



## Section 66A

### ***A background to Section 66A of the IT Act, 2000***

Recently, the Supreme Court delivered a judgement striking down Section 66A of the Information Technology Act, 2000, in *Shreya Singhal vs. Union of India*, terming it "vague" and "unconstitutional," because it put restrictions not sanctioned by the Constitution. The court was of the view that only reasonable restrictions can be imposed as contained under Article 19(2). This was in response to a PIL that challenged the constitutionality of this provision.

### ***What are the provisions contained in Information Technology Act, 2000?***

The Information Technology (IT) Act, 2000 provides for legal recognition for transactions through electronic communication, also known as e-commerce. The Act also penalizes various forms of cybercrime. The Act was amended in 2009 to insert a new section, Section 66A, which was said to address cases of cybercrime with the advent of technology and the Internet. In more specific terms, Information Technology Act 2000 addressed the following issues:

1. Legal recognition of electronic documents.
2. Legal recognition of digital signatures.
3. Offenses and contraventions.
4. Justice dispensation systems for cybercrimes.
5. Section 10A of Information Technology Act, 2000 (amended in 2008) it also validates E-contracts.

### ***Views on the 2008 Amendment of the IT Act, 2000***

The 2008 Amendment Act was passed with no discussion in the House. Some of the cyber law observers have criticized the amendments on the ground of lack of legal and procedural safeguards to prevent violation of civil liberties of Indians. However, there have also been appreciation about the amendments from many observers because it addresses the issue of Cyber Security.

Section 66A is widely criticized. It has led to numerous abuses as reported by the press. Based on Section 66A, Bombay High Court has held that creating a website and storing false information on it can entail cybercrime. On March 24, 2015 the Supreme Court of India struck down Section 66A of the IT Act as unconstitutional on the grounds of violating Article 19(1)(a) of the Constitution of India which grants freedom of speech and expression. Describing the law as "vague in its entirety," the Supreme Court said, it encroaches upon "the public's right to know.

Then comes Section 69A, which empowers the Central Government/State Government/its authorized agency to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource if it is necessary or expedient to do so in the interest of the sovereignty or integrity of India, defense of

India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence or for investigation of any offence.

### ***What does Section 66(A) of the IT Act say and the controversy surrounding it?***

Section 66(A) of the Act criminalizes the sending of offensive messages through a computer or other communication devices. Under this provision, *any person who by means of a computer or communication device sends any information that is:*

1. *grossly offensive;*
2. *false and meant for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will;*
3. *meant to deceive or mislead the recipient about the origin of such messages, etc., shall be punishable with imprisonment up to three years and with fine.*

Over the past few years, incidents related to comments, sharing of information, or thoughts expressed by an individual to a wider audience on the Internet have attracted criminal penalties under Section 66(A). This has led to discussion and debate on the ambit of the Section and its applicability to such actions.

In the recent past, a few arrests were made under Section 66(A) on the basis of social media posts directed at notable personalities, including politicians. These were alleged to be offensive in nature. For example, the provision was used by Thane police to arrest two girls from Palghar for their comments on Facebook, but an apologetic Maharashtra government said the arrests were unwarranted, hasty, and indefensible. Similarly, Aseem Trivedi, a cartoonist, was arrested invoking the same provision for making sketch on the state of parliamentary conduct of the politicians and was charged with sedition. Fortunately, the Bombay High Court quashed the charges against the cartoonist.

The very day the Bombay High Court held that cartoons could not be deemed seditious, a class 11 student from Bareilly was remanded in judicial custody for a Facebook post allegedly uncharitable towards a UP minister. The Rampur district police found the post to contain derogatory language and promptly slapped the draconian section 66A of the Information Technology Act, among other laws, against the boy.

Thus, for some time now section 66A has become a handy tool for state governments to suppress dissent or even harmless humor that thin-skinned politicians cannot stomach. The arrest of a Jadavpur University professor – for sharing a comic strip, which the Bengal chief minister did not find amusing – set an unfortunate precedent, which found many imitators precisely because the law is so loosely worded. The police show surprising alacrity in invoking the perverse 66A against innocent citizens, but are found wanting in strictly enforcing the law when politicians make outrageous statements, often bordering on the communal or designed to incite violence.

Section 66A gives arbitrary powers to the police to make arrests for anything deemed annoying – an entirely subjective term. Not only does it have the potential for being abused, the law attacks the fundamental right of freedom of speech and expression and is therefore unconstitutional. The law itself is an annoyance to democracy and deserves to be struck off the statute books.

Thereafter, a Public Interest Litigation (PIL) was filed in the Supreme Court, challenging this provision on grounds of unconstitutionality. It was said to impinge upon the freedom of speech and expression guaranteed by Article 19(1) (a) of the Constitution.

### ***Should Section 66A be repealed?***

#### **Defense of Section 66A by the Center**

The government had opposed the plea for quashing the provision saying it is meant to deter people from uploading grossly offensive material, which can lead to lawlessness by inciting public anger and violence.

Justifying the retention of the provision, the Centre had told the apex court that the impact of the Internet is much wider and restriction on this medium should be higher in comparison to print and TV. Following were the arguments put forth by the center against quashing Section 66A.

1. It had said, unlike print and electronic media, the internet did not operate in an institutional form and there was need for some mechanism to put checks and balances. The government had said the provision could not be quashed just because of its potential misuse. Posting pictures and comments on social networking sites, which hurt religious sentiments could not be tolerated and people must be prosecuted.
2. The Ministry of Communication and Information and Technology in its affidavit said Section 66A did not curb freedom of expression and speech guaranteed under Article 19(1) of the Constitution, as the provision did not provide absolute freedom but imposed certain restrictions. In other words, freedom of expression and speech should be unquestionable so long as the person making such expression or speech is identifiable.
3. It added that the "content, effect, and the purpose of Section 66A of the IT Act clearly shows that it is regulatory in nature" and was not in breach of Article 14, 19 and 21 of the Constitution. Moreover, the advisory issued by the Centre to states not to effect arrest under Section 66A without prior permission from senior police officers would rule out unnecessary detentions in future, the Centre said while seeking dismissal of the PIL.
4. The Centre provided statistics about internet users in India and the danger of internet misuse. Of the 700 million internet users worldwide, India had 125 million and accounted for 16% of spam mails/messages, which has emerged as an altogether new medium to spread malicious content and information.
5. The misuse of information technology, particularly the social media sites, has been witnessed by the country in the recent past when emails were sent, messages posted on social media sites attaching morphed images purported to certain incidents.
6. There have been innumerable instances to disturb/outrage the religious/inter-community harmony and faith by uploading, publishing and transmitting highly inflammatory and objectionable information in the forms of texts, tweets, images, audio-videos and links.
7. The policies adopted by the internet mega companies located outside India compounded the problem by not offering information pertaining to perpetrators/offenders under certain pretexts which effectively blunts the law enforcement activities. The cyberspace therefore, offers altogether different kind of medium, opportunities as well as a perception of invisibility as compared to physical shape.

The apex court had also issued notice to Delhi government, West Bengal government and Puducherry administration taking into account three other incidents of harassment last year -- arrest of Jadavpur University professor, businessman Ravi Srinivasan in Puducherry and Air India employee R Jagannatha Mayank Sharma in Mumbai.

The bench also allowed the intervention of India Against Corruption activist Aseem Trivedi, who was arrested and slapped with sedition charges for drawing cartoons lampooning Parliament and Constitution to depict its ineffectiveness. The Bombay High Court had later dropped sedition charges against him and he now faces a case under Section 66A of IT Act.

### **Supreme Court's quashing of Section 66A**

Section 66A of the Information Technology Act is unconstitutional in its entirety, the Supreme Court ruled while striking down a "draconian" provision that had led to the arrests of many people for posting content deemed to be "allegedly objectionable" on the Internet. It is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right. According to the Supreme Court, the definition of offences under the provision was "open-ended and undefined", and thus prone to be misused by the law enforcement agencies.

However, the Bench turned down a plea to strike down sections 69A and 79 of the Act, which deal with the procedure and safeguards for blocking certain websites and exemption from liability of intermediaries in certain cases, respectively. Following were the arguments put forth by the Supreme Court:

1. In the judgment, the court said the liberty of thought and expression was a cardinal value of paramount significance under the Constitution. Three concepts fundamental in understanding the reach of this right were discussion, advocacy and incitement. Discussion, or even advocacy, of a particular cause, no matter how unpopular it was, was at the heart of the right to free speech and it was only when such discussion or advocacy reached the level of incitement that it could be curbed on the ground of causing public disorder.
2. The court then went on to say that Section 66A actually had no proximate connection with public order or with incitement to commit an offence. The information disseminated over the Internet need not be information which 'incites' anybody at all. Written words may be sent that may be purely in the realm of 'discussion' or 'advocacy' of a 'particular point of view'. Further, the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the Indian Penal Code at all.
3. Holding several terms used in the law to define the contours of offences as "open-ended, undefined and vague", the court said: "Every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another."
4. The court pointed out that a penal law would be void on the grounds of vagueness if it failed to define the criminal offence with sufficient definiteness. Ordinary people should be able to understand what conduct is prohibited and what is permitted. Also, those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place.
5. The restrictions imposed by Section 66A transcend the ones allowed by the Constitution under Article 19(2). Thus, the section is unconstitutional and void.

## ***Supreme Court refused to repeal Sections 69A and 79 of the IT, Act***

### **Section 69A**

It grants powers to the Central Government to "issue directions for blocking of public access to any information through any computer resource". In other words, that would mean that it allows the government to block any website. While necessity or expediency in terms of certain restricted interests are specified, no guidelines have been specified.

The Supreme Court upheld constitutional validity of section 69A of Information Technology Act, under which the Centre can exercise its power to issue directions to block an internet site, saying there are adequate procedural safeguards. However, it noted that reasons for blocking have to be recorded in writing in such blocking order, which would be amenable to judicial scrutiny.

The bench rejected the contention that procedural safeguards provided under Sections 95 (power to declare certain publications forfeited) and 96 (appeal in High Court to set aside declaration of forfeiture) of CrPC are not available here.

Besides Section 66A which was held as "unconstitutional", there was also challenge to the validity of Section 69A. Both provisions were added to the Act through amendments in 2009 by the erstwhile UPA government.

According to the court, merely because certain additional safeguards such as those found in section 95 and 96 CrPC are not available, does not make the Rules constitutionally infirm. The bench noted that the Rules provide for a hearing before a committee set up for the purpose which then looks into whether or not it is necessary to block such information. It is only when the committee finds that there is such a necessity, that a blocking order is made.

## **Section 79**

Section 79 of the Information Technology Act 2000 says that Intermediaries, like Google, Yahoo, Facebook, My Space etc. are not liable for third party information if they observe due diligence while discharging their duties. One of the petitioners' counsel also assailed Section 79(3)(b) to the extent that it makes the intermediary exercise its own judgment upon receiving actual knowledge that any information is being used to commit unlawful acts. Further, the expression "unlawful acts" also goes way beyond the specified subjects delineated in Article 19(2).

It must first be appreciated that Section 79 is an exemption provision. Being an exemption provision, it is closely related to provisions which provide for offences including Section 69A. We have seen how under Section 69A blocking can take place only by a reasoned order after complying with several procedural safeguards including a hearing to the originator and intermediary. We have also seen how there are only two ways in which a blocking order can be passed – one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The intermediary applying its own mind to whether information should or should not be blocked is noticeably absent in Section 69A read with 2009 Rules.

According to the Supreme Court, Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relating to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material.

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