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Internet Rights Are Human Rights

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DEF DIGITAL EMPOWERMENT foundation

APC ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS

Supported by the European Union under the
Instrument for Democracy and Human Rights (EIDHR)

Internet Rights are Human Rights

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DEF is a not-for-profit organization with an aim to find solutions to bridge the digital divide with Information Communication and Technology.

APC is an international network and non-profit organisation that wants everyone to have access to a free and open internet to improve our lives and create a more just world.

European Union
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INTERNET RIGHTS ARE HUMAN RIGHTS

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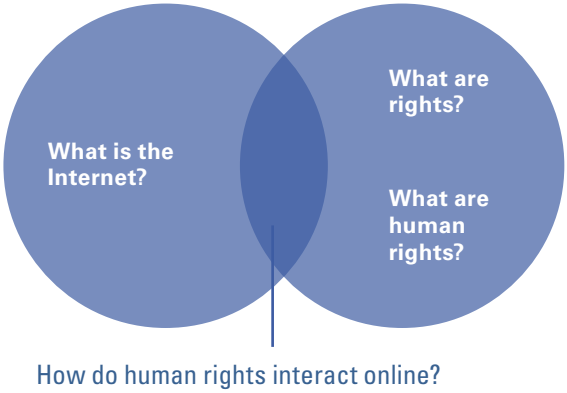
DECONSTRUCTING INTERNET RIGHTS HUMAN RIGHTS (IRHR)

OBJECTIVE:

To make people aware that FoE online is a basic human right

1. Group exercise to set a context and deconstruct IRHR-Venn Diagram



   a. What does the internet mean to you? (Purposes, benefits, negative implications/effects)
   b. What are rights?
   c. What are human rights?
   d. What do you think is the prerequisite for people to access their rights?
   e. Do these rights apply online

2. Discussion about the concept of IRHR and FoE

3. Materials needed
   a. Prints of cases to be discussed
   b. Chart Paper for group activities – contingent on number of learners
   c. A4 sheets for notes and miscellaneous requirements

CONCEPTS TO BE INTRODUCED

- Freedom of Expression – Article 19
- Right to Life and Personal Liberty – Article 21

DECONSTRUCTING FREEDOM OF EXPRESSION (FoE) ONLINE

OBJECTIVE:

- Garner thoughts/views about FoE online
- Explain the concept of FoE

A. Accessing information and schemes, entertainment, education, career or jobs related rights

- Do you think that you or we have the right to express ourselves online?
- What does the word "**freedom**" mean to you?
- What does the word **"expression"** mean to you?
  - What are personal things we communicate or express online about?
  - What are public things we communicate or express online about?

B. International Human Rights Instruments

- International Covenant on Civil and Political Rights
- Universal Declaration on Human Rights
- Resolution 20/8 on Promotion, Protection and Enjoyment of Human Rights on the Internet

C. FoE Rights in India

- **The Constitution of India 1949**
  - Article 19W(1) of The Constitution of India 1949
  - Article 19(2) reasonable restrictions under The Constitution of India 1949
  - Article 21:
  - Article 25: Freedom of Religion
- **Indian Penal Code 1860**
  - Section 124A
  - Section 153
  - Section 295A
  - Section 500
- **Indian Telegraph Act 1885**
  - Section 5
- **Information Technology Act (IT Act)**

EXPLORING FREEDOM OF EXPRESSION

GROUP EXERCISE

Questions to be answered

- What is expression?
- What is Freedom of expression (FoE)
- What is FoE offline?
- What is FoE online?

CONCEPTS TO BE INTRODUCED

- Article 19 (1) of the Constitution of India – in detail
- A/HRC/RES/12/16 – Freedom of Expression according to the UN Human Rights Council
- Resolution 20/8 on Promotion, Protection and Enjoyment of Human Rights on the Internet
- Article 19 (2) of the Constitution of India – in detail

GROUP DISCUSSION

Questions to be answered

- Does the individual have personal responsibility viz Article 19 (1) and A/HRC/RES/12/16 and A/HRC/RES/20/8 ?

  Discuss why/ why not

THEME 1: HUMAN RIGHT, ICTS AND THE INTERNET

SCENARIO 1

REGULATION OF CONTENT BY THE GOVERNMENT OF INDIA ON GOOGLE, FACEBOOK, TWITTER AND OTHER PLATFORMS

Section 69A of the Information Technology Act (IT Act) 2011, gives the Central Government the power to issue orders to intermediaries to block information for public access when it deems it necessary in the interest of national security, sovereignty and integrity; to maintain friendly relations with foreign states or public order, or to prevent "incitement to the commission of any cognizable offence".

The Information Technology (Intermediaries Guidelines) Rules, 2011 places the responsibility on these intermediaries to inform users not to host, display, upload, modify, publish, transmit, update or share any information" that:

- Infringes upon personal privacy of the users
- Harms minors
- Content that is grossly offensive, defamatory, obscene, libelous, hateful, or racially or ethnically objectionable;
- Relates to money laundering
- Infringes upon patent, copyright, trademark or other proprietary rights
- Threatens national security or integrity of India
- Contains viruses, files or codes that has the potential to harm computers and systems

Intermediaries like Facebook, Twitter and Google have argued that since they deal with large amounts of content and data; any move towards monitoring content and data by the intermediaries themselves would be extremely difficult and unsustainable.

Section 79 of the IT Act places certain exemptions through which intermediaries would not be liable for any content that contravenes the provisions in Section 69A and the Intermediary Guidelines. These exemptions provide respite for intermediaries against liability on content on their websites.

However, these exemptions are deemed void in case an intermediary is shown to have any part to play in;

a) Ownership – initiating the transmission (of infringing content),
b) Select the receiver of the transmission and
c) Editorial acts – (selecting or modifying information in the transmission)

The Indian Government sends take down/ removal requests to intermediaries. Google, Facebook and Twitter publish transparency reports that deal with the number of removal requests.
The numbers of content blocking/ removal requests received by the three biggest intermediaries are:

Removal Requests Received (for the period of July – December 2013)	
Intermediary Name	Details
Google	154 requests (540 items)
Facebook	4765 items
Twitter	8 items

ADDITIONAL INFORMATION

- http://indiankanoon.org/doc/1965344/
- http://www.google.com/transparencyreport/removals/government/IN/?hl=en.
- https://transparency.twitter.com/removal-requests/2014/jul-dec
- https://govtrequests.facebook.com/country/India/2013-H2/

QUESTIONS FOR DISCUSSION

1. In your opinion, can the removal of content by intermediaries at the request of the government be rationalised in light of the tenets of human rights as laid down in the Constitution of India and the UDHR & the ICCPR?
2. Given the evolution of the internet in India and the rising number of internet users; will the Indian government be able to continue with the practice of takedown/removal notices?

SCENARIO 2

BLOCKING BASED ON OBSCENITY

Pornography in India has a rocky relationship with the legal framework. Section 292 of the Indian Penal Code (IPC) prohibits the production and distribution of any material that is deemed obscene. Sections 67 and 67A of the Information Technology Act, 2000 (IT Act) extend the provisions of Section 292 of the IPC to electronic forms of production and distribution. The Protection of Children From Sexual Offences Act (2012) heavily penalises the production, distribution and viewership of child pornography.

Further, the Indecent Representation Of Women (Prohibition) Act, 1986 (IRWPA) prohibits the production and distribution of material, where women are depicted in an indecent manner. The IRWPA defines indecent as "depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals". Despite all these laws, there is no law that makes the watching of pornography in private illegal.

However, in 2009, the Department of Telecommunications (DoT) blocked the online pornographic cartoon-strip, Savita Bhabi. In 2013, the DoT sent a circular to internet service providers (ISPs) in India with a list of 39 websites that contained pornographic content, with orders to block the sites listed. The ISPs followed the orders and promptly blocked access to the websites.

In 2014, The Cyber Regulation Advisory Committee invited the Internet and Mobile Association of India (IAMAI) to create a list of porn sites from various sources and turn this list over to the Department of Electronics and Information Technology (DeITy), who would then move forward on blocking them.

Additional information

- http://indiankanoon.org/doc/1704109/
- http://indiankanoon.org/doc/1318767/
- http://www.lawzonline.com/bareacts/information-technology-act/section67A-information-technology-act.htm
- http://wcd.nic.in/childact/childprotection31072012.pdf
- http://wcd.nic.in/irwp.htm
- http://www.cuttingthechai.com/2011/02/4828/savita-bhabhi-blocked-again-in-india-also-typepad-and-mobango/
- http://archives.scroll.in/article/703746/blocking-online-porn-who-should-make-constitutional-decisions-about-freedom-of-speech
- http://www.gizbot.com/tech-biz/indian-government-bans-32-porn-websites-012726.html

QUESTIONS FOR DISCUSSION

1. Given the information on the legality of pornography, do you think the government was right in ordering ISPs to block the websites?
2. Do you believe that the blocking of these sites affected legitimate expression on the internet?
3. Do you think that blocking is an effective deterrent to accessing pornographic content?

SCENARIO 3

GOVERNMENT ORDERS ISPs TO BLOCK 32 WEBSITES

In mid-December 2014, the Government of India, through the Department of Telecommunications (DoT) sent a circular to ISPs ordering the blocking of 32 websites. A detail of some major websites and the traffic generated from India is below:

Major websites block in DoT Circular in December 2014		
Website (Type)	Global Rank on Alexa.com	Traffic Generated from India (Percentage)
Dailymotion.com (Video)	86	10.4%
Vimeo.com (Video)	170	5%
Github.com (Code Sharing)	97	15.7%
Weebly.com (Web Hosting)	263	17.3%

The Government of India later revealed that the websites were blocked because they contained information and recruitment propaganda from the extremist terrorist group Islamic State of Iraq and the Levant (ISIS/ISIL). Additionally, they contained posts from certain people who were arrested by the police in connection to activities of ISIS.

While certain URLs in the circular were to specific webpages, most of the URLs listed were of entire websites. This was seen as an extreme measure undertaken by the government.

Historically, in cases of website blocking, the government does not release the reasons behind the block. However, in this situation, a representative of the ruling political party (BJP) tweeted:

"The websites that have been blocked were based on an advisory by Anti-Terrorism Squad, and were carrying Anti India content from ISIS. The sites that have removed objectionable content and/or cooperated with the on-going investigations, are being unblocked."

On the 31st of December, the Ministry of Communications & Information Technology released a press release stating that they had contacted the administrators of the websites in the table above and the admins has instituted measures to block propaganda information from their websites.

Subject to this move by the website administrators, the government issued notices to unblock the sites.

ADDITIONAL INFORMATION

- https://www.techdirt.com/articles/20141231/02075529554/indian-government-orders-32-web-sites-blocked-including-github-archiveorg-pastebin-dailymotion-vimeo.shtml
- http://thenextweb.com/in/2014/12/31/vimeo-github-30-sites-blocked-india-content-isis/
- https://i.imgur.com/81vaZbP.png - Circular ordering the block
- http://pib.nic.in/newsite/mbErel.aspx?relid=114259

QUESTIONS FOR DISCUSSION

1. Do you think the blanket banning of websites was an effective way of dealing with the infringing content?
2. Is the Government's silence on the reasons for blocking a website acceptable?
3. Was the blocking of websites a proportionate response?

SELECTED CASES FROM MARTUS

BLOCKING WEBSITES

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	India
Key Words:	Website, Webpage, Blocking, Islamic State for Iraq and Syria, Social Media, Religious Intolerance, Information Technology
Date of Event:	July26th 2015
Date Created:	July 31st, 2015

SUMMARY OF THE INCIDENT:

Government has ordered the blocking of at least 40 web pages with inflammatory content relating to a minority community including posts on social media and popular video sharing platforms.

STATING THE PROBLEM:

Internet is the prime source for the terror groups to incite religious intolerance among people. The Government of India has ordered the blocking of 40 websites which share inflammatory content relating to a minority community, including posts on social media and popular video sharing platforms. The Government issued the order under the Information Technology (Procedure and Safeguards for Blocking Access of Information by Public) Rules 2009.
The order came on 29th June 2015 was issued to all internet service providers who have complied with the order. The DoT issued another order on July 8th directing the ISPs to block the social media accounts and posts as well as videos posted on popular video sharing platforms, which were found to be covering content aimed at provoking a particular minority community in the neighbouring country, Myanmar.
The websites purportedly contained material about an alleged ISIS member, who was arrested by NIA, and three other suspected to be associated with other terror groups. The website was being used to recruit Indian youth to join ISIS and for spreading news about purported death of certain persons while fighting Allied Forces in counties like Afghanistan and Iraq

QUESTIONS FOR DISCUSSION:

1. Is using the internet to incite religious intolerance protected by the freedom of expression?
2. What. in your view, is the proper response by the government to this situation?

Source: http://timesofindia.indiatimes.com/tech/tech-news/Government-orders-ISPs-to-block-websites-with-inflammatory-content/articleshow/48223714.cms

PORN BAN IN INDIA

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	India
Key Words:	Website, Webpage, Blocking, Porn, Right to liberty
Date of Event:	Aug 3rd 2015
Date Created:	Aug 12th, 2015

SUMMARY OF THE INCIDENT:

The India government has banned access to 857 porn sites.

STATING THE PROBLEM:

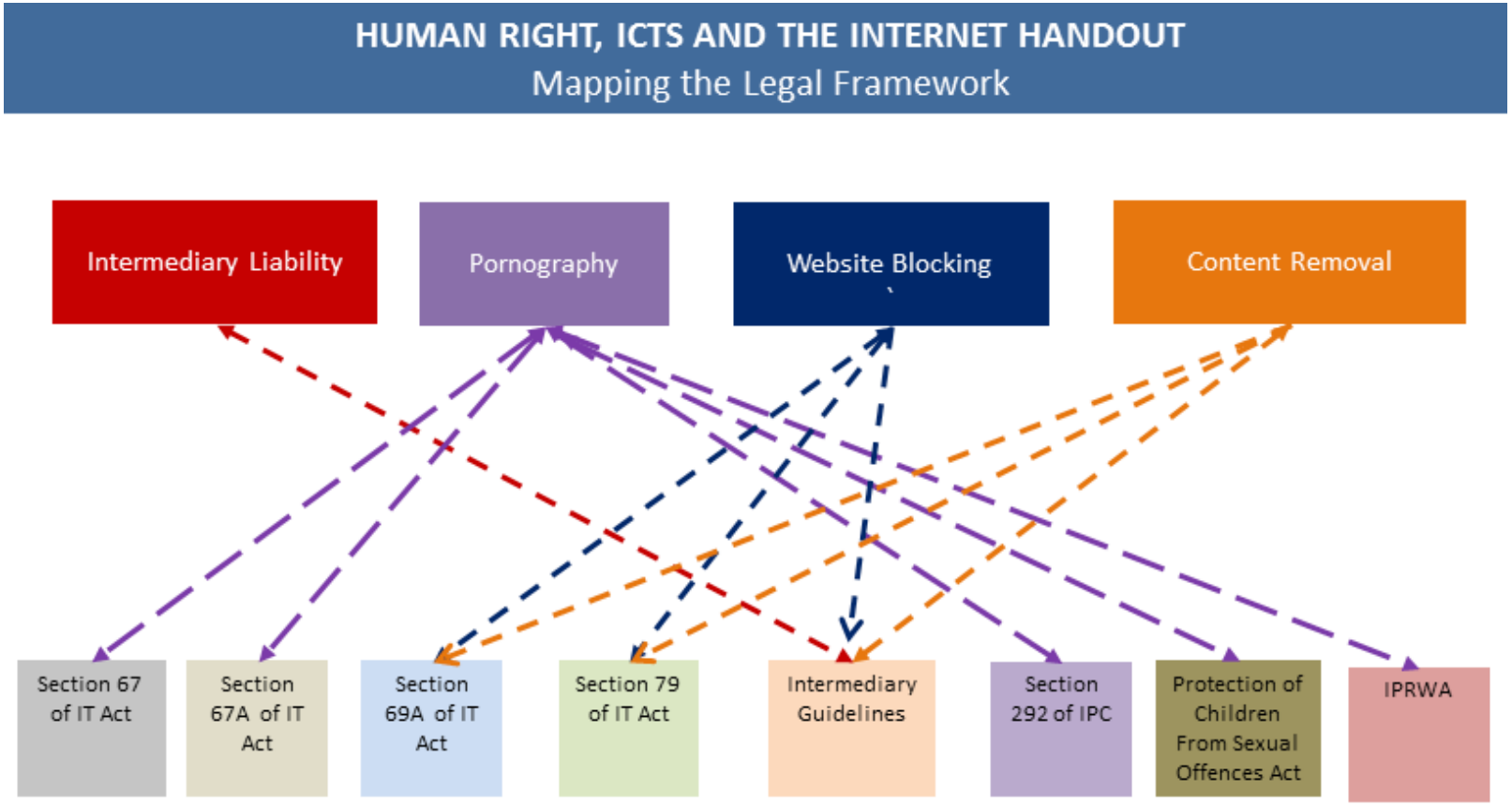
The Department of Electronics and Information Technology has asked the Department of Telecom to notify internet service providers to block access to 857 URLs, under the provision of Section 73(3)(b) of the Information Technology Act. They claim that the content on these websites relate to a breach of morality & decency as given in Article 19(2) of the Constitution of India. The ban takes place after the Supreme Court refused to order a ban on pornographic websites saying such an order would intrude upon fundamental freedoms. However, after criticism from all parts of the country, the Government has partially revoked the order to block these pornographic websites. The government has ordered internet service providers to shut down sites that promote child pornography.

QUESTIONS FOR DISCUSSION:

1. What rights are at stake in this case?
2. What is the proper response by the government to protect personal liberty and prevent the objectifications of women?

Source: http://indiatoday.intoday.in/story/its-official-government-has-banned-these-857-porn-sites/1/455899.html

MAPPING THE LEGAL FRAMEWORK



THEME 2: FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION

SCENARIO 1

ONLINE DEBATES ABOUT THE PK MOVIE

PK, a satirical science fiction comedy film was released in Indian in December, 2014. Promotional material released before the commercial release of the film showed the lead actor posing almost nude with a radio covering his genitals. This poster created a furore online as well as offline. A Writ Petition filed in the Supreme Court of India demanded blocking the release of the film. This petition was dismissed by the Court.
After its release, this debate was fuelled by what some Hindu nationalist organisations being enflamed by content that they felt was against their religious sentiments. A Public Interest Litigation (PIL) was filed in the Delhi High Court sought blocking the exhibition of the film on these grounds. While this PIL was rejected by the Court, the online debate raged.

Spokespersons for various Hindu nationalist organisations and other private individuals raised questions about the financing of the film, BJP spokesperson Subramanian Swamy tweeted "Who financed the PK film? According to my sources it is traceable to Dubai and ISI. DRI must investigate"

ADDITIONAL INFORMATION

- http://lobis.nic.in/rtidhc/RSE/judgement/12-01-2015/RSE07012015CW1122015.pdf
- https://twitter.com/swamy39/status/549500620118319104
- http://www.thehindu.com/news/national/bajrang-dal-members-vandalise-theatres-screening-pk-in-ahmedabad/article6735632.ece
- http://www.thehindu.com/news/national/bajrang-dal-members-vandalise-theatres-screening-pk-in-ahmedabad/article6735632.ece
- http://www.dailymail.co.uk/indiahome/indianews/article-2725459/Let-art-remain-art-SC-judge-refuses-ban-film-based-vulgar-nudity.html

QUESTIONS FOR DISCUSSION

1. Do you think that the poster for PK was offensive enough to deem banning the film?
2. Do you believe that a discussion online can allow for a similar breadth of conversation as those offline?
3. Do you believe that the tweet posted by the BJP leader was ethical? Why/ why not?

SCENARIO 2

RIGHT TO INFORMATION AND OPEN DATA INITIATIVE INDIA

The Indian Government passed the Right to Information Act in 2005 with the aim to provide an avenue for citizens to access information about government departments and agencies. It also provides a mandate to government bodies to be proactive about disclosing certain information. The RTI Act, 2005 has had its fair share of supporters and detractors. Its overall impact still remains a matter for considerable debate.

The National Data Sharing and Accessibility Policy was approved by the Government in early 2012 to encourage and govern the publication of government created and owned datasets, from various organisations, in open data formats and accessible through a single portal.

The Open Government Data Platform of India was launched later that year to collect and publish government data. The Portal has also rich mechanism for citizen engagement. Besides enabling citizens to express their need for specific datasets or APPs, it also allows them to rate the quality of datasets, seek clarification or information from respective data controller.

In addition, to support wider reach and dissemination of datasets, anyone can share the information about any dataset published on the portal with his/her social media pages on a press of a click.

Several innovative and useful apps across platforms and devices ranging from Mobile/Tablet, SMS to Voice-based applications using Open Government Data have been created which help the government serve its citizens better. Therefore, we see the advent of innovation building in India using government data through various types of APPs, mash-ups, info-graphics, visualizations and even services.

ADDITIONAL INFORMATION

- https://data.gov.in/sites/default/files/brochure.pdf
- http://www.opendataresearch.org/sites/default/files/publications/sumandro_oddc_project_report_0.pdf
- http://www.unece.org/fileadmin/DAM/stats/documents/ece/ces/ge.50/2014/Topic_3_India.pdf
- https://data.gov.in

QUESTIONS FOR DISCUSSION

1. Do you believe proactive information and data disclosure mechanisms are a good direction for the government to be taking?
2. What information would you access from such a platform?
3. Do you think this platform has a positive impact on transparency and accountability of government bodies?

SCENARIO 3

TESTING THE RESTRICTIONS TO FREE ONLINE SPEECH IN INDIA

Section 66A of the Information Technology Act (IT Act) 2000 (Amend. 2008), establishes the punishment for sending offensive messages through any communication service. The particulars that this specific provision highlights in subsection (a) are about information that is "grossly offensive" or has a "menacing character". Then it goes on in sub section (b) to include information that causes "annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will". Broadly, it brings under its jurisdiction all kind of digital activity including (but not exhaustive of) status updates, tweets, wall posts, group messages, emails and picture shares across any online platform and using any kind of communication device. When created it was looked at like a game changer in the domain of Internet communication and content regulation about individuals, associations, companies and the Government at large. However, it turns out that it was never used like it was supposed to. Within four years, the first PIL against this law was filed and it was demanded that such a provision be abolished.

Table 1: Incidents of Section 66A of The IT Act, 2000

November 2011: Manoj Oswal - for allegedly having caused 'inconvenience' to relatives of Nationalist Congress Party chief Sharad Pawar for allegations made on his website. Section 500 of (Defamation), Indian Penal Code, 1860 also used.	**April 2012:** University Professor Ambikesh Mahapatra arrested for a political cartoon about West Bengal Chief Minister Mamata Banerjee.
November 2012: Two girls arrested over a comment questioning the total shutdown in the city for a political leader's death. Section 295A, IPC also used.	**March 2015:** Vicky Khan was arrested for sharing a critical post about senior minister Azam Khan of Samajwadi Party

This jurisdiction in the times of WhatsApp did not lose its stand when Sayed Waqar, an MBA student from Bhatkal, Karnataka was arrested based on a complaint by Jayant Tinaikar against an image he received that showed BJP leaders LK Advani, Rajnath Singh, Sushma Swaraj, Baba Ramdev, Maneka Gandhi, Varun Gandhi and others attending the final rites of Narendra Modi. This picture was captioned 'Na Jeet Paye Jhooton Ka Sardar — Ab Ki Baar Antim Sanskar (A false leader will never win, this time it's final rites)'. Even Sayed's roommates were brought in for questioning but were released the same day. The case never saw trial because Sayed was

found not to be the originator. Roughly, around 18 arrests were made during the general election for circulating Anti-Modi digital content. However, the constitutionality of such arrests in terms of equality and fairness is questionable.

Finally in 2015, by means of a doctrine in law, as a result of the PIL in 2012, Section 66A has been shadowed totally. Shocks to the support of freedom of online speech came even after that when the Supreme Court ruled that any speech going against any "historically respectable figure" will be considered "putatively obscene".

ADDITIONAL INFORMATION

- http://bangalore.citizenmatters.in/articles/know-this-law-well-it-can-arrest-you-for-a-facebook-post-or-text-message
- http://timesofindia.indiatimes.com/city/bengaluru/MBA-student-arrested-for-anti-Modi-message/articleshow/35610877.cms
- http://cyberblogindia.in/autobiography-of-section-66a-of-the-it-act2008/
- http://cis-india.org/internet-governance/blog/analysis-of-news-items-and-cases-on-surveillance-and-digital-evidence-in-india.pdf
- http://www.telegraphindia.com/1140617/jsp/nation/story_18520612.jsp#.VXlwEnWlyko

QUESTIONS FOR DISCUSSION

1. In your opinion, what is the correct replacement for this law relating to freedom of online speech; what are the exact words that can demarcate a crime apart from "offensive, ill-will, hatred" etc.?
2. Do you think that there should be a limit on the freedom of speech online; is it that Internet is a free platform for whatever is to be shared?
3. Do you believe Section 66A was barbaric or was it just an exaggeration or misuse of the law?
4. Should there be a replacement to Section 66A in the law?

SCENARIO 4

CYBER BULLYING – THE CASE OF KAVITA KRISHNAN

Sec 66A introduced via Information Technology Act Amendment 2008 talked about Punishment for sending offensive messages through communication service, etc. According to it any person who sends, by means of a computer resource or a communication device

- any information that is grossly offensive or has menacing character;
- any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device,
- any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages (Inserted vide ITAA 2008) shall be punishable with imprisonment for a term which may extend to two to three years and with fine.

It encapsulates any message sent via electronic medium or an attachment in the form of text, images, audio, video and any other electronic record transmitted with the message which majorly deals with cyber bullying.

In April 2013, activist Kavita Krishnan was invited by Rediff to participate in a chat discussing violence against women. Being the Secretary of the India Progressive Women's Association she willingly accepted the offer.

Questions started popping at her screen as soon as the setting for the chat was done at her office. After a little while during the session someone with the handle "Rapist" appeared. Like any other stereotypical men, the first message of the rapist to Krishnan read "Tell women to not wear revealing clothes, then we will not rape them" followed by a gaali. Krishna replied back. After a moment of silence, the Rapit replied "Kavita tell me where I should come and rape you using condom". Krishna was taken aback and hurriedly replied, 'Give me your name and address, and I'll show you'. This didn't stop the Rapist and he continued threating Krishnan because of which she had to leave the chat session in between.

On 24th March 2015, section 66A became a history after Supreme Court's judgement on arrest of Vicky Khan for making a critical post about Azam Khan, a senior minister of Samajwadi Party. It has become hard to convict anyone under our current laws. Vakul Sharma, a New Delhi-based advocate in Supreme Court who specializes in cyber laws says there is no exact definition of cyber bullying under the Indian Penal Code (IPC) or the Information Technology (IT) Act. Earlier, these cases were booked under Section 66A of the IT Act but that was revoked.

ADDITIONAL INFORMATION

- http://www.firstpost.com/living/rape-threats-on-rediff-kavita-krishnan-speaks-out-727395.html
- http://police.pondicherry.gov.in/Information%20Technology%20Act%20 2000%20-%202008%20%28amendment%29.pdf
- https://www.parentcircle.com/cms/clip/view/438/
- http://cyberblogindia.in/autobiography-of-section-66a-of-the-it-act2008/
- http://www.livemint.com/Leisure/IpQCFqjgETbXachoWRxysO/Cyber-bullying-Nip-it-in-the-bud.html

QUESTIONS FOR DISCUSSION

1. What kind of policies and law can Indian Government adopt on their own or from other nations to tackle cyber bullying?
2. According to you what steps can be taken to have a genuine identity of every user in the virtual world?

SELECTED CASES FROM MARTUS

KOVAN ARRESTED IN TAMIL NADU

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	Tamil Nadu
Key Words:	Electronic content, Defamatory, Public peace, Free speech
Date of Event:	November 16th 2015
Date Created:	December 3rd, 2015

SUMMARY OF THE INCIDENT:

54-year-old Kovan, propagandist singer of Ultra-Left arts and literary outfit 'Makkal Kalai Ilakkiya Kazhagam', was arrested in Tiruchirapalli on October 30, 2015 for alleged sedition, uploading "defamatory" electronic content against Chief Minister J Jayalalithaa and "disturbing" public peace.

STATING THE INCIDENT:

Kovan, a 54 year old propagandist singer was arrested for content centring over the liquor vending policy of Tamil Nadu government, allegedly referenced Jayalalitha in a bad light. The allegedly defamatory content in the form of videos were uploaded on some Tamil websites and had also gone viral in messaging mediums like WhatsApp.

QUESTIONS FOR DISCUSSION:

1. Was the government correct to arrest Kovan?
2. What are other possible responses that are in line with freedom of expression?
3. What are the potential consequences of his arrest?

Source: http://www.dnaindia.com/india/report-court-grants-bail-to-kovan-who-is-facing-sedition-charge-2145869

ONLINE INTOLERANCE IN KERALA

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	Kerala
Key Words:	Cyber Crime, Social media, Facebook, Online intolerance
Date of Event:	November 26th 2015
Date Created:	December 8th 2015

SUMMARY OF THE INCIDENT:

Kerala journalist faces threats for writing about madrasa child abuse

STATING THE INCIDENT:

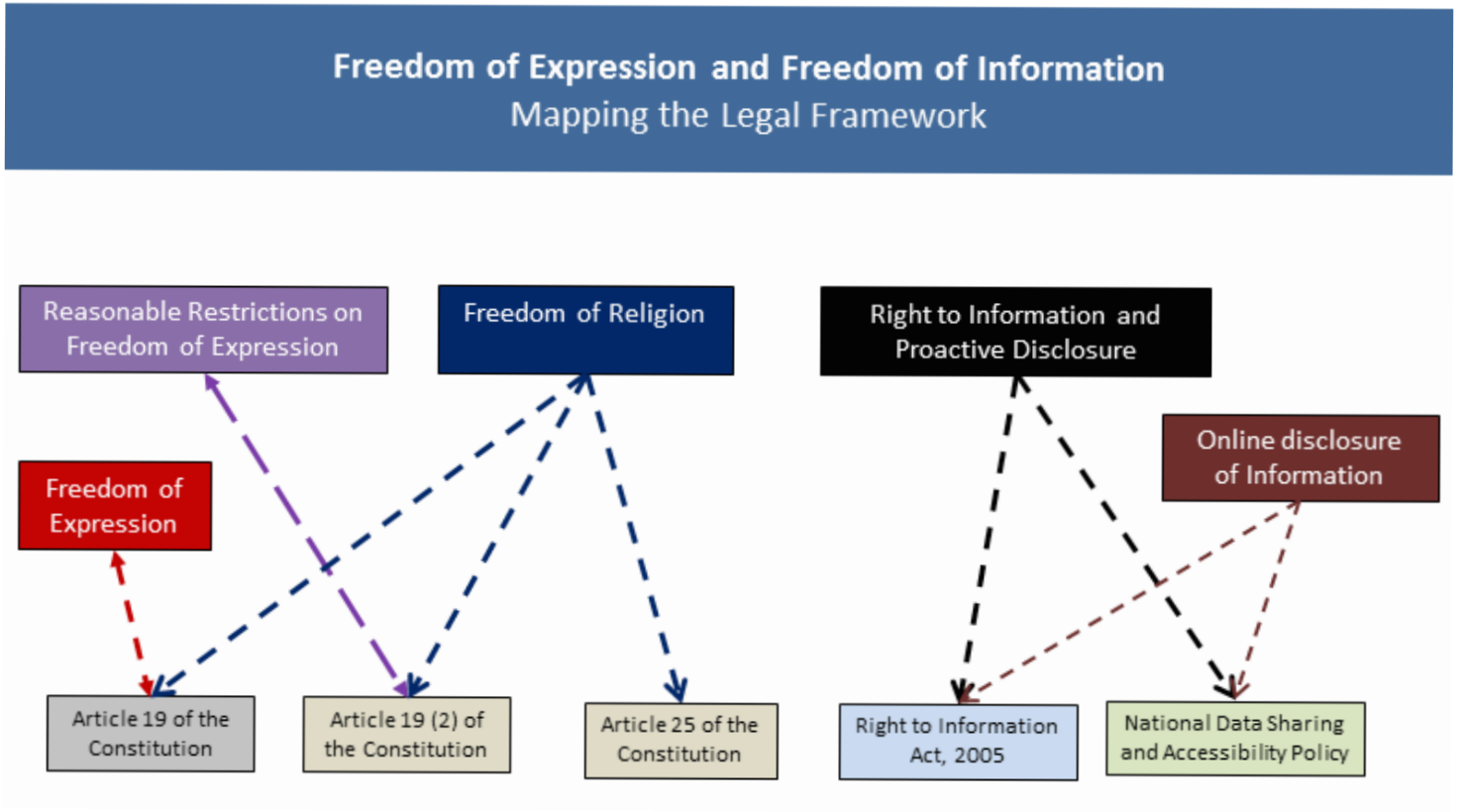
Kozhikode based VP Rajeena is a senior journalist with a prominent Malayalam newspaper. On November 21, she wrote about child abuse at madrasas on her Facebook page. Shortly afterwards, she started receiving threats online. She claimed to have witnessed the alleged immoral conduct of madrasa instructors in her Facebook post. She came under fierce attack on social media and even her profile has been deactivated by Facebook.

QUESTIONS FOR DISCUSSION:

1. Is there a violation of rights in this case? If so, which rights?
2. What questions about gender does this case highlight?

Source: http://zeenews.india.com/news/kerala/online-intolerance-kerala-journo-faces-threats-for-writing-about-madrasa-child-abuse_1826499.html

MAPPING THE LEGAL FRAMEWORK



THEME 3: RIGHT TO PRIVACY

SCENARIO 1

INDIA'S CENTRAL MONITORING SYSTEM

Lawful interception of telephones is permissible under Section 5(2) of the Indian Telegraph Act 1885 which is governed by Rule 419-A of the Indian Telegraph (Amendment) Rules, 2007. Section 69 of the Information Technology (Amendment) Act, 2008, which allows for the interception of all information transmitted through a computer resource.

Draft Rule 419B under Section 5(2) of the Indian Telegraph (Amendment) Act, 1885, allows for the disclosure of "message related information" / Call Data Records (CDR) to Indian authorities. According to draft Rule 419B, directions for the disclosure of Call Data Records can only be issued on a national level through orders by the Secretary to the Government of India in the Ministry of Home Affairs, while on the state level; orders can only be issued by the Secretary to the State Government in charge of the Home Department.

In December 2009, the Home Ministry set up and hosted NATGRID. As a part of this, 21 databases are to feed 11 security agencies for national security.

The Central Monitoring System (CMS), which was largely covered by the media in 2013, was actually approved by the Cabinet Committee on Security (CCS) on 16th June 2011. Since then CMS has been operated by India's Telecom Enforcement Resource and Monitoring (TERM) cells, and has been implemented by the Centre for Development of Telematics (C-DOT).

ADDITIONAL INFORMATION

- https://indialawyers.wordpress.com/tag/indian-telegraph-act-1885/
- http://www.sacw.net/article4793.html
- http://cis-india.org/internet-governance/blog/india-central-monitoring-system-something-to-worry-about

QUESTIONS FOR DISCUSSION

1. Do you think there is a need for an authority like CMS to prevent cyber-crimes and protect national security?
2. Does interception of information violates freedom of speech and expression?
3. How can a country prevent cyber-crimes in absence of information?

SCENARIO 2

REAL NAME REGISTRATION AND DATA RETENTION IN CYBER CAFES

In 2011, the Government of India issued the Information Technology (Guidelines for Cyber Café) Rules. These rules govern the establishment and operation of Cyber Cafes in India. Any user that wishes to avail the services of a cyber café must establish his/her identity by presenting either:

1. Identity card issued by any School or College; or
2. Photo Credit Card or debit card issued by a Bank or Post Office; or
3. Passport; or
4. Voter Identity Card; or
5. Permanent Account Number (PAN) card issued by Income-Tax Authority; or
6. Photo Identity Card issued by the employer or any Government Agency; or
7. Driving License issued by the Appropriate Government; or
8. Unique Identification (UID) Number issued by the Unique Identification Authority of India (UIDAI).

A copy of the ID, photo and various details about the user including; log-in time, log-out time, gender and computer terminal identification must be placed in a log register and submitted to the government.

Browsing history of all the computers in the café and details of any proxy serve must be logged and maintained in a secure location for a period of 1 year and must be turned over to the government in case they ask for them.

The availability of such information, which is personal in nature, with the cyber café could have negative implications on the right to privacy and personal security of the user.

ADDITIONAL INFORMATION

- http://deity.gov.in/sites/upload_files/dit/files/GSR315E_10511(1).pdf
- http://trak.in/tags/business/2011/04/26/cyber-cafe-rules-india-guidelines/

QUESTIONS FOR DISCUSSION

1. Are cyber cafés the cheap source of cyber-crimes?
2. Does enforcement of "cyber café laws" prevent cyber-crimes?
3. Does this policy infringe on the rights to privacy?

SELECTED CASES FROM MARTUS

PRIVACY REQUEST FROM THE ESTATE OF LATE A.P.J. ABDUL KALAM

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	Chennai, India
Key Words:	Facebook, APJ Abdul Kalam, Social Media, President
Date of Event:	Aug 5th 2015
Date Created:	Aug 10th, 2015

SUMMARY OF THE INCIDENT:

Dr, APJ Abdul Kalam's office issued a statement saying Srijan Pal Singh, who was associated with Kalam in his academic pursuits should not give or share any statements in the media or social networks in the name of the former President of India against the video shared through Kalam's official account on July 27th 2015

STATING THE PROBLEM:

After the death of former President Dr. APJ Abdul Kalam, a struggle has come between his long-time associate, Srijan Pal Singh, who has co-authored books with him, primarily on handling his official accounts on social networking sites. Kalam's office has issued a statement regarding the operation of the social networks in the name of the former President and Srijan Pal Singh has already been advised to deactivate all Facebook and Twitter accounts in the name of Dr. Kalam or in his memory immediately. The statement has issued because of the video related to Kalam's last hours titled 'Last Eight Hours with Kalam" went viral on social media immediately after it was posted on Kalam's account. Kalam's office says that Singh has the right to share his experience with Kalam, but he has no right to share things through Kalam's official pages in social media networking sites. He added that there is an office to take care of it.

QUESTIONS FOR DISCUSSION:

1. Is there a human rights violation in this case? If so, which rights were violated?
2. Do public officials deserve the same level of privacy protections as regular citizens?

Source: http://timesofindia.indiatimes.com/city/chennai/Kalams-associates-fight-over-his-FB-Twitter-accounts/articleshow/48368571.cms?

ARREST FOR SHARING OBSCENE PHOTOS OF A GIRL CHILD

Language:	English
Author:	Impact Research Team
Organisation:	Digital Empowerment Foundation
Location:	Chennai, India
Key Words:	Cyber Crime, Obscene pictures, child pornography, Whatsapp
Date of Event:	Aug 12th 2015
Date Created:	8th, 2015

SUMMARY OF THE INCIDENT:

A man arrested for posting obscene photos of a girl child in WhatsApp

STATING THE PROBLEM:

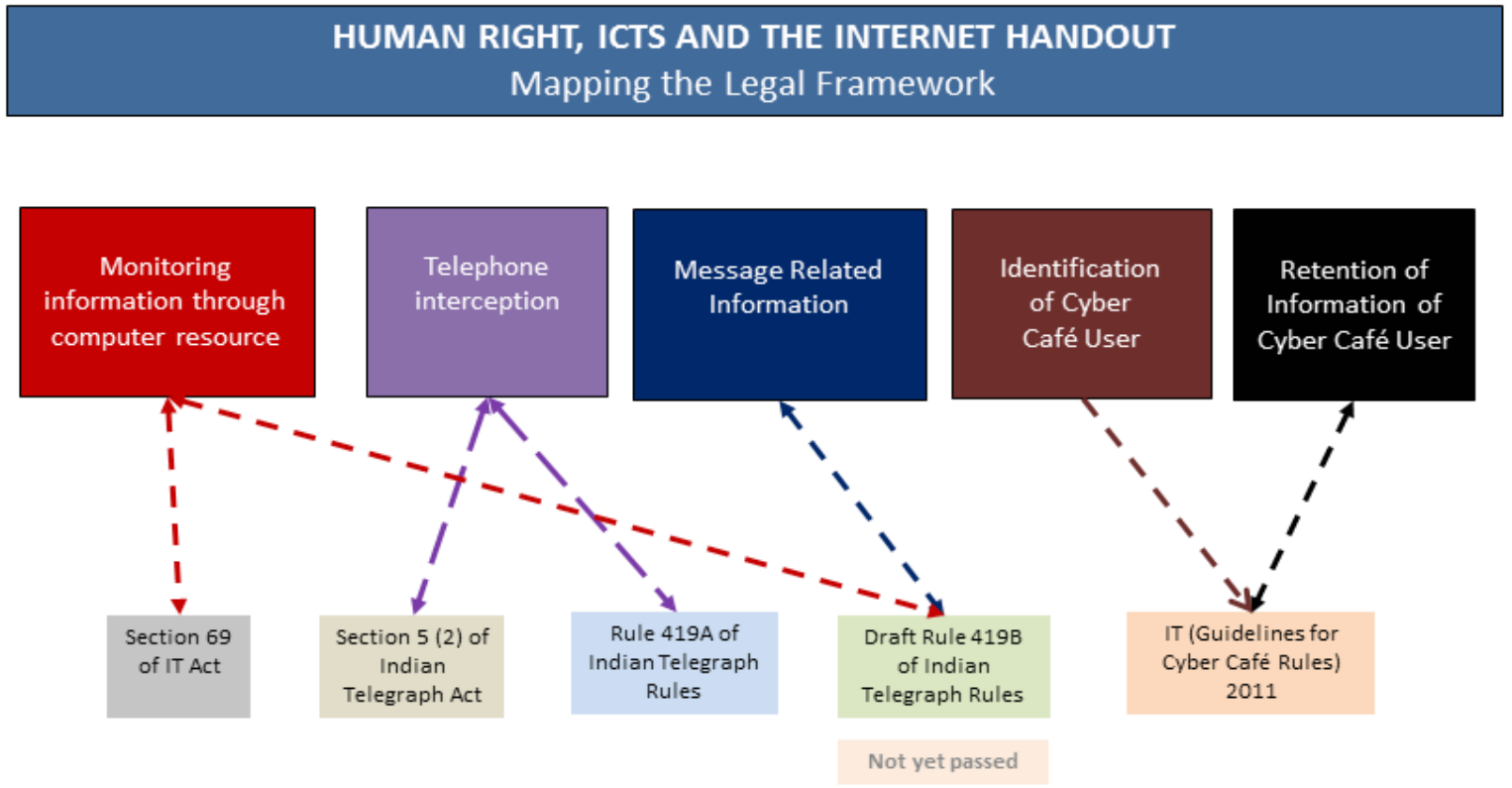
An employee of a private company was booked by the Cyber Crime wing of the police in Chennai for purportedly circulating obscene pictures of a girl child in a WhatsApp group comprising his colleagues. Based on the complaints from two members of the group, including a woman, Cyber Crime Cell investigators of Crime Branch CID lifted the accused and seized the phone used for taking the obscene photographs of the child and circulating it. The accused identified as Vetrivel, who hails from Ariyalur district, allegedly confessed to the crime. A case has been registered against the man under section 67, 67A, 67B of the Information Technology Act and section 14 of the POCSO Act that deals with child sexual offences.

QUESTIONS FOR DISCUSSION:

1. Was arresting Vetrivel and seizing his phone a legitimate and proportional limitation on freedom of expression?
2. Is there a a difference between sharing an obscene or personal photograph with friends and contacts (via WhatsApp)
3. Are there any other human rights violations to consider in this case?

Source: http://www.thenewsminute.com/article/man-held-posting-obscene-pictures-child-chennai-companys-whatsapp-group-33170

MAPPING THE LEGAL FRAMEWORK



THEME 4: FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY

SCENARIO 1

THE PINK CHADDI CAMPAIGN

In late January 2009, a group of 40 members of right-wing Hindu group Sri Ram Sena attacked women and men in a pub in the Indian city of Mangalore. The founder of the group, Pramod Muthalik publicly endorsed the attacks and announced plans that any unmarried couples spotted in public on Valentines Day will be forcibly married by members of his group. a group of women formed the "Consortium of Pub-going, Loose, and Forward Women" (PLFW) on Facebook.

Within a week, the group had 40,000 members. PLFW called on members to participate offline by sending "pink chaddis" to Muthalik.

The Pink Chaddi campaign mobilised support very quickly; with no leader, they organised collectively on Facebook. Muthalik received 2000 pink chaddis from India and abroad. Days before Valentine's Day, Muthalik called off his threat of Valentine's Day violence. He and his supporters were placed in preventive custody by the state government.

Facebook disabled the group's messaging function (because the membership exceeded 5000) and later, revoked access after their page got hacked, they had no other means to access their members.

On reflection, the organisers realised that it was problematic to rely solely on a proprietary platform like Facebook for organising and managing their membership base. So although it was a useful tool to target the local audience, Facebook being very popular at the time, it created new vulnerabilities that the organisers did not have time or experience to foresee.

ADDITIONAL INFORMATION

- http://blogs.wsj.com/indiarealtime/2014/03/24/how-pink-underwear-brought-down-pramod-muthalik/
- https://blogs.commons.georgetown.edu/isdyahoofellow/tag/pink-chaddi-campaign/
- http://timesofindia.indiatimes.com/india/Pink-chaddi-campaign-a-hit-draws-over-34000-members/articleshow/4126529.cms

QUESTIONS FOR DISCUSSION

1. Do you believe that the pink chaddi campaign was a successful use of digital tools to assemble towards a cause online? Yes or No?
2. Do you believe that Facebook is an effective platform for rallying support?
3. Do you think that Facebook was justified to block access to the groups page?

SCENARIO 2

SAVETHEINTERNET.IN – THE BATTLE FOR NET NEUTRALITY IN INDIA

In March, 2015, what has come to be known as the "Battle for the Free Internet" began in India.

Earlier in 2015, Facebook and Airtel launched their zero-rated internet access services; Internet.Org & Airtel Zero. The Telecom Regulatory Authority of India (TRAI) released a consultation paper in March seeking comments on the definition of network neutrality in India. A comedy group, All India Bakchod, released a Youtube video that garnered over 3.8 million views and sparked an online and eventually, offline debate surrounding the concept of net neutrality. TRAI received over 1 million responses to their consultation paper

The Cellular Operators Association of India (COAI) soon afterwards launched a counter campaign called Sabka Internet, Sab ka Vikas. Cellular operators asked consumers to give them a missed call in support of of their demands.

Later in 2015, Internet.Org was rebranded as FreeBasics and Facebook launched a massive online and offline campaign to garner support for their initiative. TRAI received over 12 million emails from various sources.

An analysis of a record 24 lakh comments, as disclosed by TRAI, shows that 18.94 lakh replies are in support of Free Basics, of which 13.5 lakh views are through supportfreebasics.in and without the sender's individual e-mail IDs while further 5.44 lakh comments have come from facebookmail.com.

ADDITIONAL INFORMATION

- http://www.trai.gov.in/WriteReadData/ConsultationPaper/Document/20160109092252737206 5Comments_data_services.pdf
- http://trai.gov.in/WriteReadData/Miscelleneus/Document/201601190319214139629TRAI_letter_to_FB_dated_18_01_2016.pdf
- http://indianexpress.com/article/technology/social/trai-slams-facebook-letter-on-free-basics-campaign-wholly-misplaced/
- http://motherboard.vice.com/read/facebooks-free-internet-program-had-a-rough-week

QUESTIONS FOR DISCUSSION

1. Do you believe that online activism is an effective way to garner support for a cause?
2. Keeping aside personal opinions on the matter, what could Facebook/FreeBasics have done differently to gather more responses?
3. Do you believe a 'missed-call' campaign is an effective tool for activism?

SCENARIO 3

ANONYMOUS #OPINDIA… ENGAGED!

In 2012, the Indian Government blocked various file sharing websites on the basis of a "John Doe" order by the courts in favour of a Chennai based firm, Copyright Labs to prevent copyright infringement of an upcoming movie.

Sites like Dailymotion, Vimeo, Pastebin and various torrent tracker websites were blocked in this proactive move to prevent piracy.

In retaliation, hacktivist group Anonymous targeted the websites of various government agencies, bodies and political parties. The web sites of the Department of Telecom, the IT ministry, the BJP and INC parties and the Supreme Court, among others, were all hit by Distributed Denial of Service (DDoS) attacks lasting over a day using the group's preferred weapon: the low orbit ion cannon (LOIC).

Anonymous India had earlier released a video on YouTube warning the Indian government against the arbitrary blocking of the websites and gave a time of 1 week to reverse the order. Anonymous released an open letter to the Government of India stating that they considered the DDoS attack a means of peaceful protest online and it did not constitute hacking.

ADDITIONAL INFORMATION

- https://docs.google.com/file/d/0Bxi2TzVXuI5ZUI9EclRQZXlRdVdUb3c2S3EwSk1Udw/edit?pli=1
- http://www.bgr.in/news/anonymous-open-letter-to-indian-govt-claims-ddos-attack-on-sites-are-legal/
- http://www.indiancustomers.in/vimeo-dailymotion-pastebin-331.html
- http://www.theregister.co.uk/2012/05/21/india_anonymous_cert_ddos/
- http://www.theregister.co.uk/2012/05/18/anonymous_ddos_india_sites/
- http://arstechnica.com/security/2012/05/indian-supreme-court-orders-pirate-bay-pastebin-blocks-gets-ddosed/
- https://youtu.be/52zwjkSVx2k

QUESTIONS FOR DISCUSSION

1. Do you think that hacktivism is an effective tool for protest?
2. Would you have protested against the blocking of website? If yes, how would you have rallied individuals online against the order?
3. Do you believe that DDoS attacks are a peaceful form of protest?

SELECTED CASES FROM MARTUS

WHATSAPP BLOCKED IN GUJARAT

Language: English
Author: Impact Research Team
Organisation: Digital Empowerment Foundation
Location: Gujarat
Key Words: Internet, Mobile Internet, Whatsapp, Facebook
Date of Event: August 25th, 2015
Date Created: September 8th, 2015

SUMMARY OF THE INCIDENT:

The police have blocked WhatsApp and mobile internet in Gujarat after a state-wide bandh was called out by Patidar Anamat Andolan Samiti leader Hardik Patel.

STATING THE PROBLEM:

A rally was led by 22 year old politician Hardik Patel, the convenor of the Patidar Anamat Andolan Samiti to demand Other Backward Class (OBC) status for members of the Patidar community. The aim of the demand is to equal the competition for enrolment at universities and jobs in government organisations. Police arrested Hardik Patel during the rally where around 1.5 million Patels joining in the protest. Patel sent out messages via WhatsApp just after his arrest, urging citizens to maintain peace.

" I make an appeal to maintain peace and keep calm. I give a call for Gujarat bandh tomorrow(Wednesday). This dicision has been taken by Patidar Anamat Andolan Samiti considering widespread violence in the state"

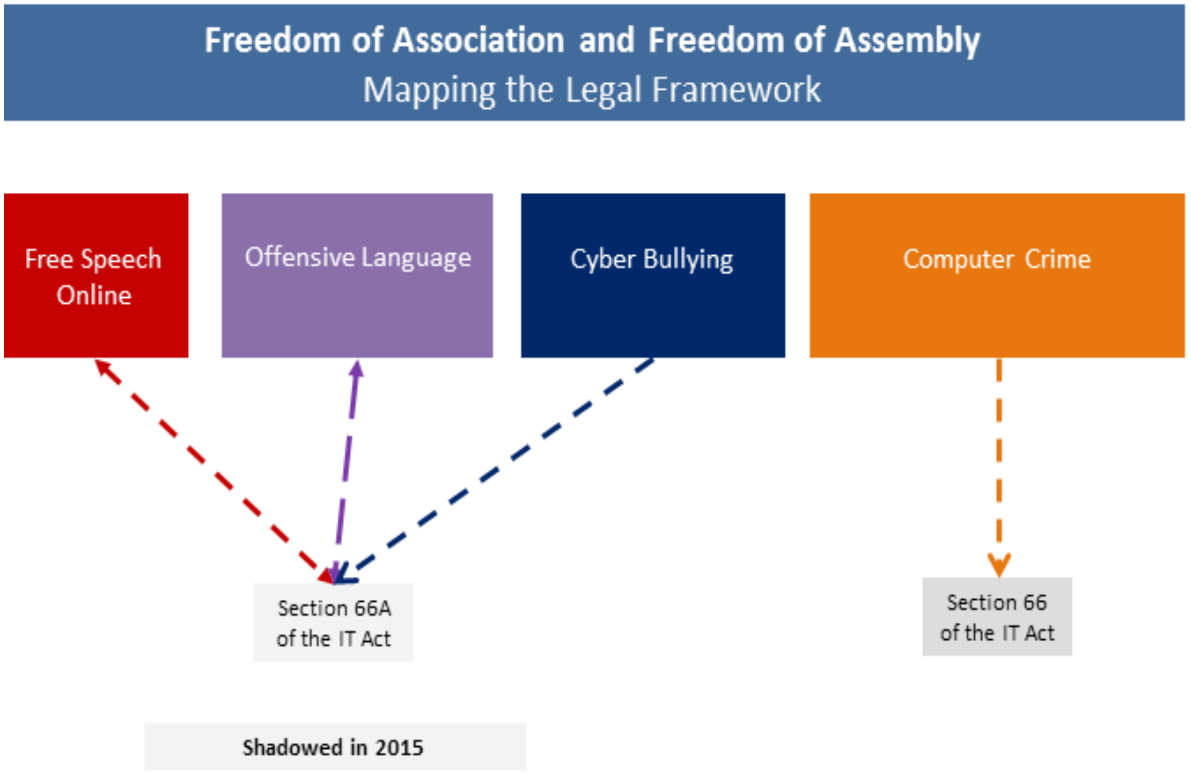
However, his followers ignored his advice and there were reports of large scale violence in some cities of Gujarat. The police suspect that rumours were being spread through the cross platform messaging app, WhatsApp, which led to the state government to block all services including 3G and 4G/LTE to the state of Gujarat.

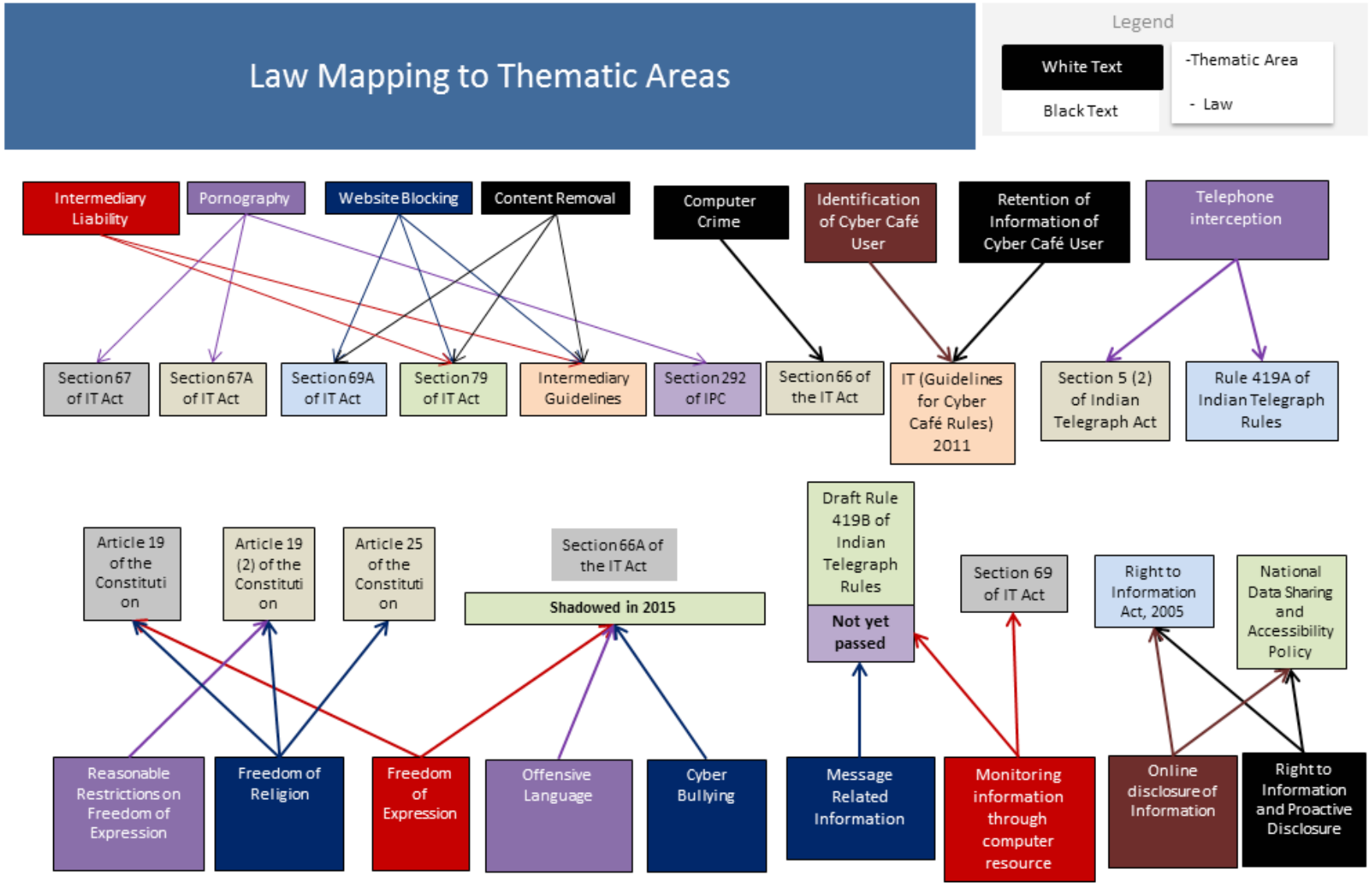
QUESTIONS FOR DISCUSSION:

1. What human rights violations, if any, took place in this scenario?
2. Was arresting Patel a justified/legitimate response?
3. Was blocking WhatsApp and mobile internet a proportionate response to protect national security and public order? Was it an effective measure?

Source: http://www.techworm.net/2015/08/india-blocks-mobile-internet-for-63-million-citizens-amid-protests-in-ahmedabad.html

MAPPING THE LEGAL FRAMEWORK




Law Mapping to Thematic Areas
Legend
White Text
-Thematic Area
Black Text
- Law
Intermediary Liability
Pornography
Website Blocking
Content Removal
Computer Crime
Identification of Cyber Café User
Retention of Information of Cyber Café User
Telephone interception
Section 67 of IT Act
Section 67A of IT Act
Section 69A of IT Act
Section 79 of IT Act
Intermediary Guidelines
Section 292 of IPC
Section 66 of the IT Act
IT (Guidelines for Cyber Café Rules) 2011
Section 5 (2) of Indian Telegraph Act
Rule 419A of Indian Telegraph Rules
Article 19 of the Constituti on
Article 19 (2) of the Constituti on
Article 25 of the Constituti on
Section 66A of the IT Act
Shadowed in 2015
Draft Rule 419B of Indian Telegraph Rules
Not yet passed
Section 69 of IT Act
Right to Information Act, 2005
National Data Sharing and Accessibility Policy
Reasonable Restrictions on Freedom of Expression
Freedom of Religion
Freedom of Expression
Offensive Language
Cyber Bullying
Message Related Information
Monitoring information through computer resource
Online disclosure of Information
Right to Information and Proactive Disclosure

Kumar, R. (2015)

NOTES

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Internet Rights Are Human Rights 42

Supported by the European Union under the Instrument for Democracy and Human Rights (EIDHR)