
ANALYSIS OF SECTION 66A OF THE IT ACT

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ABSTRACT

This research paper critically explores Section 66A of the Indian Information Technology Act, concentrating on its origins, implementation, and subsequent legal challenges. Section 66A, enacted in 2000, was meant to prevent cybercrime and control internet communication channels. However, its ambiguous language and expansive interpretation allowed law enforcement to restrict freedom of speech and expression, resulting in widespread abuse and controversy. The article examines significant instances such as *Shreya Singhal v Union of India*, which questioned the validity of Section 66A, emphasising the judiciary's critical role in protecting basic rights in the digital world.

Furthermore, the paper investigates Section 66A's sociological and legal implications, particularly its effect on democratic principles and individual liberty. It investigates cases of arbitrary arrests, restrictions on speech, and the suppression of dissident voices in the sake of protecting public order and humanity. Furthermore, the report addresses legislative initiatives to update the Information Technology Act to reflect changing technology environments and increasing cyber risks. This study adds to the continuing discussion about cyber law by critically examining the history of Section 66A and its implications, emphasising the need to protect democratic principles and digital liberties in an increasingly linked world.

Introduction

The Internet is an interface via which people can seek, save, and share information. The demand for legislation governing this industry is growing with the rapid advancement and spread of technology and the technological sector. The Information Technology Act was developed to address advanced and technical crime trends such as hacking, data leakage, privacy violations, and so on. The Information Technology Act came into force on 17th October 2000. This act was formed to deal with various cyber-related matters, i.e., electronic transactions, data security, etc. Another issue that is dealt with by this act is the transmission of offensive messages through communication devices.

In the digital era, Section 66A of the Information Technology Act has developed as a key legislative measure allegedly aimed at combating cybercrime and protecting online spaces. However, its broad and imprecise phrasing sparked significant criticism, raising worries about its possible misuse and infringement on free speech and expression. Despite its original aims, Section 66A became a symbol of the difficulties inherent in regulating cyberspace, prompting significant court intervention and calls for a rethinking of legal frameworks controlling digital interactions.

The Supreme Court of India's decision to strike down Section 66A in the landmark *Shreya Singhal v. Union of India* case was an important point in the country's legal landscape. By declaring the provision illegal, the court stated the importance of fundamental rights in the digital sphere and emphasised the need for strong protections against legislative overreach. Nonetheless, the Section 66A saga serves as a sobering reminder of the delicate balance between security imperatives and individual liberties in cyberspace, necessitating a critical rethinking of regulatory approaches to ensure the preservation of democratic values and digital freedoms in an increasingly interconnected world.

Amendment of 2008

The Ministry of Communications and Information Technology proposed an amendment to address many deficiencies in the current Information Technology Act of 2000. The major purpose was to modernise the Act to address emerging issues such as cybercrime, data protection, electronic transactions, and intermediary liability.

While case laws and judicial decisions can help with the interpretation and application of the law, the Information Technology (Amendment) Act of 2008 was not the result of a specific

court case. The government took proactive steps to strengthen India's legislative framework for coping with technological concerns.

The Information Technology (Amendment) Act, 2008 came into force on 27th October 2009. This amendment served many changes

Section 66A- Explanation

“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.”¹

It means that :

Any person who, using a computer or communication device, sends information that is:

1. Grossly offensive,
2. False, and intended to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, hatred, enmity, or ill will.
3. Intended to deceive or mislead the recipient regarding the origin of such messages, etc., shall be punishable by imprisonment for up to three years and a fine.

The issue with the section

To begin, one of the main problems with Section 66A was its ambiguous language, which failed to specify what constituted "offensive" or "menacing" speech. Because of this ambiguity, law enforcement officials were free to interpret and abuse the rule in any way they saw fit.

Second, Section 66A limits free speech and expression online. Individuals and organisations were cautious to voice opposing views or engage in critical conversation for fear of being

¹ Information Technology Act, 2000, s 66A

punished under the provision for publishing anything considered offensive or inconvenient by the government.

Third, Section 66A was vulnerable to exploitation and abuse by law enforcement and other powerful groups. There have been countless incidents of people being unjustly detained and prosecuted under the provision for benign social media posts or online criticism, resulting in infringement of their basic rights.

Fourth, the arbitrary arrests and censorship under Section 66A violated the Indian Constitution's basic rights, especially the right to free speech and expression under Article 19(1)(a). The clause was deemed incompatible with democratic norms and the rule of law.

Finally, Section 66A has received legal challenges in several Indian courts. Several petitions were filed questioning its constitutionality and calling for its repeal or revision to bring it in line with constitutional principles and international human rights standards.

66A and the Right to Freedom of Speech and Expression

All people are guaranteed the right to free speech and expression under Article 19(1)(a) of the Indian Constitution. This basic right provides individuals the freedom to express their views and opinions through a variety of methods, including speaking, writing, and printing.

However, this right is not absolute and is subject to reasonable limitations under Article 19(2) of the Constitution. These limits include concerns such as India's sovereignty and integrity, state security, cordial relations with other nations, public order, decency, morality, contempt of court, defamation, and encouragement to commit an offence.

Section 66A of the Information Technology Act of 2000 was a contentious clause that sparked debate owing to its possible violation of the right to free speech and expression. This section discussed the penalties for delivering offensive communications using communication systems, especially the Internet. It allowed for the arrest of those who uploaded objectionable information online, which was deemed extremely wide and imprecise, resulting in misuse and abuse.

Shreya Singhal v Union of India²- Analysis

Facts:

Two girls were arrested in Mumbai in 2012 after posting remarks on Facebook criticising the

² *Shreya Singhal v Union of India*, AIR 2015 SC 1523

city's closure for Shiv Sena leader Bal Thackeray's funeral. The ladies were charged with violating section 66A of the Information Technology Act, which makes transmitting "offensive" or "menacing" remarks online illegal. The provision also penalised sending information that was "grossly offensive" or had a "menacing character."

The girls' arrests sparked significant outrage (anger), with many calling for the abolition of Section 66A. Shreya Singhal, a law student, filed a petition with the Supreme Court of India challenging the provision's legitimacy. She argued that the wording was imprecise, overly broad, and stifled free expression.

Issues:

1. Is Section 66A of the Information Technology Act, 2000 a violation of the freedom of speech and expression granted by Article 19(1)(a) of the Indian Constitution?
2. Is section 66A of the IT Act ambiguous and overbroad, and thus susceptible to being overturned?

Petitioner's Argument:

- ☐ The petitioner stated that Section 66A of the Information Technology Act violated the basic right to free speech and expression protected by Article 19(1)(a) of the Indian Constitution. They argued that the rule was unclear and unduly broad, allowing for arbitrary and disproportionate limits on communication.
- ☐ It was argued that the broad and unclear language of Section 66A had a chilling effect on online expression since people were unsure what content may potentially result in legal penalties.
- ☐ The petitioner cited instances in which Section 66A was utilised to quiet dissent and suppress valid criticism, compromising democratic norms and principles.
- ☐ There was a request for legislative clarity and precision to ensure that regulations governing online expression are precisely designed to meet legitimate governmental goals while not unnecessarily constraining basic rights.

Defendant's Arguments:

- ☐ The government maintained that Section 66A was required to safeguard public order, morality, and the nation's integrity, particularly in light of quickly expanding technology and the growth of online communication platforms.

- It was argued that Section 66A was critical for countering cybercrimes like as online harassment, defamation, and incitement to violence, which presented substantial hurdles to law enforcement authorities.
- The government emphasised the need to balance the right to free speech and expression with other conflicting interests, such as national security, public order, and individual privacy.

Judgement:

The court ruled, "Every used is nebulous in meaning. What may be offensive to one may not be offensive to another". As a result, the was determined to be subjective. Hence, the court ordered 66A as violative of the right to freedom of speech and expression and is not covered under the grounds specified under Article 19(2). The court also concluded that barring information for public access under Section 69A of the IT Act is constitutionally valid.

The court found that the terms used in 66A are open-ended and are not protected by Article 19(2) of the Indian Constitution. Section 66A has no proximate relationship or link with disrupting public order or with inducement to commit an offence, hence it was thrown down by the court. The court's approach was to safeguard the basic right to free speech and expression, and the government could not take away this right by hiding behind Article 19(2) of the Constitution.

Furthermore, the court applied the severability criterion to strike down only those passages that were unclear and arbitrary. The entire law does not need to be declared invalid.

Cases Referred:

Several decisions of this Court have emphasised the significance of free speech and expression, both in terms of individual liberty and our democratic system of governance.

1. In the early case of *Romesh Thappar v. State of Madras*³, this Court said that free speech lies at the heart of democratic organisations.
2. In *Sakal Papers (P) Ltd. & Ors. v. Union of India*⁴, a Constitution Bench of this Court stated that freedom of speech and expression of opinion is of essential significance under a democratic constitution that allows for changes in the makeup of legislatures

³ *Romesh Thappar vs. The State of Madras*, AIR 1950 SC 124

⁴ *Sakal Papers (P) Ltd. and Ors. vs. The Union of India*, AIR 1962 SC 305

and administrations and must be protected.

3. In a separate concurring judgement, Beg. J. stated in *Bennett Coleman & Co. & Ors. v. Union of India & Ors.*⁵ that free speech and the press are the Ark of the Covenant of Democracy since public criticism is necessary for the functioning of its institutions.
4. *Whitney vs. California*⁶, Liberty should be viewed as both a means and an aim, and to justify the repression of free speech, there must be a plausible justification for concern that such free speech would result in substantial harm.

Arrests after the judgement

Rahat Khan, a 22-year-old male, was detained in Dankaur in March 2017 by Greater Noida police on a report that he had tweeted a modified photo of Uttar Pradesh's Chief Minister for an offence under Section 66-A.⁷

Zakir Ali Tyagi, an 18-year-old from Muzaffarnagar, wrote a comment on Facebook challenging the Uttarakhand High Court's decisions on the river Ganges being a living entity, asking if "The Ganga has been declared a living entity; will criminal charges be initiated if someone drowns in it?" The Telegraph reported in October 2017 that Tyagi spent 42 days in jail after police filed a case under Sections 66-A of the IT Act and Section 420 of the Indian Penal Code. The claims in Section 66-A were moved to Section 66. However, once he was released on bond, the police added the charge of sedition.⁸

In October 2018, Veeramreddy was detained under Section 66A of the Act by the Andhra Pradesh police.⁹

In May 2019, Priyanka Sharma, a BJP worker, was arrested and remanded in jail. She was also charged under Section 66A of the Act and other offences. The Supreme Court intervened, ensuring her speedy freedom.¹⁰

⁵ *Bennett Coleman & Co. and Ors. vs. Union of India (UOI) and Ors.*, AIR 1973 SC 106

⁶ *Whitney v. California*, 274 U.S. 357 [1927]

⁷ Abhinav Sekhri & Apar Gupta, 'Section 66A and other legal zombies' (SSRN, November 2018) <<https://ssrn.com/abstract=3275893>> accessed on 25 January 2024

⁸ *ibid*

⁹ Ujwal Bommakanti, 'AP: Here's how a techie grad cheated 507 people through dating app' *The Times of India* (India, 8 September 2018) <<https://timesofindia.indiatimes.com/city/amaravati/heres-how-an-m-tech-grad-cheated-507-people-through-dating-app/articleshow/65996837.cms>> accessed on 25 January 2024

¹⁰ Shruti Mahajan, 'Mamata Banerjee Meme Row: SC orders immediate release of BJP Worker Priyanka Sharma' (*Bar and Bench*, 14 May 2019) <<https://www.barandbench.com/news/mamata-banerjee-meme-sc-orders-immediate-release-sharma>> accessed on 25 January 2024

In January 2020, the Karnataka High Court imposed a fine of 10,000 rupees on 2 police officers on registering an FIR under section 66A of the IT Act.¹¹

In October 2020, 29 police stations in Mumbai registered 37 FIRs and arrested 32 people for 6 non-cognizable offences which included Section 66A of the IT Act.¹²

As of November 2021, the case of Ambikesh Mahapatra, who was charged under Section 66A in the year 2013, is still being heard in the court. After asking the government, it was said that the case had nothing to do with the section.¹³

In June 2022, the Mumbai police filed an FIR against Ketaki Chitale and included Section 66A in the chargesheet, later it was removed by the senior officer.¹⁴

In September 2023, Manipur police filed a case against 3 members of a fact-finding team. These journalists in Manipur published "one-sided reports" in their coverage of the ethnic violence in the northeastern state, a fact-finding team of the Editors Guild claimed in its report.¹⁵

Trials after the judgement

□ State v. Shekhar Rahul Nikam

In this case, the charges were made under section 66A of the IT Act based on 'offensive messages' made in the year 2010. The court was still hearing the case on 28th February 2020.¹⁶

□ State v. Mohd. Sakir

In this case, the FIR was reported in the year 2013. After this several trials took place. Even after the judgement of the Shreya Singhal case, the trials didn't stop. On 14th April 2017, the accused was directed to deposit 2000 rupees as a cost toward DLSA. On 5th

¹¹ 'Karnataka HC Penalises Cops For Registering FIR Under Section of IT Act Struck Down by SC' (*The Wire*, 17 January 2020) <<https://thewire.in/law/karnataka-hc-section-66a-it-act>> accessed on 28 January 2024

¹² Narayan Namboodiri, '32 held in Mumbai for toxic messaging' (*The Times of India*, 5 October 2020) <<https://timesofindia.indiatimes.com/city/mumbai/32-held-in-mumbai-for-toxic-messaging/articleshow/78494830.cms>> accessed on 28 January 2024

¹³ Madhuparna Das, '9 years on, Jadavpur prof arrested for forwarding Mamata cartoon is still stuck in legal battle' (*ThePrint*, 15 November 2021) < <https://theprint.in/india/9-years-on-jadavpur-prof-arrested-for-forwarding-mamata-cartoon-is-still-stuck-in-legal-battle/765431/>> accessed on 28 January 2024

¹⁴ 'Revoked IT section removed from Marathi actress Ketaki Chitale case' (*The Times of India*, 19 June 2022) <<https://timesofindia.indiatimes.com/city/mumbai/revoked-it-section-removed-from-marathi-actress-ketaki-chitale-case/articleshow/92311240.cms>> accessed on 28 January 2024

¹⁵ 'FIR in Manipur against Editors Guild for report on media coverage of conflict' (*Scroll*, 4 September 2023) <<https://scroll.in/latest/1055363/fir-in-manipur-against-editors-guild-for-report-on-media-coverage-of-conflict>> accessed on 20 January 2024

¹⁶ WRIT PETITION (CRIMINAL) NO. 199 OF 2013

December 2018, the accused was further directed to deposit 2000 rupees against cancellation of NBW. On 3rd September 2019, the state itself submitted that Section 66A was struck down but still, the magistrate issued a non-bailable warrant against the accused because he was not appearing before the court. Even after that, the case was still being trailed.¹⁷

□ **State v. Dilip Shetty**

In this case, charges were formed against the accused and he was acquitted. The recording of the evidence started taking place on 29th October 2015 i.e., after the judgement of Shreya Singhal and it ended on 6th January 2021. This indicates absolute disgrace towards the Supreme Court's judgement.¹⁸

Amendment bill of 2018

In 2018, the Information Technology (Amendment) 2018 Bill (bill number. 193 of 2018) was tabled in the Lok Sabha. It was claimed that Section 66A of the Act was omitted. However, the cases filed before Shreya Singhal v. Union of India are still being investigated by the police and prosecuted in court, while new cases are being filed. Since the Supreme Court pronounced Section 66A illegal, all ongoing investigations and prosecutions should be halted, and no new cases should be started. It was also suggested that Section 66A of the Information Technology Act be deleted from the law books.

Petition by PUCL and order by the court

In January 2019, the People's Union for Civil Liberties (PUCL), one of the initial petitioners in the Shreya Singhal case, addressed the Supreme Court with IFF's aid, citing the study report. The PUCL petitioned the Supreme Court for directives to guarantee the execution of the Shreya Singhal ruling. In February 2019, the Supreme Court ordered the Union of India to provide copies of the judgement to Chief Secretaries nationwide to guarantee compliance with its ruling. Chief Secretaries were tasked with raising awareness among police departments nationwide.

After that, on 12th October 2022, the Supreme Court ordered that no citizen should be prosecuted under section 66A of the IT Act.¹⁹ As it is struck down by the Supreme Court in

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ 'No citizens to be prosecuted under Section 66A IT Act: SC' (*The Economic Times*, 12 October 2022) <<https://economictimes.indiatimes.com/news/india/no-citizens-to-be-prosecuted-under-section-66a-it-act-sc/articleshow/94816298.cms?from=mdr>> accessed 20 January 2024

the case of Shreya Singhal case in the year 2015. The rapid arrests made after the judgement are a total disgrace to the court.

Conclusion

In conclusion, the evolution of Section 66A of the Information Technology Act demonstrates the changing character of legal frameworks in tackling digital age concerns. Section 66A, which was originally intended to prevent cybercrime and govern internet communication, rapidly became a symbol of the conflict between security imperatives and individual liberty. Its wide and imprecise language sparked heated debate, ending in an important annulment by the Supreme Court of India in the *Shreya Singhal v. Union of India* case.

Despite its removal, Section 66A's legacy stayed on, providing an unsettling reminder of the complications that come with governing cyberspace while protecting basic rights. The increase in arrests and legal procedures following annulment highlights the importance of strong protections and judicial control in ensuring the proper application of legal standards and protecting against potential abuses of power.

Moving forward, the need is to promote a comprehensive understanding of digital rights and duties based on openness, accountability, and democratic governance principles. The People's Union for Civil Liberties (PUCL) and the Supreme Court's judicial interventions play critical roles in determining the parameters of digital governance and protecting individual rights in an increasingly linked world.

As we navigate the changing world of technology and legislation, we must be cautious against infringements on digital freedoms and maintain the ideals established in the Indian Constitution. By encouraging discourse, raising awareness, and adhering to constitutional principles, we may create a future in which technology gains empowerment, innovation, and inclusive societal growth, guided by the lasting ideals of justice, equality, and personal dignity.