites like Facebook, YouTube, Twitter and Google to screen and remove offensive content about religious figures and political leaders as soon as they learn about it, which was denied by the companies. The neutrality of service providers operating in India remains grim however; the popular BlackBerry services compromised with the Indian government and gave access to monitor messages sent over its server. The right to privacy is compromised in this process.

In August 2013, Facebook released its first report on requests made by governments around the globe to access user information. Covering the first six months of 2013, ending June 30, Facebook's 'Global Governments Requests Report' reveals the U.S. had made the highest number of requests (over 11,000) about users, with India ranking second, having made 3,245 requests for information.

In recent times, worldwide movements for human rights issues have been made possible through the Internet, including the anti-austerity protests in Greece, Italy and Spain; "Occupy" protests; 'Arab Spring'. Citizens and netizens have benefited tremendously from access to Internet, which has enabled them to promote democratic values through the online formation of associations and communities, and through the exchange of opinions. Human rights defenders used social media to promote and defend human rights worldwide. In India electronic surveillance is not monitored by the judiciary, and several sections of the IT

Act have been proving barriers to the realization of the fundamental rights to freedom of speech and expression. It is high time that India reviews its Internet governance policies, particularly with regard to the Special Rapporteur's recommendation that surveillance must occur under, 'the most exceptional circumstances and exclusively under the supervision of an independent judicial authority', and that 'surveillance techniques and practices that are applied outside the rule of law must be brought under legislative control'.

The freedom of speech and expression are essential to a vibrant democracy and India should strive towards such an ideal.

## **References**

Centre for Internet and Society, [www.cis-india.org](http://www.cis-india.org)

Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, April 17, 2013, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf)

1 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, April 17, 2013.