

## SECTION 66 A, INFORMATION TECHNOLOGY ACT, 2000: A CRITIQUE IN WAKE OF SUPREME COURTS' JUDGMENTS

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### Abstract

In the past decade, the Information Technology sector has witnessed an overwhelming growth in India. Criminals also have evolved to use the internet as a potential medium for committing a crime. The Information Technology Act is one of the most important acts passed by the legislative council in order to check the crimes in context of use of internet. The original Act passed in 2000 and its subsequent amendments introduced various provisions to deal with new categories of offences. Since the enactment of the Act, there has been a cry about its shortcomings and misuse by the authorities. The Section 66A, which was arguably the most misused section, was quashed by the Supreme Court of India on March 24, 2015 to protect the Right to freedom of speech and expression after a PIL was filed by Shreya Singhal challenging the constitutionality of the section. This paper will explore the weaknesses of this section in light of the decision of the apex court. Various parameters on the basis of which Section 66A was marked off as unconstitutional by the Supreme Court are discussed. The paper also establishes the importance of Sec 66A to fight numerous crimes. The paper concludes with a note on the necessity of this section and explores the reason of why the section should have stayed with some changes or guidelines or both.

### Introduction

In November, 2012, entire Mumbai was mourning the death of their beloved leader Bal Thackrey. Almost the entire city was blocked due to the huge turnout of the people who were paying homage to their leader. The financial capital of India was in a state of shutdown. Two girls from Thane district questioned the shutdown of entire city just to mourn the passing away of a

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political leader<sup>1</sup>. Little did they know that this act of theirs would attract a criminal case against them? It is the famous Section 66A of the Information Technology Act, 2000 which the authorities invoked to charge them with disrupting of public order. The action of police authorities was certainly not acceptable as nothing the girls said could have led to public disorder. The action was a result of the vague wording of Section 66A and lack of proper guidelines for implementing the same. The scope of this paper is limited to Section 66A. The paper discusses its number of shortcomings. This paper also argues that a section similar to Section 66A, if not the entire Section 66A, is necessary for fighting crimes committed using the internet or communication device.

The intent of the legislature behind establishing a certain law has always been to protect citizens from exposure to criminal activities. But some of the laws made by the legislative body may be misused by some people for their own benefit. Loopholes in a law are sometimes exploited by criminals for obstruction of justice and harassment. It then becomes imperative on the part of judiciary to so interpret the provision as to further the intent of the legislature or even suggest guidelines to the government to prevent its misuse. Section 66A falls in this category of misused acts. However, instead of issuing guidelines, the Supreme Court straight away struck down the section. Section 66A was an important law to tackle numerous crimes such as cyber bullying, trolling, harassment, etc. The purpose of this paper is to establish the importance of Section 66A in controlling acts of cyber bullying, obscenity, hate speech, harassment, etc. which cannot be checked just by the use of similar sections of Indian Penal Code (IPC) in an efficient and time bound manner.

### **Background of the Act**

The United Nations Commission adopted a model law focusing on E-commerce on January 30, 1997 by the resolution A/RE S/51/162<sup>2</sup>. The model law was based on the International Trade Law. The participating states were advised to enact, amend or

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<sup>1</sup> Two Mumbai girls arrested for Facebook post against Bal Thackeray get bail, India Today Group, (17 December, 2015), <http://indiatoday.intoday.in/story/2-mumbai-girls-in-jail-for-tweet-against-bal-thackeray/1/229846.html>

<sup>2</sup> Dr. Shobhalata v. Udupudi and Barnik Ghosh, *The Information Technology Act of India: A Critique*, p. 2, ZENITH International Journal of Business Economics & Management Research, available on [http://www.zenithresearch.org.in/images/stories/pdf/2012/May/ZIJBEMR/13\\_ZIJBEMR\\_VOL2\\_ISSUE5\\_MAY2012.pdf](http://www.zenithresearch.org.in/images/stories/pdf/2012/May/ZIJBEMR/13_ZIJBEMR_VOL2_ISSUE5_MAY2012.pdf) (last accessed on 17th December, 2015)

revise the existing laws to bring all countries on the same page on Information Technology laws.

The Government of India prepared an initial draft of the legislation and was termed as the “E Commerce Act of 1998”. Later, due to other developments in the field, the Ministry of Information and Technology was devised who took up the task of completing the bill. The new document was called the Information Technology Act 1999. The draft bill was placed for discussion in Parliament in December 1999 and was passed in May 2000. The act was notified after the assent of the President on June 9, 2000.

The Act of 2000 focused majorly upon electronic commerce. It dealt with issues like digital signatures, electronic filings, security of electronic data, etc. The aim was to make online trade transparent and safe. The law was also put in place to ensure that the data available in electronic form is not misused.

When the Act was notified in 2000, the IT sector was just starting to spread its wings in India. No one could have predicted the boom that it saw within 5 years covering towns, villages, and cities all across India. No wonder the topic of cybercrime was not thought of in depth in the 2000 Act. Only passing references to cybercrime was made. After a huge cry on this shortcoming of the Act, a major amendment was made in 2008 which covered a wide and diverse array of cybercrimes. However, it must be noted that this amendment of 2008 was passed as a knee jerk reaction to the terrorist attack in Mumbai on November 26, 2008. The provisions in the amendment were neither well thought, nor well debated, to say the least. The provisions included in the act had ambiguities over implementation and interpretation. Experts also say that the act is not competent enough to fight cybercrime per se<sup>3</sup>.

After the amendment, Section 66A was the most discussed and criticized section of the IT Act for its vague wording and misuse. Some terms like ‘grossly offensive, ‘insult’, etc. were loosely used in the Section. Laws are made to protect the general public from wrongdoers and provide justice if any act against the law is committed. But in case of this section the number of cases registered were more from the side of the government against critical comments made on its policies or decisions. The right to free speech was severely challenged. The number of cases

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<sup>3</sup> Your cybercrime-friendly legislation, Pavan Duggal, Business Standard, (last accessed on 28<sup>th</sup> January, 2016), [http://www.business-standard.com/article/technology/your-cybercrime-friendly-legislation-109010801070\\_1.html](http://www.business-standard.com/article/technology/your-cybercrime-friendly-legislation-109010801070_1.html)

registered under this section on wrong grounds increased drastically<sup>4</sup>. This is when the Supreme Court stepped in to check the constitutional validity of the law. Considering the argument that Section 66A was indeed denying the constitutional right to free speech, the apex court struck down the law on 24<sup>th</sup> March, 2015.

### **The Act and its provisions**

Section 66A<sup>5</sup> deals with offensive messages sent through a computer resource or communication device. It provides that when any person sends information that is grossly offensive, menacing, false for the purposes of causing annoyance, inconvenience, enmity, hatred, ill-will etc., he shall be punished with imprisonment and fine. In case where a message is offensive, or menacing, no further object needs to be established for the act is culpable. In other words, the mere fact that the words are construed by the enforcement as being offensive or menacing is enough to maintain an action. Where the information is false, in such cases a further object or purpose needs to be made out in the sense that the perpetrator sent the information to spread ill-

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<sup>4</sup> Some of the cases which were registered under Section 66A but did not have any criminal ingredient are mentioned here:

Man arrested for tweet on Chidambaram's son, NDTV, (last accessed on 19<sup>th</sup> December, 2015), <http://www.ndtv.com/south/man-arrested-for-tweet-on-chidambarams-son-503192> Outrage over arrest of class 11 student for facebook post attributed to UP Minister Azam Khan, NDTV, (last accessed on 19<sup>th</sup> December, 2015) <http://www.ndtv.com/india-news/outrage-over-arrest-of-class-11-student-for-facebook-post-attributed-to-up-minister-azam-khan-747755> Professor arrested for arrested for poking fun at Mamta, Hindustan Times, (last accessed on 19<sup>th</sup>, 2015) <http://www.hindustantimes.com/india/professor-arrested-for-poking-fun-at-mamata/story-OmV4FhEop4XaRP13gZdI1H.html>

<sup>5</sup> 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 a 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 makes 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 3 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.

will, hatred, enmity, etc. Section 66A was introduced to increase the scope of IT Act which was somewhat restricted to offences related to E-commerce.

According to the standing committee report<sup>6</sup> on the amendment to the IT Act of 2000, the intent of the legislature was to bring in a law which is people friendly and can be understood by the common man and having least dependence on other laws. The intent of the legislature cannot be challenged. The major reason why the Section 66A came out so vague was the lack of discussion on the floor of Parliament. Since the terrorist attack of November 26, 2008, an immediate need for substantial change in cyber law was felt. Moreover the disturbance caused in Parliament further reduced the chances of debating the amendment bill. No wonder an amendment with a lot of loopholes was passed.

The section was one of its kind to deal with hate speech, defamation, criminal intimidation, etc. which is done via internet. Though similar sections are available in the IPC, a new set of law was necessary for a new modus operandi of committing crimes. This section enabled police officers or cyber cell to deal with online content swiftly which cannot be done by the IPC.

### **Drawbacks of the Act and Supreme Court's decision**

Section 66A was struck down by the Supreme Court in the judgment of *Shreya Singhal v. Union of India* Writ Petition (criminal) No. 167 of 2012<sup>7</sup>. The Public Interest Litigation (PIL) was filed by Shreya Singhal for protecting the freedom of speech and expression. Other stakeholders who suffered due to misuse of this section later on joined her in her petition and finally the court declared the section unconstitutional on the grounds of vagueness.

#### **I. Unconstitutionality**

The challenge for constitutionality was with respect to the Articles 14, 19(1)(a), 19(2) and 21 of the Constitution of India. However, the Court repelled the challenge for Article 14 and 21 and held the section unconstitutional for violating Article 19(1)(a) and 19(2). The challenge for Article 14 and 21 was repelled after the

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<sup>6</sup> Standing Committee on Information Technology (2007-2008), (last accessed on 19<sup>th</sup> December, 2015), [http://www.naavi.org/cl\\_editorial\\_07/ITStanding\\_Committee.pdf](http://www.naavi.org/cl_editorial_07/ITStanding_Committee.pdf).

<sup>7</sup> See *Shreya Singhal vs. Union of India* WP.(criminal) no.167 of 2012 URL: [http://supremecourtindia.nic.in/FileServer/2015-03-24\\_1427183283.pdf](http://supremecourtindia.nic.in/FileServer/2015-03-24_1427183283.pdf) (last accessed on 19<sup>th</sup> December, 2015)

argument by learned Additional Solicitor General that relaxed standard of reasonable restriction apply for internet as a medium of speech was accepted by the Court<sup>8</sup>. The government was able to convince the court how huge and far reaching medium internet is as compared to other traditional mediums like newspaper and electronic medium like television. Thus, the court accepted the argument that reasonable restriction should and must apply on the internet, thus, repelling<sup>9</sup> the unconstitutionality challenge with respect to Article 14 and 21 of the Indian Constitution. So, the constitutionality of Section 66A was scrutinized only with regard to Article 19(1)(a) and 19(2).

- **Article 19(1)(a)**

Article 19(1)(a) of the Indian constitution gives all Indian citizens right to freedom of speech and expression. The Court stated three fundamental concepts which are important to understand the 'freedom of speech and expression'. The first is discussion, the second is advocacy, and the third is incitement. Article 19(1)(a) encourages discussion or advocacy of topics howsoever unpopular or against the government. It is only when such discussion or advocacy reaches an incitement that Article 19 (2) comes into the picture. The court stated - it cannot be overemphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme<sup>10</sup>.

This section curbs the right to expression of opinion, if it is grossly offensive to someone irrespective of the ingredient and intent of the opinion. It overlooks the fact that in a vibrant democracy like India, an opinion for someone maybe grossly offensive to someone else which attract criminal action according to this section. This is a direct attack on freedom of speech and expression. The petitioner argued that the public's right to know is directly affected by Section 66A. Giving its decision in view of Article 19(1)(a) the Court said "no distinction has been made 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.

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<sup>8</sup> *Ibid.*, pg.31

<sup>9</sup> *Ibid.*, pg.32

<sup>10</sup> *Ibid.*, pg.9

Thus the freedom of speech and expression is curbed by the creation of the offence contained in Section 66A<sup>11</sup>”.

- **Article 19(2)**

Article 19(2) says that ‘Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.’ Therefore for a State to curb the freedom of speech and expression the offence must fall under any of the eight subject matters mentioned in Article 19(2). A state cannot curtail one freedom to promote the general public interest or even for securing the better enjoyment of another freedom. While arguing against the constitutional validity of the section, the petitioner challenged that the offence created by the said section has no proximate relation with any of the eight subject matters contained in Article 19 (2). Defending this challenge the State claimed that in fact the section can be supported under the public order, defamation, incitement to an offence and decency or morality. Thus, while judging the constitutionality, the Court focused on the four of the eight heads mentioned by the State<sup>12</sup>.

- a. Public order**

Section 66A clearly fails the test of tendency to create public order and, the clear and present danger test. These two tests are important in order to determine if a law is really used to control public disorder.

- The Public Order Test

Checking the tendency to create public disorder, it is clear that the section does not require that such message should have a clear tendency to disrupt public order. There is no differentiation made between the message is sent to an individual or a group of individuals. Also, no relation can be established between the message sent and further action taken by the individuals resulting in disruption of public order. An offence under this section can be implied even if a message is annoying to an individual without creating public disorder. On these counts, the

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<sup>11</sup> *Ibid.*, pg.21

<sup>12</sup> *Ibid.*, pg.22

court stated that the section has no proximate relationship to public order whatsoever<sup>13</sup>.

#### The Clear and Present Danger Test

Although it cannot be completely captured in a formula, it effectively means that there must exist reasonable ground to fear that serious evil will result. The late Justice Murphy demanded ‘convincing proof that a legitimate interest of the State is in grave danger’. Expressed otherwise, clear danger means that clear public interest be threatened clearly not doubtfully. Justice Brandeis observed in *Gilbert v. Minnesota*<sup>14</sup> that, “There are times when those charged with the responsibility of the Government, faced with clear and present danger, may conclude that suppression of divergent opinion is imperative; because the emergency does not permit reliance upon the slower conquest of error by truth. And in such emergencies the power to suppress exists”. In *Whitney v. California*<sup>15</sup> he added: “... no danger flowing from free speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. Only an emergency can justify suppression.” There must be time and space for rational democratic processes of thought and discussion. Freedom cannot be abridged only on the future evils that haunt the government. The Supreme Court observed that the Section 66A had no element of the clear and present danger test<sup>16</sup>.

#### **b. Defamation**

Defamation<sup>17</sup> is an act of making an imputation which is false and which harms the reputation of an individual person, group, community, religion, etc. According to the Indian Penal Code, defamation can be done by using words either spoken or written or by signs or by visible representations. The ingredient in the act of defamation is injury to reputation. However the Court observed

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<sup>13</sup> *Ibid.*, pg.40

<sup>14</sup> See *Gilbert vs. Minnesota*, 254 U.S. 325 (1920), URL: <https://supreme.justia.com/cases/federal/us/254/325/case.html>, (last accessed on 29<sup>th</sup> January, 2016)s

<sup>15</sup> See *Whitney vs. California*, 274 U.S. 357 (1927) URL: <https://supreme.justia.com/cases/federal/us/274/357/case.html>, (last accessed on 29<sup>th</sup> January)

<sup>16</sup> See *Shreya Singhal vs. Union of India WP.(criminal) no.167 of 2012* URL: [http://supremecourtindia.nic.in/FileServer/2015-03-24\\_1427183283.pdf](http://supremecourtindia.nic.in/FileServer/2015-03-24_1427183283.pdf) (last accessed on 19<sup>th</sup> December, 2015)

<sup>17</sup> According to the Indian Penal Code, Defamation - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person

-something may be grossly offensive and may annoy or be inconvenient for somebody without at all affecting his reputation<sup>18</sup>. Either of these, this section does not target defamatory statements only. It may incriminate other statements too, which are annoying or grossly offensive, but not have the ingredients for defamation.

### **c. Decency or Morality**

Something which is categorized as grossly offensive or annoying under the Section may not be obscene at all. Thus, it cannot be termed as indecent. The court observed that the word 'obscene' is conspicuous by its absence in Section 66A<sup>19</sup>. Therefore, it cannot be accepted that this section includes the decency or morality head.

### **d. Incitement to an offence**

Just because something is grossly offensive, annoying, or having a menacing character doesn't mean that it has ingredients to incite an offence at all. It may fall in the category of 'discussion' or 'advocacy' or 'point of view'. The Supreme Court observed "Section 66A has nothing to do with 'incitement to an offence'. As Section 66A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a) and cannot be saved under Article 19(2) also<sup>20</sup>".

## **II. Vagueness**

The Counsel for the petitioners argued that the section is so vague that neither the accused nor the authority administering the Section will be clear as to on which side of a clearly drawn line a particular communication will fall. Terms like annoying, criminal intimidation, grossly offensive, menacing character, ill will, etc. are very loosely used. Their interpretation is left as a prerogative of the authority. This is one of the reasons because of which there has been constant misuse of this section. The vagueness is at the soul of the curbing of freedom of speech and expression. Since the authorities have to decide the character of any statement made by the accused it directly affects free speech.

Words like annoyance, injury and danger have been used in the IPC in Section 268, 294 and 510. However, in IPC they are used in

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<sup>18</sup> See Shreya Singhal vs. Union of India WP.(criminal) no.167 of 2012 URL: [http://supremecourtindia.nic.in/FileServer/2015-03-24\\_1427183283.pdf](http://supremecourtindia.nic.in/FileServer/2015-03-24_1427183283.pdf) (last accessed on 19th December, 2015)

<sup>19</sup> *Ibid.*, pg. 49

<sup>20</sup> *Ibid.*, pg. 47

a particular context which differs from section to section. Unlike Section 66A they are not open to interpretation. Moreover the terms like injury, danger or annoyance are used for public and are not confined to an individual. Thus the use of these terms in IPC is in stark contrast with the use in Section 66A.

The apex court quoted various cases<sup>21</sup> from India and abroad where laws were struck down due to their vague nature. The court observed that the provisions contained in Sections 66B up to Section 67B also provide punishments for offenses that are clearly made out. It is only in the Section 66A that terms are not properly constructed. The government tried to defend this argument by stating various laws that were vague in nature but were not dismissed by the court in previous decisions. Thus establishing that the mere presence of vague terms cannot form the grounds for striking out a law. However the Court pointed out that the laws mentioned in the cases cited by the government were not dealing with a criminal<sup>22</sup> case. So it would be absurd to compare both the situations which in the first place are fundamentally different.

### **Effect of this judgment**

Section 66A though ambiguous, was a strong section to deal with some serious crimes committed against the user of internet or a communication device. Though the judgment is seen as a victory for advocates of free speech, when weighted against the difficulty that authorities will face to put away genuine criminals with harsh punishment, it doesn't look like an absolute victory. However, it doesn't mean that one has unrestricted freedom of speech and expression. The void that has been created by striking away the Section has to be fulfilled by some other provision. There are traditional laws still in place that deal with the misuse of this freedom. The freedom can be curtailed by the government if it comes in the purview of Article 19(2) of the Indian Constitution. Any misconduct in this regard will be checked by offenses defined in the IPC.

The analogous provisions in the IPC, which apply are viz. Sedition (S. 124A), Promoting Enmity between Groups on the Grounds of Religion, Race, Etc. (S. 153A), Intentionally Insulting Religion or Religious Beliefs (S. 295A), Defamation (S. 499), etc. Under most of these sections the maximum jail term is of 2 years or less. However, it may be noted that even these sections are liable to

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<sup>21</sup> *Ibid.*, pg. 54

<sup>22</sup> *Ibid.*, pg. 80

abuse by the authorities and have been instances of misuse of the above sections.

Section 124A is generally invoked if violence or public disorder erupts against the government. Sedition charge was used by the British Government to suppress the freedom movement by labelling the activities by freedom fighters to be against the State. It has been long argued that since India is a free nation now, the law should be dismissed. However, there have been multiple occasions<sup>23</sup> when this Section has been misused by the government to suppress the critics against it.

- Sudhir Dhawale<sup>24</sup>: In the wake of atrocities done to Dalits, Sudhir Dhawale openly criticized the state over its failure in cases of social inequalities. He was charged under sedition and had to spend 60 months in jail. Dhawale was also booked for conspiring and waging war against the nation. Acquitting him, the Sessions Court observed that there were discrepancies in the investigation and lack of evidence.
- 67 Kashmiri students from the Swami Vivekanand Subharti University of Meerut who had cheered for Pakistan when the Pakistani cricket team defeated India cricket team in the Asia Cup in 2014 were booked by Police with Sec 124A and other sections<sup>25</sup>. Though the section 124A was dropped, but only after a wide outrage.
- Assem Trivedi<sup>26</sup>: A Mumbai based cartoonist raised his voice against corruption via his cartoons. In 2012, he was booked under sedition charges which were later dropped by the Bombay High Court and observed that necessary safeguards should be added to the Section on Sedition in IPC.

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<sup>23</sup> Sedition laws & the death of free speech in India, page no. 32 lists some recent cases, (last accessed on 19<sup>th</sup> December, 2015), [https://www.nls.ac.in/resources/csseip/Files/SeditionLaws\\_cover\\_Final.pdf](https://www.nls.ac.in/resources/csseip/Files/SeditionLaws_cover_Final.pdf)

<sup>24</sup> 40 months on, court acquits 'Naxal activist' SudhirDhawale, Sukanya Shetty, The Indian Express, <http://indianexpress.com/article/india/regional-india/40-months-on-court-acquits-naxal-activist-sudhir-dhawale/> (last accessed on 19<sup>th</sup> December, 2015)

<sup>25</sup> Sedition charges against Subharti University's Kashmiri students based on complaint by officials, IBN Live, <http://www.ibnlive.com/news/india/sedition-charges-against-subharti-universitys-kashmiri-students-based-on-complaint-by-officials-695015.html> , (last accessed on 19<sup>th</sup> December, 2015)

<sup>26</sup> Indian cartoonist Aseem Trivedi jailed after arrest on sedition charges, The Guardian, <http://www.theguardian.com/world/2012/sep/10/indian-cartoonist-jailed-sedition>, (last accessed on 19<sup>th</sup> December, 2015)

### **Section 499 (Defamation)**

The Supreme Court has been vocal about the constitutional validity<sup>11</sup> of Section 499 which covers the act of defamation due to its misuse. It has been in the news for its ill use to silence disagreeable opinions and satisfy political vendetta.

In the case of Assem Trivedi a PIL was filed against the section 124A owing to its misuse. The Bombay High Court stated –Section 124A of IPC cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on the administration or strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal<sup>27</sup>.

The main reason because of which Section 66A was hated is its gross misuse by the authorities. But, we need to understand that the above mentioned traditional laws which are supposed to fill the vacuum created by repelling of Section 66A are not immune to misuse. Time and again they have been subject to misuse by the government to silence its critics. The basic purpose of repelling Section 66A stands defeated if other laws which will be used as a substitute for it are also misused. It must be noted that IPC is unable to deal with such crimes swiftly and efficiently. In fact this Section could have been much more effective and efficient to deal with serious crimes like cyber bullying, harassment, obscenity, hate speech, etc.

### **Why is Section 66A necessary?**

To understand the necessity of Section 66A it is essential that we understand the difference in action that would be taken as a result of invoking the sections as an alternative to Section 66A. Prior to the information technology era, the freedom of speech was misused at public gathering by giving controversial speeches. So the IPC was formulated to tackle such situations of mass gathering turning violent. Naturally, the action suggested in the IPC is not swift. Today, due to the far and easy reach of the technology the damage is already done by the time actions suggested in the IPC are taken.

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<sup>27</sup> See para 15 on <http://indiankanoon.org/doc/57916643/> (last accessed on 19<sup>th</sup> December, 2015)

Anomalies aside, this Section proved to be a useful remedy in tackling situations of sensitive nature, such as those concerning religious and communal sentiments. For example, the episode of North-Eastern students from Bangalore fleeing the state of Karnataka after videos and messages inciting violence against them surfaced on whatsapp and other forms of social media in Bangalore. Police authorities took the recourse of Section 66A to avoid spreading of rumors caused by inflammatory messages and videos circulated to incite violence against a particular community<sup>28</sup>.

Section 66A provided an opportunity for genuine victims of cyber harassment to obtain immediate relief against content that may be insulting or injurious in nature, abrogation of which has now made the police authorities toothless in dealing with the growing menace of cyber bullying. We need to understand that section 66A also contained legal recourse against a number of other cybercrimes such as stalking, bullying, threatening through SMS and email, phishing and spamming, etc. Though other sections of the IT Act or IPC may be invoked, the specific nature of section 66A is hard to find. Moreover the other acts need not ensure swift action which is generally the necessity in these cases pertaining to use of the internet. The more the time taken to remove the derogatory, defamatory or outrageous content, more is the damage done. Section 66A addressed the offenses such as cyber bullying and cyber stalking as well as ‘spam’ which could not be dealt effectively under any Section of the IPC.

One of the most important aspect of this section is that it explicitly covers bullying. The cases of suicide after obscene pics being uploaded to social networking sites, fake accounts being created to defame someone, cyber stalking, cyber bullying posing as another person to send malicious messages etc. have gained prominence<sup>29</sup>. All these cases come under the term cyberbullying. The number of such cases being registered is on the rise. An online survey by McAfee reveals some very disturbing facts. According to this survey, 50%<sup>30</sup> of Indian children between 8 and

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<sup>28</sup> See Juhi P. Pathak, IOSR Journal of Humanities and Social Sciences, Role of social media in reference to North-East ethnic violence (2012), (last accessed on 29<sup>th</sup> January, 2016), Available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol19-issue4/Version-5/H019455966.pdf>

<sup>29</sup> See SammerHinduja & Justin W. Patchin, Bullying, Archives of Suicide Research, Cyberbullying, and Suicide, (last accessed in 29<sup>th</sup> January, 2016), Available at

<http://www.tandfonline.com/doi/abs/10.1080/13811118.2010.494133>

<sup>30</sup> Alarming! 50% Indian youths have experienced cyberbullying, The Indian

17 years have been bullied online i.e. of every 10 Indian children, more than 50% are bullied online. A survey<sup>31</sup> by Microsoft shows how India leads the world in different metrics of cyber bullying. Cyber bullying has led to depression in some of the cases. A more disturbing outcome of the survey was that India comes third<sup>32</sup> in the world as far as cyber bullying is concerned. Section 66A could have proved effective in such cases. Awareness of the existence of such laws is also important. It can be agreed that even in absence of Section 66A, the criminals won't be getting away with any crime. They would be punished for their activities. However the strictness and swiftness in serving the justice would lack in absence of Section 66A.

### Conclusion

No law is perfect in nature and can be exploited to one's benefit. The mere possibility of abuse of any law shouldn't be the ground of its removal. While framing a law the legislature keeps the best interest of its citizen in its mind. It doesn't make a law just so that is misused by the authorities or the common man. Even the Section 498A has been subject to gross misuse. But the petition for striking it down cannot be taken into consideration because the intention of the legislature was to ensure no woman is subject to domestic violence due to any reason whatsoever. Over a period of time the implementation of Section 498A has improved courtesy of both the judiciary and the government. However, it wasn't challenged for unconstitutionality. Same is the case with Section 66A. One of the flaw in the section was the discretion of the police which was often misused due to lack of proper guidelines in the section. The court could have laid down detailed guidelines in regard to the arrests made by police authorities to ensure effective application of the law as it was done by the court for Section 498A. Normally, it is expected that the Courts take into account the legislative intent and read the meaning of a provision

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Express, <http://indianexpress.com/article/technology/technologyothers/alarm-ing-50-indian-youths-have-experienced-cyberbullying/> , (last accessed on 19<sup>th</sup> December, 2015)

<sup>31</sup> India ranks third in cyber bullying, T.E. RAJA SIMHAN, The Hindu, <http://www.thehindubusinessline.com/info-tech/india-ranks-third-in-cyber-bullying/article3573592.ece> , (last accessed on 19<sup>th</sup> December, 2015)

<sup>32</sup> The report by Microsoft can be downloaded from the following link [https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&cad=rja&uact=8&ved=0CEgQFjAlahUKEwiXy8vApuTIAhUGCI4KHdkDBOM&url=http%3A%2F%2Fdownload.microsoft.com%2Fdownload%2FE%2F8%2F4%2FE84BEEAB-7B92-4CF8-B5C77CC20D92B4F9%2FWWW%2520Online%2520Bullying%2520Survey%25200%2520Executive%2520Summary%2520%2520India\\_Final.pdf&usg=AFQjCNFTe\\_ng\\_qL8J3qLVHvinfKb9zk7fA&sig2=VKgRCEzal\\_BWO6qFoQgDow](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&cad=rja&uact=8&ved=0CEgQFjAlahUKEwiXy8vApuTIAhUGCI4KHdkDBOM&url=http%3A%2F%2Fdownload.microsoft.com%2Fdownload%2FE%2F8%2F4%2FE84BEEAB-7B92-4CF8-B5C77CC20D92B4F9%2FWWW%2520Online%2520Bullying%2520Survey%25200%2520Executive%2520Summary%2520%2520India_Final.pdf&usg=AFQjCNFTe_ng_qL8J3qLVHvinfKb9zk7fA&sig2=VKgRCEzal_BWO6qFoQgDow)

accordingly. This is how jurisprudence is developed and the law is able to adjust to changing times without any major amendments. When the provisions are vague or subjective, it is the duty of the judiciary to lay down the principles to determine if an action contains the element of offence or not. Dismissing the provision has led to lack of safety in the cyber world. No doubt that the Section 66A had become a monster. But sincerely, there is a need of unambiguous Section 66A. A newly framed and well defined Section 66A would really help in fighting horrific crimes like cyber bullying and harassment. It is the responsibility of both the judiciary and the government that this need is taken care of to protect the citizen from heinous crimes.

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