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BAN ON CHINESE APPS IN INDIA : IT'S LEGALITY AND IMPACT ON INDIAN ECONOMY.

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ABSTRACT :

“PUBG will be banned” was one of the most popular Headlines that reached every household and wasn't even unsung in the age group which doesn't even know anything about Indian politics. So, the impact and addictiveness of Chinese apps are visible to Indian citizens, especially younger people. So, the ban on these apps was also considered as a need for the hour and also there are certain complaints logged to the government about the misuse of data by these apps that aided in the process of the ban and the government ban all these apps on account of sovereignty and security of the nation. a chaotic situation arises after the ban as the legality of the ban came under question as to how will this ban impact India and its economy. This article comprises the basic introduction of the whole scenario the reasons for the ban and the position of China and India after the ban. The legality of the ban is dealt with in the next paragraph accompanied by the impact on the Indian economy and what were the drawbacks in the Indian counterpart that the solution cannot be applied properly on the ground level.

INTRODUCTION :

On 29th June 2020, news flashed on our tv screens “ 59 Chinese apps banned in India“. this was the first time in history that any country banned Chinese apps in their territory. Labelling it was a huge step by the Indian government especially in between a global pandemic that too whose blame was given to China by almost half of the world. The news went all over the air in just a few hours and many debates were being conducted by the news houses on this issue not only on the domestic level but on the global level. But as we all know, this wasn't the first time when China was a well-versed name on Indian news channels, especially after the governance of the Chinese Communist Party. The border standoff in 2017 in Dokhlam and the 2020 border clash in Galvan were the most recent and major times when China and India's relations were at bay. There were so many rumours revolving around wars between the two countries amidst that ongoing border dispute and other countries choosing their sides but nothing of that has happened yet. As no country will choose war as a choice, war will always be considered the last option. But nonetheless, India is known for its out-of-the-box responses to the political activities of the enemy countries, be it not playing bilateral cricket with Pakistan since early 2013 due to political tension or the recent ban of Chinese apps. Most people consider this ban to be a reaction to the Galvan attack by the Chinese army.

Let's dive right into the details of all the events that have happened and try to understand what exactly happened between both countries-

Legal steps that were taken :

and non-mobile Internet-enabled devices”⁶government said this in a statement. The Computer Emergency Response Team(CERT-IN) received several complaints and representation qua security of DATA collected by these apps. Further in July 2020 47 more apps were banned followed by the banning of 118 more apps on September 2, 2020. A government spokesperson also said that Google and Apple App stores have been directed to remove these apps from their stores.⁷

China and data security controversy :

Swadeshi Jagaran Manch (SJM) a political organisation of India claims that Tik Tok sends 69% of its data to China. ⁸But India may be the first country to ban Chinese apps but it surely isn't the first one to raise its voice against the misuse of Chinese apps and its data security policy. The US National security advisor Robert O'Brien that all Chinese apps work for the Communist Party of China (CPC) to fulfil their political and geographical agenda, “is collecting your most intimate data -- your words, actions, purchases, whereabouts, health records, social media posts, texts and mapping your network of friends, family and acquaintances it is not telecom hardware or software profits the CPC [is] after, it is your data. They use 'backdoors' built into the products to obtain that data. This is micro-targeting.” - Robert O'Brien.⁹

China at a serious loss :

This decision created a chaotic situation in both nations as the apps that were banned had a huge number of Indian users. For a worldwide 2 billion downloads, India has accounted over 600 million downloads making it a 30% of the whole. So, the companies too suffer a major loss because of the ban and also gave statements regarding the future actions that will be taken by them afterwards concerning this ban. Responding to the ban the Chinese ambassador said, “India’s measure selectively and discriminatorily aims at certain Chinese apps on ambiguous and far-fetched grounds, runs against fair and transparent procedure requirements, abuses national security exceptions, and [is suspected] of violating the WTO rules. It also goes against the general trend of international trade and e-commerce. And the interests and the market competition in India.”¹⁰ So, the Chinese company will take legal action against that, also China considered this ban to be a violation of World Trade Organisation (WTO) rules. And also goes against the general trend of international trade and E-commerce. After the ban of 49 apps in February, the total no. of overall bans reached around 321 in June 2020.¹¹ After that the spokesperson of the Chinese embassy in India tweeted showing concern towards the matter, “Foreign investors have created a large number of employment opportunities in India and made positive contributions to India’s economic development. Hope that India will improve its

⁶ <https://www.outlookindia.com/website/story/india-news-india-bans-59-chinese-mobile-apps-including-tik-tok-and-shareit/355679>

⁷ <https://www.legalservicesindia.com/law/article/1841/28/Ban-On-Chinese-Apps-In-India>

⁸ <https://www.youtube.com/watch?v=0Q6nAzwNSzk>

⁹ <https://www.mbauniverse.com/extempore-speech-topics/chinese-app-ban-in-india>

¹⁰ <https://www.cnbc.com/2020/11/26/china-responds-to-india-banning-43-additional-chinese-apps.html>

¹¹ <https://www.legalservicesindia.com/law/article/1841/28/Ban-On-Chinese-Apps-In-India>

business environment and treat all foreign investors, including Chinese companies, in a fair, transparent and non-discriminatory manner”- Wang Xiaojian, spokesperson of the Chinese Embassy in India.¹²

Can the legality of the ban be questioned? :

So, this meanwhenlegality of this act comes into question there’s no doubt that the Indian government has full authority to take such actions as in Article 19also The Indian Constitution provides for reasonable restriction even over the freedoms provided. Apart from this China shouldn’t even dare to state such steps as be of violation to World Trade Organisation (WTO) rule, as several global apps such as such as WhatsApp, Google, Facebook, Twitter, YouTube, Netflix, Instagram, BBC, The New York Times and quota.¹³ Also, Article 7 and Article 19 of China’s National Intelligence Law 2017 states that all organisation and individual shall assist, cooperate and support National Intelligence efforts. Following similar rules in their own country how can they question other nations’ steps towards securing their sovereignty and security of the nation as a whole and the privacy of its 130 crore citizens.

But when this ban will be challenged by the companies in the Indian courts there will be a continuous war between the constitutional right of freedom to speech and expression and the right to free trade or business with the right to privacy and security of the nation on other hand. The ban raised a question about the legality and necessity of the government’s decision. Evidently, restriction on freedom of speech can only be imposed internationally or in rare and exceptional circumstances subject to qualify three essential conditions that are, prescription under law, legitimate aim and necessity to impose a restriction to achieve the legitimate aim. Indian courts have followed the same approach in these cases and the state will have to prove that their action satisfies the conditions that are;

- 1) Backing by a law
- 2) Legitimate aim
- 3) The connection between the object and the restriction
- 4) The necessity of the action
- 5) Proportionality test

For this case, the state will require to prove how the bans were a great threat to Indian sovereignty and that there was a major need to restrict the use of a ban in Indian territory. The state will also have to prove how the ban without giving any fair chance of being heard was a justified step.

When the justifiability of the ban will reach the court premises and the state will counter that with the point of threat to national security and sovereignty, the courts will also err to the side of caution. A similar approach has been used by the courts in cases where restriction and fundamental right contradicts each other. Like in a recent decision by the Supreme Court of India in the context of internet shut-downs in the Union Territory of Kashmir, the court held that both fundamental rights and national security concerns must be reasonably adjusted with one another, in the line of constitutional principles. In the present issue, the question before the

¹² <https://www.opindia.com/2022/02/china-upset-after-india-blocks-chinese-apps-and-raids-huawei/>

¹³ *Ibid*

courts will be whether the ban was a necessary step to protect the interest of the nation. And that there was no other solution available to resolve the problem.¹⁴

Effect on Indian economy :

The ban was viewed as a major plus point for the Indian economy, especially from the view of Reduce Digital Dependency-

That is one of the major agendas of our current government “*Aatmanirbhar Bharat*” a step to make India less dependent on imports from other countries. Moreover, this step was considered to be an initiative to “vocal for local” campaign that is another step by the government for making India independent of its native country. China as we all know always wants to be ahead of every other country and want to become a superpower no matter what way it opts to be a tech giant was one of the schemes to gain power but the Indian government’s this step countered this effect and reduced India's digital dependency on China’s app that resulted in many Indian apps to grow their base over-night. Many Indian apps like Chingari and Mitron have benefited from the app ban. Sumit Ghosh, founder of Chingari, an India based video making app tweeted, “100,000 downloads per hour, guys please be patient! We are working on the servers and getting things up and running asap!”¹⁵ as it is evident by these types of responses that Indian economy became less dependent on the Chinese investments especially in the IT sector as Indians have a very wide range of options for replacement of Chinese apps and those replacements are originated in India and that contributes a lot in the Indian economy as well rather than aiding to another country’s economy.

Bring more investments-

This step by the government was considered a major step and with that step, many other countries made sure of the fact that India will be a very secure investment for them and that’s the reason that this step brings a lot of other investments to the data centres of India.

Vocal for Local-

The banning of apps was considered to be a part of the “vocal for local” campaign which is another scheme by the present government to flourish local businesses in the country. By this step also local businesses flourished and compete with the high-tech supported apps of China.

Was the step successful?:

The Indian government took the step on account of the nation's security but failed to adopt the approach efficiently as most of the banned apps are still available as APK on third-party sites. Moreover, the banned apps have been reintroduced in India with similar names and some minute functioning changes.

India has lacked the infrastructure to compete with Chinese technology that we all know is on what level. India has not only failed to check the infringement policy of Chinese apps but also to kick out Chinese app companies from the Indian app market.¹⁶

¹⁴ <https://www.lexology.com/library/detail.aspx?g=97c6a86e-8c67-4af3-bfe2-9650db241440>

¹⁵ <https://www.mbauniverse.com/extempore-speech-topics/chinese-app-ban-in-india/>, Supra 11.

¹⁶ <https://www.inventiva.co.in/trends/chinese-app-ban/>

So, we can see that India's step was an initiative to a process but not backed by the counterparts of the whole banning process.

CONCLUSION :

China's desire to become a superpower isn't unsung at all, it's evident to everybody. And India trying to cope with that by banning China's apps from its territory for misusing the data of Indian citizens was a big step to reduce India's digital dependency on China. The Indian government took the account of national sovereignty and security as a reason for the ban but when the legality of this is taken into consideration the government will have to prove that the step was necessary and cannot be skipped at any cost. Also, a strong reason will be required to be given by the government for curtailing the fundamental right to speech and trade. Apart from the legality issues, the ban turned out to be a plus point in the Indian economy, especially in the IT sector as many local apps took place of the popular Chinese apps and expanded their business. The step by the government did harshen the trade relations of both countries, but the step will always be taken as an iconic step as it will set an example for all other countries that India will never put its nation's security at stake for some business and trade purposes.

