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India – Censorship for a Good Cause?

May, 2013

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INTRODUCTION

Normally, Information Technology (IT) corporations such as Google or Yahoo are criticized and sued for their direct complicity in censorship and its related human rights violations: Yahoo was sued under the Alien Tort Claim Act for providing the Chinese government with personal account information of dissidents Wang Xiaoning and Shi Tao who were subsequently arrested and tortured for publishing state sensitive information on the web (Kahn, 2005). Nokia Siemens Networks was criticized for collaborating with the oppressive regime in Iran, and providing the regime with monitoring technology that enabled the government to identify, capture and eventually torture dissidents (Schrempf, 2011). In 2010, an Iranian activist also sued Nokia Siemens Networks and its parent companies for their complicity in his torture (Dehghan, 2010). Recently, two lawsuits were filed against Cisco for providing the Chinese government with customized IT equipment that enables the government to track dissenters (The Economist, 2011).

In these classic cases IT companies were criticized and sued for their direct complicity in censorship and collaboration with oppressive regimes. A recent lawsuit in India is different: Google, Facebook, Yahoo and 18 other IT corporations are sued for **not** censoring online content as required by the government. This case is interesting for three reasons: First, corporations are not sued by human rights victims, but by Indian citizens that are offended by obscene online material and want IT corporations to censor accordingly. Second, corporations are not sued for their involvement in censorship, but for the lack of it. Third, India is perceived as one of the strongest democracies in the world that anchored fundamental human rights such as freedom of speech in its constitution. Censorship can also become a challenge in solid democracies.

Human rights organizations and activists have always considered IT companies as the “bad guys”. The latest lawsuit in India shakes the traditional role division: Who is the “bad” guy here – Google and other IT corporations for not doing enough censorship, or the Indian government that demands censoring activities from these companies? What does this case tell us about a country that writes democracy and civil rights in capital letters? Is India becoming the new China? Also, since 2010 Google has presented itself as the anti-censorship crusader in regards to China. How does the company handle the rising censorship issues in India?

INDIA – AN OVERVIEW

After years under foreign rule India became an independent state in 1947. With a population of around 1.2 billion, India is the world’s largest democracy in which the power is shared between the central government and the country’s 28 states (Iyengar, 2006). The British and U.S. models inspired India’s constitution. India’s constitution reflects the country’s desire for social wellbeing and equality. It details fundamental human rights such as right to equality, information, education, and the freedom of speech and expression. Appendix A provides a brief summary of the fundamental civil rights guaranteed to India’s citizens.

Traditionally, India has been socialist democratic. Recently, the country moved towards a more capitalist market economy characterized by unregulated markets, privatization and increasing foreign direct investments (Iyengar, 2006). One of India’s founding goals has been the end of

inequities of traditional social relations and the enhancement of social welfare. India's population is very diverse in terms of ethnic origin and religion. Even though English is the most important language in India, India has 15 other official national languages such as Hindi, Bengali, Telugu and Marathi (Central Intelligence Agency, 2011). The majority of India's population follows Hinduism. However, India's population practices also other religions. For example, India has the second-largest Muslim population in the world (Indonesia has the largest Muslim population) (Iyengar, 2006). The ethnic and religious diversity is also reflected in India's political party system.

India's Party System

India is a parliamentary republic with a multi-party system – mirroring the diversity of its population. It has six recognized national parties: Bharatiya Janata Party (BJP), Communist Party of India, Communist Party of India (Marxist), Indian National Congress (INC), Bahujan Samaj Party, and Nationalist Congress Party. Besides, India has over 40 regional parties. The two largest national parties are the INC and BJP though. Until the 1980s the center-left (liberal) INC held the majority in the parliament. However, the 1990s were marked by political turmoil: In 1989 the INC was voted out, and a short-lived interim coalition took over. In the 1991 elections no party gained majority, but the INC was able to form a minority government. Then, several short-lived alliances shared the power in the parliament until BJP was elected into power in 1998. For the first time, a non-BJP government completed the elected five-year term. In 2004 no party achieved a majority. INC, however, was able to form a minority government with external support. After the elections in 2009 the INC is not dependent on external support anymore. For the first time after 1957 and 1963, a prime minister was re-elected for a second consecutive five-year term.

INC has always favored Indian farmers, labor force and unions, and minorities (religious and ethnic ones). Its policies favor the regulation of business and finance, and progressive income tax. During the last years INC adapted its agenda and added neo-liberal policies including populism, social liberalism, and a free-enterprise system with a public-private partnership model. Nevertheless, INC supports the weak, and least advantaged parts of India's society. With its affirmative action programs, the party aims at improving the welfare of the economically and socially disadvantaged.

India's Economy

During the 1990s India has developed into a powerful state: It has a strong military, fast-growing economy and is referred to as a future superpower (Grammaticas, 2007). Today, India belongs to the top ten largest economies in the world. It is the ninth largest economy by nominal GDP (\$1,631,970), and even the third largest by purchasing power parity. Its average GDP was 5.8% over the last two decades. During 2010 India's GDP was 10.4% - making India one of the fastest growing economies in the world (Central Intelligence Agency, 2011).

After its independence in 1947 India relied on a strong and large public sector and a protected its economy with high import duties and controlled private participation. At the beginning of the 1990s Minister of Finance, Manmohan Singh (today India's Prime Minister) opened India's

economy and adopted free market principles: India reduced tariffs and interest rates, terminated public monopolies and encouraged foreign direct investment in many sectors. With the liberalization of its economy India experienced a fast growing economy, and an increase in foreign direct investment. Economists refer to India as an emerging economic superpower that has the potential to overtake strong Western economies such as France, Germany, and United Kingdom in the coming decades (Grammaticas, 2007). India's major trading partners are United Arab Emirates, China, United States, Saudi Arabia and Germany.

India has become a very attractive location for investors. With a population of 1.2b India is the second most populous country in the world (after China). India has a large middle class consumer base, and a large labor force. Over 50 percent of India's GDP comes from the service industry. The industrial sector accounts for almost 30 percent of the country's GDP before the agriculture sector with 15 percent. During the last decade India has made great strides in fields of IT.

India's Promising IT Market

Currently, the IT sector accounts for around 5% of India's GDP, and employs a significant amount of people from the country's tertiary sector. Annual revenues from India's IT sector are estimated to be over \$55 billion. China's annual IT revenue amounts to \$35 billion

The IT sector has grown fast in India during the last decades. At the beginning of the 1990s the sector employed only 150,000 people. By the end of the 1990s this number rose to 500,000. In 2006 the number of employees in the IT sector rose to 1 million. Until 2011, the number of employees in the IT sector has doubled to 2 million.. The IT sector is certainly growing and multinational corporations see India as a promising market (IB Times, 2011).

Forecasts for the IT sector in India are very positive: Industry experts forecast continuous growth of the IT sector in India. Indian IT corporations expect an annual growth rate of 25 percent (IB Times, 2011). Likewise, research firms and consultancies confirm the growth potential. Gartner, for instance, projects double-digit growth rate of IT sector in India. Even though there was a growth slowdown in 2009, the IT sector is back on the growth path (The Economic Times, 2010). Gartner prognoses that corporations continue to invest in IT in India despite the global economic challenges. The largest segment in the Indian IT market is the telecommunications market, which is expected to reach almost \$55b in 2012. It services are expected to spend \$11b. The hardware market is also growing and expected to reach almost \$11b in 2012. Software spending is the smallest segment in the Indian IT sector and expected to reach around \$3b in 2012 (Gartner, 2011). Overall, India's IT market is one of the fastest growing ones in the world (Central Intelligence Agency, 2011; Gartner, 2011). Mumbai and Bangalore are the country's IT hubs. Economic analysts even regard those two cities as the future global hubs, and refer to Bangalore as the Asian Silicon Valley.

Obviously, India is an attractive market for IT companies. There are currently 52 million Internet users. They only represent 5% of India's population (Sharma & Vascellaro, 2010). Hence, the online market growth potential in India is huge. Internet firms such as Google, Facebook, Twitter, and IT giants such as Microsoft are aware of India's market potential, and have entered the market already.

Google entered India in 2004. Its Indian research and development lab in Bangalore was the first one to be established outside the United States (Furchgott & Prasso, 2001). The company has increased its investments and operations since 2007. Google has currently a strong market share: 89 percent of internet searches are conducted through the Google search engine. Two thirds of all social networking activities are done through Google's Indian Orkut service, and over 80 percent of media is viewed on Youtube. It is estimated that Indian Internet users spend 30 percent on Google sites. This is three times more than the world's average (Lee, 2010). Investment banks expect India to have up to 200 million internet users by 2015 (Sharma, 2011). In 2011 Google was the most visited website in India with over 55 million unique visitors, followed by Yahoo (40 million unique visitors) and Facebook (35 million unique visitors) (Sharma, 2011). Other IT companies are equally present in India.

Just recently, Facebook analysts revealed that India is their third biggest market after the United States and Indonesia. Facebook has almost 35 million users in India (The Economic Times, 2012). Facebook has experienced a tremendous growth of 132 percent (IBN Live, 2012).

Microsoft started its first operations in India during the 1990s, and established its second largest development center at that time in Hyderabad. In general Microsoft's operations in India focus on partnering with the Indian government and local IT industry, and supporting the country's inclusive development (Microsoft, 2012). Since the 2000s Microsoft increased its investment in India. It continued investing over \$100 million in its center in Hyderabad. In 2005, Microsoft announced an innovation-related investment of \$1.7 billion. India is the only country apart from the United States where Microsoft has an end-to-end presence with six business units (D'Monte, 2006). All of Microsoft's famous products and services (Xbox 360, Office, Explorer e.g.) are available in India (in local languages). Its research and development center works on various projects such as technology for emerging markets or multilingual systems. Microsoft India has become the third largest company (by revenue) in the software market (Babu, 2009).

Even though India's economy is strong and growing, and the IT market has enormous growth potential, the country has to deal with some pressing problems such as overpopulation, environmental degradation, poverty, corruption and civil unrest (Central Intelligence Agency, 2011).

India's Civil Unrest

Despite the favorable political and economic conditions, India has a long history of social and civil unrest, violence and riots. India is extremely diverse in terms in terms of language, culture and religion. India has 16 official national languages such as English, Hindi and Bengali (Central Intelligence Agency, 2011). Its citizens also follow different religions such as Hinduism and Muslim (Iyengar, 2006).

India is peculiar due to this ethnic and religious diversity. The country has experienced severe public riots that origin from the diverse set of values, beliefs and religion. For example, in the early 1990s Hindu activists destroyed a mosque because they regarded it as a birthplace of the Hindu deity Rama. Riots followed that killed over 1,000 people. Hindu activists continue to be upset if they hear or read about Lord Rama (Sharma et al., 2010). In another extreme case a Tamil Sri Lankan extremist who condemned the politician's policies assassinated Prime Minister

Rajiv Gandhi in 1991 (Sharma et al., 2010). Recently author Salman Rushdie canceled his talk at the Jaipur literary festival because of assassination threats by Muslim activists (The Economist, 2012). As it turned out there were no real assassination threats. The police however feared riots if Rushdie presented, and claimed that his life was threatened. The government is aware of the India's peculiarities and the impulsiveness of its citizens. Therefore, it tries to prevent riots or civil unrest where possible. During the last years, the Internet has developed into one source for civil unrest. For instance, in June 2007 a Hindu nationalist political party attacked cyber cafes, damaged computers and threatened owners after they came across postings that offended the group's founder and a celebrated heroic warrior (Sharma et al., 2010).

Due to this and similar experiences, the Indian government introduced tighter regulations regarding web content and publishing. Unlike China, the Indian government does not oppress free speech or state opponents. Instead, the Indian government has the wellbeing of its citizens in mind, and wants to reduce any risk for triggering violence and riots.

INDIA'S INFORMATION TECHNOLOGY ACTS

At the end of the 1990s the United Nations introduced a model law on electronic commerce to facilitate and introduce internationally acceptable regulations to remove legal obstacles and increase legal predictability for electronic commerce. Following this model law on electronic commerce India passed the Information Technology Act (ITA) in 2000.

The ITA 2000 introduced some general regulations and guidelines regarding online and electronic documents and content. The act aimed at facilitating electronic commerce by providing explicit guidelines. In particular ITA addresses the following issues: legal recognition of electronic documents, legal recognition of digital signatures, offenses and contraventions, and justice dispensation systems for cybercrimes (Indian government, 2000).

In 2008 ITA was amended to include more guidelines regarding the protection against liability to intermediaries, and the protection of electronically collected, processed or stored data (Indian government, 2008). One reason for the 2008 amendment was an incident in 2004: In 2004, the CEO of Baazee, an Indian auction web company and wholly owned subsidiary by eBay, was arrested, because a pornographic video had been sold through the auction website. According to India's ITA 2000, the publication or transmission of obscene material is punishable by up to five years imprisonment (Rai, 2004). Neither Baazee nor eBay, nor Baazee's CEO, Avnish Bajaj had filmed or uploaded the video, but they were confronted with legal charges. Bajaj was first denied bail and kept in custody before the High Court granted him bail. The High Court decided later that Bajaj was neither directly nor indirectly involved in the publication or transmission of the pornographic video sold on the company's website (Nagpal, 2007). The fact that a CEO was arrested caused critique on the existing Information Technology Act 2000 at that time. In 2008 ITA was amended to ensure that IT corporations and their employees cannot be made liable for the content that users upload or publish on their websites. One section in ITA 2008 has been highly criticized: Section 69 allows the Indian government to intercept, monitor or decrypt any information on any computer resource if this is deemed necessary (if it is in the interest of the sovereignty or integrity of the state, or for State security e.g.)

In 2011 ITA was again amended. The most significant changes of the 2011 Information Technology Act were prescriptions of security standards for personal electronically-stored information, due diligence requirements for intermediaries, requirements for cyber cafes to identify users and keep user records, and a framework for electronic delivery of services (licenses, forms and certificates). According to ITA 2011 content that is “obscene, harassing, libelous, hateful or harms minors or infringes copyright has to be withdrawn within 36 hours of being notified by authorities”. Inobedience is punished with prosecution. Social networks and internet access providers must state that such content is banned in their terms of services (Reporters Without Borders, 2011). Internet café operators have to keep a copy of each client’s identity document for a year. Also, photos are taken from clients and web-browsing history is saved. This data is sent to the government each month. Regulations also detail how Internet cafes are to be furnished, size and orientation of computer tables (Reporters Without Borders, 2011).

The 2011 amendment has been criticized for several reasons. The rules on blocking content harm freedom of speech because the content must be taken offline before official investigations are introduced. Besides the cyber cafes rules harm the right for privacy and personal safety because they require cyber café owners to keep records (personal information, browsing history as well as photos) of users.

Obviously, the Indian government has increased its regulations regarding online content during the last decade. The main reason for this is that obscene online content (as defined by the government) continues to exist. For example, the NCP’s president, Sonia Gandhi, is maligned on a Facebook page (Timmons, 2011). Other websites insult Prime Minister Manmohan Singh and major religious heroes (Adamec, 2011). ITA 2011 came into effect in May 2011. Google soon observed an increase in governmental requests to take content and websites offline: In 2011 Google received over 250 requests compared to 11 requests in 2010 (The Economist, 2012). However, improper online content continued to exist, and by the end of 2011 the dispute over obscene online content increased.

Legal Actions Against IT Corporations for Non-compliance

After the 2011 amendments to the Information Technology Act were issued in May 2011, the Indian government approached IT corporations Google, Yahoo, Facebook, Microsoft and others to pre-censor web content, i.e. to review the content before it goes online. According to the new rules, corporations were expected to remove any content that was critical of political leaders or content that is religiously provocative (The Economist, 2012; Timmons, 2011). However, critical content as defined by Indian authorities persisted. Google explained in a statement that it was impossible to filter or monitor all online content given the massive amount of postings worldwide everyday (Munshi, 2012).

The government continued pressuring IT corporations to comply to the new IT rules. At the end of 2011 Indian citizen Ajjaz Arshad Qasmi filed a civil lawsuit against some IT companies such as Google, Yahoo and Facebook for obscene online content (Sharma, 2012b). In December 2011 the New Delhi high court finally summoned over 20 websites for sharing undesirable (obscene) content. The high court ordered the related IT companies to remove the pages by February 6, 2012 (Reporters Without Borders, 2012). Also, the high court advised the IT corporations to de-

velop a voluntary framework to ensure that obscene content was not published online (BBC News, 2012). At the end of the ruling, the judge indicated that if no improvement can be observed in the near future, “like China, we will block all such websites” (BBC News, 2012). India’s IT minister Kapil Sibal confirmed the judge’s statement, and said that the government considers tightening the regulations and set up additional measures to ensure that obscene content does not appear online. Apparently, the Indian government started to consider creating a monitoring unit for online content (Timmons, 2011). Google and Facebook complied with this court order and reported in early February 2012 that they had taken down the mentioned content (BBC News, 2012).

At the beginning of 2012 the Internet conflict further escalated when Hindu journalist Vinay Rai filed a criminal lawsuit against Google, Facebook, Microsoft and 18 other IT companies for publishing content on their websites that could trigger religious conflict (Pasricha, 2012). Rai’s employees showed him a couple of compromising images of Prophet Muhammad that offend Muslims. Besides, the reporters found numerous images and text that could offend followers of other religions, too (Hindus, Christians). The government approved the claim, and allowed Rai to proceed with the prosecution. Microsoft, Facebook and Google unsuccessfully appealed and asked to dismiss the case. Microsoft argued the case disclosed no cause of action against the company (BBC News, 2012). Facebook referred to its policies which enable users to report abusive content (BBC News, 2012). According to the company this should be enough. Google argued that it is impossible to prevent users from publishing or posting material online (Pasricha, 2012). Rai and his team insisted that filtering is possible, and that IT companies have to do more to ensure that there is no critical online content published on their websites. If Google and the other IT companies were convicted they could face huge fines. Even imprisonment is possible under Indian law. However, so far no executives were prosecuted. However, the external affairs minister expects to see officials of the companies under charge at the court hearing in March 2012 (Sharma, 2012a).

The first wave of lawsuits against multinational IT corporations in India has triggered public attention worldwide. Reporters without Borders (2012) criticize ITA 2011 for introducing vague and unclear rules. The threats of punishments and even increased censorship for non-compliance might induce corporations to remove any content. Activists and international organizations claim that ITA 2011 violates the right to information, expression and speech. Critics fear that India starts to slowly develop into a second China in regards to censorship. Interestingly, supporters of freedom of expression, such as the Indian-based Center for Internet and Society, see the pending lawsuit positively:

“I think the executive in India has always been very conservative in freedom of expression. It is usually the courts in India that protect freedom of expression, the precedent. So we are very hopeful that the current case is in the appropriate venue, and we are confident that, as in the past, the judiciary in India will stand on the side of freedom of expression” (cited in Pasricha, 2012).

However, considering the judge’s comment on tightening regulations and becoming similar to China raises some concerns whether the court will actually stand on the side of freedom of in-

formation and expression. Reporters Without Borders (2012) are more pessimistic and raise concern:

“For several months the Indian government has undertaken several initiatives with worrying implications for Internet freedom. It is [...] essential that the authorities scrap their policy of monitoring the Internet, which is disproportionate and jeopardizes press freedom”.

Despite these critiques, the Indian government stressed that it supports fundamental rights such as the freedom to information, speech and expression (Pasricha, 2012). India’s prime minister did not like the comparison between his country and China. He stressed that India has a free and independent media unlike China. At the same time, the government defends ITA 2011: Regulating online content is important to guarantee civil peace. As discussed above, India has a long history of civil unrest and violence. The diverse religious, cultural and political background of its citizens can easily create tensions and develop into riots and violence. The government is less concerned with the actual critical content, but more about the effect it has on its citizens. Hence, censoring online content that could hurt or harm citizens is actually for a good cause: It helps avoiding public riots (Sharma et al., 2010). The initiators of the lawsuits against Google and the other IT companies are not the government, but Indian citizens who feel offended by the content. The government then simply supports its citizens in filing a lawsuit, as it might fear that the initial offense could turn into violent acts. As stated by one of India’s parties “this is a country with a lot of religions and sentimental values. If that censorship is not there, some people may utilize these mediums to disturb the harmony of the country, and it may lead to chaos” (Sharma et al., 2010). Does India’s government have just good intentions? A leading Indian attorney is not convinced and claims that civil tensions are simply used as an excuse for restricting freedom of speech, information and expression (Sharma et al., 2010).

Intentions aside, the pressure from the Indian government on corporations to censor online content is increasing. Traditionally, human rights victims sued IT corporations for their complicity in the abuse. In India, citizens sue the company for not censoring sensitive content. “While authoritarian countries pose well-known challenges, Google is learning that even democracies such as India can be fraught with legal and cultural complications” (Sharma et al., 2010).

APPENDIX A: FUNDAMENTAL RIGHTS GRANTED BY THE CONSTITUTION OF INDIA (SUMMARY)

1. Right to equality

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

2. Right against discrimination

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

3. Right to freedom

All citizens shall have the right—

- to freedom of speech and expression;
- to assemble peaceably and without arms;
- to form associations or unions;
- to move freely throughout the territory of India;
- to reside and settle in any part of the territory of India; [and]
- to practice any profession, or to carry on any occupation, trade or business.

4. Right against exploitation

Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

5. Right to freedom of religion

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

6. Cultural and educational rights

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Note: The complete constitution is available at: lawmin.nic.in/coi/coiason29july08.pdf

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