



SECTION 66A INFORMATION TECHNOLOGY ACT, 2000: BOON OR BANE

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Abstract

The Information Technology (Amendment) Act, 2009, Act No. 10 of 2009 (hereinafter referred to as the Amendment Act, 2009) inserted Section 66A of The Information Technology Act, 2000 (hereinafter referred to as the "IT Act"). However, on March 25, 2015, the Hon'ble Apex Court ruled in *Shreya Singhal v. Union of India* (2015) 5 SCC 1 (hereafter referred to as "the judgement") that it was unconstitutional due to Art. 19 (1)(a)'s ambiguity and volatility. The current effort would solely critically assess the parts of the verdict that dealt with S.66A. Following that, a look at how it actually works in society and the ensuing scenario that emerged as a result of the void left by S.66A's absence would be covered. **Key words** - Section 66A IT Act, 2000, Unconstitutional, Illegal, fundamental rights, prudence, ultra vires.

INTRODUCTION

Internet is believed to be full of anarchy and a system of law and regulation therein seems contradictory. However, Cyberspace is governed by a system of law and regulation called Cyber law. There is no single exhaustive definition to the term "Cyber law".ⁱ

History tells us that the term "Cyberspace" was first use by author William Gibson in 1984 in his sci-fi novel *Neuromancer* to describe the virtual world of computers. Today, Cyberspace is how most people describe the virtual world of computers. Today, Cyberspace is how most people describe the world of the Net. Though a far cry from the immersive virtual reality of the fictional version, and often regarded as an overused buzzword, Cyberspace has become synonymous with the internet. However Cyberspace is not the World Wide Web alone.ⁱⁱ

CYBER LAWS IN INDIA

In India, cyber laws are contained in the Information Technology Act, 2000. In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and is now the Information Technology Act, 2000 (IT Act, 2000). The IT Act, 2000 aims to provide the legal infrastructure for e-commerce in India.



These laws have a major impact for e-businesses and for the new economy in India. It is important for us to understand what the IT Act, 2000 offers and its various perspectives.ⁱⁱⁱ

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 cyber-crime. The Act was amended in 2008 to insert a new section, Section 66A which was said to address cases of cyber-crime with the advent of technology and the internet.^{iv}

STATUTE DEFINED

What does the Section 66A of the INFORMATION TECHNOLOGY ACT, 2000 says is mentioned below:

SECTION 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.]^v

INTERPRETATION BY LEGISLATURE

The legislative intent behind section 66A was to curb the menace of sending offensive messages by means of a computer resource or a communication device. The intention was to regulate, and criminalize publication or transmission of false information, which has the potential of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will to the individuals, community or the society keeping in view the ethnic, religious and cultural diversity. The legislature imported certain words and phrases from the



Indian Penal Code, namely “annoyance”, “danger”, “obstruction”, “insult”, “injury”, “criminal intimidation”, “enmity”, “hatred”, or “ill will” to section 66A to make it more broad based keeping in view hues and colours a communication message might take.

WHAT DOES THE CRITICS SAY?

However, critics felt that section 66A would be used as a tool to curb individual freedom of expression guaranteed under the Constitution. There have been incidents of arresting individuals for posting Facebook comments,^{vi} drawing caricatures^{vii} and writing critical blogs^{viii} under section 66A. It all started with *Shreya Singhal v. Union of India*,^{ix} it was followed by *Dilip Kumar Tulsidas Shah v. Union of India*,^x *Rajeev Chandrashekhar v. Union of India*,^{xi} *Common Cause (A Regd. Society) v. Union of India*,^{xii} *PUCL v. Union of India*,^{xiii} and *Mouthshut.com (India) Pvt. Ltd. v. Union of India*.^{xiv}

PRUDENCE BEHIND SHREYA SINGHAL V. UNION OF INDIA (2013) 12 SCC 73

The relevant ratio of the Supreme Court of India in the case of *Shreya Singhal v. Union of India* is as follows:

In Para no. 69 of the final judgement the apex court find out some loopholes in the newly added section that is Sec. 66A of the Information Technology Act, 2000. The Hon’ble court interprets that the expressions used in this particular newly added section are open-ended and undefined. Section 66 of the Information Technology Act, 2000 in stark contrast to Sec. 66A states that:

Section 66 - Computer related offences.—If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation.—For the purposes of this section,—

(a) The word —dishonestly‖ shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);

(b) The word —fraudulently‖ shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).^{xv}

What does Sec. 268 of the IPC, 1860 states?

Sec. 268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to



the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

In Para no.73 Supreme Court says that it is important to note the distinction between the two sections i.e. Sec 268 of IPC, 1860 and Sec. 66A of IT act, 2000, whereas in Sec. 268 the various expressions used are ingredients for the offence of a public nuisance, these ingredients now become offences in themselves when it comes to Sec. 66A.

Further under Sec. 268, the person should be guilty of an act or omission which is illegal in nature legal acts is not within its net. A further ingredient is that injury, danger or annoyance must be to the public in general

Further in *Shreya Singhal v. Union of India*, the court directed impleadment of the states of Maharashtra, West Bengal, Delhi and Union Territory of Pondicherry.

Further the petitioners informed the court about the advisory issued by the Department of Electronics and Information Technology, Government of India dated 09.01.2013 on the implementation of Sec. 66A of the Information Technology Act, 2000.^{xvi}

FINAL VERDICT-

The Hon'ble Supreme Court of India views the case's verdict as one of its most significant decisions. Especially when it falls under the umbrella of citizens' and internet users' fundamental rights to speech and expression. The ruling overturned the restrictions on people's rights and provided a clearer path to their future well-being. The Information Technology Act of 2000's Section 66A, which widened the definition of free speech and expression, was repealed:

Furthermore, Article 19 of the Indian Constitution guarantees the freedom of expression for every citizen, which includes this Fundamental Right.

Also the two-judge bench ruled that Section 69A of the IT Act 2000, which allows the Government to choose to remove content from the Internet through a secret blocking mechanism, did not suffer from the flaws in Section 66A or Section 79 and was a narrowly designed provision with sufficient protections.

A FOLLOW-UP TO THE SHREYA SINGHAL CASE



TAKING NOTE of law enforcement agencies continuing to book people under Section 66A of the Information Technology Act, 2000, which has been struck down, the Supreme Court on October 11, 2022, directed that no person should be prosecuted under it anymore.

Hearing a plea which raised the issue, a three-judge bench presided by Chief Justice of India U. U. Lalit asked the Home Secretary and Director Generals of Police of states to direct their officers not to register any complaint with respect to violation of Section 66A and to see to it that reference to the provision, which was held unconstitutional by the court in the Shreya Singhal case in 2015, is removed from all pending cases.

Hearing the PIL on September 6, the top court had expressed “serious concern” over states continuing to register FIRs for offences under the provision and asked Advocate Zoheb Hossain, who appeared on behalf of the Centre, to “get in touch with the concerned Chief Secretaries of the respective states where the offences are still being registered or stand registered and impress upon” them “to take remedial measures as early as possible”.

On October 11, 2022, Hossain submitted a status report outlining the statistics on such cases before the bench also comprising Justices S Ravindra Bhat and Ajay Rastogi.

Taking note, the bench said in its order that Section 66A was already held unconstitutional and no citizen can be prosecuted under it. It said that in all cases where citizens are facing prosecution for violations of Section 66A, the reference and reliance upon 66A shall stand deleted.^{xvii}

INTERPRETATION

Section 66A of the Information Technology Act of 2000 has frequently been misunderstood and abused. Freedom of speech and expression plays a significant part in the legal system of any democracy. Our nation shouldn't follow the example of Afghanistan^{xviii}, where people are afraid to express their beliefs and speak up for themselves. I wholeheartedly concur that slander and sedition are two instances of when the right to freedom of speech and expression is not guaranteed, and it makes perfect sense.

Freedom of speech and expression is crucial for our nation's growth and development, and its absence would undermine democracy in its purest form. It is a fundamental right that directly affects how 1.3 billion people feel about their nation.

SUGGESTION

Although it must be provided a wide range of options, freedom of speech and expression must also have built-in restrictions that are legal within the confines of the constitution. We reaffirm



that the right in question has enormous worth and transcendence. As time goes on and culture develops, it will need to prepare the way for ascendancy, but it cannot be confined to an absolute space. It is subject to a constitutional restriction.

To avoid any judicial activism, the court may have asked the law commission to make recommendations to fill the vacancy left by the repeal of Sec. 66A in addition to invalidating the provision.^{xix}

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