

"Analytical Study Of Section 66a Of The Information Technology Amendment Act, 2008" Jurisprudential Aspects Of Innovation And Socital Change"

Mr. Santosh S. Pawar^{1*}, Dr. Padmaja D. Khatikar²

^{1*}Be (Mech), Ba (Eco), Mom, Llb, Llm, Msw, Mca. Research Scholar, Faculty Of Law, Department Of Law & Governance, Vishwakarma University, Pune.

²llb, Llm, PhD, Assistant Professor And Research Guide Cum Co-Author, Faculty Of Law, Department Of Law & Governance, Vishwakarma University, Pune.

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ABSTRACT

In the past decade, the Information Technology industry has witnessed an astounding expansion in India. Criminals also have revolved to utilize the internet as a possible medium for committing a crime. The Information Technology Act is one of the most significant actions enacted by the legislative council in order to verify the offences in context of usage of internet. The original Act enacted in 2000 and its following revisions incorporated many provisions to deal with new kinds of crimes. Since the passage of the Act, there has been a cry over its inadequacies and abuse by the government. The Section 66A, which was perhaps the most abused part, was overturned by the Supreme Court of India on March 24, 2015 to defend the Right to freedom of speech and expression after a PIL was filed by Shreya Singhal contesting the constitutionality of the section. This paper will analyze the shortcomings of this section in light of the decision of the apex court. Various factors on the basis of which Section 66A was marked out as unconstitutional by the Supreme Court include discussed. The article also demonstrates the relevance of Sec 66A to tackle several offences. The article closes with a comment on the importance of this part and discusses the rationale of why the part should have kept with some modifications or recommendations or both.

Keywords: Section 66 A of the I.T. Act, 2000 (amended in 2008), Cyber bullying, Online Trolling, Online Gender Harassment.

1. INTRODUCTION

On 24 March 2015, by ruling Section 66A of the Information Technology Act, 2000, the Supreme Court of India issued a landmark judgement (the Act). This specific clause was not at the original Act created in 2000. Section 66A was included by the 2008 amendment revised the Act to control many sorts of online offences includes online transmission of abusive remarks and Digital communication services, sexually explicit material publication Video voyeurism on the internet, private data leaks Intermediary, cyber-terrorism, phishing, identity robbery etc.

All Mumbai mourned the loss of their dear leader Bal Thackrey in November 2012. Almost the whole town was banned because of the massive attendance of the persons who paid Homage to their leaders. India's financial capital was in a Shutdown state. Two girls from Thane district asked Shutdown the whole city to mourn the political leader's death. Did they not know that their behaviour would draw a criminal case? The famous section 66A of the Information Technology Act, 2000, was utilised by the government for public order disruption. It was definitely not acceptable for police officials to respond, as nothing the girls said could have led to public unrest. The suit resulted from the imprecise language of Section 66A and from the absence of adequate guidance. The scope of this document is confined to Section 66A. The study analyses the amount of deficiencies. This paper further contends that a portion comparable to Section 66A is needed for combating crimes committed via the Internet or communications device, except for the full Section 66A.

The legislature has always tried to shield individuals from exposure to illegal activity underlying the establishment of a specific legislation. However, certain laws created by the legislative body may be abused for their personal gain by some persons. Criminals can utilise loopholes in the law to obstruct justice and harassment. It becomes necessary that the judicial authorities read it in such a way that the legislature's intention is supplemented or even that the government proposes instructions for preventing its misuse. Section 66A covers this category of activities that have been abused. Instead of giving recommendations, however, the Supreme Court immediately broke the provision. Section 66A was a significant statute in addressing various offences, including online bullying, trolling, harassment, etc. The objective of this study is to determine the relevance of section 66A for the control of cyberintimidation, obscenity, hatred, harassment, etc. actions that cannot be effectively and time-boundedly controlled thus far by using comparable provisions of the Indian Penal Code (IPC).

2. HISTORY OF THE ACT

On 30 January 1997, the United Nations Commission established a model legislation on e-commerce in Resolution A/RE S/51/1622. The model law was based on international commercial law. The participating States were urged that current legislation should be adopted, amended or reviewed to get all nations on the same page as information technology laws.

The Indian government developed an early draught law and was referred to as the 'E Commerce Act of 1998.' Later on, the Ministry of Information and Technology was established, which took on the responsibility of finishing the project. The new document was known as the IT Act of 1999. The proposal for a measure was tabled in Parliament in December 1999 and adopted in May 2000. The legislation was notified on 9 June 2000 with the approval of the President.

The Act of 2000 mainly focused on e-commerce. It deals with topics such as digital signatures, electronic recordings, electronic data security, etc. The objective was to ensure transparency and security of the internet transaction. The regulation was also introduced to guarantee that the accessible data is not abused in electronic form.

The IT sector was only just beginning to spread its wings in India when the Act was introduced in 2000. No one could have imagined the boom he has seen in 5 years' time encompassing cities, towns and towns throughout India. It is hardly surprising that the subject of cybercrime was not considered in detail in the 2000 Act. Only allusions were made to cybercrime. Following a large complaint about this lack of the Act, a substantial modification was enacted in 2008 that included a wide range of cyber offences. It should be emphasised, however, that the 2008 modification was accepted as a knee jerk response in Mumbai on 26 November 2008. The provisions in the amendment were, to put it mildly, not well thought out or debated. The provisions contained in the Act have uncertainties about their application and interpretation. Experts also think the act is not sufficiently competent to combat cybercrime per se.

The most widely discussed and criticised provision of the IT Act after this modification was Section 66A for its ambiguous phrasing and abuse.

In the section, certain words such as "grossly insulting," "insult," etc. were lavishly utilised. Laws are enacted to safeguard the general public from wrongdoers and give justice when acts are performed against the law. However, the number of complaints filed in this sector was greater on the part of the Government against negative remarks on its policies or judgments. The right to freedom of expression was seriously contested. The number of cases lodged for incorrect reasons under this clause has grown dramatically. This is when the Supreme Court took steps to verify the constitutional legality of the statute. Taking into account that Section 66A really denied the fundamental right to freedom of speech, on 24 March 2015 the top court ruled against the statute.

3. THE ACT AND ITS REGULATIONS

In Section 66A, offensive messages delivered by a computer or a communication device are discussed. It provides for the punishment of jail and fines when any person sends out information that is highly insulting, threatening or fraudulent with the aim of cause irritation, discomfort, hostility, hate, ill will and so on. If a communication is insulting or threatening, no further object must be created for this conduct. In other words, the simple fact that the statements are seen as insulting or threatening by the executive is sufficient to sustain action. If the information is incorrect, then a further aim or intent should be established in such situations in that the offender transmitted the information to promote ill-will, hate, hostility, etc. In Section 66A the scope of the IT Act was increased, which was relatively confined to e-commerce offences.

According to the Standing Committee Report on the IT Act 2000 modification, a legislation that is favourable to persons and can be comprehended by the ordinary man and has least dependency on other laws was introduced by the legislature. The legislature's intention cannot be disputed. The main reason for the ambiguous appearance of Section 66A was the absence of debate in Parliament. Since the terrorist incident on 26 November 2008, a significant reform in cyber law was immediately needed. In addition, the disturbances generated in Parliament significantly limited the possibilities of discussing the proposed change. No wonder an amendment has been adopted with several loopholes. The provision was one of its types to include hate speech, diffamation, illegal bullying, etc. Although the IPC has identical provisions, a

new set of laws has been needed for a new kind of offence. This part allows policemen or cyber cells to deal quickly with online content that cannot be carried out by the IPC.

4. DRAWBACKS OF THE ACT AND JUDGEMENT OF THE SUPREME COURT

In the *Shreya Singhal v. Union of India* decision (criminal) No 167 of 2012, Section 66A was overturned by the Supreme Court. Shreya Singhal submitted the Public Interest Litigation (PIL) to defend freedom of speech and expression. Other parties who suffered from this provision's abuse eventually joined her and the court finally found the section unlawful on the basis of ambiguity.

I. Constitutionality

The constitutionality challenge was articles 14, 19(1)(a), 19(2) and 21 of the Indian Constitution. Nevertheless, the Court rejected the Article 14 and 21 challenges and declared the Article 19(1)(a) and 19(2). The challenge for Article 14 and 21 had been denied after the Deputy Additional Solicitor General had argued that the Court accepted a lower level of reasonable limitation on the Internet as a medium of speech. The administration was able to convince the court how large and far-reaching the Internet is compared to other conventional media such as newspaper and electronic media like TV. Thus the Court accepted the notion that a reasonable limitation on the Internet should and must apply, thereby rejecting the claim to unconstitutionality in Article 14 and 21 of the Indian Constitution. Section 66A's legality was therefore solely examined in relation to Article 19(1)(a) and 19(2).

a. Article 19(1) (a)

Article 19(1)(a) of the Indian Constitution provides for freedom of speech and expression for all Indian citizens. Three were mentioned by the Court basic ideas that are crucial to grasp 'Free speech and freedom of expression.' The first is the debate, Secondly, advocacy, and secondly, incitement. Article 19(1) (a) Promotes debate or promotion of controversial topics or the government against. It is only when such a debate or Advocacy is inspired by the inclusion of Article 19(2) picture. The Court has held that where it is not overemphasized Democracy, freedom of opinion and speech is a question Cardinal value of vital importance to us constitutional arrangement This clause limits the freedom to express opinions when they are Grossly offensive to everyone regardless of the ingredient and Intent of opinion. It ignores the reality that it is lively Democracy like India, perhaps a crude perspective for someone offensive against someone else who attracts criminal action to this part. It is a blatant attack on freedom of expression and expression. The petitioner maintained that the public has the right to know Section 66A is immediately affected. Give your decision in the light of According to Article 19(1)(a), "no distinction has been made" between simple conversation or a specific point of view advocacy It can be upsetting, uncomfortable or excessively unpleasant provocation and incitement that leads to these statements urgent Public disturbance causative link, State security, etc. The freedom of speech and expression is thereby restricted Creating the offence referred to in Article 66A

b. Article 19 (2)

Article 19(2) states that 'Nothing in subparagraph (a) of paragraph (1) is provided impede or hinder the functioning of any existing legislation making any legislation rational in so far as such law imposes Restrictions on the exercise of the privilege granted by that section Clause for the benefit of India's sovereignty and integrity, State security, foreign friendly relations, public Order, decency or morality, or in connection with judicial disdain, Diffamation or offence inducement.' That is why a State Restrict the freedom of speech and expression In any of the eight issues referred to in Article 19 (2).

A state cannot reduce one's freedom to promote the public interest or even the best pleasure of others freedom. while arguing against the legitimacy of the Constitution The section disputed the offence constituted by the petitioner That part has no relationship with any of the eight Subject issues referred to in Article 19 (2). To defend this Challenge The State contended that the clause might really be Public order support, diffamation, incitement to a Infringement with decency or morals. So, while judging The Court focused on constitutionality four of the eight heads State mentione.

a) Order of the public

Section 66A obviously fails to establish public order And, the obvious and current hazard test. These are two tests to evaluate if a legislation is actually utilised to govern Public disturbance. Public disorder. Test of Public Order It seems obvious that checking the inclination to generate public chaos The section does not need the message to have a Clear public order trend. No difference exists The message is sent to a person or group of people between individuals. There might also be no relationship between the Message delivered and additional action done by persons This leads to public order disturbance. An offence in this respect Section may be inferred even if a message is disturbing Without generating public disturbance, individuals. The Court stated in these cases that the section had no close link with public order.

• The Clear and Present Risk Test

Even though it cannot be expressed fully in a formula, it basically indicates that reasonable grounds must exist in order to dread significant harm. Late Justice Murphy requested 'convincing evidence of a serious

threat to the legitimate interest of the State.' The risk otherwise indicates that clear public interest is obviously without question jeopardised. Justice Brandeis said in *Gilbert v. Minnesota*¹ that: "Sometimes those tasked with government duty, confronted with obvious and present danger, may determine that abolishing different opinions is necessary; since an emergency does not allow truths to rely on sluggish mistake conquest. And the capacity to repress such situations exists." In *Whitney v. California*², he added: "No risk arising from freedom of expression can be seen and seen unless the bad person is so near that it can occur before there is chance for thorough discussion. Only an exigency may warrant abolition." Time and space must be available for reasonable democratic thinking and debating processes. Freedom cannot simply be shortened on the future horrors haunting the government. The Supreme Court remarked that the obvious and current risk test 16 was not included in Section 66A³.

b) Defaming

Defamation is an imputation which is untrue and damages the reputation of an individual, a group, a community, a religion, etc. The Indian Penal Code states that defamation can be done using words spoken or written, signs or visible representations. The element in the act of defamation is reputational damage. But the Court noted that something might be highly offensive and irritating or unpleasant to somebody without harming his reputation at all¹⁸. This section neither targets defamatory statements alone. It can also indict other remarks that are unpleasant or highly insulting, but do not include defamation components.

c) Decency or ethics

Anything defined under the section as excessively unpleasant or irritating may not be obscene. It cannot thus be described as obscene. The Court noted that the phrase 'obscene' in Section 66A was absent. It cannot thus be recognised that this part covers the head of decency or morals.

d) Incitation to an offence

Just because something is highly unpleasant, upsetting or threatening doesn't indicate it has any elements to produce an offence. It may come within the category "debate," "advocacy" or "point of view." "Section 66A has nothing to do with 'incitement to an offence.' The Supreme Court remarked. Section 66A severely reduces information which could be transmitted on the Internet, whether grossly offensive, distracting or disadvantaged and, consequently, unrelated to any of the eight topics referred to in Article 19(2) must be in breach of Article 19(1)(a) and cannot be saved in accordance with Article 19(2) also."

II. Vague

The petitioners' lawyer stated that the section is so ambiguous that neither the accused nor the Section administration would be aware as to which side of a clearly established boundary is a certain communication. Terms such as angry, intimidating, extremely insulting, threatening, ill-will, etc. are often employed. Their interpretation is left to the authorities as a prerogative. This is one of the reasons why this area has been constantly misused. Vagueness is at the heart of restricting freedom of expression. Since the authorities must determine on the character of every declaration made by the accused, freedom of speech is immediately affected.

The IPC has utilised words such as irritation, harm and risk in Sections 268, 294 and 510. In the IPC, however, they are employed in a specific context that changes section by section. They are not subject to interpretation, unlike Section 66A. The phrases injury, hazard or irritation are also used by the public and are not limited to a person. Therefore, the usage of these phrases is strongly opposed to the use in Section 66A in IPC.

The supreme court cited several cases from India and overseas, in which legislation was established because of its ambiguous character. The Court remarked that the provisions of Sections 66B through Section 67B also offer penalties for clearly identified crimes. Section 66A alone does not correctly create words. The administration has sought to support this position by mentioning numerous ambiguous statutes that have not before been rejected by the court. Thus, it cannot be established that the mere presence of ambiguous phrases is the basis for law enforcement. However, the Court pointed out that the statutes referred to by the government in the instances did not deal with a criminal case. It would thus be ridiculous to compare both circumstances that are essentially different in the first place.

¹ *Gilbert vs. Minnesota*, 254 U.S. 325 (1920),

URL: <https://supreme.justia.com/cases/federal/us/254/325/case.html>, (last visited on 29th January, 2021)

² *Whitney vs. California*, 274 U.S. 357 (1927) URL:

<https://supreme.justia.com/cases/federal/us/274/357/case.html>, (last visited on 29th January 2021)

³ *Shreya Singhal vs. Union of India WP.(criminal) no.167 of 2012* URL:

http://supremecourtindia.nic.in/FileServer/2015-03-24_1427183283.pdf (last accessed on 19th December, 2020)

5. EFFECT OF THE JUDGEMENT

Although unclear, Portion 66A was a powerful section some severe crimes against the internet user or a Device of communication. Although the verdict is considered a triumph when weighed against difficulties for proponents of freedom of speech the authorities will tackle actual criminals it doesn't appear like an ultimate win, severe penalty.

But it does not imply that you have unfettered freedom expression and speech. The gap caused by the striking some other provision must be satisfied aside from the Section. There are still customary rules dealing with this abuse freedom. The government can limit freedom if it is under the jurisdiction of Article 19(2) of the Indian Constitution. Any misbehavior in this respect is controlled by specific offences in the IPC. The IPC's equivalent provisions apply viz. Sedition (S. 124A), Enhancement of the Enmity amongst Grounds Groups Religion, race, etc. (S.153A), religion deliberately insulting or Religion (S. 295A), defamation (S. 499), etc. Under the majority the maximum prison term of these provisions is 2 years or less. It should be stressed, however, that even these portions may be abused by the government and were abuse Sections above. General recourse to Section 124A is where violence or public disorder the government erupts against it. The accusation for the sedition was used UK Government to limit freedom of movement Labeling the freedom fighters' operations against the State. Since India is now a free nation, it has long been maintained that Legislation should be rejected.

However, there were several Occasions when this Section was abused Government to hide its criticisms.

- **Sudhir Dhawale⁴:** after the horrors perpetrated on Dalits, Sudhir Dhawale publicly attacked the government for its failure Social disparities cases. He was accused of sedition and Must have spent 60 months in prison. Dhawale has also been reserved for Comprore and wage war on the nation. To acquit him, The Court of Sessions noted differences in Investigation and lack of proof.
- 67 Swami Vivekanand Subharti Kashmiri students Meerut University that rooted for Pakistan Cricket squad in Pakistan beat India's Asian cricket team In 2014, the police with Sec 124A and others booked the cup sections⁵. Section 124A has been dropped, but only Following a huge uproar
- **Assem Trivedi⁶:** A cartoonist from Mumbai shouted his voice Via his drawings against corruption. He was booked in 2012 facing sedition charges that were subsequently dismissed The High Court of Bombay and noted that The IPC Sedition Section should be included.

6. SECTION 499 (Defamation)

The Supreme Court spoke regarding the fundamental principle Section 499 validity which addresses the act of diffamation its abuse. It was in the headlines because of its misuse in silence Disagreeable views and political vendetta satisfied. In the instance of Assem Trivedi a PIL against the section was filed 124A because of its abuse. The High Court of Bombay said – Section 124A of the IPC cannot be called upon to punish people' criticism at the time being involved with the management or Strong phrases used to convey disapproval of the actions of Government in order to improve or change it Legal means. Legal means. Similarly, while harshly phrased, remarks Expressing disapproval of government activities without those sentiments that produce a tendency to cause Public disturbance would not be punished for acts of violence²⁷. The major reason Section 66A was despised is because of its The authorities' egregious misuse. However, we must recognise that the above-mentioned customary laws should be implemented The vacuum produced by Section 66A repulsive is not resistant to misuse. They have been often misused by the Government's critics to silence. The fundamental function of repulsion Paragraph 66A is overcome if other laws are utilised as a Replace it is sometimes abused. It is important to remember that the IPC is Unable to act quickly and efficiently with such offences. In reality this Section might have been considerably more efficient and effective to deal with severe offences such as online bullying, harassment and obscenity, Hate talk, etc.⁷

7. Why is Section 66A required?

It is vital that we recognise the importance of Section 66A seeing the distinction in action as a result of invoking the sections of Section 66A as an alternative. Before the advent of digital technology, freedom of speech was abused by providing provocative discourses during public gathering. So The IPC was developed to address such major crises Gathering violent turning. Of course, the action proposed in the IPC isn't quick. Today because of the simple and vast reach of the harm technology is already done by time measures the IPC advised that they be taken. Apart from anomalies, this section proved a valuable solution address delicate

⁴ <http://indianexpress.com/article/india/regionalindia/40-months-on-court-acquits-naxal-activist-sudhir-dhawale/> (last visited on 19th December, 2020)

⁵ Sedition charges against Subharti University's Kashmiri students based on complaint by officials, IBN Live, <http://www.ibnlive.com/news/india/seditioncharges-against-subharti-universitys-kashmiri-students-based-on-complaintby-officials-695015.html>, (last visited on 19th December, 2020)

⁶ Indian cartoonist Aseem Trivedi jailed after arrest on sedition charges, The Guardian, <http://www.theguardian.com/world/2012/sep/10/indiancartoonist-jailed-sedition>, (last accessed on 19th December, 2020)

⁷ <http://indiankanoon.org/doc/57916643/> (last visited on 19th December, 2020)

circumstances such as those concerning Religious and community feelings. For instance, the episode North-Eastern Bangalore students who fled the state Karnataka following videos and comments that incite violence they appeared on whatsapp and other social media forms Bangalore. Section 66A has been used by the police authority prevent rumors of offensive statements from spreading Videos distributed to encourage violence against a certain person community.

Section 66A was a chance for real cyber victim's harassment to acquire quick content alleviation be offensive or harmful in character, whose repeal now has the police authorities rendered the booming business toothless Cyber bullying threat. We must comprehend Section 66A also included legal remedies against a number of others cybercrimes such stalking, bullying, SMS threats E-mail, phishing, spamming, etc. However, other portions the unique nature of section may be cited in the IT Act or IPC 66A's difficult to find. Moreover, the other activities do not have to be quick action which in these situations is typically necessary Internet use. The longer it takes to remove the Overriding; slanderous or offensive content Damage done. Section 66A dealt with crimes like cyber Bullying, online stalking, and spam that cannot be effectively handled under any IPC section.

One of the main aspects of this section is that it deals directly with bullying. Suicide instances after indecent photos to social networking sites that are false accounts created to defame somebody, online stalking, cyber bullying as someone else has obtained harmful messages etc. prominence. All these situations are known as cyberbullying. The number of such incidents is on the rise. McAfee's online survey shows some pretty frightening facts. According to this poll, 50 percent of Indian children aged between 8 and 17 years, i.e. of every 10 Indian youngsters, were bullied online.

Online bullies are more than 50 percent. A Microsoft survey by demonstrates How India tops the globe in many cyber bullying indices. In certain situations, cyber bullying has led to depression. Another thing the troubling result of the poll was that India is third the world is concerned with cyber bullying. Section 66A may be available in such situations, they have been beneficial. Knowledge of the presence of such laws are crucial as well. It is acceptable that even in the absence the perpetrators won't get away with any of Section 66A crime. You would be penalized for your work. But it is the Strictness and speed would lack in the service of justice Section 66A absent.

CONCLUSION

No law is flawless in nature and can be used to its advantage. The simple misuse of any legislation should not be the basis of its removal. The legislature retains the best while drafting a legislation for Citizen's interest in his thoughts. It doesn't merely make a law so the authority or the ordinary guy is abused it. Still the Section 498A has been severely abused. But the request cannot be taken into account for striking it because the legislative goal was to guarantee that no woman were subjected to Domestic abuse for whatever cause. For a period of time improvement seen in the introduction of Section 498A, thanks to Judiciary and government alike. But it wasn't Unconstitutionality questioned. The same goes for Section 66A. One of the flaws in the provision was the police discretion.

SUGGESTIONS

Legislation was commonly abused because absence of adequate standards section. The court might have established explicit guidelines about the arrests by police authorities in order to guarantee efficieyant Application of the law as the Court did Section 498A. The courts are normally required to take notice of Legislative purpose and read the significance of a provision. This is how case law is formed and the law is developed Capable of adjusting to change times without substantial changes. It is the obligation of the When the regulations are ambiguous or subjective the judiciary to evaluate whether an action Contains the offence element or not. Rejection of the provision in the cyber realm, it has led to a lack of security. No doubt Section 66A was turned into a monster. However, clear Section 66A is genuinely needed. A newly defined Section 66a would aid in the battle against heinous crimes such as cyber crime Intimidation and harassment. It is the duty of the two the judiciary and the government that take care of this requirement to Protect the citizen against abominable crimes.

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