

Government of India Vs Twitter: Sec 69A of IT Act and IT Rules

February 27, 2021

At the heart of the current debate about the showdown between the Government of India and Twitter is the legal structure around the Union government's web content censorship powers under India's Information Technology Act 2000.

In news: Government sent a notice to Twitter for reinstating accounts that were supporting the farmers' protests despite the IT Ministry directive

Placing it in syllabus: Security Dimensions

- What is the tussle about?
- Procedure to ban Websites
- Sec 69 A of IT Act
- IT Rules 2009
- Criticisms of the Section and Rules
- Reforms to make the section useful

Content:

What is the tussle about?

- Twitter accounts of an investigative news magazine, a member of parliament, and an organisation supporting farmer protests in Delhi were among the handles that suddenly became inaccessible for Indian users on Feb 1.
- The takedown was in response to the central government's orders under the Information and Technology Act.
- But soon after, some of the accounts were restored.
- The government sent a notice to Twitter for reinstating

a number of accounts that were supporting the farmers' protests despite the IT Ministry directive to block these and warning it of consequences "of non-compliance of directions issued under section 69A of the Act".

- Twitter again reportedly complied with the government's orders and over 97% of the accounts flagged have been blocked.
- The restoration and blocking of these accounts have raised several critical questions:
 - The lack of transparency from the government in issuing such orders.
 - The ability of big tech to refuse compliance citing international laws.
 - And an intermediary's liability if it fails to comply with the government's orders.

Procedure to ban Websites:

There are two laws which laid down the provision for blocking the Websites

- Information Technology Act, 2000 (Section 69 A)
- Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

Sec 69 A of IT Act

Section 69A of the IT Act allows the government to issue reasoned and written orders to intermediaries or any government agency to block access to any information on cyberspace.

However, such blocking can only be ordered if it meets certain criteria which are laid down in **clause (1) of section 69A**.

The grounds on which such orders can be issued include:

- In the interest of sovereignty and integrity of India.
- Defence of India, the security of the state.

- Friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence.

The section also mandated that the reasons for the blocking must be recorded in writing.

Additionally, the section carries criminal penalties and intermediaries can be punished with an imprisonment for a term which may extend to seven years and are also liable to fine if do not comply with the requests.

IT Rules 2009

- The **detailed procedure for blocking access** to any such information has been laid down in the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009.
- Under the said rules, only ministries and agencies of the Central Government or any of the State or a Union Territory can ask for blocking access to the information.
- Individuals can not directly request for blocking of access to any content.

Procedure in Normal Circumstances

- All the requests received for blocking are examined by a **committee** consisting of the designated officer and representatives from the ministries of Law and Justice, Home Affairs and Information and Broadcasting and the **Indian Computer Emergency Response Team (CERT-In)**.
- Committee should complete the examinations within seven days.
- The committee examines the request and determines whether it is covered under the grounds mentioned in Section 69A and provides recommendations.
- The recommendations are presented to the Secretary, Department of Technology who decides whether the

information should be blocked or not.

Procedure in Emergency Situations

- **Rule 9** lays down the procedure for blocking in case of an emergency in which a decision needs to be taken without any delay.
- the Designated Officer must submit the request with specific recommendations in writing to the Secretary, Department of Information Technology.
- the Secretary, Department of Information Technology may issue an interim order to persons or intermediaries in control of online information without giving them an opportunity of hearing.
- Under the rules, the government is supposed to give the intermediary at least 48 hours to reply before a blocking order is issued, if the government can identify who the intermediary is.
- The Designated Officer then brings the request before the committee within 48 hours of the issue of interim order for its consideration and recommendation.
- On receipt of recommendations of the committee, Secretary of Department of Information Technology, passes the final order to block or allow the online content.

Criticisms of the Section and Rules:

Vague Definitions

- Section 69A of the IT Act **violates the principles of natural justice** because it is vague.
- It **doesn't specify which laws have to be violated** for the government to have the powers to block a website or app.
- So the government can arbitrarily decide what is legal and what is illegal

No procedure for appeal

- Section 69A does not give the aggrieved party, the person who uttered the words that are being censored, **any chance to defend her or himself**.
- It **does not lay out any procedure for appeal**.
- Once the government has decided you are guilty and now your voice is muzzled.

Opacity Of 69A Orders

- Under section 69A of the Information Technology Act, the government can keep all such orders secret, and out of the purview of the **Right to Information (RTI)**.
 - The **lack of transparency** means that users whose accounts have been blocked have little recourse
 - In the absence of the actual text of the orders, it becomes **difficult to probe their legal fitness**
 - All these factors combined can stifle legitimate exercise of freedom of Speech and expression of citizens in electronic media, especially cases of dissent.
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- The first website to be blocked in India was of the Pakistani newspaper Dawn, during the Kargil war.
 - The legal framework for blocking websites evolved only later, and is overly influenced by national security concerns.
 - Critics argue that the national security concerns become a convenient reason for censoring all kinds of speech, especially voices that disagree with the government of the day on politics and policy.
 - Internet blocking got legal cover through the Information Technology Act of 2000, when the Vajpayee government was in power.
 - But it has been misused by various governments for political reasons.

Reforms to make the section useful:

The following measures could be taken to make the law more robust:

- **Well-Defined Laws:** The definitions and circumstances should be specified in the law just like they are done in Section 95 of the Code of Criminal Procedure (CrPC) for Print media.
- **Legal recourse:** Clearly lay out how the aggrieved party could approach a court.
- **Enhancing transparency:** Providing actual text of order to the parties involved and bringing the orders and reasoning behind the orders under the purview of RTI

Mould your thought: India's web censorship regime needs urgent reform. Evaluate the statement in light of recent controversy in respect to Section 69A of IT Act and IT rules 2009.

Approach to the answer:

- Introduction
- Discuss the powers of the government to block online content
- Mention the problems of IT Act and rules
- Suggest measures to improve the situation
- Conclusion