

Use and Misuse of IT Act 2000

February 6, 2021

In a letter addressed to all principal secretaries and secretaries of various departments in Bihar, has sought intimation of any offensive social media posts against the government, ministers, MPs, legislators and state officials by individuals or organisations so that the EOW could take action in accordance with IT Act. This has sparked debates over how the state government is moving towards curbing freedom of speech on the internet.

In news: Bihar police circular says offensive social media posts against govt to be treated as cyber crime

Placing it in syllabus: Law & Policy

Dimensions

- Section 66A of the IT Act 2000
- SC ruling on the section(Shreya Singhal Case)
- IT act 2000: History , objective and Provisions
- How does the circular violate SC judgement?

Content:

Section 66A of the IT Act 2000:

Section 66A of the Information Technology Act 2000 provides punishment for sending offensive messages through communication services.

It defines the punishment for sending offensive messages through a computer or any other communication device like a mobile phone or tablet. A conviction of it can fetch a maximum three years of jail and a fine.

These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of:

- Text
- Images
- Audio
- Video
- Any other electronic record which may be transmitted with the message

The Law targets messages that:

- Are grossly offensive or menacing
- Proffer false information intending to cause annoyance, inconvenience, intimidation, insult, obstruction, etc.,
- Are intended at deceiving the addressee about the origin of the message

The Section 66A of IT Act 2000 says that:

Any person who sends, by means of a computer resource or a communication device

- any information that is grossly offensive or has menacing character; or
- 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,
- 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.”

Section 66A had been dubbed as “draconian” for it allowed the arrest of several innocent persons, igniting a public outcry for scrapping it.

SC Ruling on the Section 66A:

The Supreme Court's judgement in **Shreya Singhal v. Union of India** is considered as a landmark judgement that upheld the right to free speech.

In March 2015, Supreme Court **struck down section 66A of the IT Act, 2000** which provided provisions for the arrest of those who posted allegedly offensive content on the internet upholding freedom of expression.

Pronouncing the verdict in Shreya Singhal v. Union of India case the Supreme Court held that:

- Section 66A arbitrarily, excessively and disproportionately invades the right of free speech under Article 19(1)
- It upsets the balance between freedom of speech and the reasonable restrictions that may be imposed on this right
- Definition of offences under the provision was "open-ended and undefined"

IT act 2000: History , Objective and Provisions:

The Information Technology Act, 2000 was notified on October 17, 2000.

It is the law that deals with cybercrime and electronic commerce in India.

History:

- In 1996, the **United Nations Commission on International Trade Law (UNCITRAL)** adopted the model law on electronic commerce (e-commerce) to bring uniformity in the law in different countries.
- Further, the **United Nations General Assembly** recommended that all countries must consider this model law before making changes to their own laws.
- India became the 12th country to enable cyber law after

it passed the Information Technology Act, 2000.

- While the first draft was created by the Ministry of Commerce, Government of India as the ECommerce Act, 1998, it was redrafted as the 'Information Technology Bill, 1999', and passed in May 2000.

Objectives of the Act:

- The Information Technology Act, 2000 **provides legal recognition to the transaction done via electronic exchange** of data and other electronic means of communication or electronic commerce transactions.
- This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.
- Further, this **act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers' Books Evidence Act 1891, and the Reserve Bank of India Act 1934.**

The objectives of the Act are as follows:

- Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- Facilitate the electronic filing of documents with Government agencies and also departments
- Facilitate the electronic storage of data
- Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for

keeping the books of accounts in electronic form.

Features of the Information Technology Act, 2000

- All electronic contracts made through secure electronic channels are legally valid.
- Legal recognition for digital signatures.
- Security measures for electronic records and also digital signatures are in place
- A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- Provision for establishing a “**Cyber Regulatory Appellant Tribunal**” under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- Digital Signatures will use an asymmetric cryptosystem and also a hash function
- The **Act applies to offences or contraventions committed outside India**
- Senior police officers and other officers can enter any public place and search and arrest without warrant
- Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

Section 69A of IT Act

- Section 69A empowers the authorities to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource
- This can be done in the interest of the sovereignty or integrity of India, defense of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence or for

investigation of any offence.

- It also empowers the government to block internet sites in the interests of the nation.
- The law also contained the procedural safeguards for blocking any site.
- When parties opposed to the section stated that this section violated the right to privacy, **the Supreme Court contended that national security is above individual privacy.**
- The **apex court upheld the constitutional validity of section 69A.**
- The recent banning of certain Chinese Apps was done citing provisions under Section 69A of the IT Act.

How does the circular violate SC judgement?

The Bihar government's latest circular calls for action against persons and organisations posting **"objectionable and indecent" comments online** against the State government, Minister, MLAs and even MPs and government officials, under IT Act and Indian Penal Code.

The **circular by Bihar Police's Economic Offences Unit (EOU)** states, "It has regularly been coming to light that certain persons and organisations have been making offensive comments through social media and Internet against government, honourable ministers, MPs, MLAs and government officials as well, which is against prescribed law and comes under cybercrime laws. For this act, it seems appropriate to take action against such organisations and individuals".

- The government said that this advisory was issued keeping in mind rumours and factually incorrect information and involving the use of insulting language on social media – these are punishable offences under the IT Act.
- While several Supreme Court judgements may be cited that

have upheld freedom of speech and expression in its myriad manifestations.

- The judgment in *Shreya Singhal vs. UOI*, the apex court struck down two provisions namely section 66A (Punishment for sending offensive messages) of the IT Act and section 118(d) [causing annoyance in an indecent manner] of the Kerala Police Act as both suffered from vagueness and overbreadth.
- In the judgment, the court said the **liberty of thought and expression was a cardinal value** of paramount significance under the Constitution.
- Three concepts fundamental in understanding the reach of this right were **discussion, advocacy and incitement**.
- Discussion or advocacy of a particular cause, no matter how unpopular, was at the heart of the right to free speech.
- The court held that Freedom Speech could be curbed only when such discussion or advocacy reached the level of incitement on the ground of causing public disorder.
- The court then went on to say that Section 66A actually had no proximate connection with public order or with incitement to commit an offence.
- **What may be offensive to one may not be offensive to another**. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another. Even the expression 'persistently' is completely imprecise.
- The **mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences** under the Indian Penal Code at all, the court held
- The **right of freedom of opinion and the right of freedom of conscience** by themselves **include the extremely important right to disagree**.
- The **right to disagree, the right to dissent and the right to take another point of view**, would inherently in

each and every citizen of the country

- The **Bihar circular on account of it being vague and overbroad severely threatens fundamental rights of speech and right to dissent.**
- The circular in stating that action be taken against offensive posts aimed towards the government and not mentioning what kind of comments lie within the boundaries of freedom of speech, makes it an inadequate direction.
- It also makes the circular an unwarranted direction as it does not introduce any new procedure but merely calls for execution upon those provisions in penal law that have been in existence for a long time now

Mould your thought: Bihar circular on action against critics goes against not just fundamental rights but also views held by the Supreme Court. Critically evaluate.

Approach to the answer:

- Introduction
- Discuss the rationale given by Bihar govt for the circular
- Discuss the provisions of Article 19 and Supreme Court observations
- Write about how the circular goes against the rights and SC judgement on Shreya Singhal case
- Conclusion