



Digital Speech in India

This editorial is based on [“Takedown Transparency”](#) which was published in The Indian Express on 07/07/2022. It talks about Digital India, Freedom of Speech and challenges in Information Technology Rules.

For Prelims: Fundamental Rights, Information and Technology, IT Rules 2021, Section 66A and 69A of IT Act

For Mains: Information Technology Rules 2021, Freedom of Speech and Expression, Issues Arising Out of Design & Implementation of Policies, Government Policies & Interventions

As the Government of India celebrates eight years of the [Digital India](#) programme, Twitter has filed a writ petition in the Karnataka High Court against its order to block tweets and handles of users.

Over the last decade there has been a **ten-fold increase in [broadband connectivity](#)** to 600 million broadband subscribers in India.

But, we need to assess **“Is mere connectivity enough to fulfil the democratic promises of the Constitution?”**.

In this context, let’s understand Twitter’s case, IT Rules and related spheres.

What Do We Need to Know About the Issue?

- Twitter has legally challenged the government **against its directions to block tweets and even handles** issued by the Ministry of Electronics and Information Technology under [Section 69A of the Information Technology Act, 2000](#).
- There are issues with its own transparency mechanisms in content moderation decisions.
 - However, It has been prompted to go to court to protect the integrity of its platform rather than in arrogant defiance against the laws of India.
- As per parliamentary data, the number of such orders has risen from 471 in 2014 to 9,849 in 2020 representing a 1991% increase.
 - Beyond mere numbers, a comprehensive qualitative assessment of such orders is prevented by official secrecy.
 - The need for disclosure emerges directly from a joint reading of the **Shreya Singhal and Anuradha Bhasin judgments**.
- **Government and Accounts Takedown:**
 - Recent disclosures in the last week of June 2022 revealed that Twitter withheld a number of accounts and tweets in India.
 - Many of these belonged to politicians, journalists, activists and even a global think tank such as Freedom House.

- Similar situations witnessed in February and April 2021, when takedown orders were reportedly issued for content about the [farmers' protests](#) and criticism of the Union government's response to the [second wave of Covid-19](#), respectively.

How does the Government Regulate Digital Speech?

▪ Information Technology Act, 2021:

◦ About:

• Mandates Social Media to Exercise Greater Diligence:

- IT Rules (2021) mandate social media platforms to exercise greater diligence with respect to the content on their platforms.

• Establish a Grievance Officer:

- They are required to establish a grievance redressal mechanism and remove unlawful and unfitting content within stipulated time frames.
- The grievance officer of the platform's redressal mechanism is responsible for receiving and resolving complaints of the users.

◦ Draft Amendments Proposed:

• Grievance Appellate Committee:

- It proposed an additional level of oversight, namely, the '[Grievance Appellate Committee](#)', functioning over and above the intermediary's grievance redressal officer.
- Broadly, in case a user is not satisfied with the resolution provided by the intermediary, she/he can appeal against the decision at the appellate rather than going directly to court.
- However, this did not take away the user's right to appeal in any other court.

▪ Section 66A of IT Act 2000:

- [Section 66A](#) empowered police to make arrests over what policemen, in terms of their subjective discretion, could construe as "**offensive**" or "**menacing**" or for the purposes of **causing annoyance, inconvenience, etc.**
- It prescribed the punishment for **sending messages through a computer or any other communication device** like a mobile phone or a tablet, and a conviction **could fetch a maximum of three years in jail.**
- The **court struck down Section 66A as unconstitutional** in 2015 . However, it is **still being used in several instances.**

▪ Section 69A of IT Act 2000:

- It confers on the **Central and State governments the power** to issue directions "to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource".
- **The grounds on which these powers may be exercised are:**
 - In the interest of the [sovereignty](#) or integrity of India, defence of India, the security of the state.
 - Friendly relations with foreign states.
 - Public order, or for preventing incitement to the commission of any cognizable offence relating to these.
 - For investigating any offence.
- Section 69A enables the Centre to ask any agency of the government, or any intermediary, to block access to the public of any information generated, transmitted, received or stored or hosted on any computer resource.
 - Any such request for blocking access must be based on reasons given in writing.

What are the Challenges in Government's Regulations?

▪ Information Technology Act:

◦ Made Government the Arbiter to Suppress Speech:

- This would have made the government the arbiter of permissible speech on the internet and incentivised social media platforms to suppress any speech that may not be palatable to the government.
- It will empower the government to censor speech on grounds not stated under

Section 69A of the IT Act, 2000 or [Article 19\(2\)](#) of the Constitution.

- **Obligation on Social Media to Resolve Complaints:**
 - The draft put forth the obligation that all social media intermediaries resolve all complaints within 72 hours of reporting.
 - Intermediaries are known to invest sizable time in thoroughly scrutinising and determining the content and user accounts they are called to censor.
 - The shortened timelines therefore invited fears of a hastier approach to get things done.
- **Section 66A:**
 - **Based on Undefined Actions:**
 - The court observed that the weakness of Section 66A lay in the fact that it had created an offence on the basis of undefined actions: such as causing “inconvenience, danger, obstruction and insult”, which do not fall among the exceptions granted under [Article 19](#) of the Constitution, which guarantees the freedom of speech.
 - **No Procedural Safeguards:**
 - In addition, the court had noted that Section 66A **did not have procedural safeguards** like other sections of the law with similar aims, such as the need to obtain the concurrence of the Centre before action can be taken.
 - Local authorities could proceed autonomously, literally on the whim of their political masters.
 - **Against the Fundamental Rights:**
 - Section 66A was contrary to both Articles 19 (free speech) and [21 \(right to life\)](#) of the Constitution.
 - Right to know is the species of the right to speech and expression provided by the [Article 19\(1\) \(a\)](#) of the constitution of India.

What should be Our Approach Moving Forward?

- Making platforms share more information could prove counterproductive in a country where the citizens still do not have a data privacy law to guard themselves against excesses committed by any party.
 - In this context, there is a need to expedite the passing of the [personal data protection bill, 2019](#).
- After that, if regulation is still deemed to be necessary, then it must be implemented through legislation that is debated in [Parliament](#) instead of relying upon executive rule-making powers under [Section 69A of the IT Act](#).
- **Deliberating with Stakeholders:** There are indeed many problems with the new rules, but the major issue was that these were introduced without much public consultation.
 - The solution to ongoing criticism about these rules is to start afresh with the publication of a white paper.
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Drishti Mains Question

Government's recent takedown orders of accounts and posts on social media flags issues of free speech. Comment.