

Section 66A of IT Act

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The Supreme Court recently asked States to respond to a petition that citizens continue to get booked and prosecuted under Section 66A of the Information Technology Act for expressing themselves freely on social media. Section 66A was declared unconstitutional by the Supreme Court in a judgment in 2015.

In news: SC asks States to respond to plea that says citizens are still being booked under Section 66A of IT Act

Placing it in syllabus: Law & Policy

Dimensions

- What is the issue ?
- What is the section about ?
- Brief Provisions of IT Act 2000
- Ruling in Shreya Singhal Case
- Misuse of the Section
- Remedies

Content:

What is the issue?

- **Section 66A** was declared unconstitutional by the Supreme Court in **Shreya Singhal judgment** in 2015.
- An NGO, **People's Union of Civil Liberties (PUCL)** had drawn the Supreme Court's attention to the fact that **citizens continue to get booked and prosecuted under Section 66A** of the Information Technology Act for expressing themselves freely on social media.
- In its response, the **Centre said the police and public order were "State subjects"** under the Constitution.
- The Supreme Court **found it "distressing", "shocking" and "terrible"** that people were still booked and tried under

Section 66A even six years after the Supreme Court struck down the provision as unconstitutional and a violation of free speech.

- A Bench led by Justice Rohinton F. Nariman said State governments, which control the police force, had to answer for this violation of the Supreme Court judgment.
- The Supreme Court said the judiciary could be reined in from wrongly charging under Section 66A, but the cooperation of the States was necessary to put the brakes on the police from registering FIRs under Section 66A.
- The court said it intended to pass a holistic order after hearing from the States.

What is the section about ?

The IT Act, 2000 was amended in 2008. This amendment introduced the controversial Section 66A into the Act.

Section 66A was designed to define how criminal activity might be conducted by a person or persons on digital mediums. It penalized a considerable portion of such action by laying out a broad definition.

Any person who communicated the following with her/his computer or another digital device was subjected to a criminal activity under the Section 66A of the IT Act:

- The content shared by the person was considered **grossly offensive.**
- The content carried false information and was deliberately created for **annoying, putting in danger, making it inconvenient for, insulting, injuring, criminally intimidating, obstructing, people or treating them with enmity, hatred, or ill will.**
- The content was created to **create a deception about the source of the messages.**

Any person or persons found carrying out such activities were

treated with **criminal charges** and could **receive three years of imprisonment and a fine**.

Brief Provisions of IT Act 2000

- The Information Technology Act, 2000 enacted by the Indian Parliament, is the primary law in India **for matters related to cybercrime and e-commerce**.
- The act was **enacted to give legal sanction to electronic commerce and electronic transactions, to enable e-governance, and also to prevent cybercrime**.
- Under this law, for any crime involving a computer or a network located in India, foreign nationals can also be charged.
- The law **prescribes penalties for various cybercrimes and fraud through digital/electronic format**.
- It also gives **legal recognition to digital signatures**.
- The IT Act also amended certain provisions of the Indian Penal Code (IPC), the Banker's Book Evidence Act, 1891, the Indian Evidence Act, 1872 and the Reserve Bank of India Act, 1934 to modify these laws to make them compliant with new digital technologies.

Ruling in Shreya Singhal Case

- In the historic case **Shreya Singhal v. Union of India**, the Supreme Court of India **invalidated Section 66A** of the Information Technology Act of 2000 **in its entirety**.
- The Petitioners argued that Section 66A was unconstitutionally vague and its intended protection against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will **were beyond the scope of permissible restrictions under Article 19(2)** of the Indian Constitution.
- The Court agreed that the prohibition against the dissemination of information by means of a computer

resource or a communication device **intended to cause annoyance, inconvenience or insult did not fall within any reasonable exceptions to the exercise of the right to freedom of expression.**

- It further found that because the provision failed to define terms, such as inconvenience or annoyance, “a very large amount of protected and innocent speech” could be curtailed and hence its sweep was overly broad and vague.

Misuse of the Section

- The ‘open-ended and unconstitutionally ambiguous’ definitions in Section 66A were often misused to quell genuine criticism and exercise of free speech on social media.
- The invalid Section 66A is **often invoked out of ignorance**, but it **serves as a tool of harassment**
- Section 66A of the IT Act has continued to be in **use not only within police stations but also in cases before trial courts across India.**
- The **Internet Freedom Foundation** published a study in November 2018 on the continued use of the Section which found about 65 to 70 cases cumulatively in different legal databases and that fresh cases were being registered in police stations, investigated and thereafter, considered by lower Courts
- According to PUCL, as on March 10, 2021, as many as a total of 745 cases are still pending and active before the Districts Courts in 11 States, wherein accused persons are being prosecuted for offences under Section 66A of the IT Act

In 2012, the Mumbai Police apprehended two girls, Shaheen Dhada and Rinu Srinivasan, for posting a lambasted remark in Facebook against the bandh imposed in the wake of Shiv Sena founder Bal Thackeray’s death. The girls were later released by the police but the apprehension of them was widely

criticized across the country.

Remedies:

- Police officers who receive complaints and register them as First Information Reports must be made aware of the non-applicability of Sec 66A
- Police chiefs and the directorates of prosecution must proactively begin a process of conveying to the lower courts and investigators all important judgments and their effect on the practices relating to investigation, prosecution and the framing of charges from time to time.

Mould your thought: The invalid Section 66A of IT Act 2000 still serves as a tool of harassment. Critically evaluate.

Approach to the answer:

- Introduction
- Discuss the rationale behind section 66A
- Discuss the Shreya Singhal Case Judgement
- Discuss the continued use of Sec 66A – PUCL Case / Supreme Court
- Discuss the potential reasons for it
- Suggest some remedies to correct the situation
- Conclusion