

CIS Welcomes Standing Committee Report on IT Rules

Centre for Internet and Society | 2013-03-27

Pranesh Prakash

The Centre for Internet and Society welcomes the report by the Standing Committee on Subordinate Legislation, in which it has lambasted the government and has recommended that the government amend the Rules it passed in April 2011 under section 79 of the Information Technology Act.

Click to read the Parliamentary Standing Committee Report on the IT Rules. A modified version was published in CiOL on March 27, 2013.

These rules have been noted by many, including CIS, Software Freedom Law Centre, and Society for Knowledge Commons, and many eminent lawyers, as being unconstitutional. The Standing Committee, noting this, has asked the government to make changes to the Rules to ensure that the fundamental rights to freedom of speech and privacy are safeguarded, and that the principles of natural justice are respected when a person's freedom of speech or privacy are curtailed.

Ambiguous and Over-reaching Language

The Standing Committee has noted the inherent ambiguity of words like "blasphemy", "disparaging", etc., which are used in the Intermediary Guidelines Rules, and has pointed out that unclear language can lead to harassment of people as has happened with Section 66A of the IT Act, and can lead to legitimate speech being removed. Importantly, the Standing Committee recognizes that many categories of speech prohibited by the Intermediary Guidelines Rules are not prohibited by any statute, and hence cannot be prohibited by the government through these Rules. Accordingly, the Standing Committee has asked the government to ensure "no new category of crimes or offences is created" by these Rules.

Government Confused Whether Rules Are Mandatory or Advisory

The Standing Committee further notes that there is a discrepancy in the government's stand that the Intermediary Guidelines Rules are not mandatory, and are only "of advisory nature and self-regulation", and that "it is not mandatory for the Intermediary to disable the information, the rule does not lead to any kind of censorship". The Standing Committee points out the flaw

in this, and notes that the language used in the rules is mandatory language ("shall act" within 36 hours). Thus, it rightly notes that there is a "need for clarity on the aforesaid contradiction". Further, it also notes that there is "there should be safeguards to protect against any abuse", since this is a form of private censorship by intermediaries."

Evidence Needed Against Foreign Websites

The government has told the Standing Committee that "foreign websites repeatedly refused to honour our laws", however, it has not provided any proof for this assertion. The government should make public all evidence that foreign web services are refusing to honour Indian laws, and should encourage a public debate on how we should tackle this problem in light of the global nature of the Internet.

Cyber Cafes Rules Violate Citizens' Privacy

The Standing Committee also pointed out that the Cyber Cafe Rules violated citizens' right to privacy in requiring that "screens of the computers installed other than in partitions and cubicles should face open space of the cyber café". Unfortunately, the Standing Committee did not consider the privacy argument against retention of extensive and intrusive logs. Under the Cyber Cafe Rules, cyber cafes are required to retain (for a minimum of one year) extensive logs, including that of "history of websites accessed using computer resource at cyber café" in such a manner that each website accessed can be linked to a person. The Committee only considered the argument that this would impose financial burdens on small cybercafes, and rejected that argument. CIS wishes the Committee had examined the provision on log maintenance on grounds of privacy as well."

Government's Half-Truths

In one response, the government notes that "rules under Section 79 in particular have undergone scrutiny by High Courts in the country. Based on the Rules, the courts have given reliefs to a number of individuals and organizations in the country. No provision of the Rules notified under Sections 43A and 79 of the IT Act, 2000 have been held *ultra vires*."

What the government says is a half-truth. So far, courts have not struck down any of the IT Rules. But that is because none of the High Court cases in which the vires of the Rules have been challenged has concluded. So it is disingenuous of the government to claim that the Rule have "undergone scrutiny by High Courts". And in those cases where relief has been granted under the Intermediary Guidelines, the cases have been ex-parte or have been cases where the vires of the Rules have not been challenged. The government, if it wants to defend the Rules, should point out to any case in which the vires of the Rules have been upheld. Not a single court till date has declared the Rules to be constitutional when that question was before it.

Lack of Representation of Stakeholders in Policy Formulation

Lastly, the Standing Committee noted that it is not clear whether the Cyber Regulatory Advisory Committee (CRAC), which is responsible for policy guidance on the IT Act, has "members representing the interests of principally affected or having special knowledge of the subject matter as expressly stipulated in Section 88(2) of the IT Act". This is a problem that we at CIS also noted in November 2012, when the CRAC was reconstituted after having been defunct for more than a decade.

CIS hopes that the government finally takes note of the view of legal experts, the Standing Committee on Delegated Legislation, the Parliamentary motion against the Rules, and numerous articles and editorials in the press, and withdraws the Intermediary Guidelines Rules and the Cyber Cafe Rules, and instead replaces them with rules that do not infringe our constitutional rights.

The Centre for Internet and Society is a non-profit research organization that works on policy issues relating to freedom of expression, privacy, accessibility for persons with disabilities, access to knowledge and IPR reform, and openness, and engages in academic research on digital natives and digital humanities. It was among the organizations that submitted evidence to the Standing Committee on Subordinate Legislation on the IT Rules.