

The Dilemma of ID s for Cyber Cafe..Fit Case for a Big Debate.

The move of the Mumbai Police to bring in a rule that "Cyber Cafe Visitors" should produce ID cards has evoked wide spread negative responses from the community. We need to look at this development along with the public interest litigation that has been filed in Delhi where the Government has been requested by a member of the public to introduce a similar provision as a "law". It appears therefore that there are both supporters and opposers for the move.

The issue is a sensitive one and is fit for a "Big Debate". Some of the issues involved are,

1. What are the objectives of the regulation?
2. Has the Crime situation been so desperate as to call for a measure such as these?
3. How is the regulation expected to be implemented?
4. What are the dangers behind this regulation?
5. Is it a "Privacy" Issue? or "Freedom" Issue?..or a "Decency" Issue?
6. Can the local Police institute regulations which are subject matter of law making by the legislators?

Let me try to start the debate by providing my point of view on some of these issues.

1. What are the Objectives of the Regulation?

The regulation for insisting on ID s is being justified by the reason that "Cyber Cafe" is a public place and if a Cyber Crime takes place using a computer in the Cyber Cafe, it would be difficult to identify the culprit and make anybody accountable.

In the case of a computer at home or at office, prima facie accountability for the crime rests with the owner of the computer. On the other hand, Cyber Cafe is an "Intermediary" providing connectivity between the Internet consumer and the Internet and is therefore protected under Sec 79 of the ITA-2000. Hence there has to be some method by which the Police can prevent the Cyber cafe's being used by criminals.

It has already been noted that in Delhi, Pakistani terrorists have been caught using a Cyber Cafe for sending e-mail messages while planning and executing the recent Redfort attack. In Mumbai, a "lost" minor boy was traced through the e-mails he sent through a Cyber Cafe.

The Police therefore believe that the requirement of ID s will discourage the criminals from using the Cyber cafe for their activities. According to them, this is just like the ban on the use of "Wireless" sets without license.

2. Has the Crime situation been so desperate as to call for a measure such as these?

While we can accept that there is some logic in the argument of the Police that ID s can help them fight crimes, we need to examine the practicality of the measure in achieving the objectives vis-a-vis the inconvenience caused to the general public before implementing the regulation.

For example, we have seen in the past few months that a number of train dacoities are taking place between Chennai and Bangalore. The modus operandi has been for the criminals to travel like other passengers, stop the train in between, loot and get away. Obviously, if we can make every train traveler produce his ID before reserving the ticket or boarding the train, it would be possible to prevent criminals from using this

mode of dacoity.

But, is it practical?

However, if the Police decide to check all vehicles in the Jammu-Srinagar highway or insist on ID s for identifying illegal migrants from "Bangladesh" in Assam, there is no reason to object. Even if the volume of work is enormous, it becomes necessary for the community to provide for the same since the benefits could be substantial.

The key therefore is " What is the probability of a crime being committed in the Cyber cafe"?.to warrant the drastic measure of calling for IDs?

I feel that the incidence of Crime is so minuscule at present that the drastic measure now thought of is w3holly unnecessary.

3. How is the regulation expected to be implemented?

It is proposed that ID s such as "Ration Card", "Driving License", "Passport" etc will be used for checking the identity of persons.

It is obvious that the requirement of ID s has to be implemented by the Cyber cafe owners subject to the supervision of the Police. i e, the police may raid the Cafe from time to time and demand the users to show the ID. If it is not found, they may have to find a way to punish the Cyber Cafe owner as well as the user who is unable to produce the ID. Perhaps it will be like fining a ticket less traveler in a traveling in a city bus.

Or

Will the Police introduce a new "Cyber Cafe Identity Card?..

which will be issued after application in the required form in quadruplicate at the nearest police station, after which a Police officer not below the rank of a DSP will visit the house of the applicant and verify the correctness of information and then issue the card for a fee of say RS 100, renewable every year? ..

And If the information furnished therein is false to any extent, the applicant would be liable for a fine of RS 1 lakh and imprisonment of upto 3 years?..

The most obvious result would be that , Police Constables would lurk in front of Cyber Cafe's and ask the outgoing customers to produce the ID s. It will be just like the Traffic Policeman hiding round the corner waiting for the month end prey. If the customer is unable to produce the same, they can walk into the "Cafe" (Which is attached to most Cyber Cafes") and talk it over a breakfast or lunch.

4. What are the dangers behind this regulation?

When 99.99 % of the customers are going to be genuine visitors, it is unlikely that the Cyber Cafe owner would be able to devote time and energy into checking the IDs. When even the voting officials in the election were unable to check the IDs, what is the earthly chance of Cyber cafe owners taking up this responsibility?

Hence in practice, the rule is likely to be ignored both by the Cyber Cafe owner as well as the users. Instead, most Cyber cafe owners would opt to pay "Protection Money" to the local police and forget the rule.

If there is a criminal who wants to use the Cyber Cafe, he will easily use a false identity or talk his way out to convince the Cyber Cafe owner to let him use the facility without the formality.

The rule will therefore remain only on paper and can be used and will be used only to

harass the honest and innocent Netizens and will not contribute to the solving of Cyber Crime.

On the other hand, the rule will be used by small time policemen to harass Cyber cafe users and increase small time corruption. Soon, our policy makers and senior Police officials will rationalize this corruption as "Too Small and Inevitable".. (I have heard this argument already regarding harassment of Cyber Cafe owners)

5. Is it a "Privacy" Issue? or "Freedom" Issue?..or a "Decency" Issue

There have also been some discussions on the "Legal Angle" of the issue. First question is "Whether the ID proposal is a violation of Privacy Rights?"

In India, since there are no specific Privacy laws, it has to be handled as a "Human Rights" issue. Under these conventions, are you entitled to keep information on where you go and what you do "Private"? .Or

Should the State keep a record or Right to Know information of where all you went during the day.. Morning went for a walk around the Lalbaug, ..Had a breakfast in Kamat... Visited a Cyber Cafe..returned home.. went to office ..visited a pub...again visited a Cyber cafe...came back home at 9.30 pm etc..etc.

It may look funny for some of you. But it looks scary for many. I still support that such measures could be required in Srinagar or perhaps in the Villages surrounding Veerappan's jungles. But if the roads of Mumabi are treated in a similar fashion, it would mean that we are sowing the seeds of discontent in the community. Nothing prevents people who are thinking of this regulation to later introduce a system where by, every Citizen will wear an "ID Collar" which will transmit his whereabouts to a central server which using the GIS (Geo-Graphical Information Software) technology will monitor and record whether he is visiting a friend's house or a Cyber cafe or a Brothel?.

Going by the popular concept of "Privacy", we can say that an individual is entitled to keep his where abouts as a "Private Information". If the state wants to have this information as a matter of right, it has to be a "State of Emergency" and there has to be an extraordinary circumstance under which public interest is involved. If even after Jessica Lal's murder, people can visit "Drinking Dens" and get intoxicated without ID's, there is no reason why a "Visit to Cyber Cafe" should warrant a show of ID.

The issue is also more of "Freedom" where an individual should be free to move around and do what he wants as long as his activities donot adversely affect the society. Again, if this freedom has to be curbed in a democratic society, there has to be "Extraordinary" circumstances.

Leaving aside the "Privacy" and "Freedom" issues, what is of greater consequence is the issue of "Decency" in public administration. There is no doubt in my mind that one of the characters of a "Decent Society" is respect for the existence of different persons and allowing them a reasonable freedom of operation. Otherwise "Creativity" will be curbed and "Intellectual Development" of the mankind would be curtailed.

The proposal is like creating an "Apartheid" policy and treating all "Cyber Cafe" visitors as "Potential Criminals". I would like Mumbai Police to remember that the Indian Freedom struggle had its roots in South Africa where Mohan Das Karam Chand Gandhi took up the civil disobedience movement against issue of passes to the people of black origin. The proposed regulations, remind me of the need for a similar movement to "Liberate" the "Cyber Society" from the "Apartheid policies" of "Regulation by Non -Netizens on the Netizens".

I would like to reiterate that this incident further highlights the need to insist that "Regulation for Netizens has to be By the Netizens, For the Netizens and Of the Netizens".

6. Can local Police institute regulations which are subject matter of law making by the legislators?

Yet another policy issue that this issue has thrown up is the power of the local police to make regulations which are in effect "Laws". We have seen that IT Rules have been drafted "Ultra vires" the ITA-2000. We have seen Telecom guidelines bringing in "Back door" laws on "Censorship". This ID regulation will now bring down the level of "Law Making" to every Police Station .

If Police Stations have a jurisdiction for maintenance of "Law and Order" in their territory, do they have the jurisdiction to walk into the "Cyber Space"? Just because the Internet access terminal is attached to a jurisdictional area, does it give the right over the "Cyber Space created around this physical infrastructure"? " Does A web site being visited by a Cyber Cafe user in Andheri belong to the jurisdiction of the Andheri Police?"... are issues that will need to be answered if we let this legislation be implemented .

When Police donot want to touch a "Dead Body" lying in their jurisdiction and prefer throwing it into the neighboring jurisdiction area, it looks ridiculous that they should opt to encroach into the Cyber Area which doesnot belong to their jurisdiction at all.

By the by, it is also interesting to debate whether this regulation would fall in the area of "Regulation of Cyber Traffic"?. If so, Should it come under the jurisdiction of the Traffic Police? or remain under "Crime Department?".. Or Should it come under the jurisdiction of the Ministry of External Affairs like "Passports" and "Visas"?

The Last Word:

Even though I have raised several issues above, I am personally convinced that the notification per-se has been an act of innocence over enthusiasm in respect of some Police Officers who are genuinely concerned about the growing use of Computers and Internet for committing Non Cyber Crimes. It is actually borne out of ignorance and lack of proper guidance in "Techno Legal Issues". If the Crime department knows that there are better ways of regulating Cyber Crimes, they would not have awakened the memories of a "Historic Civil Disobedience Movement " in the community.

I suggest that before the issue gets out of hand, the notification should be withdrawn. Simultaneously, if the notification is not withdrawn, the Civil Liberties groups, (We need one such for Netizens separately) to initiate action immediately for the withdrawal of the notification.

I request readers to [send in their comments](#) and I assure that the information will be sent across to the Minister of Information Technology for necessary consideration.