

CONSTITUTIONAL VALIDITY OF SECTION 66A UNDER INFORMATION TECHNOLOGY ACT 2000

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ABSTRACT

Innovation changes the mindset of the general public. Profanity in electronic shape, transforming of pictures, criticism, content harassing, stalking, spamming, spontaneous messages, criminal terrorizing, blackmail, open wickedness, affront, danger to cause damage have entered in this advanced society with the assistance of digital innovation. Under this background government inserted section 66A under the Information Technology Act. The Information Technology Act, 2000 was corrected in 2008. The altered Act which got the consent of the President on February 5, 2009, contains the scope of 66A. Section 66A of the Information Technology Act may create a fresh set of problems. Recall that the Supreme Court had quashed 66A which criminalized the sending of offensive messages over a communication device noting that it had become a political instrument of coercion and intimidation. So the thumb rule for replacing 66A is to frame provisions that do not threaten free speech or individual liberty. But according to the news report cited above, the Centre is planning to use Section 153A (Promoting enmity between different groups on grounds of religion, language, etc., and doing acts prejudicial to maintenance of harmony) and Section 505 (Statements conducive to public mischief) of the Indian Penal Code in place of 66A. This is a dose of strong, and hence attractive, but wrong, medicine for a pervasive ailment.

Key words: section 66a, information technology, offensive, free speech

Aim / Objectives:

1. To understand the concept of section 66a of IT Act 2000
2. To study about Art 19 of Indian constitution
3. To trace out the cases for section 66a
4. To observe the test of obscenity
5. To establish the constitutional validity of 66a of IT Act with shreya shinghal case

Hypothesis

The provision of information technology Act 2000 section 66a is unconstitutional

The provision of section 66a of information technology act 2000 is not unconstitutional

Introduction

While the goal behind the 2008 Amendment was to keep the abuse of data innovation, especially through online networking, Section 66A accompanies to a great degree wide parameters, which permit eccentric elucidations by law implementation organizations. The vast majority of the terms utilized as a part of the area have not been particularly characterized under the Act. The petitions have contended that it is a potential device to choke real free discourse on the web, and to diminish the right to speak freely and rights ensured under the Constitution, going a long ways past the ambit of "sensible confinements" on that opportunity. The administration has all the earmarks of being blowing hot and chilly on the issue of Section 66A of the Information Technology Act, regularly used to gag free discourse via web-based networking media. Having conceded under the watchful eye of the Supreme Court that there is a need to alter the section, the Center has now supported maintenance of the questionable arrangement fighting web needs stricter checks than other media - given its more extensive reach and effect. The supreme court saved its decision on a cluster of petitions testing the legitimacy of the section 66A. Be that as it may, the administration's most recent declaration insinuates a mess in managing the mishandle of web opportunity by hostile to social components to make underhandedness and the outlandish contentions made by conspicuous abuse of the law against honest individuals practicing their

major ideal to the right to speak freely and articulation. While advising the court that it had framed a board to draft another law, set up a guide subsequent to examining abnormalities and recommend shields against its conceivable abuse, the Center had prior kept up that the disputable arrangement does not damage subjects' entitlement to the right to speak freely and articulation. It looked to give a fillip to electronic exchanges, give legitimate acknowledgment to web based business and e-exchanges, encourage e administration, anticipate PC based wrongdoings and guarantee security practices and strategies with regards to most extensive conceivable utilization of data innovation around the world. The IT Act likewise corrected the Indian Penal Code, Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to encourage internet business and electronic administration. However, the issue lies in a speedily made correction amid the UPA-I decide in December 2008 that added Section 66A to the law alongside a few different arrangements. The expectation was to reinforce correctional arrangements following a quick increment in new wrongdoings, for example, distributing sexually express material in electronic frame, video voyeurism, break of classification and spillage of information, web based business cheats like phishing, wholesale fraud and transmission of hostile messages through correspondence administrations. It's no one's case that those abusing web-based social networking stages for criminal purposes ought not be berated. They should be. Also, it should be possible just through a well thoroughly considered law which is discussed in Parliament and the media.

WHAT IS SECTION 66A OF INFORMATION TECHNOLOGY ACT 2000

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 reason for this area, terms "electronic mail" and "electronic mail message" implies a message or data made or transmitted or gotten on a PC, PC framework, PC asset or specialized gadget incorporating connections in , pictures, sound, video and some other electronic record, which might be transmitted with the message.

IMPORTANCE

The UN General Assembly had on January 30, 1997 passed a Resolution embracing the Model Law on Electronic Commerce drafted by the UN Commission on International Trade Law. The determination prescribed that all member states should create or update their laws in perspective of the requirement for consistency of the law relevant to contrasting options to paper based strategies for correspondence and capacity of data. It was to offer impact to the this UN determination that India's Parliament created the Information Technology Act, 2000 to advance effective conveyance of taxpayer supported organizations by methods for dependable electronic records. A dubiously worded area It is not a straightforward instance of abuse of law. Actually, the law experiences the bad habit of non-use of brain. An exposed perusing of the segment uncovers how ambiguously worded it is. It endorses a most extreme discipline of a jail term of 3 years with fine and to send data that is "terribly hostile" or has "threatening character" and for sending messages causing "disturbance or "burden" to the beneficiary. What is much more dreadful is that none of these articulations has been characterized in the law. This conflicts with the cardinal rule of criminal law, which requires every single term or articulation utilized as a part of a law to be all around characterized, leaving no degree for error and conceivable abuse. It was for this very reason in the whole Indian Penal Code, Lord Macaulay utilized various clarifications and delineations to clear up corrective arrangements and characterized all articulations utilized as a part of the IPC.

Section 66A: Do not send offensive messages

Section 66A of the Information Technology (Amendment) Act, 2008 prohibits the sending of offensive messages through a communication device (i.e. through an online medium). The types of information this covers are offensive messages of a menacing character, or a message that the sender knows to be false but is sent for the purpose of 'causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will.' If you're booked under Section 66A, you could face up to 3 years of imprisonment along with a fine.

Sections 67 and 67A: No nudity, please

The large amounts of ‘obscene’ material that circulate on the Internet have long attracted comment in India. Not surprisingly, then, in the same way as obscenity is prohibited offline in the country, so it is online as well. The most important tools to curtail it are sections 67 and 67A of the IT Act, prohibiting obscene and sexually explicit material respectively.

Section 69A and the Blocking Rules: Allowing the Government to block content under certain circumstances

Section 69A of the IT (Amendment) Act, 2008, allows the Central Government to block content where it believes that this content threatens the security of the State; the sovereignty, integrity or defence of India; friendly relations with foreign States; public order; or to prevent incitement for the commission of a cognisable offence relating to any of the above. A set of procedures and safeguards to which the Government has to adhere when doing so have been laid down in what have become known as the Blocking Rules.

Section 79 and the IT Rules: Privatising censorship in India

Section 79 of the Information Technology (Amendment) Act, 2008 regulates the liability of a wide range of intermediaries in India. The section came in the limelight mostly because of the infamous Intermediary Guidelines Rules, or IT Rules, which were made under it. The IT Rules constitute an important and worrying move towards the privatisation of censorship in India. Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution.

Article 19 of the Constitution gives us freedom of speech and expression. However, the same article restricts this freedom on grounds of:

Defamation, incitement to crime, contempt of court public order decency morality friendly relations with neighbors ,national security

Sec 66A

However, Section 66A which restricts freedom of speech and expression over internet and other electronic mediums, prima facie goes much beyond the restrictions mentioned. For example, it criminalizes sending messages which “cause annoyance” or “hurt” sentiments or are “knowing wrong” or even “blasphemous”! The irony is that many of these actions are perfectly valid over other forms of media like print. So while an article may be entirely legal when a newspaper prints it, if one sends it over internet one can be arrested! One also wonders how can blasphemy be a crime in a plural and secular country like India!

Section 66A must comply with the fundamental rights chapter of the Indian Constitution. Article 19(1)(a) guarantees the freedom of speech and expression, and Article 19(2) permits reasonable restrictions in the interests of – inter alia – “public order, decency or morality”. Presumably, the only way in which Section 66A can be justified is by showing that it falls within the category of “public order” or of “morality”. The precedent of the Supreme Court, however, has interpreted Article 19(2) in far narrower terms than the ones that Section 66A uses. The Court has held that “public order” may only be invoked if there is a direct and immediate relation between the offending speech and a public order disturbance – such as, for instance, a speaker making an incendiary speech to an excited mob, advocating imminent violence (the Court has colloquially stated the requirement to be a “spark in a powder keg”). Similarly, while the Court has never precisely defined what “morality” – for the purposes of Article 19(2) – means, the term has been invoked where (arguably) pornographic materials are concerned – and never simply because speech has “offended” or “menaced” someone. Indeed, the rhetoric of the Court has consistently rejected the proposition that the government can prohibit individuals from offending one another.

This raises two constitutional problems with Section 66A: the problems of overbreadth and vagueness. Both doctrines have been developed to their fullest in American free speech law, but the underlying principles are universal.

A statute is overbroad when it potentially includes within its prohibitions both speech that it is entitled to prohibit, and speech that it is not[1]. In, a Georgia statute criminalized the use of “opprobrious words or abusive language”. In defending the statute, the State of Georgia argued that its Courts had read it narrowly, limiting its application to “fighting words” – i.e., words that by their very nature tended to incite an imminent breach of the peace, something that was indisputably within the power of the State to prohibit. The Supreme Court rejected the argument and invalidated the statute. It found that the words “opprobrious” and “abusive” had greater reach than “fighting words”. Thus, since the statute left “wide open the standard of responsibility, so that it [was] easily susceptible to improper application”, the Court struck it down.

A statute is vague when persons of “ordinary intelligence... have no reasonable opportunity to know what is prohibited.” [2], the American Supreme Court noted that “a vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on

an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” There are, therefore, a number of problems with vague laws: one of the fundamental purposes of law is to allow citizens to plan their affairs with a degree of certainty. Vagueness in legislation prevents that. And equally importantly, vague laws leave a wide scope of implementing power with non-elected bodies, such as the police – leading to the fear of arbitrary application.

FEW INSTANCES WHEN SECTION 66A BROUGHT INTO PICTURE

1. Jadavpur University professor **Ambikesh Mahapatra** has been arrested for sharing information about Trinamool Congress chief Mamata Banerjee on Facebook in 2012.
2. In 2012 Activist **Aseem Trivedi** was also arrested for drawing cartoons of Parliament and the Indian Constitution to depict their ineffectiveness. He was arrested on charges of sedition leading to huge protests.
3. In 2012, **three youngsters from Kishtwar** district - Kishori Sharma, Bansi Lal and Moti Lal Sharma – has been arrested and imprisoned for 40 days after they were tagged in an allegedly blasphemous video posted on Facebook and also One of them had commented on that post. They were charged with desecrating religious symbols among people and inciting communal hatred by using information technology.
- 4 **In October, 2012:** A Puducherry businessman Ravi Srinivasan was arrested for allegedly posting 'offensive' messages on Twitter about Congress leader P Chidambaram's son Karti Chidambaram.

ONE OF THE LEADING CASE WERE SECTION 66A SAID TO BE UNCONTITUTIONAL IN NATURE

SHREYA SINGHAL V. UNION OF INDIA

FACTS

Mumbai police captured two young ladies Shaheen Dhada and Rinu Srinivasan in 2012 for conveying their alarm at a bandh gotten the wake of Shiv Sena supervisor Bal Thackery's destruction. The young ladies posted their comments on the Facebook. The captured young ladies were released later on and it was chosen to drop the criminal bodies of evidence against them yet the captures of them pulled in the nation over dissent. It was assumed that the police have mishandled its power by conjuring Section 66A in the meantime it is a break of principal right of discourse and articulation[3]. The offense under section 66A of IT act being cognizable, law requirement organizations have expert to capture or

examine without warrants, in light of charges brought under the data innovation act. The result of this was numerous very acclaimed captures of individuals all through the nation for posting their perspectives and assessments while govt called them 'questionable " however more regularly these were disagreeing political suppositions. In January 2013, the focal govt had turned out with a consultative under which no individual can't be captured without the police having earlier endorsement of examiner general of police or whatever other senior authority to him/her. The Incomparable Court called the whole appeal to identified with sacred legitimacy of data innovation act or any area inside it under single PIL[4]

FACTS IN ISSUE

A writ request of was filed in public interest under 32 of the Constitution of India by petitioner, looking to announces Section 66A,69A and section 79 as unlawful on the reality that the style utilized as a part of Section 66A,69A and section 79 of the IT Act, 2000 is so wide and obscure, in the meantime unequipped for being judged on target measures, that it is defenseless to wanton manhandle and consequently falls foul of Article 14, 19 (1)(a) and 21 of the Constitution. Solicitor further contends that the terms, threatening, hostile, disturbance, burden, check, threat, and affront have not been characterized in the General Clauses Act, IT Act or some other law thus they are defenseless to wanton mishandle. candidate further encouraged that the arrangement sets out a nonsensical characterization between residents on one hand and then again citizens as the flexibility for the most part ensured under Article 19(1)(a) to residents including general media now is restrained similarly as citizens are concerned. On the off chance that citizens make remarks which could be made by and large by natives, they can be captured. This is the means by which Article 14 is been disregarded by this arrangement.

JUDGEMENT

In a 123-page long judgment, which widely examined Indian, English and US law on free discourse, the Supreme Court struck down Section 66-A of the Information Technology Act, perused down Section 79 of the Information Technology Act and the related principles, and avowed the defendability of Section 69A of the Act. Representing the Court, Justice Nariman talked about the different norms which are appropriate to declare when limitations on discourse can be regarded sensible, under Article 19(2) of the Indian Constitution. The Court held that Section 66-A was ambiguous and over-expansive, and in this way fell foul of Article 19(1)(a), since the statute was not barely customized to particular occasions of discourse which it tried to

check. Significantly, the Court additionally considered the 'chilling impact' on discourse caused by ambiguous and over-expansive statutory dialect as a method of reasoning for striking down the arrangement. Further, the Court held that 'general society arrange' confinement under Article 19(2) of the Constitution would not have any significant bearing to instances of 'support', but rather just to 'prompting', particularly affectation which has a proximate connection to open issue. Of the test on the grounds under Article 14 of the Constitution of India, the Court held that "we can't concur with guide for the candidates that there is no clear differentia between the medium of print, communicate and genuine live discourse rather than discourse on the web. The understandable differentia is clear – the web gives any individual a stage which requires next to no or no installment through which to air his perspectives." The Supreme Court additionally perused down Section 79 and Rule 3(4) of the Intermediaries Guidelines, under the Act, which manages the obligation of go-betweens, generally those which have content and give online administrations. While the Section itself utilizes the term 'accepting genuine learning', of the unlawful material as the standard at which the go-between is obligated for evacuating content, the Court held that it must be perused to mean information got that a Court arrange has been passed requesting that it bring down the encroaching material.

At last, the Court likewise maintained the mystery blocking process under Section 69A of the Act, by which the Government can bring down substance from the Internet, holding that it didn't experience the ill effects of the illnesses in Section 66A or Section 79, and is a barely drawn arrangement with sufficient shields.

CONCLUSION

This case has upset the idea of Freedom of Speech and Expression ensured by the Constitution under Article 19(1). As years passed, the Supreme Court interpreted the idea of the Freedom of Speech and the almost negligible difference between the right to speak freely what's more, criticism law and expanded the right to speak freely restricting a thin degree to the defamation law. It has perceived the chilling impact of criticism law on free discourse and has guaranteed that at whatever point a free conclusion is communicated it is permitted and not banished by defamation law. As Section 66A is the topic of thought under the watchful eye of the Supreme Court, the court considered different parts of the law to test its legitimacy. Legitimacy of the law

was tried utilizing both sacred and different parameters. The protected parameters or the legality of the law was considered and it was discovered that it was explicitly violative of Article 19(1) and not spared by the special cases or the parameters of "sensitivity" as expressed in Article 19(2). This was the perception made by the court making this law unlawful. The candidates further battled the law to be violative of Article 14 as it recognizes the maligning law utilizing a disconnected and an online mode. The court held that there was clear differentia which was utilized by the assembly in giving higher detainment and making the offense under Section 66A cognizable while that under Section 499 of IPC non-cognizable as web was free and anybody could convey what needs be in the virtual world and it has a higher range and speedier mode of correspondence in a more extensive territory. In this way, the claim under 14 was held not adequate. The Supreme Court concurred with the applicants in the regard that the said area was exceptionally ambiguous in nature and did not indicate or clear up the reason or presence of the said segment in the nearness of numerous all the more managing the same or comparable subjects. Be that as it may, it was further held by the court that the legitimacy of a law does not rely upon its assurance. Applying the same on the opposite, the negation of a law can't rely upon its vulnerability. A law which is generally legitimate can't be pronounced unlawful just in light of the fact that it is dubious or unverifiable and a law which is generally invalid can't be proclaimed legitimate on the ground that it is sure. Thus, the Supreme Court utilized the main decide and announced that the ambiguity is not a ground to refute a law or announce the law as opposed to or unlawful.

REFERENCE

1. <https://cis-india.org/internet-governance/resources/section-66A-information-technology-act>
2. https://www.livemint.com/Politics/qjqRU6mS4NZWUvNZZbT5eP/Section-66A-of-IT-Act-2000-What-has-changed-two-years-on.html?facet=amp&utm_source=googleamp&utm_medium=referral&utm_campaign=googleamp
3. <http://www.dnaindia.com/india/report-with-section-66A-of-information-technology-act-gone-stronger-law-on-cards-2534756/amp>

4. <https://blog.ipleaders.in/66-a-it-act/amp/>
5. <http://www.thehindu.com/news/national/supreme-court-strikes-down-section-66-a-of-the-it-act-finds-it-unconstitutional/article10740659.ece/amp/>
6. <https://www.ndtv.com/india-news/freedom-of-speech-online-section-66-a-is-struck-down-by-supreme-court-749104?amp=1&akamai-rum=off>
7. <https://indiancaselaws.wordpress.com/2015/03/28/supreme-court-strikes-down-s-66a-of-information-technology-act-as-unconstitutional/amp/>
8. <https://yourstory.com/2015/03/supreme-court-sec66a-it-act-ruling/amp>
9. Shreya Singhal v. Union of India
10. <https://www.quora.com/Does-Section-66-A-of-the-IT-Act-violate-Article-19-1A-of-the-Constitution-of-India>
11. <https://www.firstpost.com/india/good-riddance-to-sec-66a-nehru-article-192-curbs-on-free-speech-should-be-next-2170157.html/amp>
12. M.C. Mehta v. Union of India Citation(s): 1987 SCR (1) 819
13. Introduction to information technology, v. Rajaraman ,2004
14. Ethics in information technology, George Walter Reynolds ,2003
15. Managing information technology, Francisco, Castillo, 2016
16. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
17. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

[1] Gooding v. Wilson

[2] Grayned v. Rockford

[3] Shreya Singhal v. Union of India."[W.P. (crI).No.167 of 2012]

