

## Social Media, Democracy and Changing Facets of Law: A Critical Study

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**Abstract:** *The social media is now a day is an effective and novel tool available in the hands of the common people to express their anger, expressions and feelings against the government and the leaders/political parties. It is the sign of healthy and vibrant democracy particularly in India where the people are less aware about the rights and duties. The recent incidences of arrest in Bengal, Maharashtra and other states when persons posted comments and cartoons on facebook related to particular political parties and leaders are not only alarming but also a threat to the freedom of speech and expression given by the Constitution of India to over citizens. The biased action of state government and law enforcing agencies under Information Technology Act, 2000, Indian Penal Code, 1860, Indian Evidence Act, 1872 and various other related Acts through mis interpretation under the wide discretionary power vested with them are an eye opener for us and direct threat to our democracy. Through doctrinal approach the author will analyze in this paper the various legislations, Constitution of India and case laws dealing this issue at large in the interest of healthy democracy and finally suggest the few amendments and actions are required to strengthen the various laws dealing social media directly and indirectly in India particularly.*

**Hypothesis:** Constitutional, legislative and International mandate to protect freedom of speech and expression of the person using social media as a tool exist.

**Methodology:** It is purely based on the doctrinal approach. The author discusses the various important provisions of Constitution of India, other legislations, International Instruments and Case laws related to the topic for the purpose of critical analysis of the concerned topic. The author also relies on other data and secondary literature available on the topic gathered from various online and offline resources.

**Backdrop:** The Right to Freedom of speech and expression is an old age concept. Even in the Hindu Religious books, God Naradji was working as a messenger and communicating the information instantly to the person concerned. Sometimes there were allegations against him that he is manipulating the information in favor of the person concerned. Credibility of the source and facts always are two important fundamental pillars of the information and it is immaterial what actual tools or devices adopted by the person or institution are. Well informed people in any open and democratic society are an asset for the overall development of the nation. Today, we are living in an open society. Particularly in India which is the largest democracy of the world, it is very important for the strength and progress of the nation. Dissemination and access to information is essential to the health of democracy for at least two reasons. First, it ensures that citizens make responsible, informed choices rather than acting out of ignorance or misinformation. Second, information serves a “checking function” by ensuring that elected

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representatives uphold their oaths of office and carry out the wishes of those who elected them. In some societies, an antagonistic relationship between media and government represents a vital and healthy element of fully functioning democracies. In post-conflict or ethnically homogenous societies such a conflicting, tension ridden relationship may not be appropriate, but the role of the press to disseminate information as a way of mediating between the state and all facets of civil society remains critical.<sup>2</sup> Basically it falls under the wide ambit of the freedom of speech and expression, which means the right to express one's convictions and opinion freely by word of mouth, writing, printing, pictures or any other mode. Freedom of speech and expression includes the freedom of propagation of ideas and is ensured by the freedom of circulation. While it is true in case of print and electronic media, when the matter is related to freedom on social media, there is a difference of opinion among academicians, authors, judiciary and legal luminaries.

Facebook activity is global in scope but disproportionately focused on the Americas, Europe and Australasia. Some major human rights institutions and organizations use SNSs. In some countries local networks remain dominant. In Russia, the *Vkontakte* network has more than one hundred million members, compared with *Facebook's* seven million Russian members. In China, *RenRen* has more than thirty million users. *Twitter*, created in 2006, is an online SNS and micro blogging service that enables its users to send and read text-based messages of up to one hundred and forty characters, known as 'tweets'. As of 2012 it reportedly had over five hundred million active users generating over three hundred and forty million tweets daily and handling over 1.6 billion search queries per day. *Twitter* users include presidents, prime ministers and the Pope. In China, the *Twitter*-like service *Sina Weibo* has more than three hundred million users.<sup>3</sup>

We are now living in the 21<sup>st</sup> century, where the role of virtual media or cyber world or cyber media is not only important in every one's life but also affecting the masses greatly and creating their opinion about any person and political parties. Recently the Anna Hazare Movement against corruption and after wards, the evolution and formation of new political party-Aam Admi Party by Arvind Kejriwal at national level has only been possible through the wide use of Social Media. A large number of students, youths and social activists are using the Social Media as a tool to interact, to disseminate information faster as compared to other modes or means of communications. But this is only one facet of use of Social media and the strength vested in it in true sense; but another side of the coin is not as simple. It is a little different and is showing how government is ready to crush the rights of the common people to use Social Media as a tool if they are using it against any elected Central/State Government. In case of *S. Rangrajan v. P. Jagjivan Ram*<sup>4</sup> the Madras High Court has given emphasis that "It is the duty of the State to protect the freedom of speech and expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression." In the light of the observation made by the Hon'ble High Court, if the State itself is initiating and torturing any persons through state agencies, the situation is really a threat to a healthy democracy. It is also important to mention

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<sup>2</sup> The Role of media in Democracy: A Strategic Approach; Technical Publication Series (June 1999); Center for Democracy and Governance, Washington; Page.3

<sup>3</sup> <http://hrlr.oxfordjournals.org/content/13/1/125.full>

<sup>4</sup> (1989) 2 SCC 574

here that the right to know, right to receive information and impart information effectively through any means has been recognized within the right to freedom of speech and expression.<sup>5</sup>

It is important to note that after the Information Technology revolution, about 10 Crore people are using Facebook and 45 Crore are using WhatsApp for transferring messages from one person to another worldwide<sup>6</sup>. Sometimes the people are having anger against the system and the government and they are using social media as a tool to protest and are circulating it to various other persons and groups, which are further forwarding it. In Professor Ambikesh Mahapatra case, Professor Ambikesh Mahapatra was arrested on account of forwarding of caricature/cartoons on Facebook. Further, Ravi Srinivasan Twitter case showed how on a complaint, a person's tweets could be brought within the ambit of Section 66A of the amended Indian Information Technology Act, 2000. In K V Rao case, two men K.V. Rao and Mayank from Mumbai, were arrested for allegedly posting offensive comments against some leaders on their Facebook group. The recent case pertaining to Shaheen Dhada, where two girls were arrested for Facebook post and 'liking' it respectively, has become the talking point for all the users. These incidents of State action are surprisingly an attempt to threaten the basic fundamental rights given by the Constitution of India to the citizens of this country.<sup>7</sup>

### **Constitutional Mandate, Freedom of Speech & Expression and Social Media**

The creation and evolution of new form of virtual/cyber/digital social media during the first decade of the 21<sup>st</sup> century has transformed the ways in which many people communicate, share and transfer through Facebook, Twitter or YouTube as well as blogging environments and online discussions as well. This changes the whole scope and perspective of the freedom of speech and expression when we are limiting it only to the print and electronic media. The Constitutional rights are express and very wide in scope and extend to the citizens of this country to express their feelings, anger, and oppositions through different mode of communications, including social media.

Article 19(1) (a) finds its roots in the First Amendment to the Constitution of the United States of America. The First Amendment reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peacefully to assemble and to petition the government for a redress of grievances.”<sup>8</sup>

No doubt that the freedom of speech and expression under Article 19(1)(a) is a concept with diverse facets, both with regard to the content of the speech and expression and in the means through which communication takes place including Social Media. It is also a dynamic concept that has evolved with time and advances in technology. In short, Article 19(1)(a) covers the right to express oneself by word of mouth, writing, printing, picture or in any other manner including

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<sup>5</sup> In S.P. Gupta v. President of India, AIR 1982 SC 149; Secretary, Ministry of I & B, Govt. of India v. Cricket Association of Bengal, (1995) 2 SCC 161

<sup>6</sup> Dainik Bhaskar” Newspaper dated 24-02-2014.

<sup>7</sup> <http://www.chmag.in/article/dec2012/social-media-indian-cyber-law>

<sup>8</sup> US Constitution, First Amendment (1791), Article 1.

electronic and cyber media. It includes the freedom of communication and the right to propagate or publish one's views. The communication of ideas may be through any medium, newspaper, magazine or movie, including the electronic and the audiovisual media.<sup>9</sup> The different facets of freedom of speech and information includes right to circulate<sup>10</sup>, right to criticise<sup>11</sup>, right to receive information<sup>12</sup>, right to expression beyond national boundaries<sup>13</sup>, right of the press to conduct interview<sup>14</sup>, reporting court proceedings<sup>15</sup>, reporting legislative proceedings<sup>16</sup>, right to advertise<sup>17</sup>, right to rebuttal<sup>18</sup>, right to broadcast<sup>19</sup>, right to fly national flag<sup>20</sup> etc.

The situation is a little complicated when the State owned agencies are denying such rights and protecting the interests of the government directly and indirectly through various restrictions on some or other grounds. In a case of *Odyssey Communication (P) Ltd. v. Lokvidayan Sangathan*<sup>21</sup>, the Supreme Court held that the right of a citizen to exhibit films on the State channel, Doordarshan is part of the fundamental rights guaranteed under Article 19(1)(a). The Court held that this right was similar to the right of the citizen to publish his views through any other media such as newspapers, magazines, advertisements, hoardings and so on. It was held that Doordarshan, a State-Controlled agency that was dependent on the public funds was not entitled to refuse telecast except on grounds under Article 19(2)<sup>22</sup>. Recently Shri Sushil Kumar Shinde, Union Home Minister, Govt. of India has given the statement that we will crush Social Media<sup>23</sup> but later on categorically denied the statement as mis interpreted by the media.

There is no doubt that State instrumentalities and bodies are using social media as tool to reach the masses and disseminating information through use of website and other mode of social media including Facebook, Twitter, blogs, You tube etc. It is strengthening the democratic values as well as adding more transparency in the government functioning. But the problem basically arises when the individuals/institutions are criticizing the government decisions and work and political parties and political leaders belonging to the various parties.

<sup>9</sup> S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574

<sup>10</sup> Romesh Thapar v. State of Madras, AIR 1950 SC 124; Virendra v. State of Punjab, AIR 1957 SC 896; Sakal Papers v. Union of India, AIR 1962 SC 305

<sup>11</sup> Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955

<sup>12</sup> Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

<sup>13</sup> Maneka Gandhi v. Union of India, (1978) 1 SCC 248

<sup>14</sup> Prabhu Dutt v. Union of India, (1982) 1 SCC 1; State of Charulata Joshi (1999) 4 SCC 65; Shela Barse v. Union of India, (1987) 4 SCC 373

<sup>15</sup> Saroj Aiyer v. Maharashtra Medical (Council) of India Medicine, AIR 2002 BOM 97

<sup>16</sup> The Parliamentary Proceedings (Protection of Publication) Act, 1977, Section 3 and 4 and Keshav Singh's case, In re, Under Article 143(1) of Constitution of India, AIR 1965 SC 745

<sup>17</sup> Tata Press Ltd. V. MTNL, (1995) 5 SCC 139

<sup>18</sup> LIC v. Manubhai Shah, (1992) 3 SCC 637

<sup>19</sup> Odyssey Communications (p) Ltd. V Lokvidayan Sangathan, (1988) 3 SCC 410

<sup>20</sup> Union of India v. Naveen Jindal, (2004) 2 SCC 510

<sup>21</sup> (1988) 3 SCC 410

<sup>22</sup> Article 19(2): Nothing in sub-clause (a) of (1) shall effect the operation of any existing law, or prevent the State from making any law, in so far as such law impose reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

<sup>23</sup> <http://timesofindia.indiatimes.com/india/Will-crush-electronic-media-Shinde-says/articleshow/30961216.cms>

The internet renders censorship/restrictions of speech somewhat meaningless as what may be sought to be controlled in one jurisdiction can be made available through another. It is the mandate of the Constitution of India that citizen's have a right to freedom of speech and expression in all the cases except the restriction imposed on it under Article 19(2).

### **International Mandate, Freedom of Speech & Expression and Social Media**

The internet is now a sign of information revolution and a tool of information dissemination much faster as compared to other mode of communication. The national boundaries are no more relevant when you are using this mode of communication, particularly through Social Media. The International instruments are giving strength to this basic concept across the frontiers in the interest of people of the world. Freedom of opinion and expression is a fundamental right and is the touchstone of all the freedoms with which the United Nations is deeply concerned. Freedom of opinion and expression includes freedom of information and it implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and the progress of the world. Understanding and cooperation among the nations is impossible without an alert and sound world opinion which is wholly dependent upon freedom of information. Freedom of information requires as a basic discipline, the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent.<sup>24</sup> In the recent years, stress has been laid upon implementation of the right to freedom of opinion and expression through cooperation between the United Nations, UNESCO, and other organizations of the UN system. Particularly the International Telecommunication Union (ITU) – of the International Programme for the Development of Communication and establishment of a new world information and communication order.<sup>25</sup>

Article 19<sup>26</sup> of the Universal Declaration of Human Rights (1948), Article 19<sup>27</sup> of the International Covenant on Civil and Political Rights, Article 5<sup>28</sup> of the International Convention

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<sup>24</sup> The General assembly Resolution No. 59 (1) of 14<sup>th</sup> December, 1946

<sup>25</sup> Un Action In the Field of Human Rights, United Nations, Newyork and Geneva, 1994, p. 112 Para 986

<sup>26</sup> **Article 19** of the Universal Declaration of Human Rights (1948): "Every one has a right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."

<sup>27</sup> Article 19 of the International Covenant on Civil and Political Rights (1976) : (1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

<sup>28</sup> Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

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(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections -to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

**(viii) The right to freedom of opinion and expression;**

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

on the Elimination of All Forms of Racial Discrimination, Article 13<sup>29</sup> of the Convention on the Rights of Child, etc. are focusing on the aspect of the right to freedom of speech and expression for all persons to receive and impart information and ideas through any media regardless of frontiers.

Article VII of the Declaration of the Principles of International Cultural Cooperation, made by the General Conference of UNESCO on 4<sup>th</sup> November, 1966 provides that-

- (1) Broad dissemination of ideals and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality.
- (2) In cultural cooperation, stress should be laid on ideas and values conducive to the creation of climate of friendship and peace. Any mark of hostilities in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information to ensure its authority.

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<sup>29</sup> Article 13 of the Convention of the Rights of Child(1989): 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Case Study:** European Human Rights Court Finds Turkey in Violation of Freedom of Expression<sup>30</sup>. The European Court of Human Rights had, unsurprisingly, found that Turkey had violated their citizens' right to freedom of expression by blocking Google Sites.

Turkish law prohibits any insult towards Mustafa Kemal Atatürk, the founder of the nation, as well as any general insult towards "Turkishness." This form of censorship has led, as one might expect, to some examples of egregious government overreach. In 2009, a criminal court in Turkey issued an order to block a website that allegedly insulted Atatürk. The Turkish Telecommunications and Electronic Data Authority carried out the order by blocking sites.google.com *in its entirety*. Along came Ahmet Yıldırım, who used Google Sites to publish a personal blog and host academic papers. And then—because of a case that had nothing to do with Yıldırım—his website was rendered dark in Turkey. So in January 2010, he took the case to the European Court, claiming that Turkey had violated Article 10 of the European Convention on Human Rights, which guarantees everyone the right to freedom of expression.

The European Court of Human Rights found that Turkish law did not allow for "wholesale blocking of access" to a host like Google Sites, and Google Sites had not even been informed that it was hosting "illegal" content in the first place.

Turkey has a sordid history of Internet censorship. This includes the banning of YouTube for a majority of time since March 2007. The ban was finally lifted a few years later when YouTube agreed to take down certain videos that ran counter to Turkish law, and just a few months ago, YouTube was re-launched in the country under a Turkish domain. This effectively has given the government more say over what content is permissible on the site. Last year, there was also the launch of a voluntary filtering system in the country, which incited a number of protests.

We hope Turkey heeds the European Court's decision and unblocks Google Sites. The Court was very clear that censorship of any kind requires deep thought, foresight, and a strict legal framework. And while we do not condone censorship of any kind, it is obvious that Turkey's actions went well beyond the Human Rights Convention's guidelines and directly abused its people's right to freedom of expression.

It is reflected from the International Instruments that freedom of speech and expression is on top of the priority list of the United Nations in all States whatever the mode of communication use be by the persons in this regard including Social Media. In so many instances, the State instrumentalities are curbing this for political reasons and vested interests, but have withdrawn the actions against individuals or institutions under the media and other pressure groups. But from the above case study, it is clear that it varies from country to country and is completely at the sole discretion of the State to follow the international norms in this regard or not. The democratic values in some countries are not so strong as compared to the nations who are more liberal and giving liberty and freedom to extend information, views or otherwise through any mode of communication including Social Media, like in India. Even the decision or direction

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<sup>30</sup> <https://www.eff.org/deeplinks/2012/12/european-human-rights-court-finds-turkey-violation-freedom-expression>

given by the International Courts/ Regional Courts/ International Organizations implementation is on the mercy and will of the State Government. Particularly the State is compelling the Internet Service Providers to follow the domestic laws as reflected in above case study or otherwise they will ban them in violation of domestic information technology laws or any specific circular or notification in the vested interest of the State.

### **Social Media, Information Technology Act, 2000 and Freedom of Speech and Expression**

**Position Before Supreme Court Judgement:** In India, there has been a lot of controversy over the last few months over Section 66A of the Indian Information Technology Act. It is really a transition phase for Indian media because the power is in the hands of an individual using internet and social media. This group is little different from the common and routine media group and requires special treatment when attacking on person/institution through social media. They want protection under freedom of speech and expression but law enforcement agencies under the pressure of political parties/individuals are suppressing their voices. Recent incidents in India are an alarming situation for the strong democratic setup and also violation of fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution of India.

Professor Ambikesh Mahapatra Case<sup>31</sup>, Shaheen Dhada Case<sup>32</sup>, Robert Vadra Case<sup>33</sup>, Air India Employees Case<sup>34</sup>, Assam Violence Case<sup>35</sup>, Aseem Trivedi Case<sup>36</sup> etc. are some important cases

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<sup>31</sup> Jadavpur University, West Bengal Professor Ambikesh Mahapatra was assaulted by Trinamool Congress activists, and later arrested for uploading a spoof featuring West Bengal Chief Minister Ms. Mamta Banerjee.

<sup>32</sup> Two girls, Ms. Shaheen Dhada and Renu Srinivasan, were arrested in Palghar after Shaheen posted a Facebook status lamenting the Mumbai shutdown for Thakeray's funeral on November 18, 2012 and Renu 'liked' it. They were arrested under IPC Section 295(A)[ deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs] and 505(2) Of IPC[ statement creating or promoting enmity, hatred or ill-will between classes] and the IT Act Section 66A. They were later granted bail n surety of Rs 15,000 each. Shaheen withdrew her comment and apologized.

<sup>33</sup> Congress President Sonia Gandhi's Son-in-Law Robert Vadra stirred up a controversy after he updated his status message on social networking site Facebook-'Mango people at banana republic'. The comment was for IAC activist Arvind Kejriwal and his colleagues after they alleged Vadra received undue favours from real estate giant DLF. Vadra later deleted his Facebook comment after controversy started.

<sup>34</sup> Two Air India employees KVJ Rao and Mayank Sharma were arrested under Section 66A of the Information Technology Act,2000 for criticizing Supreme Court orders for allegedly posting derogatory remarks against the Supreme Court in a closed online group for Air India Employees.

<sup>35</sup> The government's crackdown over 300 web pages , including social media accounts in the backdrop of the Assam violence invited reactions from all the corners. It was found that the MoS for Communication and IT; Mr. Milind Deora's twitter account was also blocked by the government.

<sup>36</sup> Aseem Trivedi was exhibiting his political cartoons from Cartoons Against Corruptions in the anti corruption protest at Mumbai, when his website was suspended by Crime Branch, Mumbai. Hia cartoons also provoked RJD leaders, Ram Kripal Yadav (Now in the BJP), to initiate a discussion in the Rajya Sabha, labeling the cartoons as an "insult to the Indian Parliament". The ban on website initiated a hot debate over freedom of speech and expression in India. After the ban on the website, Aseem Trivedi started Save Your Voice, a campaign for internet freedom. In January, 2012, a case of Sedition (Section 124 A of the Indian Penal Code) was filed against him a t the District Court, Maharashtra. Additional charge were brought against him by the Maharashtra Police in Mumbai for insulting India's National Symbol's, under the State Emblem of India(Prohibition of Improper Use) Act,, 2005.

of application of Section 66A<sup>37</sup> of the Information Technology Act, 2000 and are under a lot of criticism/debate. Everyone is seeing this as an attack on democratic values and fundamental rights of freedom of speech and expression in particular.

### **Position after Supreme Court Judgement on Constitutional Validity of Section 66-A of the Information Technology Act, 2000<sup>38</sup>:**

In a landmark judgment, Supreme Court has struck down Section 66A of the IT Act. In their order, the court said, Section 66A is violative of Article 19(1)(a), not saved by Article 19(2), hence unconstitutional.

In a landmark judgement upholding freedom of expression, the Supreme Court on Tuesday struck down a provision in the cyber law which provides power to arrest a person for posting allegedly "offensive" content on websites. Terming liberty of thought and expression as "cardinal", a bench of justices J Chelameswar and R F Nariman said, "The public's right to know is directly affected by section 66A of the Information Technology Act." Justice Nariman, who pronounced the verdict in a packed court room, also said that the provision "clearly affects" the fundamental right to freedom of speech and expression enshrined under the Constitution.

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<sup>37</sup> Section 66A makes it an offense when you send, by means of a computer resource or communication device, any of the following information:

1. any information that is grossly offensive;
2. any information that has menacing character;
3. any information which you know to be false but which is sent for purpose of causing annoyance;
4. any information which you know to be false but which is sent for purpose of causing inconvenience;
5. any information which you know to be false but which is sent for purpose of causing danger;
6. any information which you know to be false but which is sent for purpose of causing obstruction;
7. any information which you know to be false but which is sent for purpose of causing insult;
8. any information which you know to be false but which is sent for purpose of causing injury;
9. any information which you know to be false but which is sent for purpose of causing criminal intimidation;
10. any information which you know to be false but which is sent for purpose of causing enmity;
11. any information which you know to be false but which is sent for purpose of causing hatred; or
12. any information which you know to be false but which is sent for purpose of causing ill will.

All the above as per (3) to (12) must be done persistently by using a computer resource or communication device.

13. any e-mail or electronic mail message for the purpose of causing annoyance;
14. any e-mail or electronic mail message for the purpose of causing inconvenience;
15. any electronic mail or electronic mail message to deceive the addressee or recipient about the origin of such messages;
16. any e-mail or electronic mail message to mislead the addressee or recipient about the origin of such messages.

<sup>38</sup> <http://www.dnaindia.com/india/report-landmark-judgement-by-sc-strikes-down-section-66a-of-it-act-2071523>

Elaborating the grounds for holding the provision as "unconstitutional", it said 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. The bench also referred to two judgements of separate UK courts which reached different conclusions as to whether the material in question was offensive or grossly offensive.

“We hold the section unconstitutional on the grounds that it takes within its sweep protected speech that is innocent in nature. It is liable to have a chilling effect on free speech and, therefore, has to be struck down,” the court said.

"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, the bench said, adding, "What may be offensive to a person may not be offensive to the other". The bench also rejected the assurance given by NDA government during the hearing that certain procedures may be laid down to ensure that the law in question is not abused.

The government had also said that it will not misuse the provision. "Governments come and go but section 66A will remain forever," the bench said, adding the present government cannot give an undertaking about its successor that they will not abuse the same. The bench, however, 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.

Posting defamatory and inflammatory content online, however, is still punishable under the Indian Penal Code. The court said procedural safeguards in the criminal procedure code already exist to ensure they are not misused.

**Conclusion:** There are some major issues involved in the application and implementation of various Sections of Information Technology Act, 2000 in letter and spirit in India. Sometimes, lack of knowledge and proper training/education of law enforcement agencies are one of the most important factors of mis use of Sections. The police stations are not sufficiently advanced for proper investigation of such incidents and due to this reason, they are only acting upon the directions/pressures of masses or groups with political clout to control immediate situation. Even though there is no doubt that this provision has been inspired by the noble objectives of protecting reputations and preventing misuse of networks, it has not been able to achieve its

goals. For India, being the world's largest, vibrant democracy, reasonable restrictions on free speech need to be very strictly construed. After judgement of Hon'ble Supreme Court on Section 66A of the amended Indian Information Technology Act, 2000 some other sections also has the potential of prejudicially impacting free speech in the digital and mobile ecosystems. It is the need of the hour that some sections of the Indian Information Technology Act, 2000 needs to be amended to make the Indian Cyber Law in sync with the principles enshrined in the Constitution of India and also with the existing realities of social media and digital platforms today<sup>39</sup>. The Supreme Court judgement to strikes down the most controversial Section 66A of the Information Technology Act in the wake of its alleged misuse in the few recent cases<sup>40</sup> even after the guidelines issues to restrict the mis use of the section 66A. It is also the need of the hour to follow the international standards set by the global community to provide this basic fundamental right of freedom of speech and expression to the citizens of the State.

**Suggestions:** In light of the above discussions, the author wants to suggest strengthening the democratic values and freedom of speech and expression given to citizens of this country in more healthy and proper manner as follows:

- (1) District level committee should be set up by the Government under the Chairmanship of Retired District Judge and eminent social activists/citizens for primary review of matter before filling of FIR or any other preventive measures against the accused person under the Information Technology Act, 2000 or any other legislation in case of offence related to Social Media. This will be in addition to the guidelines issues by the Ministry of Home Affairs, Government of India.
- (2) The Law enforcement below the rank of Additional Superintendent of Police agencies must be strengthened in the area of Cyber Law through regular training, camps and workshops to deal with technical matters effectively.
- (3) Cyber or virtual citizenship should also be highlighted by the Service Provider in the larger national interest of each country.

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<sup>39</sup> <http://www.chmag.in/article/dec2012/social-media-indian-cyber-law>

<sup>40</sup> **New guidelines:** No less than a police officer of a rank of DCP will be allowed to permit registration of a case under provisions of the Information Technology Act that deals with spreading hatred through electronic messages, following uproar over recent arrests under the controversial law.

In the case of metropolitan cities, such an approval would have to come at the level of Inspector General of Police. "... the concerned police officer or police station may not register any complaints (under Section 66 (A)) unless he has obtained prior approval at the level of an officer not below the DCP rank in urban and rural areas and IG level in metros".

- (4) Political parties must ensure the freedom of speech and expression particularly when there is any criticism against the party and political leaders of the party.
- (5) The matters registered under section 66A must be transferred to the Fast Track Courts for speedy disposal.
- (6) In each district, the government should set up a Cyber Police Station with trained personals to deal with these matters effectively.
- (7) Government should set up a High Level Committee to examine the issue to include Cyber Law and Security in 10+2 level in our country through proper amendment in the Acts.