RG/12.15/1Q

STATUTORY MOTION FOR RESOLUTION THAT THE INFORMATION TECHNOLOGY (INTERMEDIARIES GUIDELINES) RULES, 2011, LAID ON THE TABLE OF THE HOUSE ON 12TH AUGUST 2011, BE ANNULLED.

SHRI P. RAJEEVE (KERALA): Sir, I move:

"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 annulled; and

That this House recommends to Lok Sabha that Lok Sabha do concur in this Motion."

Sir, after a long time, our Parliament is discussing a Statutory Motion. This is one of the rarest occasions in Parliamentary proceedings. Normally, Parliament would not get an opportunity to discuss rules. Statutory Motion is the only opportunity for Parliament to discuss rules. Parliament has the power to make laws. But the

power to make rules is delegated to the Executive. The legal requirement is that the rule should be in accordance with the parent Act. But, nowadays, we find that most of the rules are *ultra vires* the parent Act. The Information Technology (Intermediaires Guidelines) Rules, 2011, is a clear-cut illustration of this trend, which needs to be curbed by the supreme law-making body of the country, that is, Parliament. The World Summit on the Information Society is going to be held in Geneva tomorrow, where different aspects, including Government-control on internet by our country, are going to be discussed. We are discussing this Motion today, and this would reflect on the Conference which is to be held in Geneva.

Coming to the grounds for this Statutory Motion, I would like to state one important thing. I am not against any regulation on internet, but I am against the control on internet. What is the difference between regulation and control? Recently, Justice Markandey Katju correctly made a distinction between control and regulation. In control, there is no freedom. In regulation, there is freedom within the reasonable restrictions given under our Constitution. The Information Technology (Intermediaries Guidelines) Rule is an attempt to control the cyber space. It is an

attempt to curtail freedom of speech and expression which has been ensured under article 19 (1) (a) of the Constitution. Sir, we have enough legal provisions to regulate the internet. The I.T. Act, 2000, has a very strong provision to regulate internet. I would like to invite the attention of this august House to Section 69 of the Act. Section 69 (1) gives powers to issue direction for blocking, for public access, any information through any computer resource. This Section has correctly specified what the offendable things are. Now, I quote Section 69 (1): "If satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the 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)." These are correct formulations. This is in accordance with article 19 (2) of the Constitution. But, in addition to that, Section 69 (3) talks about intermediaries. What are intermediaries? Now, when we use the I-pad in Parliament, we get the internet access through the MTNL. So, that is an intermediary. Likewise, Google and Yahoo are intermediaries.

(Continued by 1R)

SHRI P. RAJEEVE (CONTD.): Facebook and Twitter are intermediaries. Web hosters are intermediaries. These are intermediaries. In the Act itself there are strong provisions to control these intermediaries. 69 A (3), "The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years". Section 69 A (3) is a very strong provision in the Act itself. Sir, the Government has made rules on the basis of Section 69, i.e. the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. Sir, if the formulation of procedure is very correctly framed, then, how can the content be blocked by an intermediary? The designated officers are there. Specific Committees are there. Reviewing Committees are there and as per this Rule, there is a strong provision to control the intermediaries also. A provision to not only regulate, but even to 'control the intermediaries' is there in the Act itself. Then, Sir, there are too many criminal provisions in the IT Act. While coming to Section 66 A of the IT Act, "causing annoyance or inconvenience electronically has a penalty of three years and does not require a warrant to arrest." That is the provision of the Act itself. That shows the IT Act itself and the rule

in accordance with several sections of the Act give power to the Government, and also to the intermediaries, to deal with all these things. Then, what is the urgency for the new rule? Sir, in 2004, Avnish Bajaj, the CEO of Baazee.com, an auction portal, was arrested for an obscene MMS clip that was put up for sale on the site by a user. The Baazee.com case, a well-known case, resulted in an appeal by the industry to amend the Information Technology Act by providing protection to intermediaries from liabilities arising out of user-generated content. Sir, the intermediaries have no editorial control on the content. That is true. Then, certain protection should be there. For this, the IT (Amendment) Act, 2008 amended Section 79 of the IT Act, 2000 to provide for safe harbour protection to intermediaries. The safe harbour protection available to intermediaries is conditional upon their observing "due diligence" while discharging their duties under the Act and observing guidelines issued by the Government in this regard. Sir, these guidelines prescribing "due diligence" to be observed by intermediaries were notified in April 2001 in the form of IT (Intermediaries Guidelines) Rules 2011. Sir, why should these rules be annulled? That is the content of the Statutory Motion. Firstly, Sir, these rules are *ultra vires* to the parent Act. Section 79

intended to give harbour protection to the intermediaries. The purpose of Section 79, amended Section, is to give harbour protection to the intermediaries from other liabilities, but this rule has gone against the intent of Parliament by introducing a private censorship mechanism. Sir, this is private censorship. Delhi High Court in 2002 has specifically stated that pre-censorship cannot be countenanced in the scheme of our Constitutional framework. That is the verdict of Delhi High Court in 2002. These Rules, the new Rules, which we are discussing now, cast an obligation on the intermediaries to remove access to any content within 36 hours on receiving a complaint from an affected person, that falls under the category of a wide vague undefined list of "unlawful" content specified in the Rules. That is true. The rule should act, but *de-facto* they are compelled to remove the content.

(Contd. by NBR/1S)

-SSS/NBR-MCM/1S/12.25.

SHRI P. RAJEEVE (CONTD.): That is the reality. It has been experienced by several organisations and other people by giving some complaints and the content was removed within 36 hours. The unlawful content has been mentioned under Rule 3(2) of Intermediaries Guidelines. Rules 3(2) says, "Such rules and

regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information." Then, Sir, 3(2)(b) specifically states what are the offendable contents, but without defining what are these. Sir, I would not like to take more time to read all these things. But, I would only say any information that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, pedophilic, libellous and there are several things has to be informed to the computer users. It is neither defined in the Rules nor is defined in the Act.

But, Sir, Section 69 of the Act specifically defined unlawful content. The correct formulation of Section 69 specifically defined unlawful content which came under the purview of Article 19(2) of the Constitution. But, Rule 3(2) of the Intermediaries Guidelines goes beyond the Act which is a clear violation of the Act.

Sir, my second point on the *ultra vires* of the parent Act is Section 69. Sir, Section 69 of the Act gives power to the Government to issue direction for interception or monitoring or decryption of any information through any computer resource. Sir, Section 69(2) provides for procedures and safeguards subject to which such interception or monitoring may be carried out. The

executive has made a rule on the basis of Section 69. It clearly specifies what are the provisions and procedures followed by the executive to take information with regard to the user. But, Sir, Sub-Rule 7 of Rule 3 of the Intermediaries Guidelines mandates the intermediary to provide information of any such assistance to Government agencies without any safeguards. This is a clear violation of the Act. This is clearly against the guidelines specifically framed by the Supreme Court in Telephone Tapping Case. This is a clear violation of Section 69 of the IT Act and this could have serious implications on the right to privacy of citizens.

I come to Section 88 of the Act. There is a provision for Cyber Regulations Advisory Committee. Soon after commencement of the Act, Cyber Regulations Advisory Committee consisting of -- who? -- the interests of principally affected or having special knowledge on the subject matter to advise the Government on framing the rules. In the Act itself, there is a provision to constitute an Advisory Committee. Sir, Information Technology, cyber space, etc., are new sectors and hence expertise is required. So, the Government has correctly framed Section 88 in the IT Act to constitute Cyber Regulations Advisory Committee to advise the Government for framing the rules. These

rules, without seeking any advice from the Committee, have been framed. It is because even after one decade this body has not yet been formed. The advisory mechanism or body to guide the Government on framing the rules has not yet been constituted even after one decade of the Act! This is a very serious thing.

Sir, the apex court of the country has quoted several rules which are *ultra vires* of the parent Act. I am sure, as an eminent lawyer, our hon. Minister, Mr. Kapil Sibal, is well aware of the fundamental principles of the Subordinate Legislation that essential legislative function cannot be undertaken by the executive since it is the sole prerogative function of the Parliament. It is the sole prerogative function of the Parliament. It should not be delegated to the executive. If the Government wants any change, it has to come to Parliament. That is my first ground on this Motion.

Secondly, this rule is violation of the Constitution.

(CONTD. BY KS "1T")

1t/12.30/ks

SHRI P. RAJEEVE (CONTD.): Article 19(1) of the Constitution ensures the right to freedom of speech and expression. Article 19(2) of the Constitution specifically defines the 'reasonable restrictions'. But, Rule 2 goes beyond article 19(2) of the

Constitution. The Supreme Court held in the *Express Newspaper Private Limited versus the Union of India* case that if any limitation on the exercise of the Fundamental Right under article 19(1) does not fall within the purview of article 19(2) of the Constitution, it cannot be upheld. This was the verdict given by the apex Court in that case. In several cases, such as that of *Mohini Jain versus the State of Karnataka*, the Supreme Court of India quashed the rule saying that it was *ultra vires* of the Constitution, stating that the rule violates the principle of natural justice.

The rule does not provide an opportunity to the user who has posted to reply to the complaint and justify his or her case. This whole mandates the intermediary to disable the content without providing an opportunity to hear the user who posted the content. In some countries like America and the European Union countries, there is a provision to hold the content, remove the content for some days and after hearing the user who posted the comment, there is a provision to repost it. Such safeguards are not here. This is a clear violation of the principle of natural justice and it is highly arbitrary.

Fourthly, this rule prohibits the posting of certain content on the Internet while it may be lawful in the other media. For example,

an article may be permitted in the print media, it may be permitted on television, the visual media, but the same article might be prohibited from being reproduced in a web edition.

Sir, the Ministry issued a clarification in 2011. In that clarification, the Ministry had claimed, and stated:-

> "These due diligence practices are the best practices followed internationally by well-known mega-corporations operating on the Internet".

Sir, it might be true. But self-regulation should not be equated with Government control. The Ministry, in the same clarification, also stated, and I quote:-

> "The terms specified in the Rules are in accordance with the terms used by most of the Intermediaries as part of their existing practices, policies and terms of service which they have published on their website. In case any issue arises concerning the interpretation of the terms used by the Intermediary, which is not agreed to by the user or affected person, the same can only be adjudicated by a court of law".

What is the logic, Sir? Their attitude is, 'run away from defining these terms'. The Ministry has stated that the Intermediaries have defined these terms; if you have any objection to the definition, then, you can approach the court of law. What a logic, Sir! We are creating an avenue for judicial interpretation. We are running away from our own responsibilities. This is totally against the basic principles that we follow in law-making and in rule-making.

Finally, Sir, I would like to submit what the internatonal approach is. The U.N. Human Rights Council says, and I quote:-

> "Censorship measures should never be delegated to a private entity. No one should be held liable for content on the Internet of which they are not the author. Indeed, no state should use or force Intermediaries to undertake censorship on its behalf".

This is what the declaration of the U.N. Human Rights Council states. That is the duty of the Government. As per the Act itself, there are certain provisions by which the Government can intervene and regulate the Internet. Several rules are there as per section 69 of the Act. But these rules in accordance with section 79 of the I.T. Act go beyond the Fundamental Rights enshrined in the Constitution, they also go beyond the principles which are being

followed internationally and they also go against the declaration of the U.N. Human Rights Council.

(cd. by 1u/kgg)

1u/12.35/kgg

SHRI P. RAJEEVE (contd.): Finally, Sir, we should recognize multi-stakeholder nature of internet. Tomorrow, in Geneva, there is a very serious debate on this multi-stakeholder. India has proposed some code and some Government control measures. I support some part of it. But, we should protect multi-stakeholder nature of the internet. This is a very serious attack on the freedom of speech and expression. This is a very clear violation of the parent Act, which is *ultra vires* to the parent Act, and *ultra vires* to the Constitution. This is against the principles of natural justice.

So, I request the House to annul this rule itself to protect the rights of Parliament. Do not delegate these powers to the Executive. If the Minister wants any change, let him come to the House with an amendment Bill and make the rules accordingly. With these words, I conclude. Thank you, Sir.

The question was proposed. (Ends)

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Vice-Chairman, Sir, let me, first of all, compliment the hon.

Member, Shri Rajeeve, for familiarizing all of us that we have a role in overseeing even subordinate legislations. Otherwise, most of us were under the impression that the law is framed by Parliament, and rules and regulations are framed by the Government and placed on the Table of the House. I think, he deserves a compliment for educating us on this rule that Parliament has a supervisory control as far as subordinate legislations are concerned, and, if need be, we can express our vote of disapproval to the subordinate legislations.

Sir, we are dealing with a very difficult issue. We can allow ourselves to be carried away by either a popular sentiment which is always against any form of restraint or censorship; we can also allow ourselves to be carried away by a certain amount of anguish and irritation as to the kind of material we see on the internet or on various sites. The fundamental principle is that it is extremely difficult, if not impossible, to control technology. It would not even be desirable to do so. It is impossible to defy technology. So, the days of censorship, the days of withholding back information is all over. I always believe that if the internet had been in existence, the internal Emergency of 1975 would have been a big fiasco. You could restrain and create awe by censorship of the print media and

control the electronic media, but you could never control the internet. Therefore, there would be a free flow of information; information would come from all over the world. There would be angry exchange of articles and the circulation would have been so wide that the whole fear psychosis which was built up would itself have been demolished. Therefore, these institutions which have come up by virtue of technology have a great role to play.

But, then, there is the other danger. The other danger is, there is a situation of incitement of certain offences in the society. There is hate speech. There is religious hatred being created. There is caste hatred being created. There is an incitement to violence being created. You can have a flow of information which can then end up creating frenzy as far as the society is concerned. If that kind of frenzy is created, you will see the negative impact of allowing this kind of information. Therefore, we have to take a balanced approach as to how to go about in the matter, the rules which have been prepared by the Government and placed on the Table of the House. In fact, rules themselves are attempting to devise a mechanism. The mechanism is that, on account of technology, there is inflow of information. Suppose, there is inflow of information into the YouTube. Those who own or administer

YouTube do not censor every article--or any piece of information, a video or an audio--that goes on to the YouTube. Anybody can enter the information at any point. Their only authority or domain would be to remove it once it enters.

(Contd. by tdb/1w)

TDB/1W/12.40

SHRI ARUN JAITLEY (CONTD.): Now, the information is going to be so large; the content is going to be so large, that they would not even be aware of what is actually contained therein. Therefore, most sites invent the procedure by which they have internal alerts. So, if there is anything which is pornographic, the alert goes up and it is immediately taken off. This can go off, not in minutes, it can go off in seconds itself. If there is something which relates to incitement of an offence, there will be several indications of alerts within the internal system. Then, there is a system of 'outside alerts'. You don't catch that objectionable material, but somebody else brings it to your notice. Therefore, you have to then take it off. In that sense, the rule really says that every intermediatary will be given the following information, which he cannot carry. If his internal and external alerts bring it to his notice, it is incumbent on him to take it off within 36 hours. This is the architecture which this rule

appears to have devised. Don't put anything on these knowingly, which is objectionable. But if, unknowingly, something appears on your site, and if the alert brings it to your notice, then it will have to be taken off. The difficulty will arise -- this procedure, *prima facie*, appears to be reasonable -- if the kind of information which is sought to be objected to and removed becomes too wide, and then becomes a threat to free speech. My limited point is -- and I urge the hon. Minister that I have no serious personal objection against the architecture that he has devised -- it is an architecture where there is no prior censorship; it is an architecture where anything can go on these sites. If something is objectionable, and if it is by an alert system brought to your notice, then, within a reasonable period of time, you take it off. Now, you see the kind of information which is being restrained. I draw the hon. Minister's attention to Regulation No.3; it is contained in sub-clause (2) of Regulation No.3. Now, take category (b) out of that. Here, Mr. Rajeeve's point is that link it to what are the restrictions in article 19(2) of the Constitution. There is a clause which incorporates some of them; then, it adds something more. There are certain laws which prohibit carrying of certain kind of information. That may be in addition to article 19(2). For instance, an obscene display of women;

somebody else's copyrights; somebody else's patents; somebody else's trade information, you can't carry that. Now, this broadly deals with these categories. But, then, the expressions used in some of the cases are so wide that my fear is that at some stage, they could even be used to curtail some amount of free speech. In clause (b) you said, "If that information is grossly harmful". Now, the word 'harmful' is absolutely subjective. Now, there is information which some my friends in the Government may consider very harmful to them. I may think it is my right to express that information. It is 'harassing'. Now, 'harassing' is not a word which is capable of a strict legal definition. It can be stretched to such an extent: are we going to empower the Executive? I can understand that anything which harasses an individual lady, if it was specific, I may have had no objection. But if you say, 'it is harmful', 'it is harassing', it is not proper. The third word is 'blasphemous'. I would urge the hon. Minister to kindly replace this word with what is contained in Indian law. Now, we have a very secular penal law that anybody who creates incitement against any religion or who expresses disrespect is liable. Now, 'blasphemous', internationally, at least, in some countries, is very narrowly defined. In England, for instance, 'blasphemy' is only against one religion.

(Contd. by 1x-kls)

KLS/1X-12.45

SHRI ARUN JAITLEY (CONTD): So, blasphemy is only against one religion. If blasphemy is an offence, it is against Christianity. It is not an offence against Islam, Hinduism, or Zoroastrianism. You have the judicial pronouncements in the British Courts when a restraint was sought on the Satanic Verses, they said, no, you are saying that this is blasphemous of Islam, but this is an offence available only against Christianity. So, the word really comes from the English Dictionary, and, therefore, rather than using the word 'blasphemous', I have no difficulty if the words were, 'anything which incites religious hatred or disrespect to any religion' are used. You can have that power. Now this 'defamatory' in this, I have a positive objection to it. I am entitled to defame somebody as long as I can plead truth as a defence. Therefore, every time I get up and on the net an allegation is made that somebody is corrupt, it is obviously defamatory. But then the person making that allegation has a right to plead that what I have said is true. Now you seek to restrain anything which is defamatory. So, both in common law and also in our penal law, defamation is permissible as long as you can justify the defamation. You can either justify or

you can have a qualified privilege in a response to defamation, and then to say that anything defamatory will not be allowed, if I get up and say that I have a serious objection that so and so is *prima facie* guilty in such corruption scandals, it is obviously defamatory. But I am entitled to say so as long as I can plead truth as a defence. So, anything which is defamatory, I think, if it goes off the net completely, then we will probably have a very boring internet as far as this country is concerned because a lot of material which comes up enlightens people and informs us of what kind of things which are taking place. Similarly, there are words 'libellous', 'disparaging'. Now somebody can get up and criticise my party or criticise me, it is disparaging as far as my party or my criticism is concerned. Do I have a right to say that it be taken off the net? I think, the words which have been used are being capable of stretched in a manner that there is a huge possibility of a future misuse. Sub-clause (f) says, 'deceives or misleads the addressee about the origin of such messages or communicates any information, which is grossly offensive or menacing in nature'. Now 'offensive' or 'menacing' are not being capable of put in a definitional narrow jacket. Now something maybe offensive for some and may not be offensive for some. Similarly, (g) is,

'impersonates another person'. Sir, my grievance is that both in Parliament, in our media and public discourse, we are losing a sense of humour. There are cases of impersonation that I see, particularly, on the Twitter. I have had somebody impersonating a site as my site. I made a grievance and I found a lot of humours and funny things, including ridiculous to me coming from that particular impersonator. You have somebody imitating people in high places. As long as it is a part of permissible humour, it is all right, but if it is a case where somebody is committing an offence through impersonation, I think, there is a need for law to step in. But if it is a case where somebody has a satirical site or a satirical space on the Twitter, this is not intended to really stop that. In (i), there are two cases. I have no difficulty with the first part of (i), that is actually reproduction of article 19 (2) where reasonable restrictions are possible, and it says, 'threaten the unity, integrity, defence, security, sovereignty of India, friendly relations with foreign states or public order or causes incitement of a commission of a cognizable offence'. These are the words literally picked up from the Constitution. We have accepted them. They have stood the test of time, I have no difficulty. Then it says, 'or prevents the investigation of an offence.' Now do I not have a right to criticise an

investigative agency? We have seen misuse of investigating agency.

(Contd by 1Y/PK)

-KLS/PK/1Y/12.50

SHRI ARUN JAITLEY (CONTD.): I can criticise it in the print media; I can't do it on the Net. The last one, again, I think, is very broad. I would urge the Minister to retain only the first language, "friendly relations with foreign States". That is the language of the Constitution, article 19 (2). Now, you are bringing a new category saying , "or is insulting any other nation". Now, in a huge discourse on Foreign Policy on national relationships, we are entitled to criticise other States. The Government of India may use its restrained language; we, in Parliament, may use its restrained language, but on the Net, you will find a number of comments about a country where Osama Bin Laden was eventually found. We also in politics say, 'Terror as an instrument of State Policy, the Government is encouraging it.' We criticise the institutions. My fear is that they will come within the meaning of the words, 'insulting any other nation'. Therefore, a legitimate criticism, which is Constitutionally permissible, which doesn't really offend foreign relations with friendly States, is something which is

permissible. So, if I may just, in a nutshell, say, I am with the architecture that the hon. Minister is creating, because, if, as I said, there is some kind of a communal or caste problem, the Net can go viral and you can have a frenzy in the society, certain kind of information which creates disorder in the society may have to be restrained. But, then, to say, 'take that power and then extend it by the use of such words where legitimate expression may become difficult', there would be apprehension. Powers are, normally, assumed under these rules on the assumption that they won't be misused. We feel the pinch only when they are misused. Therefore, I would urge the Minister to kindly reconsider the language of the kind of restraints that he wants to bring as a result of this notification. Thank you, Sir.

(Ends)

DR. E.M. SUDARSANA NATCHIAPPAN (TAMIL NADU): Sir, I am very happy that the hon. Members are taking up these issues for a wide discussion. But, at the same time, in our House Committees, there is a Committee on Subordinate Legislation. When these types of issues come, we can request the Committee on Subordinate Legislation to go in depth and take the evidence from the Government to know whether there is a necessity for such a

rule or not. Since the so-called Plenary Session of the Parliament is having sufficient work in hand, we have created House Committees where this type of issues can be raised. But even then, our hon. Member has attracted the attention of the media, and also of the House, to take cognizance of this issue. But, Sir, after reading the rule which has now been framed, I find it to be a very carefully drafted one. I fully respect the Leader of the Opposition for making certain observations. Those are all to be considered by the Government. But, at the same time, when this particular rule is drafted, I feel, every word is having its own meaning, because the wider aspect of the extreme cases are there. We can take the extreme case of using the Twitter or Face Book, any Government can be collapsed. Egypt and Lebanon have already faced the situation; it created a situation where people opposed the Government. In the same way, I can take small example of today's newspaper. Today's 'Hindustan Times' says, "Innocent lost - Facebook photo at the root of the killer rage" -- this is the heading which is given in the 'Hindustan Times', simply because some group of people have created a message in the Facebook and on seeing the photograph, that person was killed. This is what is happening now. Many of the countries including the

USA are now considering in which way we can regulate this freedom, which is given to the people of their own country. When that is the situation, our country is very much correct in having a regulatory system which was on the basis of the enactment made by this Parliament as the Information Technology Act, 2000.

(Contd. by 1Z/PB)

PB/1Z/12.55

DR. E.M. SUDARSANA NATCHIAPPAN (CONTD.): Under that Act, there is a particular Rule. For the convenience of the hon. Members, I will read that Rule. It is Rule 3. The title itself is very, very carefully put up. Its title is: 'Due diligence to be observed by the intermediary.' Sir, one can see how sophisticated language has been used here. We can appreciate it. "The intermediary shall observe the following due diligence while discharging his duties, namely, (1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary computer resources of any person." It goes on like that. Then, Sir, I would like to quote Rule 2, which is challenged by the hon. Member, Mr. Rajeev. It says, "(b) is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy -- this is very,

very important – hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever; (c) harm minors in any way; (d) infringes any patent, trademark, copyright or other proprietary rights; (e) violates any law for the time being in force; (f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature; and (g) impersonate another person."

Sir, these things are already available in the Indian Penal Code and all other legislations which are covering the privacy of a particular individual. Sir, the reputation of a person can be very easily damaged by way of messaging something on Twitter, Facebook, etc. What is the remedy? The remedy is now provided under the Regulatory Authority under this enactment, which is the Regulator. That Regulator can prescribe certain rules and guidance which are to be followed. Now, Section 89 of the Act talks about the power of the Controller to make regulations. It says: "(1) the Controller may, after consultation with the Cyber Regulation Advisory Committee and with the previous approval of the Central Government by notification in the Official Gazette make regulations

consistent with the Act and the Rules made thereunder to carry out the purposes of this Act."

This is purely a regulatory mechanism which was provided through the enactment, which was made by way of a Parliamentary legislation and which is also very necessary. Sir, we have to look into the print media. If some damaging information is published in the print media about somebody, any individual or a group of people or an organization or any Government official has got a right to challenge it by way of filing a defamation suit, and also by way of criminal prosecution against that individual. This right has been given to us. Under the Constitution, we have got every right to see that our reputation is not damaged. Every individual has got it. He may be a billionaire or a millionaire or an ordinary person; everybody has got the right and the capability to use the legal provisions. If something is televised in the television, then also, we have got the Regulatory Authority under the Television Cable Networking Act by which that can also be controlled. But there is no regulation at all for the Internet. Even America is now thinking as to how much liberty it can give to it or how it can restrict it. All the European countries are worried about it because a lot of false information is put therein every minute and it is going throughout the world. To

whom it goes? Who is taking it? Who is taking up arms? Who is indulging in the Unlawful Activities? Nobody knows! Nobody can control it. None of the State has got the capacity to control this information as to where it goes and how they are going to use it, how they are going to plan it. This is the greatest challenge before the civil society.

(Contd. by 2a/SKC)

2a/1.00/skc-asc

DR. E.M. SUDARSANA NATCHIAPPAN (CONTD.): We are facing cyber crime. It happens every day. Lives of so many people are destroyed, and even Governments have been pulled down. Even riots have taken place in some areas because of it. How do we control it? This is something which even the United Nations is pondering over. They are trying to work out ways to control such things. Now, when such is the case, I feel sorry that the words used in this particular rule are very soft. The words used are "due diligence". This would not be able to control it.

Sir, I feel that all of us must support this law and this particular rule. (Interruptions)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Hon. Members, we have a lot of business listed for today. We have to finish the

present discussion, and then, we have The Copyright (Amendment) Bill and other Bills as well. So, let us do away with the lunch-hour. Nobody has any objection to that. (Interruptions)

DR. E.M. SUDARSANA NATCHIAPPAN: I would request everybody present here that let us support this law. (Interruptions) It is the right time for us to express our views. Even the media is being affected in some cases. Even the print and television media are being affected by these internet messages and messages on Twitter, Facebook, and other such things. Huge funds are allocated for managing the intermediaries. These intermediaries ought to be regulated. It is the thought of the international community now, and even the United Nations and other organizations have come forward with new regulations. (Interruptions)

DR. NAJMA A. HEPTULLA: Sir, let us adjourn for lunch. (Interruptions)

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): That is what I had talked about a little while ago; let us do away with the lunch hour. Everybody accepted it.

DR. NAJMA A. HEPTULLA: No, Sir. The sense of the House must be taken. (Interruptions)