

A case of unchecked power to restrict e-free speech

On June 30, 2023, the Karnataka High Court dismissed Twitter's challenge to the issuance of blocking orders by the Ministry of Electronics and Information Technology (MeitY) in connection with the taking down of Twitter accounts and specific tweets. The High Court admonished Twitter for not complying with the orders and imposed an astounding cost of ₹50 lakh on the United States-based social media company.

The judgment undermines the right to free speech and expression and also paves the way for the state to exercise unchecked power while taking down content without following established procedure. Moreover, it exhibits a new trend to hinder digital rights and the exercise of free speech on the grounds of the dissemination of false speech.

Ignorance of procedural safeguards

Section 69A of the Information Technology Act, 2000, empowers the state to issue blocking orders in cases of emergency on the grounds such as "sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States, public order or for preventing incitement to the commission of any cognizable offence relating to the above". The Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (Blocking Rules) lays down the procedure for any blocking order issued under Section 69A.

This provision's constitutionality was challenged in *Shreya Singhal vs Union of India*, where the Supreme Court of India upheld the validity of Section 69A and the Blocking Rules after observing that sufficient procedural safeguards were embedded, such as provision of recording a reasoned order, and providing notice to the intermediary and the originator whose content was sought to be blocked.

However, the Karnataka High Court has held that observations in *Shreya Singhal* cannot be construed to mean providing notice to the users of the content, and that even if reasons are recorded in writing, they may not be conveyed to the user. This runs contrary to judicial precedent. In the absence of procedural safeguards, the restrictions that are to be imposed on free speech can be implemented without any oversight or



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The Karnataka High Court judgment against Twitter is omnious and subverts the procedural safeguards that must be employed while restricting the freedom of speech

without giving any recourse to the affected entity to challenge them.

This translates into unfettered power being exercised by the state in taking down content, a point which was agitated before the Supreme Court in *Shreya Singhal* and was only laid to rest after the safeguards were emphasised.

Further, while the High Court has acknowledged that blocking orders affect the rights of users, it held that the state could exercise its discretion to hear users and that issuance of notice under Rule 8 was not mandatory. It observed that users of Twitter were not "downtrodden" or did not "suffer from some handicap" that prevented them from accessing the appropriate remedies available to them. Additionally, the High Court held that claims of users whose tweets or accounts were blocked could not be espoused by Twitter and that none of the affected users had approached the High Court.

First, the latter observation is false as the human rights activist and author, Aakar Patel, whose Twitter account had been blocked, had filed an application to intervene in the case. However, his application was refused by the High Court. Second, the view of the High Court that users need to be identified for notice to be given and that Twitter must provide this information is divorced from reality when it comes to application of the Blocking Rules. MeitY routinely cites the confidentiality requirement under Rule 16 of the Blocking Rules to deny blocking orders to originators of content. Obtaining blocking orders becomes a Sisyphean task, even when requested through the Right to Information process, and even if the originator identifies themselves. This is further evidenced by how the blocking orders in this case were provided to the High Court in sealed covers.

Free speech, chilling effect

Reasonable restrictions on the fundamental right to freedom of speech can only be instituted on the basis of eight specifically enumerated grounds under Article 19(2) of the Constitution. The Supreme Court had clarified in *Shreya Singhal* that blocking under Section 69A and the Blocking Rules must conform to those grounds only.

However, the High Court's reproduction of certain portions of blocking orders in its

judgment reveals that one of the reasons was that the content could lead to the spread of "fake news" and "misinformation", which had the potential to disturb "public order" and threaten the "security of [the] State".

Misinformation and fake news are not grounds under which free speech can be restricted under Article 19(2) and Section 69A. The Supreme Court has repeatedly held that for speech to be prejudicial to maintenance of public order, there must be a direct link between the speech and the potential threat to public order. However, the High Court is convinced that these blocking orders are "well-reasoned", even though no nexus can be established with public order and the security of the state.

This reliance on dissemination of false information to obstruct digital rights and free speech has been witnessing a rise over the past few years. Disproportionate Internet shutdown orders, such as the ones currently operating in Manipur, are routinely issued to curb this spread of false speech and misinformation. This trend to restrict fundamental rights with the "fake news" rhetoric is reminiscent of the oft-cited rhetoric of the state invoking national security to justify laws that are excessive and arbitrary.

Moreover, the High Court rejected Twitter's contention that Section 69A only permits the blocking of specific tweets. Wholesale blocking of Twitter accounts amounts to prior restraint on the freedom of speech and expression, i.e., limiting future speech and expression. In *Brij Bhushan And Another vs The State Of Delhi*, the Supreme Court held that pre-censorship on freedom of speech is unconstitutional. Such a digital prior-restraint, that too so disproportionate in nature, has the potential of inducing a chilling effect on the freedom of speech of online platform users.

The Karnataka High Court's judgment subverts the procedural safeguards that must be employed while restricting the freedom of speech, and erodes the principles of natural justice which dictate for the affected party to be allowed to present their case to the best of their abilities. Along with the recently amended IT Rules on fact-checking, the judgment has the dangerous potential of reposing untrammelled power in the State to remove any content that it deems to be unfavourable.

The task of reconstructing India's democratic universe

The season of elections is upon us. The Opposition's search for a winning electoral strategy to challenge the dominance of the Bharatiya Janata Party must contend with the inherent contradictions of a fractured polity that has birthed the disarrayed political parties but which must now come together in a unity of larger purpose. The state of the nation, riven by endless schisms, dehumanising insensitivity to the human condition, and an accentuated assault on constitutional fundamentals presents an exceptional situation meriting an extraordinary response. An objective scrutiny of the state of 'Naya Bharat and Shreshtha Bharat' lays bare as never before, the nation's depressing social and political realities.

The real India

The heart-rending destitution, exploitation and unfreedom of the multitude mirrors the reality of a not-so-shining India, despite a rising economy that has only widened the economic and social disparities in the absence of distributive equities. The agonising reality of a nation in distress is visible in the fate of 35.5% of the country's undernourished and stunted children, in the stony eyes of forsaken widows, mothers grieving for the loss of their children to addiction and hopelessness, unable to bear the grief of their innocent daughters having lost their smile forever to the ravages of lust and violence, and the unbearable grief of a father compelled to see his children starve to death.

The numbing incidents of a Dalit who had his thumb chopped off because his nephew dared to lift a ball while watching a game of cricket, of a husband and a teenager on having to carry the body of a wife and mother, respectively, for want of affordable transport are a damning indictment of a 'rising India'.... The loss of millions of lives on



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The outcomes of the Assembly and Lok Sabha elections will be a test of collective resolve — of the need to refashion a pluralist democracy

account of preventable diseases, crores of elderly citizens robbed of their dignity in the twilight of their lives, innocent love denied fulfilment because of hate and prejudice, cold blooded murders and endless acts of torture in custody, the coercive incarceration of dissenters and dissidents, and the flaunted arrogance of power, present a painful truth of a morally impoverished politics denuded of its essential purpose of brightening 'crumbled lives' and addressing the 'deep caverns of injustice'.

A moving extract from the English poet and essayist Anna Letitia Barbauld's poem, 'To the Poor', is a window into the common burden of injustice and deprivation that points to a deep wound in the soul of the nation. "Child of distress, who meet'st the bitter scorn,.... who feel'st oppression's iron in thy soul, whose bread is anguish, and whose water tears" .

Redemption from the 'purgatory of suffering' in which millions of fellow citizens continue to suffer, demands politics helmed by leadership sensitive to the moral injunctions of a dignitarian order founded in justice and freedom. The challenge for those who seek to lead is to "not just find a fork on the historical road, but help to create it", such as would enable national bonding in shared empathy, transcending all divides. Since leadership does not come to the meek nor to the servile who confuse surrender of conscience for loyalty to a higher purpose, the compelling imperative of our times is leadership that articulates the collective moral conscience of the nation and is sustained by it. And political choices driven by personal loyalties must contend with Thomas Mowbray's powerful censure of those who demand the loyalty of citizens above the dictates of their conscience. "... My life thou shalt command, but not my shame: The one my duty owes; but my fair name, Despite of death, that lives upon my grave,...."

The outcomes of the ensuing State Assembly polls and the Lok Sabha election in 2024 will test our collective resolve to energise the nation's political order and refashion a pluralist democracy around an exalting constitutional imagination. We are indeed collectively charged with a duty to reconstruct our democratic universe around 'the meaning of first things' and to remind ourselves that inaction in the face of wrong leaves the soul divided against itself. Clearly, resistance against the muscular propensities of an emerging leviathan state warrants a passionate participation of citizens, particularly of the intelligentsia, who must remind themselves of the limitations of interpreting the world without changing it. Nor can we forget an abiding truth of history that a pervasive sense of injustice carries within itself the seeds of disruptive retribution and that the progressive advance of human civilisation is embellished by the triumph of right over wrong.

Unfulfilled vision

In a political season pregnant with possibilities, our aspirations for the country are felicitously articulated in the book, *The Line of Mercy*, as a place "where laughter rings, where lush creepers of stories decorate lives, where the caverns of justice run true and deep, where the fire of illumination and wisdom burns warm, where love is not a fatal poison, where redemption and mercy do not hide their wings". Realising this vision requires an act of will, fortitude and judgment. The choice we make at the hustings, deservedly in favour of dignity, justice, inclusion, fraternity, sensitivity to popular perceptions and accountability of power will determine whether or not India's electoral democracy can vindicate its liberal promise.

The views expressed are personal