Statutory Motion Against Intermediary Guidelines Rules

Centre for Internet and Society | 2012-03-26

Pranesh Prakash

Rajya Sabha MP, Shri P. Rajeev has moved a motion that the much-criticised Intermediary Guidelines Rules be annulled.

Motion to Annul Intermediary Guidelines Rules

A motion to annul the Intermediary Guidelines Rules was moved on March 23, 2012, by Shri P. Rajeeve, CPI(M) MP in the Rajya Sabha from Thrissur, Kerala.

The motion reads:

"That this House resolves that the Information Technology (Intermediaries Guidelines) Rules, 2011 issued under clause (zg) of sub-section (2) of Section 87 read with sub-section (2) of Section 79 of the Information Technology Act, 2000 published in the Gazette of India dated the 13th April, 2011 vide Notification No. G.S.R 314(E) and laid on the Table of the House on the 12th August, 2011, be annuled; and

That this House recommends to Lok Sabha that Lok Sabha do concur on this Motion."

This isn't the first time that Mr. Rajeeve is raising his voice against the Intermediary Guidelines Rules. Indeed, even when the Rules were just in draft stage, he along with the MPs Kumar Deepak Das, Rajeev Chandrashekar, and Mahendra Mohan drew Parliamentarians' attention to the rules. Yet, the government did not heed the MPs' concern, nor the concern of all the civil society organizations that wrote in to them concerned about human rights implications of the new laws. On September 6, 2011, Lok Sabha MP Jayant Choudhary gave notice (under Rule 377 of the Lok Sabha Rules) that the Intermediary Guidelines Rules as well as the Reasonable Security Practices Rules need to be reviewed. Yet, the government has not even addressed those concerns, and indeed has cracked down even harder on online freedom of speech since then.

Fundamental Problems with Intermediary Guidelines Rules

The fundamental problems with the Rules, which deal with objectionable material online:

Shifting blame.

It makes the 'intermediary', including ISPs like BSNL and Airtel responsible for objectionable content that their users have put up.

No chance to defend.

There is no need to inform users before this content is removed. So, even material put up by a political party can be removed based on *anyone's* complaint, without telling that party. This was done against a site called *CartoonsAgainstCorruption.com". This goes against Article 19(1)(a).

Lack of transparency

No information is required to be provided that content has been removed. It's a black-box system, with no one, not even the government, knowing that content has been removed following a request. So even the government does not know how many sites have been removed after these Rules have come into effect.

No differentiation between intermediaries.

A one-size-fits-all system is followed where an e-mail provider is equated with an online newspaper, which is equated with a video upload site, which is equated with a search engine. This is like equating the post-office and a book publisher as being equivalent for, say, defamatory speech. This is violative of Article 14 of the Constitution, which requires that unequals be treated unequally by the law.

No proportionality.

A DNS provider (i.e., the person who gives you your web address) is an intermediary who can be asked to 'disable access' to a website on the basis of a single page, even though the rest of the site has nothing objectionable.

Vague and unconstitutional requirements.

Disparaging speech, as long as it isn't defamatory, is not criminalised in India, and can't be because the Constitution does not allow for it. Content about gambling in print is not unlawful, but now all Internet intermediaries are required to remove any content that promotes gambling.

Allows private censorship.

The Rules do not draw a distinction between arbitrary actions of an intermediary and take-downs subsequent to a request.

Presumption of illegality.

The Rules are based on the presumption that all complaints (and resultant mandatory taking down of the content) are correct, and that the incorrectness of the take-downs can be disputed in court (if they ever discover that it has been removed). This is contrary to the presumption of validity of speech used by Indian courts, and is akin to prior restraint on speech. Courts have held that for content such as defamation, prior restraints cannot be put on speech, and that civil and criminal action can only be taken post-speech.

Government censorship, not 'self-regulation'.

The government says these are industry best-practices in existing terms of service agreements. But the Rules require all intermediaries to include the government-prescribed terms in an agreement, no matter what services they provide. It is one thing for a company to choose the terms of its terms of service agreement, and completely another for the government to dictate those terms of service.

Problems Noted Early

We have noted in the past the problems with the Rules, including when the Rules were still in draft form:

- CIS Para-wise Comments on Intermediary Due Diligence Rules, 2011
- E-Books Are Easier To Ban Than Books
- Invisible Censorship: How the Government Censors Without Being Seen
- 'Chilling' Impact of India's April Internet Rules
- The Quixotic Fight To Clean Up The Web
- Online Pre-censorship is Harmful and Impractical
- Killing the Internet Softly With Its Rules

Other organizations like the Software Freedom Law Centre also sent in scathing comments on the law, noting that they are unconstitutional.

We are very glad that Shri Rajeeve has moved this motion, and we hope that it gets adopted in the Lok Sabha as well, and that the Rules get defeated.