

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Balagopalji, you raised a pertinent point, but your Resolution will be taken up, if not today, there are three more days. It will be included in the List of Business. With regard to what Nareshji has said, I am happy that Nareshji also fully endorses and agrees that there should be a discussion on the subject raised by them. In fact, you only wanted that the reply should be elevated to a higher level. That means आप उनकी बात से पूरी तरह सहमत हुए, आपको बस इतना चाहिए कि Prime Minister यहां आएँ। On that the Chair cannot direct the Government that which Minister should come and answer. That is the position. You know that. इसका मतलब है कि आप भी सहमत हैं। You are also in agreement with this discussion. That means I understand there is consensus. Therefore, I am giving a ruling. We now continue with the discussion of this Resolution. After that, for one hour or a maximum of one hour and fifteen minutes we will take up the Short Duration Discussion and after that we will take up The Copyright (Amendment) Bill. Further, I would assure that the point raised by Shri Balagopal, for which I have already given a ruling, thus stands. This has the consent of all parties, including the hon. Leader of the

Opposition. Therefore, I request that the remaining Members should take only five minutes to speak.

DR. E. M. SUDARSANA NATCHIAPPAN : Sir, I will just quote Rule 3 (2) (i) Objectionable content includes anything that “threatens the unity, integrity, defence, security or sovereignty of India and/or friendly relations with foreign States or public order or causes incitement to the commission of any cognizable offence or prevents investigation of any offence or is insulting any other nation.” These are all issues which have to be looked into. Therefore, I feel that the Resolution need not be passed. It can be withdrawn. Thank you.

(Ends)

उपसभाध्यक्ष (प्रो. पी.जे. कुरियन) : करीमपुरी जी, आप सिर्फ 5 मिनट में बोलिए। अगर इससे कम समय लेंगे, तो ज्यादा अच्छा है।

श्री अवतार सिंह करीमपुरी (उत्तर प्रदेश) : जी, मैं आपसे cooperate करूंगा। सर, Information Technology के इस मोशन पर यहां डिस्कशन हो रहा है। सैक्शन 79 के अंतर्गत इन Intermediaries को लीगल प्रोटेक्शन दिया गया है। मैं महसूस करता हूं कि यह जो नया प्रपोजल है, इसके तहत जो E-mail providers हैं, Google है, Facebook है, Twitter है, Yahoo है, उनको प्रोटेक्शन नहीं मिलेगा, क्योंकि अगर कोई भी यह कहता है कि यह

जो मैटर फीड किया गया है, हमें इसके ऊपर ये ऐतराज़ हैं, तो उन्हें 36 घंटे के भीतर उसे revoke करना पड़ेगा। उनके खिलाफ जो कंप्लेंट है और जिसने intermediaries को create किया है, उसे भी clarification का वक्त नहीं दिया गया। मेरा यह कहना है कि जो नए रूल्स हैं, उनके मुताबिक हम यह तो कहते हैं कि अगर कोई नफरत भरी स्पीच देता है, कोई racial attack करता है या pornography है, ऐसी जो चीजें हैं, उनके ऊपर तो यह प्रावधान हो सकता है, लेकिन अगर हम हर फील्ड में ऐसा कर दें, तो मैं समझता हूं कि हम यह सही नहीं करने जा रहे हैं। आदरणीय मंत्री जी रूल्स में अमेंडमेंट की बात सोचकर आए हैं, नए रूल्स के बारे में सोचकर आए हैं, लेकिन बहुजन समाज पार्टी की यह राय है कि intermediaries की जो आर्गनाइजेशन है, एक बार उनके साथ भी वार्तालाप कर ली जाए कि वे क्या चाहते हैं, क्योंकि हमें इसे सेंसर नहीं करना चाहिए, बल्कि issue की sensitivity को देखना चाहिए। (2M/MP पर जारी)

-SSS/NBR-MP/2M/3.10.

श्री अवतार सिंह करीमपुरी (क्रमागत) : कि जिससे हमारे नेशन पर, हमारी generation पर कोई बुरा असर पड़ता है, हम उसके बारे में सोचकर आगे बढ़ें, न कि हम ऐसा sensor कर दें कि यह सारा जो नेटवर्क है, यह meaningless हो जाए। इसलिए हम आपके माध्यम से मंत्री जी से अपील करेंगे कि वे जो रूल्स के अमेंडमेंट्स के लिए proposal लेकर आए हैं, इसको कृपया reconsider करें और जो उनकी intermediary की organizations हैं,

उनके साथ बैठकर बातचीत करें। साथ ही यहां भी जो political parties के लीडर हैं, उनके साथ भी बातचीत करके अगर आगे बढ़ा जाए, तो ज्यादा अच्छा होगा।

(समाप्त)

SHRI N.K. SINGH (BIHAR): Thank you very much, Sir.

Considering the limitation of time, I have only a couple of points to make. The first and foremost, let me say, in principle, is, I am not opposed to the formulation of these rules to put restrictions which, I believe, are reasonable.

My first point really, Sir, to the hon. Minister is, these rules are not in consonance with the best international practices. If you look at the Report called Detailed Country-by-Country information on Internet censorship is provided by the OpenNet Initiative or Reporters Without Borders or Freedom House, all these Reports suggest that most of these restrictions in other countries are somewhat milder and somewhat narrower as has been defined under the Digital Millennium Copyright Act of the US. So, the hon. Minister may like to review the entire framework of these rules to put these rules at par with the best international practices.

My second point really is, many of the words and terms which have been used, particularly in Article 3 of these rules, are

ambiguous in nature, because these have not been defined either in the rules or necessarily in the parent Act.

My third point really is, in the application of these rules, they are not at par with the restrictions which are available on the other forms of media. So, it would be somewhat restrictive if only these rules are applicable to one particular form in which communication is being done and really not applicable to other forms.

My fourth point really Sir, is, some of these restrictions could, the hon. Minister may like to consider, be in consonance with the provisions of Article 19(1) constituting an infringement of the Right of the Freedom of Speech.

The fifth point is, there is lack of transparency in relation to the application of these rules.

And, my last point really on this is, there is a presumption that all complaints which are filed for removal of offensive matter are necessarily correct. This is particularly sad when the person who has initially put it on the net is not being heard and action is taken unilaterally.

I would, therefore, end by saying that the hon. Minister may like to review all these things. And pending a review of this, send it

to the Council which is mandatory and which can review the best international practice and bring it on the best footing for that.

(Ends)

SHRI DEREK O'BRIEN (WEST BENGAL): Sir, I will begin by a self-depreciatory comment, because I am a little bit Internet addict. I spend about 2-3 hours everyday on Internet. And then, I will quickly go to a self-congratulatory comment where recently I had the privilege of being listed in a list which talked about influencing commentary in India.

That apart, I think, there are some key issues here. The first one is, I myself come from a State where I lived $3\frac{1}{2}$ decades of my life. So, we, now, know what the value of freedom of expression is and what freedom of speech is.

(CONTD. BY KS

"2N")

2n/3.15/ks-sc

SHRI DEREK O'BRIEN (CONTD.): And, that has been a major change in the last one year. So, we know that. But, the key thing today is to understand that the content which is uploaded on the Internet, unlike any other medium today, cannot be pre-empted. Any attempt to pre-empt this would be foolhardy.

Now, Sir, that having been said, steps need to be taken to limit the damage after that, because there is no doubt in anyone's mind that the most egalitarian, the most emancipatory, the most open of all spaces, is the Internet. I think, once we allow the first thing to happen — because you cannot stop the first — the second is important. For example, Sir, if you say 'freedom of expression', I am entitled to my freedom of expression. But what happens if someone impersonates me, uses another mail account — I think, the LoP mentioned this? What happens to one's freedom of expression then? This is where the freedom of expression, in fact, goes beyond the *lakshman rekha*.

Sir, in so many ways we are celebrating this freedom of expression, but I think, in this freedom on the Internet, it cannot be a highway only with green lights; there need to be some amber lights. Someone was suggesting that those amber lights can be self-regulatory which happens sometimes on the Internet. But that doesn't always happen because people hack into accounts. I will give you, as an example, a very non-political, a very poignant story of an 18-year old boy who got admission into an international college; then, he got a regret letter from that college because

someone had hacked into the college account and, then, sent him the regret letter. The boy lost a chance to study in the U.S.

The Left Front in Bengal in the 1960s and 70s was famously mixing up the terms 'computer' and 'compounder' and it is an irony that today they are talking about the freedom on the Internet because, for true freedom, Sir, it needs not only responsibility, but there also needs to be drawn a line. My only suggestion is, you cannot pre-empt the uploading, but steps need to be taken to pre-empt the damage. Sir, like every human framework, as much as we celebrate the joys and the freedom of the social media, I think, as is being suggested, there needs to be some — I wouldn't use the word 'curbs' but — kind of way of keeping an eye on it. And the Internet Service Providers also have a responsibility.

I would like to end, Sir, with quoting somebody who died long years ago but his words are so relevant even when we are discussing a subject as new as the Internet. I am talking of Rabindra Nath Tagore who said, "I would let the winds of the world blow through the doors and windows of my house, but I will not be blown away". Thank you, Sir.

(Ends)

प्रो० राम गोपाल यादव (उत्तर प्रदेश) : धन्यवाद उपसभाध्यक्ष महोदय, यह जो Statutory Resolution है, इसमें कुछ बिन्दुओं पर मुझे आपत्ति है। एक बात तो यह है कि यह आम चलन हो गया है कि सबॉर्डिनेट लेजीस्लेशन के तहत जब भी नियम बनाए जाते हैं, बायलॉज बनाए जाते हैं, तो आम तौर पर जो मुख्य कानून होता है, उसका अतिक्रमण कर देते हैं और ऐसा समझते हैं कि संसद में या कहीं भी अगर यह मुद्दा आएगा तो लोग उसको ओवरलुक कर देंगे और जैसा चाहे, वैसा कानून बना देंगे। जब भी कोई बायलॉज सबॉर्डिनेट लेजीस्लेशन के जरिए बनता है, तो कभी भी वह मदर ऐक्ट को वॉयलेट नहीं कर सकता। इसमें ऐसा लग रहा है कि जो मूल कानून है, कुछ उपबंध उसका अतिक्रमण कर रहे हैं, जो नहीं होना चाहिए।

दूसरा, हमें संविधान ने आर्टिकल 19 के तहत अभिव्यक्ति की स्वतंत्रता दी है, जिसके अंतर्गत प्रेस और पब्लिकेशन, ये सारी फ्रीडम्स प्राप्त हैं। यह सही है कि उन पर रीज़नेबल रेस्ट्रिक्शंस हैं, लेकिन रीज़नेबल रेस्ट्रिक्शंस के नाम पर हमने इस देश में देखा है कि किस तरह से पूरी तरह से स्वतंत्रता का हनन किया गया, स्वतंत्रता को छीना गया और लोगों के मुंह से निकले हुए किए भी शब्द के आधार पर उनको जेलों में डाल दिया गया।

(2ओ-जीएस पर जारी)

KGG-GS/20/3.20

प्रो० राम गोपाल यादव (क्रमागत): ऐसा हुआ है। इसलिए मेम्बर्स की यह आशंका निराधार नहीं हो सकती कि जो नियम और उपनियम बनाए गए हैं,

इनके जरिए भी अंततोगत्वा सेंसरशिप जैसी बात आ सकती है। हमारे देश में लोगों को कई तरह की स्वतंत्रताएं प्राप्त हैं, उन पर अंकुश लग सकता है।

उपसभाध्यक्ष महोदय, समय की कमी है, इसलिए मुझे ज्यादा कुछ नहीं कहना है। मैं सिर्फ इतना ही कहना चाहूंगा कि जब मंत्री जी बोलने के लिए खड़े हों, तो यह आश्वासन जरूर दें कि कोई भी ऐसा नियम, उपनियम, जो मूल कानून का उल्लंघन करता है, वह आपरेटिव नहीं होगा। इनके माध्यम से किसी भी तरह की फ्रीडम का हनन नहीं किया जाएगा। हां, जहां ambiguity है, जहां ambiguous है, किसी की कोई परिभाषा नहीं है, उस पर मनचाहे तरीके से कहा जा सकता है कि यह इसके अंतर्गत आता है, इसको सेंसर कर दिया जाए, इसको रोक दिया जाए। इंटरनेट पर तमाम तरह की सर्विसेज़ होती हैं, उन पर पाबंदी लग सकती है। इस तरह की अवांछनीय पाबंदियां नहीं लगाई जायेंगी, ये आश्वासन माननीय मंत्री जी की तरफ से इस सदन को देना चाहिए, यह मेरा उनसे अनुरोध है।

(समाप्त)

SHRI TIRUCHI SIVA (TAMIL NADU): Mr. Vice-Chairman, Sir, at the outset, before going into the merits of the Motion, I would say that the Motion moved is a very good precedent of establishing supremacy of Parliament. Sir, the rules drafted and notified by the Government could be perused by Parliament is a fact that has been established today by the Motion moved by Mr. Rajeeve.

Realising the constraint of time, I would like to say only one point. Gaining access to private communication on internet is more or less amounting to tapping of phones. Anyhow, Parliament recognized that fact and directed the Government to propose some safeguards. These safeguards were prescribed by the Information Technology Procedure and Safeguards for interception, monitoring and decryption of Information Rules, notified by the Government. Now, the mover has got a reservation with regard to sub-rule 7 of rule 3 of the new rules because he says that the Government agencies can have access to any internet connection, private communication, without safeguards.

Another thing is, as the Leader of the Opposition has pointed out, with regard to clause 2(b). There are some terms which may be stretched and could be used to the convenience of any person. Sir, on any account, every one is very clear that the freedom of expression, which is a fundamental right, cannot be compromised for anything. At the same time, the technological developments which have been increased to a larger extent bring along with them some implications. So, I would suggest to the Minister--that after taking into consideration all the views which have been expressed by the hon. Members here, the basic intention of the mover of the

Motion and the views of the Leader of the Opposition--to defer these rules to the Cyber Regulation Advisory Committee. Also, I would urge the Subordinate Legislations Committee of this House to take cognizance of these rules and examine these.

I think, only after a perusal, the apprehensions which the Members have, could be eluded. So, I think, the Minister would accept the suggestion. Though the rules are already operational, I think, the Minister could defer it to the Cyber Regulation Advisory Committee. Thank you, Sir.

(Ends)

(Followed by tdb/2p)

TDB/2P/3.25

SHRI D. RAJA (TAMIL NADU): Mr. Vice-Chairman, Sir, at the outset, I would like to compliment my hon. colleague, comrade Rajeeve, for raising this very important issue through a Motion. Sir, the Notification on the Intermediary Guidelines of Rules, 2011 to the Information Technology Act was issued on 11th April, 2011. After almost a year, the Rajya Sabha is scrutinizing the validity of these rules. I think the rules must be in accordance with the Constitutional provision on the question of fundamental rights, liberties as well as, in accordance with the primary objective of the very Act itself. The

rules appear contrary to the Act or contrary to the Constitutional provisions or contradictory to these provisions. Then, we need to re-look at these rules and scrutinize it. I am one who stands for freedom of expression, freedom of writing, freedom of thought, and everything. Having said that, Sir, whatever the Government does, it should not snatch away institutionally guaranteed liberties of individuals as well as organisations. Now, it appears, although the Government has been taking steps to control the media and the citizens in their private communications or in the formal communications, I think, the Government should be cautious in addressing this issue. I do believe that there must be some regulatory mechanism for it. I find that even the Leader of the Opposition has read out the entire portion, i.e, due diligence to be observed by intermediary. Here, 'I' talks about unity, integrity, defence and all these things. I think the common good of the society, the common good of the humanity and the supreme interest of the nation cannot be compromised at any cost. There, the Government has a responsibility. As citizens, we do have a responsibility.

Sir, India has been emerging as a knowledge power, as a power for information technology. Sir, Indian citizens are now

defined as 'netizens'. Netizens are those who have access to Internet and other things. So, Internet, Facebook, Twitter and all these things are new instruments of communications. Once upon a time, they were not known. It is not that the Left does not understand the difference between computer and compounder, as my friend says. We do move, again, with the change of time and change of science and technology. What we need is, there must be a balance between freedom and necessity. The hon. Minister will have to look at some of the apprehensions expressed as far as the rules are concerned. Once the hon. Minister responds positively, I think, the House will be able to solve this Motion. With these words, Sir, I conclude.

(Ends)

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI KAPIL SIBAL): Mr. Vice-Chairman, Sir, first of all, I want to congratulate the Mover of the Motion, Rajeeveji, for having brought these rules to the attention of the House. We have had a very informed debate. The Leader of the Opposition has, in his inimitable style, agreed with the broad contours and architecture of the rules, but has cautioned the Government, and rightly so, that the restrictive words in the rules might lead to an

interpretation, which, in turn, might lead to harassment and impact on the fundamental right of free speech. I think there can be no doubt about that. I, on behalf of the Government, can assure this House that this Government does not stand for censorship; this Government does not stand for infringement of free speech. Indeed, this Government does not stand for regulation of free speech.

(Contd. by 2q-cls)

KLS/2Q-3.30

SHRI KAPIL SIBAL (CONTD): Now, why are we discussing this issue today in the context of rules that have been framed? Sir, we are dealing with a new medium. If you have the print medium and you have the electronic medium, all the companies who provide information through the print medium and electronic medium are registered in India, they are subject to Indian laws. But in the context of new medium, which is the internet, there is no registration of any of these mediums in India, and, therefore, they are not subject to Indian laws. If there is a terrorist attack that takes place and source of it is in some other part of the world and we wish to seek information about the source of that terrorist attack, it is not provided to us on the ground that they are not subject to

Indian law. If people are trading in drugs, these are the cases that have happened in courts; actually people have gone to courts. If somebody is trading in a certain kind of psychotropic substance, the information is on the net. You say, please remove that site from the net and please inform us as to who are the persons behind it, the response is that they are not subject to Indian law. Now, I am not saying that we should subject them to Indian law *per se* but I am saying that these are very serious issues that arise in the course of the functioning of the State. I am sure that all the distinguished Members of this House will realize that many of these have impact on the security of the State, many of these things impact public order. If you have certain sites on the internet, which are incendiary, which are hate speeches, what is the mechanism to deal with it? Now if you look at the Acts and rules you will realize that we have not infringed on the rights of the media at all. There is no government intervention in any of this. Let me, Sir, just point out and I will finish very quickly because you want to go on to the other matter, kindly look at section 66 (a) of the Act, punishment for sending offensive messages through communication, this is now a substantive provision of the Act. I am not talking of section 69 but of section 66 (a) - punishment for sending offensive

messages through communication, any information that is grossly offensive as a menacing character shall be punishable. This is provided in the substantive Act. We are not talking of the rules here. This is the substantive provision of the Act which has been passed by the Parliament. Section 66 (b), punishment for dishonestly receiving stolen computer resource, let us leave that; punishment for identity theft, you impersonate somebody, that is identity theft. That is the substantive provision of the Act. And the rules we are talking about are in the context of these substantive provisions. There is excessive delegation of legislation here. The mover of the Motion read only section 69, but I am reading some of the other substantive provisions which indicate that all these rules are consistent with the provisions of the Act. Punishment for cheating any impersonation by using computer resource- the Leader of the Opposition talked about how impersonation can be, but it is a substantive offence. It is not something that is in the rules. The rules are in aid of the substance which is part of the statute. Punishment for violation of privacy which again is substantive provision; punishment for cyber terrorism, section 66 (f), again is a substantive offence; punishment for publishing or transmitting of obscene material in an electronic form is a

substantive offence. Then you go on to section 69. So, the point I was trying to make is that there is a host of substantive provisions in the Act which declare substantive offences and the rules that have been framed are consistent with the Act.

(Contd by 2R/PK)

-KLS/PK/2R/3.35

SHRI KAPIL SIBAL (CONTD.): So, the argument that the mover of the Motion has made is that this excessive delegation, with great respect, has no substance.

The second argument is that you are, actually, infringing; that the Government is trying to control the media. Now, Sir, let me indicate what the Act says; we will go to the rules a little later. Section 79 says, “Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data or communication link made available or hosted by him, the provisions of sub-section (1) shall apply, (c) this is important -- if the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.” So, the inter-mediary will not be liable subject to two things — due

diligence and following such guidelines as the Central Government may make in that behalf. That is part of the Act; it has nothing to do with the rules. Now what is 'due diligence'? That is what is prescribed in the rules. Therefore, if you look at sub-section 2, rule 3 of the rules framed under section 79, rule 3 is about 'due diligence' - due diligence to be observed by intermediary. It is not Government's interference. Government is not taking any action. But what is the 'due diligence' that the intermediary should observe? What is that? Such rules and regulations, terms and conditions or User Agreement shall inform the users. That means the intermediary must inform the users. The Government is not going to interfere in any of this. It is the 'due diligence' of the intermediary that is now being defined in the Act, which is the substantive provision of the Act, under section 79. So, he will inform the user of the computer resource not to host, display, upload, modify, publish, transmit, update or share any information that belongs to another person; that is impersonation; that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy; that harms minors, infringes patent, trademark, copyright or other proprietary rights, violates any law for the time being in force, and

impersonates another person. The Leader of the Opposition talked about ‘prevents investigation of any offence or is insulting any other nation.’ Why did this ‘prevents investigation of any offence’ come about? It came about because of sub-rule 4. Sub-rule 4 says: “The intermediary on whose computer system the information is stored.” Supposing it deals with drugs. I am just giving an example. “.. or hosted or published upon obtaining knowledge by itself or been brought to actual knowledge by an affected person - - it is not necessarily the Government; it could be anybody — in writing or through e-mail, signed with electronic signature about any such information, as mentioned in sub-rule 2 above, shall act within 36 hours and where applicable, work with user...” Who will act? Not the Government! If I provide an intermediary with information about a drug which is a psychotropic substance, which is being traded on the Net and which is being brought to India, then, in that situation, that information is given to the intermediary, and he must act within 36 hours, and, where applicable, work with user or owner of such information to disable such information. I pause here. This is the intermediary’s decision; it is not the Government’s decision. The intermediary can say ‘no’. There is no prescription that he has to remove. There is no direction that

he has to do what the Government says. The prescription is, we inform him that that is what is going on; please do something about it in 36 hours. He may write to us saying, or he may inform us, that there is nothing wrong with him. There is nothing that the Government can do. So, this impression 'that it is the Government which is interfering in the freedom of expression' is completely erroneous. The Government is informing the intermediary, consistent with his obligations of due diligence, under section 79 of the Act, that you are required to exercise due diligence when it comes to some of these things.

(Contd. by 2S/PB)

PB/2s/3.40

SHRI KAPIL SIBAL (CONTD.): But it is your choice. Where you want to work with the person who supplied the information, work with him where applicable and do what you want to do. Where does the Government come? Where have we interfered with that infringement? Where have we infringed the Right to Freedom of Expression? Nowhere; because the Government is not in the picture. The Government is only saying that this is the kind of due diligence that is expected out of it. So, this impression 'that the

Government is wanting to do something and wanting to restrict the right is unfair.'

Then, I was coming to what the Leader of the Opposition mentioned. And, Sir, it further says, '.... information to disable such information that is in contravention of sub-rule (2). Further, the intermediary shall preserve such information and associated records for, at least, 90 days for investigation purposes.' Now, why did the question of investigation come that prevents investigation of any offence? That's because if the information is relating to a drug or terrorist act, he must preserve that information. Otherwise, how do we prosecute? If he immediately remove that information and doesn't pass it onto Government, how will the Government investigate? That is why in sub-rule (4), 'prevents investigation of an offence came in.' So, there, again, I would like clarify it to the learned Leader of the Opposition that it is in this context that where there are offences of this nature, the source and the material must be preserved for a period of, at least, 90 days so that if the investigation agency in India wants that information to investigate and prosecute, it can access to it. If we don't have this provision, we will never be able to prosecute. These are essential things. You know, I don't want a full debate on it. But I am just

indicating to you that there is no attempt by Government to interfere in 'Freedom of Expression.'

Now, I come to the other point that my good friend raised, and I just want to point this out. Incidentally, I might mention that every jurisdiction in the world has these provisions, and I can point out law after law. Every jurisdiction in the world has it, including the US, including Europe, and I have these provisions with me. Of course, we are more liberal -- and we are proud of it -- than Europe and we are more liberal than the United States of America, and I am proud of that. But the fact is, let's not cut our arms in order to ensure that they do justice.

Now, Sir, the other point that I want to make is, I have the guidelines; and whatever has been set out is consistent with the guidelines of the Net Providers themselves. Take, for example, the guidelines of Yahoo. What do the guidelines of Yahoo say? It is the same thing that 'please, you agree not to use.' What are we saying? 'You agree not to use' -- Yahoo services to what? It is, 'Upload, post, email, transmit or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise

objectionable.” This is much wider than our prescription, much wider. This is their own advice to their own users that please don’t do this. So, if we, in Government, advise the intermediary, it’s a violation of ‘freedom of expression.’ If the Net Provider advises its own user, it is nothing. Yet, I understand the sentiments of the House, and I request you to look at Article 19(2) of the Constitution of India. What are the words used in the 19(2)? It says, “Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, -- there is no problem in that -- the security of the State, friendly relations with foreign States ...” Instead of saying ‘abusive of a foreign State’, you can use ‘friendly’, we will change that; there is no issue. Then, it further says, ‘... public order, decency ...’ Sir, does the Constitution define ‘decency’? Nobody defines ‘decency.’ The Constitution has not defined ‘decency.’ Ultimately, what happens? If there is an issue of decency, it is decided by the courts? So, there will be expressions like ‘morality’. The word ‘morality’ is also used — ‘decency or morality’

2t/3.45/skc

SHRI KAPIL SIBAL (CONTD.): What is 'moral'? The Constitution does not describe it, but who decides it? It is the courts of law. Sir, incidentally, these rules were cleared by the Committee on Subordinate Legislation. These are not executive rules framed by us. There were four meetings of the Committee on Subordinate Legislation and the rules were cleared by the Committee on Subordinate Legislation. So, it is not as if Parliament has not overseen these rules, and, not only that; we called for industry participation. I have the recommendations from the CII. The rules were put to the CII. The rules were put to the Data Security Council of India and other organizations. I have their comments. It is only after all this discussion happened, and they cleared it, that we brought the rules. So, it is not as if some officials in the Government of India and our Department decided to have these rules. No; it was done with full participation of everybody.

In any case, I request distinguished Members of this House to please, write to me on any issues that they are concerned about, and I assure the House, I would take those issues into account. I

will also call the Industry. I will have a full discussion on the subject; I will call distinguished Members of the House so that, after a full discussion, whatever emerges, I can implement it. I am sure that that would satisfy distinguished Members of this House and the mover of the Motion and we can all agree on a course of action because, under this new media, there would be several challenges that this nation would face, and we should be ready for those challenges. That can only be done through consensus and collaboration.

Thank you very much.

(Ends)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): That is very good.

That is an assurance. Now, Mr. P. Rajeeve, you may briefly reply.

SHRI P. RAJEEVE: Sir, I am grateful to the hon. Minister, the hon. Leader of the Opposition and hon. Members who have participated in the discussion. Actually, I had tried to utilize the mechanism existing in the parliamentary system for getting more benefits for the community and the country. I am very much grateful to Derek for mentioning about the freedom of speech, which was reflected in the arrest of a Professor just for posting a cartoon on the Internet. Thank you for mentioning that !

SHRI DEREK O'BRIEN: Sir, this is not that. We are talking about impersonation, Sir. The Leader of the Opposition and the hon. Minister spent so much time talking about impersonation. (Interruptions)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Please don't worry. Everything is on record. (Interruptions) Everything is on record, Mr. Derek. Please take your seat.

SHRI P. RAJEEVE: Sir, actually, he was mentioning about the last several years of rule there. (Interruptions) I am just reminding about the recent developments in that State. I think he is more aware of that as a quiz master.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No, no; don't get distracted. Come to your point.

SHRI P. RAJEEVE: Sir, the hon. Minister has mentioned several things.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): He has conceded. Then why are you raising it? You could send whatever points you have to him in writing.

SHRI P. RAJEEVE: That is true, Sir, but I have to mention a few things here. That is my right.

In the beginning, I have mentioned about clause 66A. I think the hon. Minister didn't have the time to listen to that.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): There is no need for this, Mr. Rajeeve. (Interruptions) All right then. Please take five minutes.

SHRI P. RAJEEVE: Sir, as the mover of the Motion, I think I have the right to put certain things to the Minister.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, you do have the right. I am not questioning your right.

SHRI P. RAJEEVE: Sir, in the beginning, I have mentioned that in the Act itself there are some provisions. My question is: what is the litmus test to examine whether a rule is in accordance with the parent Act. That is the question we are discussing while considering a statutory Motion. I am totally in agreement with the remarks of the Minister about the Act. It was passed by the Parliament. But, Sir, what is an objectionable content? It has been mentioned in clause 69A. Now, clause 69A is in accordance with article 19(2) of the Constitution. The Minister must not look at this clause in isolation. It is specifically mentioned in clause 69A what objectionable content is, and it is in accordance with article 19(2)(a). My submission is, while the Minister explained that, the

question is about clause 3(2). This clause, from (a) to (j), explains what an objectionable content is. It goes beyond the provisions of clause 69 of the Act. That is the basic question. The reply given by the Minister is not satisfactory on that point.

(contd. at 2u/hk)

HK/2u/3.50

SHRI P. RAJEEVE (CONTD.): With regard to privacy thing, that is, 3(7), it is actually against the Act, which specifically mentions what are the provisions for getting information from a user. It specifically states that. The Government framed the Rules. I invite the attention of the hon. Minister to the other Rule. There are certain provisions in the Rule for the intervention of the Government for blocking contents. For getting information from a user, there are certain other rules. The Minister says that this is not a mandatory thing; there is no Government intervention. But, Sir, this is actually private censorship. But we are going to the words used in this Rule. 'Due diligence to be observed by intermediary', you look at it. There is 'shall' everywhere. While in the legislative process, we can find out several 'may'. But here, all are 'shall'. Recently, one organization posted contents to seven websites like Google, Twitter, Facebook, etc. Thereafter, the same organization sent a

complaint saying that this is against the Rule. Within 36 hours, these all seven intermediaries removed the contents without any enquiry. That is the reality. Finally, Sir, actually it is Government intervention and private censorship. That is private censorship. What is the reality in other countries? I would not like to take more time on that. Digital Millennium Copyright Act is actually related to copyright. But, in that Act itself, there is a provision. It is 'put back' provision, by which contents can be restored. If a counter-notice is sent by the author of the contents unless the copyright holder files a suit within ten days. That is Digital Millennium Copyright Act. There is a 'put back' provision. That type of provision is not existing in the Rule. While coming to the European Union, I would not like to take more time explaining the provisions ... (Interruptions) ...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Please conclude. ... (Interruptions) ...

SHRI P. RAJEEVE: There is a specific provision. ... (Interruptions) ... That is a reality. ... (Interruptions) ... My question is: As per the Section 88, there is a provision for consultation with an Advisory Committee. It has been constituted. It may be right. But there were only two meetings in 2000. What is

the rule of this Advisory Committee? As per the Act, "The Central Government..... either generally as regards any rules or for any other purpose connected with this Act." Now, the Minister claims that the Government has taken several steps in consultation with the industry and other stakeholders. But this is the mandatory provision in this Act. It may be true that the Government has taken several steps and discussed it with stakeholders. But this is mandatory as per the Rule. Why is the Government not taking the advice of the Advisory Committee for framing these Rules? Sir, 3(2) and 3(7) are totally against the Act. They are *ultra vires* of the Act. Considering the sense of the House and the issues that we have raised, the hon. Minister should consider all these things and come with an amended Rule within a time frame. Till that time, it should be kept in abeyance.

(Ends)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, I shall put the motion for amendment to vote...(Interruptions)...

SHRI ARUN JAITLEY: Can the hon. Minister give an assurance to this House that the Rules, after this broad-based discussion, will be relooked at, and if there are any words therein, which require to

be replaced or removed, the Minister would replace or remove them? Are you agreeable for that?

(Followed by 2w/KSK)

KSK/DS/3.55/2W

THE MINISTER OF HUMAN RESOURCE DEVELOPMENT (SHRI KAPIL SIBAL): My assurance to this House is that I will request distinguished hon. Members to write letters to me objecting to any specific words. I will then call a meeting of the Members as well as the industry and all the stakeholders. We will have a discussion and whatever consensus emerges, we will implement it.

(Ends)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): That's an assurance. So, I will put the question again. The question is:

“That this House resolves that the Information Technology (Intermediaries Guidelines) Rules, 2011 issued under clause (zg) of sub-section (2) of Section 87 read with sub-section (2) of Section 79 of the Information Technology Act, 2000 published in the Gazette of India dated the 13th April, 2011 vide Notification No. G.S.R 314(E) and laid on the Table of the House on the 12th August, 2011, be annuled; and

That this House recommends to Lok Sabha that Lok Sabha do

concur in this Motion.”

The motion was negatived.

(Ends)

MESSAGE FROM LOK SABHA

The Central Educational Institutions (Reservation in Admission) Amendment Bill, 2012.

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from Lok Sabha, signed by the Secretary-General of Lok Sabha:-

“In accordance with the provisions of rule 120 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to inform you that Lok Sabha, at its sitting held on the 16th May, 2012, agreed without any amendment to the Central Educational Institutions (Reservation in Admission) Amendment Bill, 2012, which was passed by Rajya Sabha at its sitting held on the 27th April, 2012.”

(Ends)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, as per consensus, we shall take up the Short Duration Discussion on the normalisation of relations with Pakistan and issues relating to human rights violations of minorities in Pakistan. The time allotted

is one hour and the hon. Minister's time will be extra fifteen or twenty minutes. So, we should finish it within one hour and everybody should strict to the time limit. Shri Balbir Punj, your party has 12 minutes, but you can take seven minutes.

**SHORT DURATION DISCUSSION ON NORMALISATION OF
RELATIONS WITH PAKISTAN AND ISSUES RELATING TO
HUMAN
RIGHTS VIOLATIONS OF MINORITIES IN PAKISTAN**

श्री बलबीर पुंज (ओडिशा): उपसभाध्यक्ष जी, मैं आपका और इस सम्मानित सदन का बहुत आभारी हूँ कि एक तो इसने यह चर्चा स्वीकार की और आपने मुझे इस महत्वपूर्ण चर्चा पर बोलने का अवसर दिया।