

## Sec 66A of IT Amendment Act struck down – Losing a powerful weapon?

The judgement given by the Hon'ble Supreme Court striking down the Section 66A of Information Technology Amendment Act, 2008, is no doubt a landmark judgement. Understandably the 'saviours' of freedom of expression and the 'friends of media' are jubilant that a powerful and "draconian" Section 66A of the IT Amendment Act which was allegedly conveniently misused and arguably abused has now been held unconstitutional.

But permit me to express my 'freedom of expression' in this context. There is one school of thought to which I subscribe, feeling that this development is quite unfortunate. In the enthusiasm to protect the freedom of expression, and laying more emphasis on it, we miss one vital point that the police (and the victims, potential victims, women in particular) lost a powerful weapon in our arsenal in combating cyber crimes.

As a direct consequence of this development, if a girl is harassed repeatedly (remember the phrases 'grossly offensive' or 'menacing character' in 66-A) by sms or emails, can any one successfully bring conviction under our IPC? If repeated emails or text messages (without an obscene content) are targeted against an individual say a college girl, where will the hapless parent go? The police may have to advise the victims to delete the mails or sms and keep quiet or perhaps take the circuitous route of taking resort under IPC and taking it as harassment and trying to quantifying or measuring the amount of victimization and claim civil compensation or seek criminal remedy?

Even the present NDA government is playing to the gallery in showcasing itself as the guardian of human rights to express, projecting itself as Press-friendly and media-friendly and in the process failed to stoutly defend the power that the IT Amendment Act 2008 thoughtfully gave. The government could have (and should have) submitted that the phrases like 'grossly offensive', 'menacing character' etc (understandably vague and ambiguous) are sometimes misused and more clarity will be given by way of framing Rules, like it was done for blocking of websites and definition of 'sensitive and personal information'. The phrase "reasonable security practices and sensitive and personal information" used in Section 43-A, was clarified byway of Rules framed by the IT Ministry in April 2011 only.

The misuse of Section 66A was itself a Press hype. The Press failed to report the genuine cases filed by the Police resulting in well deserved conviction and always spoke about the high profile cases of Bal Thackeray Demise Facebook posts, Pondicherry Karthi Chidambaram twitter case, Mamta Banerjee government cartoonist case etc, all of which were obvious misuses of power and much publicized. Are there not instances where the police filed genuine cases under 66A? There are.

Vagueness in interpretation, ambiguity in definition and reported misuse does not justify repealing of the Act or any section. In fact this judgement of Supreme Court also cites in para No.90 of the judgement that "Possibility of an act being abused is not a ground to test its validity". To stretch this argument of misuse of legal provisions (especially sections of IPC), there are substantially a number of such sections that are often criticized of being abused, Are we going to file cases to repeal all those sections too?

Speaking of right of expression itself, it is now an accepted position that individual right of expression is always with reasonable restrictions and there is no unfettered right of expression and that it should never impact 'public order' and be an 'incitement to an offense'.

Perhaps, after a few years from now, the police, the press and all others who express jubilation now, (especially when a girl in their family is harassed in the Internet or by email or an offensive message).will repent that cyber stalking and gross misuse of the Internet have come to stay and cannot be curbed easily in this country.

### **V. Rajendran**

Advocate and Cyber Law Consultant  
President, Cyber Society of India