

● INTERNET GOVERNANCE

SECTION 69A HAS TO BE USED CAREFULLY, ONLY IN CASES WHICH FALL FOUL OF THE TEST OF 'SOVEREIGNTY AND INTEGRITY OF INDIA', ETC

Nurturing a new age internet digital ecosystem

INDIA IS ONE of the most important and fastest-growing digital economies, with over 560 million connected internet users. The internet, apart from offering access to information, represents opportunities for India and Indians for economic, cultural and social empowerment.

An archaic and outdated regime governing the internet

The Information Technology Act, 2000 is of a bygone era, ill-equipped to meet the needs of a 21st-century internet economy. Section 69A is one such example, where public access to information online has been blocked on several occasions.

Section 69A has to be seen in context and perspective of the transformative potential India holds to become a truly digital economy; an archaic/outdated legal regime, detached from changing times, is a major hurdle.

While the Constitutional validity of the section was upheld by the Supreme Court stating that it is narrowly drawn with several safeguards, in practice, it is used extensively and in a non-transparent manner. The recent bans on access to three environmental activism websites—Fridays for Future, Let India Breathe and There is No Earth B for their vocal stance against the 2020 Draft Environmental Impact Assessment (EIA) is an apt example.

Seemingly innocuous websites of the United Nations organisations, human rights groups, health forums, feminist groups, etc, have been blocked/banned. Sweeping powers bypassing cursory requirements of notice, the opportunity to be heard and a reasoned order go against the 'due process' safeguard and the checks and balances in the Constitutional scheme.

Section 69A is similar to Article 19(2) of the Constitution of India. Arti-

cle 19(1) of the Constitution is dynamic and expansive, while the restrictions under Article 19(2) are narrow. The same principle should be extended with respect to Section 69A, i.e., only that content which falls foul of meeting the test of "sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above" should be blocked/banned.

Constitutional rights under Article 19(1) namely, the right to freedom of speech, expression, information, and the right to carry on trade and business are sacrosanct. Any action/intervention must follow the Constitutional spirit. This requires an in-built mechanism which flows from the mandate of 'due process.'

The tension between fundamental rights on the one hand and restrictions/limitations on the other must be resolved through 'balancing'. This balancing exercise has been done, keeping in view the changing digital landscape/ecosystem will, in turn, be in sync with the endeavour/goal of becoming a thriving digital economy.

GOPAL JAIN

Senior advocate, Supreme Court of India
Views are personal



Adhering to due process

'Due process' requires a policy governing blocking of online content, which involves effective consultation/collaboration process with stakeholders and experts in matters of technology, economy, and consumer rights.

A just and fair procedure with a full opportunity to an affected person of being heard/represented must be provided before an order is passed, followed by an independent review and appeal mechanism. This will address the situation of triggering extreme measures like blocking/banning.

Graded responses/safeguards

Principle-based safeguards can ensure a calibrated and proportionate approach. All non-blocking options must be exhausted before restricting access to a website, which is a measure of the last resort. Blocked content and the underlying reasons for such blocking must be disclosed to the public, which will ensure transparency and due consideration before the blocking order is passed.

A graded approach must take into account key factors such as fairness and adequate safeguards. This requires striking the right balance between fundamental rights of the parties, third

parties and the general public, and a consideration of whether the relief sought includes measures that safeguard against abuse.

Germany's NetzDG law differentiates between content which is 'manifestly unlawful' giving platforms 24 hours to take down such content, and other less severe content, which they have up to seven days to take down.

Similarly, Section 23 of the UK's Digital Economy Act, 2017 provides for blocking of access, but it is limited to extreme content. Outright bans are reserved only for the most seriously unlawful or harmful material.

The spectre of streaming censorship

Online streaming represents the future of media and entertainment—which has seen most of the growth and innovation in this sector and a predominant means of content distribution in the era of Covid-19 and lockdown.

Content on streaming services enjoys greater creative freedom due to the lack of content-based restrictions or censorship. But, there are now calls for censorship of such online content in the form of litigation, police complaints and restrictions on online streaming content. This could be a worrying next step.

The breakdown of due process in practice via the Section 69A route needs an urgent course correction and must be addressed in a balanced manner for citizens to reap the full benefit of a digital economy.

New age 'Basic Structure'

The bedrock of the Constitution is the basic feature which is protected forever; by analogy, the internet (connectivity, communication and information) has its own unique basic structure, which must be kept intact as an integral part of internet governance.

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