

Importance of Section 66A in Information Technology Act 2000

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Abstract: Section 66A defines the punishment for sending “offensive” messages through a computer or any other communication device like a mobile phone or a tablet. A conviction can fetch a maximum of three years in jail and a fine. The vagueness about what is “offensive”. The word has a very wide connotation, and is open to distinctive, varied interpretations. It is subjective, and what may be innocuous for one person, may lead to a complaint from someone else and, consequently, an arrest under Section 66A if the police prima facie accepts the latter person’s view. This article makes an attempt to revisit the role of Sec 66A in accordance with the present scenario.

Keywords: Section 66A , IT Act 2000, Vague sec, Regulator, IT Act2008

1. Introduction

While the objective behind the 2008 amendment was to prevent the misuse of information technology, particularly through social media, Section 66A comes with extremely wide parameters, which allow whimsical interpretations by law enforcement agencies. Most of the terms used in the section have not been specifically defined under the Act. The petitions have argued that it is a potential tool to gag legitimate free speech online, and to curtail freedom of speech and expression guaranteed under the Constitution, going far beyond the ambit of “reasonable restrictions” on that freedom.

The government appears to be blowing hot and cold on the issue of Section 66A of the information technology act, often used to muzzle free speech on social media. Having admitted before the Supreme Court that there is a need to amend the section, the Centre has now justified retention of the controversial provision contending internet needs stricter curbs than other media - given its wider reach and impact.

The top court on Thursday reserved its verdict on a batch of petitions challenging the validity of the section. But the government's latest assertion alludes to a state of confusion in dealing with the abuse of internet freedom by anti-social elements to create mischief and the unwarranted controversies created by blatant misuse of the law against innocent people exercising their fundamental right to freedom of speech and expression.

While informing the court that it had formed a panel to draft a new law, prepare a roadmap after studying aberrations and suggest safeguards against its possible misuse, the Centre had earlier maintained that the controversial provision does not violate citizens' right to freedom of speech and expression.

It sought to give a fillip to electronic transactions, provide legal recognition for e commerce and e-transactions, facilitate e governance, prevent computer-based crimes and ensure security practices and procedures in the context of widest possible use of information technology worldwide.

The IT Act also amended the Indian Penal Code, Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to facilitate e commerce and electronic governance.

But the problem lies in a hurriedly made amendment during the UPA-I rule in December 2008 that added Section 66A to the law along with several other provisions. The intention was to strengthen penal provisions following a rapid increase in new crimes such as publishing sexually explicit material in electronic form, video voyeurism, breach of confidentiality and leakage of data, e-commerce frauds like phishing, identity theft and transmission of offensive messages through communication services.

It's nobody's case that those misusing social media platforms for criminal purposes should not be taken to task. They must be. And it can be done only through a well thought out law which is discussed threadbare in Parliament and the media.

2. Importance

The UN General Assembly had on January 30, 1997 passed a resolution adopting the Model Law on Electronic Commerce drafted by the UN Commission on International Trade Law. The resolution recommended that all member states should enact or revise their laws in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.

It was to give effect to the this UN resolution that India's Parliament enacted the Information Technology Act, 2000 to promote efficient delivery of government services by means of reliable electronic records.

A vaguely worded section

It is not a simple case of misuse of law. In fact, the law suffers from the vice of non-application of mind. A bare reading of the section reveals how vaguely worded it is. It prescribes a maximum punishment of a prison term of 3 years with fine for sending information that is "grossly offensive" or has "menacing character" and for sending e

mails causing "annoyance or "inconvenience" to the recipient.

What is even worse is that none of these expressions has been defined in the law. This goes against the cardinal principle of criminal law, which requires each and every term or expression used in a law to be well-defined, leaving no scope for misinterpretation and possible misuse.

It was for this very reason that in the entire Indian Penal Code, Lord Macaulay used numerous explanations and illustrations to clarify penal provisions and defined almost all expressions used in the IPC.

3. Absence of Regulator Justifies

Justifying retention of penal provision of Section 66A of Information Technology Act for posting offensive material on social networking sites, the Centre on Wednesday told the Supreme Court that reach and impact of internet was wider and the level of restriction on this medium should be higher in comparison to print and television.

Unlike print and electronic media, the web did not exist and operate in an institutional form and there was a need for some mechanism to put checks and balances on this medium although it was impossible to regulate it, additional solicitor general Tushar Mehta argued before the apex court.

"There are institutions which are working in other media whether it is paper, television or cinema. There is an institutional approach and there are checks like pre-censorship for TV and films. But in internet there is individual approach and there is no checks and balances or license," Mehta told the bench of Justices J Chelameswar and Rohinton Fali Nariman.

He said that restriction on freedom of speech and expression changed with the change in medium and higher level of restriction should be applied to the web. "Considering the reach and impact of medium, leeway be given to legislature to frame rules. On internet every individual is a director, producer and broadcaster and a person can send offensive material to millions of people at a same time in nanosecond just with a click of button," he said.

"In case of internet, it is very easy to invade someone's privacy. Morphing of images can be done and put on internet or some rumour can be spread through internet which can create social disorder in society. It is not possible to outrage someone's modesty through print and television but it can be easily done through internet," the ASG said.

The bench, however, said that reasonable restriction allowed under Article 19(2) of Constitution on freedom of speech and expression did not recognize any form of medium.

Mehta said that the apex court in its various judgements had recognized different threshold of restrictions for different mediums depending upon their reach and impact.

Emphasizing the need to continue with Section 66A, making posting of offensive messages on social networking site an

offence punishable up to three-year jail term, Mehta said that it cannot be quashed or thrown out just because the provision is vague on defining the word "grossly offensive".

The court is hearing a bunch of petitions challenging constitutional validity of Section 66A on the ground that it violates fundamental right to freedom of speech and expression.

The court had earlier said that the term offensive was "vague" and highly "subjective" term and Section 66A is prone to misuse.

The government had said that posting pictures and comments on social networking sites which hurt religious sentiments cannot be tolerated and people must be prosecuted under Section 66A. It had said that hurting religious sentiments comes under the category of "grossly offensive" under the provision and such acts must be penalized.

4. Conclusion

For the sake of the society ,reasonable restriction is allowed and Sec66A ,IT ACT 2000 makes posting of offensive messages on social networking sites an offence and punishable up to three year jail term which is a need of the hour.

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