



Section 66A of the IT Act

Why in News

The [Supreme Court](#) has issued a **notice to the Centre** on the use of **Section 66A of the Information Technology Act, 2000** that was scrapped several years ago.

- The court struck down the provision as **unconstitutional** and a **violation of free speech** in 2015 in the **Shreya Singhal Case**.
- The IT Act, 2000 provides for legal recognition for transactions through electronic communication, also known as **e-commerce**. The Act also penalizes various forms of cyber crime.

WHAT THE COURT SAID

THE SUPREME COURT STRUCK DOWN A PROVISION IN THE CYBER LAW WHICH PROVIDES POWER TO ARREST A PERSON FOR POSTING ALLEGEDLY OFFENSIVE CONTENT ONLINE

THE PUBLIC'S right to know is directly affected by Section 66A of the Information Technology Act. The provision "clearly affects" the right to freedom of speech and expression.

Terms like "annoying", "inconvenient" and "grossly offensive" used in the provision are vague as it is difficult for the law enforcement agency and the offender to know the ingredients of the offence.

When judicially trained minds can reach on different conclusions while going through the same content, then how is it possible for law enforcement agency and others to decide as to what is offensive and what is grossly offensive. What may be offensive to a person may not be offensive to the other. (sic)

THE CONTENTIOUS SECTION

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 a communication device,

(c) any electronic mail for the purpose of causing annoyance or inconvenience or to deceive the addressee, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Key Points

- **About Section 66A:**
 - It **empowered police** to make arrests over what policemen, in terms of their subjective discretion, could construe as **"offensive" or "menacing" or for the purposes of causing annoyance, inconvenience, etc.**
 - It prescribed the **punishment for sending messages through a computer or any other communication device** like a mobile phone or a tablet, and a conviction could fetch a **maximum of three years in jail**.
- **Issues with Section 66A:**
 - **Based on Undefined Actions:**
 - The court observed that the **weakness of Section 66A lay in the fact** that it had created an **offence on the basis of undefined actions:** such as causing **"inconvenience, danger, obstruction and insult"**, which do not fall among the exceptions granted under **Article 19 of the Constitution**, which **guarantees the freedom of speech**.
 - **Subjective Nature:**
 - The court also **observed that the challenge was to identify** where to draw the

line. Traditionally, it has been drawn at incitement while terms like **obstruction and insult remain subjective.**

- **No Procedural Safeguards:**

- In addition, the court had noted that **Section 66A did not have procedural safeguards like other sections of the law** with similar aims, such as the need to obtain the concurrence of the Centre before action can be taken.
 - Local authorities could proceed autonomously, literally on the whim of their political masters.
- The **Court did not strike down** two other provisions- **sections 69A and 79 of the IT Act** - and said that they can remain enforced with certain restrictions.
 - **Section 69A provides power** to issue directions to **block public access of any information** through any computer resource and **Sec 79 provides for exemption from liability of intermediary** in certain cases.

- **Against the Fundamental Rights:**

- Section 66A was **contrary to both Articles 19 (free speech) and 21 (right to life) of the Constitution.**
 - **Right to know** is the species of the **right to speech and expression** provided by the **Article 19(1) (a) of the constitution of India.**

Way Forward

- There is a pressing **need to move from a system where communication about judicial decisions** is at the mercy of initiatives by scrupulous officers, to a method not **contingent on human error to the greatest possible extent.** The urgency cannot be overstated.
- **Enforcing unconstitutional laws** is sheer wastage of public money.
- But more importantly, **until this basic flaw is addressed,** certain persons will remain exposed to denial of their right to life and personal liberty in the worst possible way imaginable.
- They will **suffer the indignity of lawless arrest and detention,** for no reason other than their poverty and ignorance, and inability to demand their rights.

[Source: TH](#)

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