

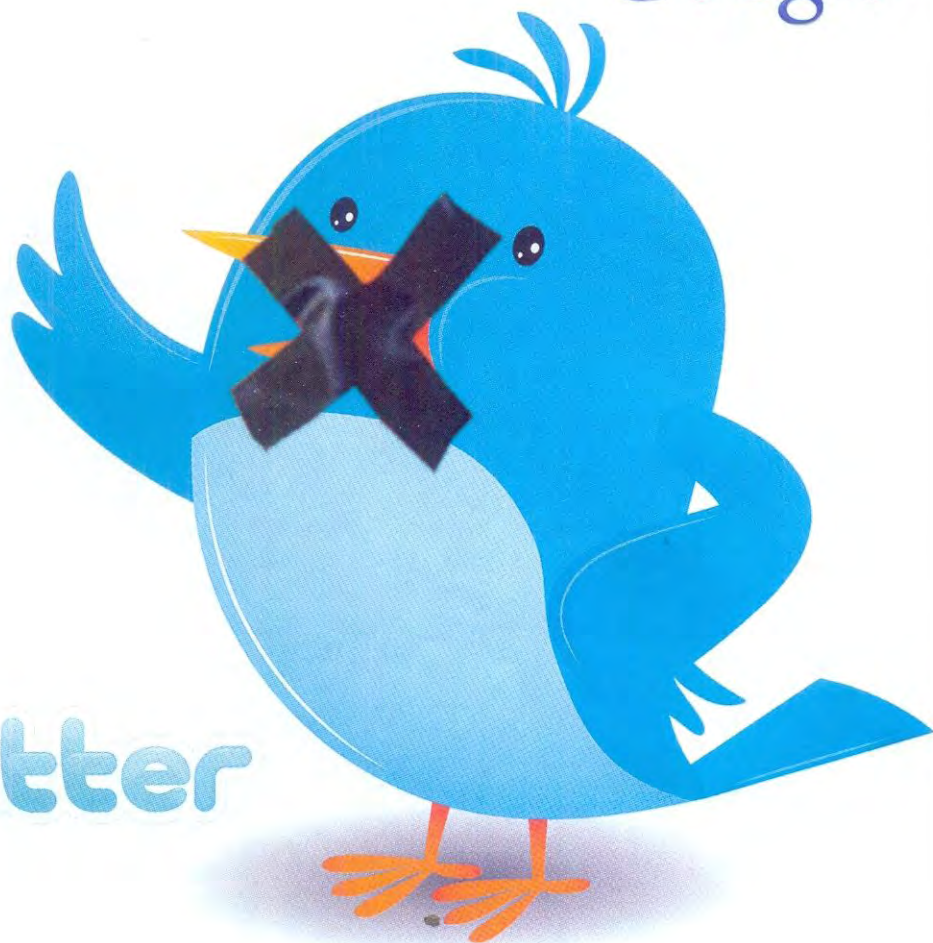
## COVER STORY

# Tangled web

Government and social networking sites **at loggerheads** as debate rages over freedom of expression

By Kumar Anshuman and Nikita Doval

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**J**ournalist-turned-activist Vinay Rai has succeeded where Information Technology Minister Kapil Sibal failed—putting the fear of law in the minds of India's bloating community of bloggers, surfers, plain e-wayfarers and inter(net)loppers.

Blogs haven't yet been blocked, but a Delhi High Court bench asked 21 internet firms, including Google, Facebook and YouTube, to look at China and have stringent checks on their content on January 19. It was enough to set the net on fire. Compulsive tweeter Shashi Tharoor, who lost this ministerial berth for over-tweeting, wondered whether phone companies could "be sued if someone sends a defamatory, obscene SMS". Said IT expert Niyam Bhushan: "If you fall on the ground and hurt your nose, you can't sue gravity. At a time when people in autocratic countries are using social media to bring in democracy, a democratic country like India is trying to restrict it!"

When the summons for the case was first sent to the companies in December, a number of respondents who were based outside India failed to answer. Said cyber crime expert Pavan Duggal: "Companies are observing the IT Act more in breach than in observance."

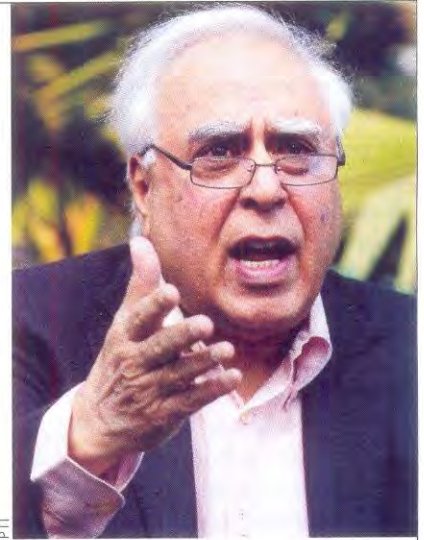
The debate was originally kick-started by Sibal last December when he summoned the chiefs of social networking sites and showed them

offensive material from their sites. However, they pleaded helplessness. Sibal's subsequent press conference drew more flak, and he retreated saying, "The government does not believe in interfering in the freedom of the press, but we have to take care of the sensibilities of our people."

It was then that Rai petitioned a Delhi criminal court, accusing 21 social networking sites of hosting objectionable and inflammatory content which would create enmity and violence among religious communities. In a sealed envelope, he presented 62 items downloaded from different web sites and got three witnesses.

Though the companies were ordered to appear before court on January 13, they challenged the order in the Delhi High Court, saying that curbing the content is technically impossible. "Human interference is not possible, and it is not feasible to check such incidents given that billions of people across the globe are posting articles and other material on their web sites," argued Mukul Rohatgi, former additional solicitor general, representing Google India.

"Certain keywords can be blocked or not allowed," said Yogesh Bansal, founder and CEO of ApnaCircle.com. "However, filtering or having 100 per cent control over the content posted is technically not possible."



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According to the Information Technology (Intermediaries guidelines) Rules, 2011, if the companies receive complaints about unlawful or objectionable online material, they have 36 hours to remove it, failing which the aggrieved party can approach court or the Cyber Law Appellate Tribunal. "The rules purportedly try to regulate and control the intermediaries like interactive web sites and social media sites, but, in effect, regulate content generated or posted by users," said Prasanth Sugathan, legal counsel, Software Freedom Law Center.

The 'intermediaries', as defined in the Information Technology Act, 2000, include a broad list of players ranging from internet service providers like Airtel and MTNL to blogging platforms like Blogspot and WordPress to auction sites like eBay and search engines like Google to cyber cafes. The new rules mandate

**We have to use it [social media] in the right sense. The fact that some desecration takes place in the US and people in Kashmir start reacting to it will create difficulties.**

**OMAR ABDULLAH**

Chief minister of Jammu & Kashmir



the intermediaries to impose a set of rules and regulations on users.

The rules specify the terms of regulations, which include a broad list of unlawful content—information that is grossly harmful, harassing, blasphemous, defamatory, obscene, related to paedophilia, libellous, invasive of privacy, hateful, racially objectionable, disparaging, encourages money laundering or otherwise unlawful in any manner whatever.

“These are very broad terms which have not been defined very well,” said Duggal. “The service provider is not even required to come to a judgment. Only after they receive a complaint or are notified by the government can they act.” According to Delhi-based cyber law consultant Karnika Seth, it will be helpful if illustrations are given to explain the nature of the crime, as in the Indian Penal Code. “This is missing in the IT Act which leaves terms like ‘blasphemy’ and ‘obscenity’ open to wide interpretations.”

The companies claim they stick to the rules. “We have a review committee, which decides on complaints in case of any content posted on our sites,” said a representative of one of the accused companies. In the current case, the official claimed that they were not shown the content presented before court. “The current accusation is baseless,” he said.

There have been several instances in the past when social networking companies acted on complaints. In 2009, a young Keralite was booked for posting offensive remarks against Shiv Sena leader Bal Thackeray and his party on a social networking site and the material was removed. In May 2010, the controversial ‘Everybody Draw Mohammed Day!’ in Facebook was blocked in India, following protests from Muslims.

In August last year, the cyber wing of the Punjab Crime Branch charge-sheeted a Sunny Dhiman for allegedly uploading a pornographic video



## Face the heat

By Nikita Doval

**W**e don't know if the Indian state fancies itself as a modern-day Greek hero Hercules but the internet is definitely comparable to the Lernaean Hydra the hero is out to kill. The Hydra, apart from its multiple heads, also had the diabolical ability to sprout two for every one that was cut off. “For every one way of blocking the net, there are many to circumvent it. So if you shut down a blog or a web site which is considered obscene or defamatory, another will be opened up,” says Sudeip Nair of Bombay Elektrik Project, shrugging off any suggestions of hysteria at the Delhi High Court's threat to do a China on internet sites.

Nair is not the only one to be a little amused and wholly unconcerned about the threat. What he and the others are worried about is the attempt to usher in definitions of

terms like blasphemy and obscenity which seem to have no room for manipulation. “If I design a bikini with the imagery of a Hindu god, to some it might seem offensive and to some an expression of faith. In a democracy there needs to be room for all kinds of viewpoints. This is not a totalitarian state,” says Arjun Mahajan, a photographer. The state needs to understand, Mahajan says, that these sites are not merely recreational. “I have a page on Facebook for my professional dealings instead of a web site. In case you don't like something, simply flag it,” he says.

Few buy the government's argument that material on these sites

**People spewing venom on the net is not the government's problem.**

**GUL PANAG**  
Actor

can incite religious violence especially since they see political parties stoking the same fires for their own gains. “Political parties choose their candidates on the basis of caste, ethnicity and say so openly. Then why is there no demand to ban them also?” asks sociologist Sanjay Srivastava.

Gul Panag, one of the first Bollywood celebrities to take to Twitter, posts: “this censorship of digital media is paramount to... fascism.” Says Srivastava, “There is no research of





any kind to suggest that what is shown on television or movie screens has a direct impact on how society functions. If that was the case, then the censor board's policies should have ensured a society bursting with honourable men and women."

"Is this being done also in the wake of the use of social networking sites during the Lokpal bill agitation," wonders Mahajan, while Panag feels this is to stem criticism of political leaders. "There is very little real criticism of our elected representatives in the mainstream media. They [politicians] have no business seeking recourse behind bans on other mediums," she fumes. But while self-censorship exists, there are also "organised groups out there pursuing agendas", admits Panag, who says she has been targeted by different religious groups for her views. "People spewing venom on the net is not the government's problem."

Unofficial estimates place India's net users at 100 million, third only

to the US and China. The number is expected to grow to 300 million in a few years. For youngsters, this medium is an extension of their fundamental right to freedom of expression but, as writer Santosh Desai warns, without any of the responsibility that accompanies it in the real world. "You need to be accountable for what you put up on a social forum. In the real world when you publish your thoughts or opinions you cannot have the cloak of anonymity. On the net, however, you can say something libellous and hide. That is a concern."

Legitimate questions regarding the freedom on the net are being asked the world over but they always get ignored in debates like the current one. Says Desai, "We could be at a crossroads from which we could go down the route of monitoring which is easier said than done or we could begin a healthy debate on the internet and responsible usage."

**Password please:** The Delhi High Court asked 21 internet firms, including Google and Facebook, to have stringent checks on their content

of a female student from Chandigarh on YouTube. Following complaints, the video was removed.

According to Sunil Abraham of the Centre for Internet and Society, the companies are over-compliant. "We did a policy sting operation wherein we sent fraudulent notices to big web sites," he said. "They never bothered to check the veracity of the complaints, but complied with everything we asked for. In one case where we asked for the removal of three comments, they removed all 13. So there is already a private censorship underway. The existing IT Act is draconian and has led to great dilution of privacy."

According to Google Transparency Report, Google received government requests for removing 358 items from its services between January and June last year. Fifty-one per cent of the requests were partially or fully complied with. "In addition, we received a request from a local

## Act responsibly

By Tariq Bhat

Jammu and Kashmir Chief Minister Omar Abdullah is quite tech-savvy. An avid user of the internet, he was one of the first politicians to start his own blog. But he closed it down when he got some unpleasant responses. The micro-blogging site Twitter is his favourite medium now. He regularly tweets about his routine and posts responses to important events. Given his celebrity status, his tweets are closely followed and receive wide media coverage. He, however, believes that social media should be used responsibly. "I am not in favour

of censorship," says Abdullah, about the proposed regulation of social media. "I would rather believe in self-regulation by the users. There should be no inflammatory content about any person. The users have to be sensible and responsible enough. The problem begins when it is used against religious sensibilities and this is where I believe some regulation fits in. But I am not in favour of curbing its use. A lot of people use social media in Jammu and Kashmir. We have to use it in the right sense. Irresponsibility can be damaging. The fact that some desecration takes place in the US and people in Kashmir start reacting to it will create difficulties."



law enforcement agency to remove 236 communities and profiles from Orkut that were critical of a local politician. We did not comply with it as the content did not violate our community standards or local law," said the report.

Both Duggal and Seth said the government's demand for pre-screening and monitoring content was not feasible. "In the IT Act there is not a single phrase which requires pre-screening or moderation under the law," said Duggal. The government has a right to stop a company from displaying content which it deems

perverse to Indian standards. But, as Seth said, "How do you define Indian standards? They are ever changing."

Web sites can put certain filters in place, but even they have limitations. As the counsel for the companies argued in court, the word 'sex' even comes up in documents like ration cards and passports. So blocking them is not feasible.

Though freedom of expression is a fundamental right, it is not absolute. Article 19(2) states that the state may make a law imposing "reasonable restrictions" on the right to freedom of speech on eight grounds mentioned in Clause (2)—security of state, friendly relations with foreign states, public order, decency or

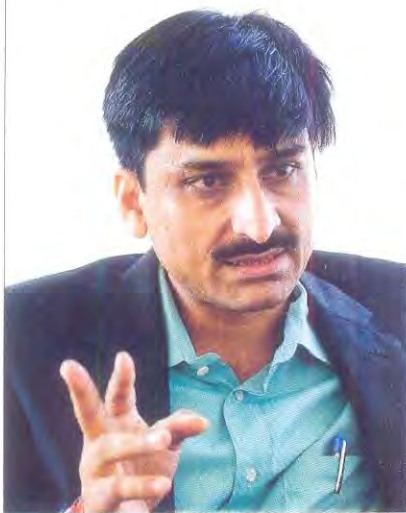
morality, contempt of court, defamation, incitement to an offence and sovereignty and integrity of India.

The evidence presented before court clearly points to violation of some of these rules. "Freedom of expression doesn't mean mutilating or morphing pictures of leaders of different religious beliefs," said Zafaryab Jilani, a lawyer. "This is a crime and the persons responsible should be accused under Section 153(A)."

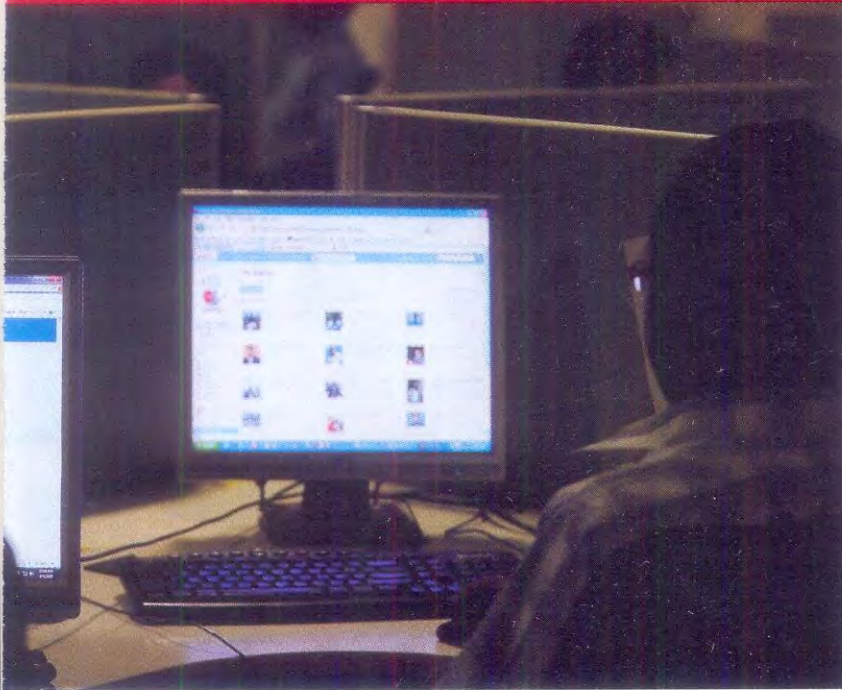
Said BJP leader Shahnawaz Hussain: "Anything hurting religious sentiments should not be allowed. But the government is trying to stop certain political viewpoints, which is wrong." Senior Congress leader Shakeel Ahmed said freedom of expression should be "in a proper, democratic way without demeaning anyone."

Team Anna member Kumar Vishwas blamed social networking sites for hosting his videos without consent. "The main part of my speech has been deliberately removed and hence it doesn't present the fact which I said." Though he has complained, the videos have not been removed. However, he said that social networking was the voice of young India and it shouldn't be curbed in any way.

According to columnist and social analyst Syed Mubin Zehra, "There



**Vinay Rai petitioned a Delhi criminal court, accusing 21 social networking sites of hosting inflammatory content which would create enmity among religious communities.**



**Hotline to customers:** The corporate sector, which is increasingly using social networking sites to connect to customers, is worried about the possibility of censorship

should be a check or verification process to have an internet identity.” However, she is against a total ban. “We are not China, and think about the good things which the internet has contributed to society.”

The corporate sector is increasingly using social networking sites to build stronger ties with consumers. For brands like Airtel, having a Facebook page meant reaching out to Generation Y, who spend a large amount of time with computers.

## Policing the web

**Saudi Arabia** clipped the already-restricted freedom of its netizens by passing a new law last year that allows the state to directly monitor, control or block material. To post content, users should now obtain a licence, and abide by the strict content limitation laws that ban “offending others”.

**Iran** uses SmartFilter, developed by an American company, for primary-level filtering. Thanks to its internet architecture—traffic from all internet service providers is routed to the state-owned Telecommunication Company of Iran—pervasive filtering is made easy.

**Pakistan** filters content relating to security and conflicts through its Pakistan Internet Exchange. Social networking web sites like Facebook are also monitored.

**China** has the most sophisticated web filters in the world. Social networking sites are constantly ‘self-censored’. It has begun trials of the new ‘real-name regulation’ that will force microbloggers to verify their accounts with their ID. Reporters Without Borders, a UN consultant on net freedom, suspects China of selling surveillance technology to Cuba, Zimbabwe and Belarus.

**India** ranks second best in Asia, after South Korea, in online freedom. However, there have been numerous incidents of web filtering on grounds of being “objectionable, endangering public order and national security”.

### Web freedom

| The best  | The worst |
|-----------|-----------|
| Estonia   | Iran      |
| The USA   | Burma     |
| Germany   | Cuba      |
| Australia | China     |
| The UK    | Tunisia   |

Courtesy: Freedom on the Net 2011: A Global Assessment of Internet and Digital Media (Published by Freedom House, Washington, DC)

GRAPHICS: N.V. JOSE, RESEARCH: NAVIN J. ANTONY