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"An Analysis of Constitutional Validity of Section 66A, I.T. Act, 2000"

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ABSTRACT

Section 66A of The Information Technology Act, 2000 (hereinafter referred to as the 'IT Act') was introduced in the year 2009, by virtue of The Information Technology (Amendment) Act, 2009, Act no. 10 of 2009 (hereinafter referred to as the Amendment Act, 2009). However, it was held to be unconstitutional on the grounds of being vague and volatile of Art. 19 (1)(a) by the Hon'ble Apex Court on 25th March, 2015, in the case of Shreya Singhal v. Union of India (2015) 5 SCC 1 (hereinafter referred to as 'the judgement'). The present project would critically analyse the judgement limiting itself to the portion dealing with S.66A only. Successively, a tour into its practical application in the society, and the subsequent situation that arose because of the vacuum created due to the absence of S.66A would be discussed.

Keywords: Section 66A IT Act, Unconstitutional, Offence, Vague and uncertain

INTRODUCTION

"A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, ecommerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal code, the Indian Evidence Act and the code of Criminal Procedure to prevent such crimes."[1]

Thus, S. 66A was introduced with the want of creating a special provisions for crimes which are already present in IPC but not with respect to electronic media. It was considered important to have another special penal provision as the magnitude of such offences when done via an e-medium is more than that which could be possible if done on any traditional platform.

Connection between Sec. 66A and Objective of I.T. Act

IT Act was enacted to create equilibrium between the e-form of transaction and that old paper based transaction.[2] This aim of UNCITRAL also required creating a penal provision which

[1] Statement of Objects and Reasons [Amendment Act 10 of 2009].
[2] Statement of Objects and Reasons [Information Technology Act, 2000].

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would be vigilant and compatible to identify an offence and catch hold of the offenders by bringing the victim to justice. Thus, 66A being a penal provision is making an act as an offence when done in e-form regardless of already having penal provisions in IPC for tackling hate speech (S.153A & S.505).

Change is dynamic in nature therefore a law to guide the same must also be flexible enough. Hence, any law restraining the rights confirmed by it must not be read in a watertight compartment, rather it needs to have some open ending to keep pace with the changing technology, social and economic dimensions. To cope with the changing demography and behaviour of citizens, the 50th Report of the Standing Committee on Information Technology (2007-08) recommended this offence with the aim of having a self-enabling and people friendly Act.[3] Only a privilege few has the ability to understand the jargons of the legal language and the matrix of different statutes and code. Thus an amendment was made to have a precise solution to inform all the citizens of what rights and liabilities they have and along with the power of exploring and using the vastness of internet maybe anonymously.

This intention of the expert committee is very much synchronized with the Constitution Assembly's discussion of Art.19(2). It could be found from the discussion of Shri K.M Munshi, Shri Mahavir Tyagi and Dr. H.C Mookherjee (Vice President) that 'morality' was given the utmost importance.[4] S. 66A also aims to protect morality by providing stringent laws for cyber-crimes like misusing technology for child pornography, video voyeurism etc.[5]

Hence, it is evident that the objective of the amendment is in consistent with the objective of Art. 19 (2).

Comparison with Sec 127 of United Kingdom's Communications Act, 2003

The bare text of S. 66A is:

"66-A. 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 computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purposeof causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin

[3] 6, 10&12 50th Report of the Standing Committee on Information Technology (2007-08).
[4] Constituent Assembly Debates, Vol. No. VII, Book 2, Lok Sabha Secretariat, conversation of 1st December 1948, p. 730-731.
[5] *Supra* note 3

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> of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine […]

Firstly, The word 'menacing' is dexterously used as it has an inherent nature of describing a grave threat; upon reading the term harmoniously with Art.19(2) it is well understood that it is only national threat or others enumerated in the Art is covered under this word. No judiciary may punish an accused on any other ground.

Secondly, in sub clause (b) the phrase 'he knows to be false' is used, the legislature intents to protect the right of a person from being misinformed.[6]

Hence, by these additional criteria of 'for the purpose of' the ambit is rather narrowed down and only false statement that are not harmful to the public at large and not all false statement are criminalised. The same could be concluded for sub clause (c).

Now, let us compare it with S.127 of the Communications Act 2003.The comparison is vital as S. 66A has been adopted from this provision. The section read as:

127. Improper use of public electronic communications network

> (1) A person is guilty of an offence if he
>
> (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
>
> (b) cause any such message or matter to be so sent.
>
> (2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he
>
> (a) sends by means of a public electronic communications network, a message that he knows to be false,
>
> (b) causes such a message to be sent; or
>
> (c) persistently makes use of a public electronic communications network.

The legislature skilfully drafted Sec.66A. The concept though was adopted from United Kingdom yet it was well crafted to fit within Art. 19(2) of Constitution and address the changing needs of the Indian citizens. Words like 'indecent,' 'obscene' and 'anxiety to another' are omitted. In the absence of any word which particularly fixes the range of the victim like 'another' it could be interpreted that while S. 66A is both a remedy in rem and personam whereas Sec.127 by using the word 'another' instead of 'other' is a remedy in personam.

[6] Sahara India Real Estate Corporation Ltd. Securities and Exchange Board (2012) 10 SCC 603.

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Further, the heading of the two provisions focuses on two different end parties of a conversation. Sec. 66A focuses on decoding i.e., if a message is found offensive by the receiver then he/they could be a victim u/s 66A. Thus, until the decoder finds an information to be offensive and such information also fulfils other criteria enumerated in Sec.66A, even if the encoder encodes with the intent of causing offense it is not a crime the same.

On the other hand Sec. 127 focuses on the encoding thus even if a message is not found offensive by the decoder but if the authorities finds that the encoding is done with an evil motive the encoder is accused of a crime u/s 127.

Hence, by reading the bare text it could be found that the legislature is more focused in drafting a legislation that protects Art. 19(2) and is not to restrict the freedom of Art. 19(1)(a).

CRITICAL ANALYSIS OF SHREYA SINGHAL V. UNION OF INDIA (2015) 5 SCC 1

The Factual Matrix of the Case

On the night of 17th November, 2012, one Mr. Balasaheb Thackeray who is a resident of the State and the founder of the political party, Shiv Sena, which is the most prominent political party in the State of Maharashtra, died as the result of a cardiac arrest. Mr. Thackeray was a well-reputed political leader with many followers across the demography. To honour his death, his followers called for a bandh, to pay their respects and mourn his loss.

However, one Shaheen Dhada posted a status on Facebook voicing her dissatisfaction, which read as "With all respect, every day, thousands of people die, but still the world moves on. Just due to one politician died a natural death, everyone just goes bonkers… Respect is earned, given, and definitely not forced. Today Mumbai shuts down due to fear, not due to respect (sic)". This status was liked by one Renu Srinivasan of Palgarh.

Subsequently, on 19th November 2012, they were arrested under Sec.66A of the Information Technology Act, 2002. Although they were released later, this matter attracted widespread protest from the public. The main allegation was misuse of power of the police by invoking Sec.66A of the Act. Human Rights Commission had awarded each with a compensation of Rs.50,000 and directed the State Government of Maharashtra to pay the same.

Aggrieved by the same, one Ms Shreya Singhal, a young and public spirited 2nd year student of a law college, via filing a writ petition dated 29th November 2012 before the Hon'ble Supreme Court which is highest court of India, challenged the constitutional validity of S. 66A, S.69A, S. 79(3)(b) of the Act, Rr. 3-10,14 and 16 of Information Technology (Procedure and Safeguards for Blocking for Access to Information by Public) Rules 2009, and Rr.3(2) & (4) of Information Technology (Intermediary Guidelines) Rules, 2011 and S.118(d) of the Kerala Police Act.

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The writ petition was accepted and clubbed with other petitions with same grievance by the Hon'ble Supreme Court, and upon an application filed by Ms. Jaya Vindhyalaya, an interim order dated 16th May 2013 was passed by the Hon'ble Supreme Court during the pendency of the final judgement. The same was for compulsory compliance of the advisory issued dated 9th January 2013, by the Central Government via the Department of Electronics and Information Technology, with an immediate effect, to the State Governments and the Union Territories of India, for not making any arrest under Section 66A without approval of the senior police officer, not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level. The final hearing was made on 24th March 2015.

RATIO AND RATIONALE OF THE JUDGEMENT

Freedom of speech and expression are the paramount goal of our Constitution. As enumerated in the preamble liberty of thought and expression is a 'cardinal value that is of paramount significance under our constitutional scheme'. This liberty of Art.19(1)(a) has three dimensions namely, discussion, advocacy and incitement. The only restriction to this freedom is Art.19(2).[7]It is not the public interest but the public order that is protected u/a 19(2). It laid down the following test to determine whether an infringement is that of public interest or of public order, "Does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquillity of society undisturbed?" and the expressions of 66A is completely open-ended, vague and undefined, thus taking within its sweep innocent and protected speech. Further, it was also pointed out that there was no standard to manage the enforcement authority. Therefore, it was struck down on the grounds of being disproportional and over breath.

Tests of Sec 66A under the Light of Art. 19(1)(a)

S.66A is a limpid provision and clears the tests of reasonableness namely proximity,[8] proportionality and non-arbitrariness.[9]

Necessity and Proximity

For a restriction to be reasonable, it must be in line with the object of the legislature and must not go beyond.[10] The objective of enacting Information Technology Act, 2002 was to bring a municipal legislation at par with UNCITRAL Model Law[11] and one of the objectives of UNCITRAL was to make legislature that would recognise electronic devices and to give the user equal treatment as paper based documentation.[12] Hence, by synchronised objectives between the Act and the Amendment(2006) could be found, viz., both was intended to create

[7] Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410, 414 5 (The Supreme Court of India) (E.S.Venkataramiah, J. per).
[8] Ram Monohar Lohia v. State of Bihar AIR 1966SC740.
[9] Chintaman Rao v. State of M.P, AIR 1951 SC 118.
[10] *Supra* note 8.
[11] *Supra* note 3.
[12] UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, 3&6.

a self-enabling Act. The judiciary needs to closely examine the underlying purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied thereby, the disproportion of the imposition,[and] the prevailing conditions at the time.[13]

Proportionality and Non-Arbitrariness

Restriction to be proportional and not excessive.[14] The Supreme Court by reading the findings of Chintaman Rao[15] along with developments in European jurisprudence, it was held that in "the court has to keep in mind the principle of proportionality and the test of necessity. The test of necessity of such orders has to be evaluated 'not only in the context of administration of justice but also in the context of the rights of the individuals to be protected from prejudicial publicity or misinformation."[16]

It is already contended that Section 66A has a very narrow scope of functioning and there may not be any doubt with the wordings of the legislature. However, in arguendo, if any doubt in its application remains as to what must contain as reasonable for considering a word to be offensive. Their Lordship in the case of S. Rangarajan has held that for determining whether someone is affected by the speech act was held to be that of an 'ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man,' it also reiterated the fact that the allegedly offending sections of a work had to be read in the context of the whole work and not in isolation.[17]

Henceforth, by analysing the object of the amendment, text of S.66A, comparing the same with S.127 and filtering it through the test of reasonableness it could be concluded that the concern section is not vague and is clearly worded with certainty.

VERIFICATION UNDER ARTICLE 19 (2)

Rules of Interpretation

By taking an intrinsic approach to interpret the term 'information' and the terms 'electronic mail' and 'electronic mail message,' as the present provision is directed to the value and effect of the same in the mind of the society at large. Indian Court had taken up a different approach for freedom of expression from that of US courts[18] as unlike the latter the Apex Court in Cricket Association of Bengal case[19] implicitly rejected the free-

[13] State of Madras v. VG Row, AIR 1952 SC196.
[14] Virendra Ojha v. State of Uttar Pradesh, AIR 2003ALL102; Ram Monohar Lohia v. State of Bihar AIR 1966SC740; Chintaman Rao v. State of M.P, AIR 1951 SC 118.
[15] *Supra* note 9.
[16] *Supra* note 6.
[17] S. Rangarajan v. P Jagjivan Ram (1989) 2 SCC 574.
[18] Abrams v. United States 250 US 616 (1919) 630; Wendell Holmes J. 'the ultimate good desired is better reached by free trade in ideas- that the test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.'
[19] Ministry of Information and Broadcasting v. Cricket Association of Bengal (1995)2SCC161: S.Rangarajan v. P Jagjivan Ram, (1989) 2 SCC 574.

marketplace-of-ideas theory, preferring a balance of public interest approach in deciding whether the state could have a monopoly on airwaves.[20]

Further, in understanding the relationship between free and subversive speech, Indian Courts have explicitly rejected the American 'clear and present danger' test on the grounds that fundamental rights guaranteed under Art. 19(1) of the Indian Constitution are [sic] not absolute rights and are subject to the restriction placed in the subsequent clause of Art. 19.[21]

Rather Indian Court laid down two test in the case of Ramji Lal Modi,[22] the question in this case was whether Sec. 295A IPC was protected by Art. 19(2). It was contended by the petitioner that Sec. 295A sought to punish such speech which insulted a religion or religious beliefs of a community, but not all insults necessarily leads to public disorder. Since the provision covers speech that does not create public disorder, it should be held to be unconstitutional. The Supreme Court disagreed with this interpretation and held that:

> *"the phrase 'in the interest of' has a much wider connotation than 'for the maintenance of' public order. Thus, 'if certain activities have tendency to cause public disorder, a law penalizing such activities as an offence cannot but held to be a law imposing reasonable restriction "in the interest of public disorder" although in some cases those activities may not actually lead to a breach of public order.' It was further held that S.295A did not penalised every act of insult, but only those which were perpetrated with the 'deliberate and malicious intention of outraging the religious feelings of a class"*

The court laid down two tests:

Aggravated Form- defines the criteria for what counts as an insult, and

Calculated tendency- the insult to disrupt the public order.

However, the calculated tendency test is to be made with the bad tendency test (no requirement of actual proximity between speech and consequence) test while interpreting 'in the interest of'. By using the calculated and bad tendency test it is certain that Sec. 66A protects national security, public order and morality.

Protects others Right

Constitutional provision is 'never static' it is ever evolving and ever changing and, therefore does not have a narrow, pedantic or syllogistic approach.[23]

Public order is synonymous with public peace, safety and tranquillity. The court had already laid down the distinction between strong criticism of the government and those

[20]Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, The Oxford Handbook Of The Indian Constitution (South Asia Edition, Oxford University Press, 2017).
[21] Babulal Parate v. State of Maharashtra AIR 1961 SC 884.
[22] Ramji Lal Modi v. State of U.P , 1957 SCR 860: AIR 1957 SC 620.
[23] Life Insurance Corporation v. Manubhai D. Shah (1992) 3 SCC 637.

words that excite with the inclination to cause public disorder and violence[24] -

> *"Strong words used to express misappropriation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal."*

S.66A r/w Hohfeldian Jural Correlation indicates that it is a provision that is to be read as a protector of primary rights of the decoder/s and at the same time is a reminder of duty to the encoder, viz., it creates a balance/ harmonious construction between Rt. u/a. 19(1)(a) and other provisions of the constitution.[25] It protects rights such as Right of not getting misinformed[26], Right against getting defamed, Right of privacy[27], etc.

Possibility of Abuse of Power Not a Ground of Unconstitutionality

The bare possibility that the discretionary power may be abused is no ground for invalidating a statute.[28]The possibility of abuse of a statute otherwise valid does not impart to it any invalidity.[29] The presumption is that public official will discharge their duties honestly and in accordance with the law.[30]

Hence, under Sec. 66A arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Sec. 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.[31]

The presumption is that the IO is using the power cautiously. Once the policy is laid down by law it cannot be held invalid merely on the ground that the discretion conferred by it may be abused in some cases and may be exercised in a manner which is in fact discriminatory.[32] However, if the power is actually abused in any case the exercise of the power is actually abused in any case, the exercise of the power may be challenged as discriminatory or mala

[24]*Supra* note 8.
[25]MSM Sharma v. Shri Krishna Sinha, AIR 1959 SC 395:(1959) Supp (1) SCR 806.
[26]*supra* note 6.
[27]R.Rajgopal v. State of Tamil Nadu, (1994) 6 SCC 632:AIR 1995 SC 264; Art. 19(1)(a) is to be balanced with Art. 21.
[28]Ramkrishna Dalmia v. Tendolkar AIR 1957 SC 532.
[29]R.K. Garg v Union of India 1985 1 SCC 641; Union of India v Elphinstone Spinning and Weaving Co. Ltd AIR 2001 SC 724.
[30]Pannalal v. Union of India AIR 1957 SC 397.
[31] M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649.
[32]*supra* note 28.

fide,[33] but the statute will not fail on that ground.[34]

Mere factor that some hardship or injustice is caused to someone is no ground to strike down the rule altogether if otherwise the rule appears to be just, fair and reasonable and not constitutional.[35] The question whether the provisions of the Act provide reasonable safeguards against the abuse of the power given to the executive authority to administer the law is not relevant for the true interpretation of the clause.[36]

Where the vesting of discretionary power by the Legislature is justified, the mere possibility of abuse of power by the Executive is no test for determining the reasonableness of the restriction imposed by the law.[37] If, however, the statutory power or discretion is shown to have been abused by the authorities, the person aggrieved shall have his remedy against the illegal order,[38] but that would be no ground for invalidating the Statute itself.[39]

AFTERMATH OF SHREYA SINGHAL CASE

With the striking of Sec.66A an immediate legal vacuum got created as no cyber-crime is punishable in real time and it is the traditional age old provisions that would now govern any online offence as much as it would for an offline one. The Supreme Court has also accepted this position of law in the case of Yogendra Kumar Jaiswal v. State of Bihar.[40] In the Shreya Singhal too, Hon'ble Justice Nariman observed that a intelligible differentia is created under the special provisions of IT Act as sending millions one message by one click needs to be seen through different glasses than sending one message to one at a time, through traditional postal services.[41]While S.66A is available for small scale day to day offences, Sec.153A and 505 of the IPC provides remedy to offences of large scale, relating to maintenance of public order. In the virtual world the crimes are very differently committed thus the methods used for collection of evidence and for trying such crimes also needs to be unique too. Unlike, many generic IPC provisions, like 153A and 505, under which a person could be committed, 66A was a bailable provision.

According to the NCRB, Crime in India 2015's statistics around 4,154 new cases were filed and 3,137 arrests were made in 2015,[42]while ironically only 2,423 were made in the previous year.[43] In addition, about 575 people were in jail on 1st January, 2016 which is twice as many as the 275 in prison before declaring Sec. 66A as unconstitutional.[44]Finally

[33]Naraindas v. State of M.P. AIR 1974 SC 1232; Thakorebhai v. State of Gujarat; AIR 1975 SC 270.
[34]*supra* note 28.
[35] AP Coop All Seeds growers Federation Ltd. V. D. Achyuta Rao, (2007) 13 SCC 320.
[36]Arunachala v. State of Madras, AIR 1959 SC 300 (303).
[37]Khare v. State of Delhi, AIR 1950 SC 211.
[38]Virendra v. State of Punjab, AIR 1957 SC 896.
[39]Harishankar Bagla v. State of Madhya Pradesh, AIR 1954 SC 465.
[40]Yogendra Kumar Jaiswal v. State of Bihar, (2016) 3 SCC 183
[41]*supra* note 7, at ¶ 98.
[42] PRISON STATISTICS INDIA 2015, National Crime Records Bureau.
[43] PRISON STATISTICS INDIA 2014, National Crime Records Bureau.
[44] Crime in India Statistic 2016, National Crimes Record Bureau.

on 27th November, 2018 with the introduction of Bill[45] by Miss. Jagdambika Palin Lok Sabha S. 66A finally got deleted from the bare text of IT Act.

It was also brought in the news of April, 2015 that a 'clear and better' successor of 66A would be drafted to bring clarity on contentious issues such as 'the rank of the officials who could order cases to be registered and under whose orders arrests could be made.'[46]

u/s 79(3)(b) and the Intermediary Rules the now before taking down any content from the internet a prior permission must be received by the intermediaries in the nature of court order / notification from a government agency for removing specific information / content.

CONCLUSION

A civilized society is not one where people has freedom to express themselves without any limitation but it is a society where one's right of freedom is well balanced with rights of another.[47] Thus, S.66A was a provision that was enacted by the democratic parliamentarian representatives of the people to create an environment where different rights of different people can co-exist. Thus, as judiciary has the obligation to do such interpretation that may fill the vacuum and not create one, S. 66A is to be provided with an interpretation within the framework of Art. 19 (2).

In LIC v. Manubhai D Shah[48] the court observed that unlike the First Amendment in the United States, Art. 19(1)(a), is not an absolute right and must be exercised in a way that does not jeopardise the rights of another or clash with 'the paramount interest of the state or community at large.' It is humbly submitted by the Respondent that 66A of the Information Technology Act, 2002 (hereinafter referred to as 'Act') is a sound provision enacted by the Legislators. The same through puts a restriction on the rights guaranteed under Article 19(1) of The Constitution of India (hereinafter referred to as 'Constitution') yet it is ordained to fall under the ambit of 'law' Art. 19(2) and is not a vaguely worded legislature for malevolent motives.

SUGGESTIONS

Freedom of speech and expression has to be given a broad canvas, but it has to have inherent limitations which are permissible within the constitutional parameters. We reiterate the said right is a right of great value and transcends and with the passage of time and growth of culture, it has to pave the path of ascendancy, but it cannot be put in the

[45] Bill No. 193 of 2018, THE INFORMATION TECHNOLOGY (AMENDMENT) BILL, 2018.
[46] Surabhi Agarwal, Aman Sharma, *In bid to fight terror on social media, draconian Section 66A may be back in a softer form*, ET Bureau, Feb 26, 2016, https://economictimes.indiatimes.com/news/politics-and-nation/in-bid-to-fight-terror-on-social-media-draconian-section-66a-may-be-back-in-a-softer-form/articleshow/51146719.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.
[47] Damodar Ganesh and ors. v. State, AIR 1951 Bom 459.
[48] *Supra* note 24.

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compartment of absoluteness. There is a constitutional limitation attached to it.

Thus, in the interest of justice it may had made guidelines like burden of proof on the authorities to show offence u/s 66A has been committed, no immediate arrest but warning, permanent imposition of the advisory dated 9th January 2013 etc., for executives for proper implementation of the provision. The advisory issued dated 9th January, 2013 suggested that "arrest to be made only with a prior approval of such arrest, from an officer, not below the rank of the Inspector General of Police in the metropolitan cities or of an officer not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level, as the case may be."

However, in order to avoid any judicial activism the court may have along with striking Sec.66A down could have also requested the law commission to come up with recommendations to fill the vacuum that got generated with such removal.

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