

Legality of Apps Ban in India

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Abstract

During the Border dispute on the India China border, the Indian government with consultation with The Ministry of Information and Technology had taken an action against the Chinese apps that are illegally transmitting Indian uses of personal data so the Government of India banned 59 Chinese applications. To preserve the Integrity, Security and sovereignty of the country these decisions with regard to banning of apps were taken. Article 19(1) (a) of the Indian Constitution states about the Freedom of Speech and expressions. This gives the right to the public at large to express their opinions on any sociological topic at any public platform. The Ministry of Information technology doesn't disclose any such information which is directly or indirectly related to the ban and which is also beyond the limit of reasoning set in the press release. The apps ban was majorly targeted to save the country's user data of these apps considering the national security as these apps were found in transferring the users' data. Government has power to ban any intermediary if such intermediary is against the Public order, Security of State etc. As per Section 69A a power to Central Government or other authority to issue some direction for blocking of any information via computer resources. The apps ban of these Chinese apps by the government is to protect the national security of the country by stopping these apps from sharing the personal important Information of the Indian user with China so that they can use it. This ban is important as today data is the most important and precious thing. At the time of the India China border issue this even became more important. Also this action of Government will come under the umbrella of public order which is purely justified. Also, India today also lacks a proper law governing and protecting data privacy.

Keywords: Apps Ban, it act, constitution, Article 19(1), Section 69A

INTRODUCTION

During the Border dispute on India China border, Indian government with consultation with The Ministry of Information and Technology had taken an action against the Chinese apps that are illegally transmitting Indian uses personal data so the Government of India banned 59 Chinese application on **2nd September, 2020**. To preserve the Integrity, Security and sovereignty of the country these decision with regard to banning of apps were taken.

A press release declared the banned under the ambit of Information Technology Act as per section 69A. After these ban Government also banned another 47 Chinese apps under the same statute. This ban by the Indian Government is been considered and recognised as the "Digital Strike on China".

This ban is a step towards protection of privacy of the people or just mere strike towards china to show them the power of Indian government towards them, this is been discussed further.

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IS THERE A VIOLATION OF ARTICLE 19(1) OF THE INDIAN CONSTITUTION?

Article 19(1) (a) of the Indian Constitution states about the Freedom of Speech and expressions [1]. This give right to public at large to express their opinions on any sociological topic at any public

platform. Article 19 of UDHR [2] and ICCPR [3] also talks about the freedom of right to speech and expression. Freedom of right to speech and expression is considered a Basic Human rights [4].

The importance of freedom of speech and expression in a democratic nation is explained in some most important judgments such as in Motion Picture Association case it has been held “Free speech is a foundation of democratic society”, which means that in a democratic country every individual should have free view point and chance to express his viewpoint [5]. As per the International laws and fundamental rights, Freedom of speech is considered as fundamental right [6].

Freedom of speech is considered as the multi-faceted right which includes both right to disseminate information and right to express but this also includes the right to receive and right to pass information ideas, as per John Milton’s [7]. Which means that right to receive information and communicate is a part of right to speech and expression?

Permanently banning these Chinese social media apps is a violation of Right to speech and expression of the general public as this will take their freedom to express their thoughts or opinions with their work on these social media and restrict them from communicating, hence there is a violation of a very important fundamental right, which should be protected by state and constitution.

But this article under the Indian Constitution is not guaranteed and hence can be restricted under the umbrella of reasonable restriction stated in the Article 19(2) where the government can impose restriction for protection of Sovereignty, Integrity and public order of the country and hence Government of India has full power in this case to take action against these Chinese apps who are acting against the national security and public order so these restriction can be imposed and this will be absolutely valid.

VIOLATION OF RIGHT TO LIFE BY THIS ACT

In the Indian constitution, right to life and personal liberty is defined under Article 21. Where it states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law* [8].”

In the case of ***Olga Tellis v. Bombay Municipal Corporation***, [9] the 5 judges’ bench held that right to livelihood is derived from the term right to life. This means that no one can live without proper livelihood.

In ***Maneka Gandhi case*** [10] the Apex court observed that for depriving someone’s life and personal liberty, the procedure should be right, just and fair and should not be arbitrary in nature otherwise the objective of right to life under Article 21 of the Indian constitution will defeat. It is comprehended from the above judgment that a human should have a life with human dignity, free from exploitation and practice any profession to support his livelihood.

So the Tik tok Stars or Influencer depending on this app and creating content on a daily basis, because of which they were earning and due to this Chinese apps ban many Indian users and content creators lost their right to livelihood which is a gross violation of Article 21 of the Indian citizens.

INFRINGEMENT OF RIGHT TO PRIVACY OF THE INDIA USERS

The Ministry of Information technology doesn’t disclose any such information which is directly or indirectly related to the ban and which is also beyond the limit of reasoning set in the press release [11]. The apps ban was majorly targeted to save the country’s user data of these apps considering the national security as these apps were found in transferring the users’ data.

As per the Government, their linkage of apps ban towards one country cannot be disclosed to the public at large [12] but it is very evident that the government is protecting the nation from Chinese

apps which are involved in this transition of data and also due to the border issue between China and India at that time. Madras High court banned Tik Tok app in 2019 as it violating the safety as well as privacy of the children and this ban is later in that year been set aside by the apex court of the court by the appeal by the apps [13]. Again in July 2019 many people including the parliamentarian raised question on the protection on users data privacy and illegal transmission of their data with China [14].

Similarly, there was another Chinese apps which got banned due to these Chinese apps bans which is earlier been banned by certain states such as Gujarat and founded that this is promoting violence, cyber bullying and aggression by the Bombay high court [15]. Some other apps like CamScanner which is used by the State police for various day to day public record works and investigation this information are very sensitive and may cause a treat to National security and various other disasters [16].

POWER OF GOVERNMENT TO BANN APPS IN INDIA

Government has power to ban any intermediary if such intermediary is against the Public order, Security of State etc. As per Section 69A [17] a power to Central Government or other authority to issue some direction for blocking of any information via computer resources.

*Where the **Central Government** or any of its **officer specially authorised** by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest 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, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or **intermediary to block for access by the public** or **cause to be blocked for access by the public** any information generated, transmitted, received, stored or hosted in any computer resource [18].*

In the Judgment of *Faheema Shirin v. State of Kerala* [19], the Kerela High Court observed that the person's right to privacy is violated whenever there is an interference with an access to internet. The constitutionality of Section 69A has been observed by the Apex court in the landmark case of Anuradha Bhasin case [20].

The Apex Court, in *Anuradha Bhasin case*, [21] has affirmed that Section 69A, read with the Blocking Rules, gives the government the authority to impose such restrictions on access to online content. In the *Shreya Singhal Case*, [22] the constitutional validity of Section 69A of the IT Act was also challenged apart from Section 66A. The apex court, while declaring Sec. 66A unconstitutional, upheld Sec. 69A and acknowledged its constitutional validity.

In the Present scenario of banning Chinese apps by the government is fully justified as the act of the government is within the ambit of the reasons given under the act. Infringing the very right of Right to Privacy is violated by these Chinese apps by using the personal details of the Indian users for their national reasons. This is violation of Fundamental as well as the Human right of the users. This is duty of the central government to protect and preserve the Fundamental right to privacy of the citizens.

CONCLUSION

Prohibition of applications due to data privacy violation brings significant learning to India which no longer has a strict data protection law. The Personal Data Protection Bill has been under discussion since 2018. In the absence of effective data protection law, application blocking may be the only temporary cover for data breaches and citizen privacy concerns.

To address the problem of malicious applications and data breaches, the government is taking steps to create regulations for mobile applications, in consultation with the Minister of Home Affairs,

Electricity and IT, Information, and Broadcasting, and the Department of Communications. Failure to comply with the rules may result in the termination of such claims. To develop a comprehensive plan, Government must initiate a public consultation process that seeks the views of all stakeholders, including targeted consumers and applications in the reception area.

Increasingly, applications are under Government scrutiny, most recently associated with the potential impact of data breaches from fintech systems. However, no other development has come to the community. Interestingly, to date, no banned applications have been filed in Indian courts, challenging the ban. The only time we will say that any government action that may be aimed at protecting citizens' privacy, national security, and Indian sovereignty will withstand a constitutional test.

It is been concluded that the app ban of these Chinese apps by the government is to protect the national security of the country by stopping these apps to share the personal important user data with China so that they can use it. This ban is important as today data is the most important thing and at times or India china border issue this even become more important. Also this action of Government will come under the umbrella of public order which is purely justified. Also India today also lack at providing a proper law governing and protect data privacy even when today the bill is pending in the Lok Sabha [23]. Government is also on a check for the fintech company that are breaching implication [24].

REFERENCES

1. All citizens shall have the right (a) to freedom of speech and expression
2. Universal Declaration of Human Rights, 1948
3. International Covenant on Civil and Political Rights, 1966
4. Life Insurance Corporation of India v. Manubhai D. Shah, AIR 1993 SC 171
5. Union of India v. Motion Pictures Association, AIR 1999 SC 2334
6. Rikke Frank Jørgensen & Lumi Zuleta, Private Governance of Freedom of Expression on Social Media Platforms, Nordicom Review, (page-63)
7. Neshapriyan M, Social Media And Freedom of Speech And Expression, (Last visited on 28.10.2021), <https://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html>
8. Constitution of India, 1950
9. AIR 1986 SC 180.
10. Maneka Gandhi v. UOI, 1978 AIR 597.
11. Unstarred Question No. 1769 'Ban on Mobile Apps', Lok Sabha, September 21., 2020 <http://164.100.24.220/loksabhaquestions/annex/174/AU1769.pdf> (last accessed on 29.10.2021, at 15:30 hrs) Also see: 'MEITY answers questions on app ban in Lok Sabha without mentioning China', Aditi Agrawal, Medianama, September 21, 2020 <https://www.medianama.com/2020/09/223-meityparliament-china-app-ban/> (last accessed on 29.10.2021, at 15:30 hrs)
12. Unstarred Question No. 614 'Data Theft', Lok Sabha, September 12, 2020, <http://164.100.24.220/loksabhaquestions/annex/174/AU614.pdf> (last accessed on 28.10.2021, at 15:30 hrs)
13. Madras High Court lifts Ban on Tiktok', The Economic Times, April 24, 2020, <https://economictimes.indiatimes.com/tech/internet/madras-high-court-lifts-ban-ontiktok/articleshow/69027422.cms> (last accessed on 23.10.2021, at 16:00 hrs)
14. 'China's Byte Dance to store Indian data locally after MPs raise concerns on privacy, national security', The Economic Times, July 22, 2019, <https://economictimes.indiatimes.com/tech/internet/chinasbytedance-to-store-indian-data-locally-after-mps-raise-concerns-on-privacy-nationalsecurity/articleshow/70317330.cms?from=mdr> (last accessed on 29.10.2021, at 15:30 hrs)

15. 'PUBG Mobile India ban: Bombay High Court directs Centre to take action', The Hindustan Times, April 30, 2020, <https://tech.hindustantimes.com/tech/news/pubg-mobile-india-ban-bombay-high-court-directs-centre-to-take-action-story-Lnvx3IYPDu1EMkfaSohdqJ.html> (last accessed on 23.10.2021, at 19:45 hrs)
16. Please see: <https://www.moneycontrol.com/news/technology/mumbai-police-karnatakagovernment-caught-using-banned-chinese-app-5491331.html> (last accessed on 24.10.2021, at 20:30 hrs)
17. Information Technology Act, 2000
18. Ibid
19. WP(C). NO. 19716 OF 2019 (L)
20. Anuradha Bhasin v. Union of India, Writ Petition (Civil) NO. 1031 OF 2019
21. Ibid
22. Shreya Singhal vs U.O.I, (2013) 12 S.C.C. 73
23. 'Panel on Personal Data Protection Bill to Submit Report in Parliament's Winter Session', Livemint September 23, 2020 <https://www.livemint.com/news/india/panel-on-personal-data-protection-bill-to-submit-report-in-parliament-s-winter-session-11600867886634.html> (last accessed on 23.10.2021, at 15:30 hrs)
24. 'Govt Lens on Fintech cos with China Links', Livemint, September 22, 2020, <https://www.livemint.com/companies/news/govt-lens-on-fintech-cos-with-china-links11600733213636.html> (last accessed on 25.10.2021, at 21:30 hrs)