



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## LEGAL SIDES OF APP BAN BY STATE GOVERNMENT

### Introduction

The Information and Technology Act of 2000, specifically section 69A, grants the central government the only authority to prohibit or ban applications. Central government can exercise the same by the provisions such as 69A of IT Act, 2000 and the Information Technology (Procedure and safeguards for blocking for access of information by public) Rules, 2009. Such rights are not granted to a state by any clause in the IT Act. Under Section 69 of the Act, the state previously had the same authority as the central government; however, this section was later amended paving way to Section 69A. Ever consider, though, how a state is acting in a similar way?

### Public Order

Public order is the first entry of State List (List II) in the Seventh Schedule of Indian Constitution. It is synonymous with peace, safety and tranquility of the community<sup>1</sup>. Referring to Justice Hidayatullah's statement in the case of *Arun Ghosh v. State of West Bengal*<sup>2</sup>, public order is defined as the harmonious rhythm of community life, with disturbances affecting the overall tranquility. Regular review of crimes against women, their incidence, prevention, investigation, detection and prosecution etc. by the Centre and States at district level is also encouraged by such duty<sup>3</sup>. The States/UTs are primarily responsible for the prevention, detection, investigation and prosecution of crimes including cyber crime through their Law Enforcement Agencies.<sup>4</sup>

---

<sup>1</sup> Second Administrative Reforms Commission on Public Order, Fifth report, at 313.

<sup>2</sup> *Arun Ghosh v. State of West Bengal*, (1972) 1 SCC 498.

<sup>3</sup> Remedies brought by Tenth Plan, at 124.

<sup>4</sup> Ministry of Home Affairs, CYBER FRAUDS, Posted On: 19 DEC 2023 5:20PM by Press Information Bureau, Delhi.

If a state bans any apps, for the above mentioned purposes, they are completely justifiable as they are to prevent crimes against the public order since they have a constitutional duty to maintain public order, conferred by the constitution.

### Public Interest Over Private Interest

It is a settled position of law that in case of a conflict between public interest and personal interest, public interest will outweigh the personal interest. There are many instances in which the court upheld this position. In the case of *Yamuna Expressway Industrial Development Authority Etc. Vs Shakuntla Education And Welfare Society & Ors. Etc.*<sup>5</sup> what the Supreme Court held was, “In conclusion, we are of the considered view that the policy decision of the State Government as reflected in the said G.O. dated 29th August, 2014 and the Resolution of the Board of YEIDA dated 15th September, 2014 were in the larger public interest, taking care of the concerns of the allottees as well as the farmers.” In the case of *Dharmendra Ravi Pratap Rajak Vs Gujarat*<sup>6</sup> involving private individuals resisting the construction of a road in Mumbai, the court observed that when public interest is urgently and clearly articulated, private interests must yield to the extent necessary, i.e the ‘public interest’ will prevail over ‘private interest’ based on the principle of legal maxim titled *Salus Populi est Suprema lex* which in simple terms means regard for Public Welfare is the highest law.

While the Delhi High Court dealing with a petition by Siddhartha Extension Pocket C Residents Welfare Association and Senior Citizens Welfare Forum, it found that, Public interest must take precedence over individual property rights, and rejected concerns raised by certain residents affected by route alignment of the Delhi-Meerut Regional Rapid Transport System (RRTS).

Thus the harm to a company which owns an application is minimal compared to potential public harm. The state, as the guardian of public order, has exclusive power under the State list. There are instances where the Kerala government have banned applications which are apprehended to alter the public order, including the recent ban of loan apps due to the suicide of two individuals of the state<sup>7</sup>. There are states like Tamilnadu, Telangana etc., that have banned rummy apps and online gambling apps<sup>8</sup>.

---

<sup>5</sup> *Yamuna Expressway Industrial Development Authority Etc. v. Shakuntla Education And Welfare Society & Ors. Etc.*

<sup>6</sup> *Dharmendra Ravi Pratap Rajak v. State of Gujarat.*

<sup>7</sup> “Ban proposed on 18 more loan apps” - The New Indian Express, Updated on 29 Sep 2023, 6:45 AM.

<sup>8</sup> The Tamil Nadu Prohibition of Online Gambling & Regulation of Online Games Ordinance, 2022 & Gambling Laws and Regulations India 2024 – ICLG.com, published on 28/11/2023.

### Alternative Remedy

While considering the 'procedure established by law' for banning a social media platform, state actions must satisfy the conditions of<sup>9</sup> (a) backing of a 'law', (b) legitimacy of purpose, (c) necessity of the action, and (d) the test of proportionality<sup>10</sup> even if they are performing a constitutional duty.

There should be a situation where if the state government hesitates to ban the App expediently, it would further increase the number of people who are affected by the so-called problem which is expected to alter public order to qualify the element of legitimate aim and necessity. The Indian law permits necessary actions, even if they go against normal judicial standards, under the 'doctrine of necessity.' Ensuring that the goal is 'of sufficient importance to warrant overriding a constitutionally protected right or freedom is this legitimate aim according to David Bilchitz<sup>11</sup>. The necessity of means should be evaluated by considering (a) a range of alternatives, (b) examining their effectiveness in achieving the purpose, (c) assessing their impact on the right at stake, and (d) determining if there is a preferable alternative that achieves the aim while being less intrusive on the right than the State's measure. This is the recommended proportionality test.

### Conclusion

An app ban in its strict sense means that, when an application has been blocked technically, or banned technically, it refrains users from using it. The Indian government has two options for restricting apps: it can either order geoblocking to prevent the app from running in India, or it can order telecom service providers to block access. It is not however possible for a state. So when it comes to a state, either they can request or recommend the central government and if it seems logical, the central government can exercise its normal procedures; or the ban in a state means an order which asks the people to not to use such applications anymore and for the consequences of any contrary acts, the state will not be liable.

In the present cyber era, it is not as easy as we think to ban an app, as they enjoy safe harbour.<sup>12</sup> State bans on apps demonstrate the careful balancing act between the rights of the individual

---

<sup>9</sup> Anuradha Bhasin v. Union of India and Ors., Writ Petition (C) No. 1031 of 2019, AIR 2020 SC 1308.

<sup>10</sup> Justice K. S. Puttuswamy (Retd) and Anr. v. Union of India and Ors., WP (Civil) No. 494 of 2012; Mohammed Faruk v. State of Madhya Pradesh, (1969) 1 SCC 853.

<sup>11</sup> Tempered with more nuanced approach' recommended by David Bilchitz.

<sup>12</sup> Section 79 of IT Act, 2000.

and the public interest. Respecting the obligation to preserve public order, well-being of society at large continue to be the key goals, notwithstanding the process' intricacy.