
STRIKING DOWN OF SECTION 66A OF THE IT LAW: THE TALE OF A DEAD LAW

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ABSTRACT

The information technology sector has seen an overwhelming growth in the past decade. Social media platforms like Facebook, Twitter, Instagram has become an integral part of our life and it used in various means. India is a diverse nation and it comprises people from different culture, so everybody has got a different thought process and ability to express. The Constitution has conferred on us certain Fundamental Rights and one such freedom is that of “Freedom of Speech and Expression” under Article 19(1)(a). Of late the media platforms are used as a tool to propagate a lot of movements and protests. Now, the freedom of speech is something which you either have it or you don't. The Information Technology Act was an important Act which was passed by the legislature and subsequent amendments also came into force due to the changing scenario of socio-economic offences. One such Section which was introduced in the Information Technology Act, 2000 was Section 66A. This section has been misused from the very beginning and it was quashed by the Hon'ble Supreme Court in order to protect the “Freedom of Speech and Expression”. Unfortunately, even after being quashed it is still used and people are being prosecuted. This paper discusses briefly about Section 66A and why it was quashed. It will also enlighten about the situation on the aftermath of judgment passed by Supreme Court in Shreya Singhal V Union of India case.

Keywords: Information Technology Act, Freedom of Speech and Expression, Sending Offensive message, Electronic Media.

1.1 Introduction

New communication systems and digital technology have made dramatic changes in the way we live¹. A revolution is occurring in the way people is communicating and also making business. In November, 2012, Mumbai witnessed a shut down due to the death of Bal Thackeray. A girl named Shaheen Dhada posted on Facebook “Every day thousands of people die. But still the world moves on... Just due to one politician dead. A natural death. Every one goes crazy... Respect is earned not given out, definitely not forced. Today Mumbai shuts down due to fear not due to respect.” Rinu, who “liked” the post, commented: “Everyone know it’s done because of fear!!! We agree that he has done a lot of good things. also we respect him, it doesn’t make sense to shut down everything! Respect can be shown in many other ways!”² following which the Palghar girls were immediately arrested and detained for ten days and they were charged under the Indian Penal Code for spreading hatred and then charged Under Section 66A of the I.T Act. After this incident took place, a Delhi based Law student, Shreya Singhal filed a PIL before the Hon’ble Supreme Court as she contended that Section 66A goes against the right to speech and expression as conferred upon us by the Constitution of India.

Section 66A of the Information Technology Act, 2000 states “Punishment for sending offensive messages through communication service etc.”³ This Section introduced by the Amendment Act, 2000⁴. It reads as if any person sends by means of an electronic communication devise any information which is “grossly offensive” or “menacing” in character or any information that is known to be false but with a motive of causing annoyance,

¹ Asimes Goswami, Commentaries on The Information Technology Act, 2000, (September, 2018), Pg. 2

² <https://indianexpress.com/article/india/india-others/sec-66a-21-individuals-who-changed-the-system-2325682/> (VIEWED ON 19TH JANUARY, 2022, 11:29)

³ https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=77 (VIEWED ON 19TH JANUARY, 2022, 11:44)

⁴ **66A. Punishment for sending offensive messages through communication service, etc.**--Any person who sends, by means of a computer resource or a communication device,
(a) any information that is grossly offensive or has menacing character; or
(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;
(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.--For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.]

inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will be punished with imprisonment for a term which may extend to three years or with jail. The main reason why this section was misused was because of the vagueness and ambiguity. The words “grossly offensive” or “offensive” were nowhere defined in the Act. In a populous country like India where half of the population is at odds with the other half ideologically, it is not possible to follow a straight jacket formula to interpret the intension of the legislature when the words are silent. Some Act might be offensive to me but not necessary it will be offensive to someone else. There was also lack of clarity with regards to the implementation of the Section.

The intention of the legislature to enact a certain law is always to protect the society from evil deeds of the criminal mind. Sometimes it is seen that the loopholes or ambiguity in the law are misused by the criminals as were as the executive authorities. This is what had lead to an uproar in the society regarding Section 66A. The words used in the section had wide connotations and was open to varied interpretations leading to numerous arrests.

2.2 Objective:

The main objectives of doing this research are as follows:

- To find out why people are still booked under Section 66A even after this Section was declared unconstitutional.
- To revisit the existing challenges that causes major hindrances’ to finally scrap out the entire section.
- To examine the modifications that is appropriate to solve the situations.

2.3 Research Method:

The research is an “arm-chair method” of research. It is commonly known as “DOCTRINAL METHOD” of research. The doctrinal method of research is concrete and reliable. The various tools that were used in the research work are journals, articles, cases and various database documents. The method of citation will be the Blue Book Method 19th Edition.

2.4 Limitation and scope of study:

In this research work the data’s is confined to the library and the internet information’s. The availability of time is one of the main constrains of this research and also the minimum amount

of budget available did not suffice to meet the experts and professionals.

2.5 Utility of the study:

The basic utility of doing this research is to:

- Provide for enhanced policies that are been adopted.
- It will be useful for the upcoming lawyers, business analysts and researchers to know about the particular area for knowledge.
- And it will be most important for a layman to understand that nobody can be booked and prosecuted under Section 66A of the I.T. Act.

3.1 Background of Section 66A

The United Nations Commission adopted a model law focusing on E-Commerce on January 30, 1997 by the resolution A/RE/S/51/162⁵. The Government of India prepared an initial draft of the legislation and was termed as the “E-Commerce Act of 1988”⁶. Then the Information Technology Bill was drafted and passed in May, 2000 by the Parliament, the Presidents assent was received on June 9, 2000. The Act, 2000 mainly focused on the transparency on e-commerce and trade. In December, 2006 the Information Technology (Amendment) Bill was introduced in the Lok Sabha. It proposed introduction of new provisions dealing with new forms of crime like cyber terrorism, pornography, phishing, voyeurism etc. It was on the aftermath of the terrorist attack in Mumbai that various bills were passed in the Lok Sabha. Thereafter, on December, 2008 the Lok Sabha had passed eight bills, one of those was the 2006 Amendment Bill passed as the I.T Amendment Act, 2008. Thus Section 66A was introduced which penalized sending offensive messages.

The Palghar incident was the incident that drew attention of the nation towards Section 66A and its misuse. Shreya Singhal raised her voice by seeing the blatant misuse of law and filed a Public Interest Litigation in November, 2012. In the wake of various complaints of arrests, the Supreme Court issued an advisory that a person, accused of posting objectionable comments

⁵ Section 66A, Information Technology Act, 2000: A Critique in wake of Supreme Courts’ Judgment, Mrs Dipa Dube, Mr. Sumedh Mool, https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/66A_Crit_viii_sem.pdf (VIEWED ON 19th January, 2022 AT 12:38)

⁶ Section 66A, Information Technology Act, 2000: A Critique in wake of Supreme Courts’ Judgment, Mrs Dipa Dube, Mr. Sumedh Mool, https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/66A_Crit_viii_sem.pdf (VIEWED ON 19th January, 2022, 12:38)

on social networking sites, cannot be arrested without police getting permission from senior officers like IG or DCP⁷.

In July, 2014, concerns regarding amendment of Section 66A was posed before the Rajya Sabha. The Minister of Communications and Information Technology Mr. Ravi Shankar stated that detailed discussions were held by Cyber Regulation Advisory Committee ('CRAC') with stakeholders including industry associations, intermediaries, civil society actors and users on the effect of Section 66A. These discussions purportedly found that the law itself was appropriate, but steps were needed to minimize the likelihood of abuse or misuse⁸.

On 24th March, 2015 the Hon'ble Supreme Court passed a landmark judgment in the matter of *Shreya Singhal V Union of India*. The Court agreed with the the petitioner's contention that S. 66A is capable of limiting all forms of internet communications as it makes no distinction "between mere discussion or advocacy of a particular point of view, which may be annoying or inconvenient or grossly offensive to some and incitement by which such words lead to an imminent causal connection with public disorder, security of State etc." [para. 20]⁹. Thus it was established that Section 66A was vague and arbitrary in nature, anyone could be prosecuted even for an innocent speech. In 2018, it was found in an article "Section 66A and Legal Zombies" in between January, 2018 to September, 2018 there were 45 cases¹⁰ registered under this scrapped section.

3.2 Cases that sparked debate

- Ravi Srinivasan, arrested for sending a tweet on then finance minister P Chidambaram's son, Karti¹¹: On 20th October, 2012, Srinivasan posted a tweet which read as "Got reports that Karti Chidambaram has amassed more wealth than Vadra". It followed a police complaint from former finance minister P. Chidambaram's son, Karti. Thereafter the Puducherry-based businessman Ravi Srinivasan got arrested and charges were framed against him Under Section 66A.

⁷ https://www.business-standard.com/article/current-affairs/sc-to-govt-how-did-you-arrest-people-under-scrapped-sec-66-a-of-it-act-119010700312_1.html (VIEWED ON 19TH JANUARY, 2022, 14:35)

⁸ <https://internetfreedom.in/how-a-bill-becomes-a-zombie-the-journey-of-section-66a-of-the-information-technology-act-2000/> (VIEWED ON 19TH JANUARY, 2022, 14:41)

⁹ <https://internetfreedom.in/how-a-bill-becomes-a-zombie-the-journey-of-section-66a-of-the-information-technology-act-2000/> (VIEWED ON 19TH JANUARY, 2022, 14:41)

¹⁰ Section 66A and other legal zombies, Abhinav Sekhri & Apar Gupta | IFF Research Series, Working Paper No. 2 November, 2018

¹¹ <https://www.livemint.com/Politics/xnoW0mizd6RYbuBPY2WDnM/Six-cases-where-the-draconian-Section-66A-was-applied.html> (VIEWED ON 19TH JANUARY, 2022, 18:33)

- Aseem Trivedi, the cartoonist got arrested for mocking the Parliament: The cartoon that was drawn depicted the Parliament as a giant commode and showed the national emblem with wolves instead of lions. He was charged by the cyber crime cell under Section 124 of Indian Penal Code, the Prevention of Insults to National Honour Act coupled with the Section 66A under I.T Act on September, 2012.
- Professor Ambikesh Mahapatra, Jadavpur University was arrested for sharing cartoons on Mamata Banerjee: Ambikesh Mahapatra and his neighbor Subrata Sengupta were arrested for circulating a cartoon based on a shot from Satyajit Ray's movie Sonar Kella. The cartoon depicted that Mamata Banerjee showing the Indian Railways' logo and telling Mukul Roy : "See Mukul, the Golden Fortress." and on the other hand Mukul reciprocating saying Dinesh Trivedi "That's an evil man!!!" At which Mamata replies "Evil man, vanish!"
- Air India crew members arrested for posting jokes about the Prime Minister and insulting our national flag: K.V.J Rao and Mayank Mohan Sharma prosecuted under Section 66A and 67 of the Information Technology Act for posting indecent jokes about the ministers. Both of them were suspended from work and was in lockup for more than a week.
- Azam Khan was arrested for posting defamatory content on Facebook: In March, 2015 at Uttar Pradesh Azam Khan, a student of Class 11 allegedly posted defamatory statement against a minister.

3.3 Observation of Supreme Court in *Shreya Singhal V Union of India*¹²

When Shreya Singhal, a law student who filed a PIL before the Hon'ble Supreme Court and challenged the draconian law, the bench of justice J Chelameswar and J R F Nariman passed a landmark judgment for Internet Freedom. The observations are as follows:

- Firstly, the bench elaborated that the terms "annoying", "inconvenient" and "grossly offensive" were vague as the act has nowhere defined the terms. Something that is annoying to me might not be annoying to someone else. It is very difficult for the

¹² <https://www.hindustantimes.com/india/sec-66a-of-it-act-scrapped-5-points-observed-by-supreme-court/story-EtZnxzRGrfsutSk5fjML4H.html> (VIEWED ON 24th January, 2022, 19:38)

enforcement agencies as well as the offender to know the ingredients of the offence. As there is no straight jacket formula to determine the elements of the offence and in what manner it is to be executed.

- Secondly, the bench described that liberty of thought and expression of paramount importance. The Constitution of India has bestowed certain basic fundamental rights, one of them being freedom of speech and expression. Section 66A of the I.T Act curbed this basic freedom as guaranteed under Articles 14, 19 and 21 of the Constitution.
- Thirdly, it was quoted by the Hon'ble Bench that "when judicially trained minds can reach on different conclusions while going through the same content, then how is it possible for law enforcement agencies and others to decide as to what is offensive and what is grossly offensive,"¹³ the bench said adding, "What may be offensive to a person may not be offensive to the other".
- Fourthly, the rights of the intermediaries were also discussed. As per Section 79 of the I.T Act intermediaries are not held liable for end users, the principal being they just provide us with a transmission mode to place our messages. Section 79 has not been scrapped down but restrictions has been provided, that is if the legal authorities or executive authorities notify that certain contents needs to be removed then it has to be deleted.
- Fifthly, in order to stop direct blocking of websites (Section 69A) delegated legislation was made. When there is lack of notice or disclosure why it was blocked the aggrieved party may approach before the High Court by writ remedy.
- Lastly, the Bench rejected the idea of giving the government the power to ascertain the procedure of Section 66A of I.T Act adding that "Government come and go but Section 66A will remain forever"¹⁴.

3.4 Why remind a Repealed law?

When the Supreme Court passed the landmark judgment in *Shreya Singhal V Union of India* case, it not only saved the freedom of speech and expression but also scrapped the draconian law. Unfortunately Section 66A continues to be a nightmare; even after it was declared unconstitutional it was found that many were being prosecuted under this section. As per the survey conducted by the Internet Freedom Foundation, a digital advocacy group and Civic Data

¹³ <https://www.hindustantimes.com/india/sec-66a-of-it-act-scrapped-5-points-observed-by-supreme-court/story-EtZnxzRGrfsutSk5fjML4H.html> (VIEWED ON 24th January, 2022, 19:38)

¹⁴ *Ibid*

Labs, a research lab, 10 states (Assam, Andhra Pradesh, Jharkhand, Karnataka, Maharashtra, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh and West Bengal) and one Union Territory (the National Capital Territory of Delhi), 332 cases under section 66A were registered even after the judgment in 2015. The number of such instances in the subsequent years has been 216 in 2016, 290 in 2017, 318 in 2018, 253 in 2019, and 34 in February 2020¹⁵. On seeing this situation People's Union for Civil Liberties, a non-governmental organization moved the Supreme Court with the complaint that Section 66A was being invoked in some courts. The petitioner pleaded that at least 745 cases were active or pending before District Courts in 11 states¹⁶. In all these cases it was seen that the accused persons were being prosecuted. Upon hearing the petition the 3 judges Bench headed by Justice Nariman issued notice to the Union Government. Thereafter the Union Minister wrote to all States and Union Territories to stop registering cases and withdraw all the lodged cases under Section 66A. Further, a copy of the Shreya Singhal judgment was issued through proper circulars to the Director Generals of Police and Chief Secretaries of States. Similar directions were also sent to all High Courts and District Courts, so that necessary orders can be passed in all pending cases.

4.1 Conclusion:

Freedom of Speech is one of the most cherished Fundamental Right guaranteed by our Constitution. The importance of freedom of speech and expression has been reiterated by the Supreme Court from two angles; firstly, from the view of the liberty of individual and secondly, from the view of the democratic form of Government. Some prominent cases being:

Romesh Thappar V State of Madras¹⁷.

Bennett Coleman & Co. V Union of India¹⁸.

It's been 7 years since the draconian law has been declared unconstitutional for excessively invading the right to freedom of speech and expression. But unfortunately even after Section 66A was scrapped several cases were filed and many prosecuted. It was only settled after another round of litigation was filed by People's Union for Civil Liberties (one of the parties

¹⁵ <https://www.theleaflet.in/recalling-why-section-66a-of-it-act-was-struck-down/> (VIEWED ON 26TH JANUARY, 2022, 18:15)

¹⁶ <https://www.indiatoday.in/law/story/decoded-section-66a-of-it-act-story-of-a-dead-law-1828417-2021-07-15> (VIEWED ON 26TH JANUARY 2022, 18:30)

¹⁷ AIR 1950 SC 124

¹⁸ AIR 1973 SC 106

in the Shreya Singhal Case). In order to ensure that this draconian law doesn't come up from the grave, there are certain measures that need to be adopted:

- Firstly, a wide spread publicity must be done in order to make the public aware of the steps taken by the Government.
- Secondly, if any case is being registered under this section, action must be taken against the erring police personnel.
- Thirdly, the states must adopt adequate measures in order to ensure that the public at large must not live in fear.
- Fourthly, the ministries must issue necessary advisories through government circulars and forward it to the state departments.

Now, the question may arise that when someone is criticized in social media platform what will be the remedy to it? The answer is quite simple as, when any individual feels that their reputation is jeopardized because of some reckless comment made on various social media handles like Facebook or Twitter or Instagram then they might pursue a defamation lawsuit against the person who has commented.

Where we stand today is Section 66A is unconstitutional as declared by the Hon'ble Supreme Court, that is, no cases should be filed under this section and nobody should be prosecuted under this section. But time and again there has been misuse of this specific provision. Thus we can understand that there is greater need for enforcement on digital rights.

5.1 Future Scope for Research:

There is a scope for further research in this particular topic of "Striking down of Section 66A of the IT Law". In its further study there can be a comparative analysis with respect to the cyber laws in other nations and its implementation.

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