Bad in law

In wake of the cases of misuse of Section 66A of the IT Act, experts say it's time we amended it. The government is not impressed

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There is an increasing demand to amend the Information Technology (Amendment) Act, 2008, as it is being often invoked to suppress dissent and pursue political and personal vendetta. Intended to curb phishing and other internet-related crimes, the law has emerged as a tool to regulate free speech. Legal experts and internet activists, who believe that the provisions of section 66A are vague and ambiguous, have voiced their concern over its misuse. The government should redraft (amend) the "poor piece of legislation", experts have strongly contended.

Under the section, a person is culpable, if she or he sends 'information that is grossly offensive or has menacing character'. The law, however, does not define what constitutes 'grossly offensive' and 'menacing character'. "Or any information", the section 66A goes on to state, "which he knows to be false, but for purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, persistently making use of such computer resource or a communication device..."

For the first time, causing "annoyance", "inconvenience" and "insult" have been made a criminal offence punishable up to three years of imprisonment. This, however, if done orally does not qualify for cognisable offence.

According to RS Sodhi, former judge of the Delhi high court, "It (amendment Act) is not a good law, it needs to be amended. It is too wide, vast and fluid. It has not been testified and there are no limits codified." Without defining terms like annoyance, inconvenience, insult, "the lawmakers have left it to the whims and fancies of officials to interpret the way they want". This eventually leads to stupid acts, says Justice Sodhi, referring to people who have been arrested for posting on social media and websites.

In criminal law, things are always black and white. If law provides for grey area, it is a bad law, says the former high court judge.

'Freedom of expression is not absolute' is usually the argument form the government. The constitution of India provides for freedom of expression under article 19 (a), subject to 'reasonable restrictions'. However, the constitution has clearly defined reasonable restrictions, which include information pertaining to national sovereignty and integrity, security of the state, public order, decency, morality, defamation or incitement to an offence. In case of section 66A, no such definition has been provided. It has been left to the discretion of cops and complainant.

Under section 66A of the IT Act, a person is culpable if she or he sends 'information that is grossly offensive or has menacing character'. The law, however, does not define what constitutes 'grossly offensive' and 'menacing character'.

"The section is contrary to our constitutional value, as it can censor legitimate views — if it causes offence or inconvenience," says Chinmayi Arun, who teaches at national law university, Delhi, and is also a member of centre for internet and society. Demanding changes in the law, she is of the view that the government needs to narrow down the scope of the given section, make it consistent with constitutional freedom and basic human rights.

According to advocate Sumedha Dua, who also runs legal consultancy firm Aequitas Legal Solutions: "The drafting of this law depicts the insecurity and inefficiency of the establishment in being unable to comprehend the dynamics of this medium (internet). It also reflects their desire to control it by any means whatsoever and that's why such an ill- and vaguely-drafted section has been incorporated."

In words of Aseem Trivedi, the government is making the already conservative society only more conservative. Trivedi was apprehended for violating section 194 of the Indian penal code and section 66A of the IT Act. Referring to the guidelines issued by the central government to all states and UTs to give the discretion of arrest under the Act to an officer of IG rank, Trivedi says the government is not interested in fixing the problem, rather it is resorting to superficial methods – like revoking section 66A in the case of Shaheen Dhada and Renu Srinivas and suspending a few cops. "Going by the law, Shaheen and Renu did commit an offence. Then why did the government revoke it?" questions Trivedi.

Cases, registered under section 66A, are being reported on almost a daily basis where a more influential party is trying to reign in dissent.

Consider the case of animal rights activist Manoj Oswal. Invoking the controversial section 66A of IT (Amendment) Act, 2008, the police apprehended Oswal, who had created a website to help a 75-year-old woman in her fight against the elder brother of NCP leader Sharad Pawar.

The website – savelila.in – listed out names of Prataprao and Abhijeet Pawar, who are allegedly trying to grab the personal property of Lila Parulekar. Lila has contested a case against Pawars on the ownership of Marathi newspaper Sakal, which was founded by her parent in 1932. Lila is also a renowned animal lover, her three acre bungalow shelters close to 200 animals, mostly stray dogs.

To reign in views against themselves, Pawars filed an FIR, under section 66A, against Manoj Oswal for allegedly causing annoyance and inconvenience. Oswal filed a petition in the Maharshtra high court, seeking quashing of the FIR under section 66A which he says is not applicable in his case.

Interestingly, in his petition, Oswal adds another argument of differentiating between "sending" (as precisely worded

in the law) and "publishing"— a lesser known argument in the overall debate. Oswal contends, in his PIL, that publishing information on a website/portal cannot be construed to mean "sending". According to his petition, the section contemplates the word 'send' along with 'communications device' leaving very little room to include 'circulation/distribution/publication'. When the court heard this argument, it had directed Oswal to file another petition, separately on section 66A (against the union of India).

"Section 66A of the IT Act simply cannot apply to material published on Facebook, twitter, blog, websites or any other internet tool that involves releasing content in the public domain," the petition says.

Sumedha has a similar viewpoint. "The section, in my view, is very specific in using the word 'sending' as against the term 'publishing' so ideally posts on social networking sites should not fall into the domain of this section," she says, adding, "but then you are expecting too much from the guy at the police station if you think that they will comprehend these legal nuances".

Recently, the petitioner has decided to move the apex court in Delhi as it is considering similar petitions on the controversial section.

Seeking reply from the state on the ground for lodging the FIR against Oswal, the court has given 22 dates. Every time the state government has asked for an extension. In the recent hearing, held on March 20, the government has again sought an extension of three weeks.

While the apex court may come up with a decision on the constitutional validity of the section 66A in the days to come, the fate of Lila Parulekar, whose health has already deteriorated, and the fate of hundreds of animals — sheltered in her bungalow – hangs in the balance.

Consider another case of two crew members of Air India Mayank Mohan Sharma and KVJ Rao, who were arrested in the midnight of May 11, 2012, for posting messages on Facebook critical of complainant, a rival trade union leader hailing from NCP, and a few political leaders. They were suspended by their employer, too. However, in a departmental inquiry, Air India found that the duo were victims of factional cold war in the organisation. They were both reinstated later.

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The arrest of professor Ambikesh Mahapatra, who teaches chemistry at Jadhavpur University, is one of the first and classic cases, which clearly shows wrong application of a wrongly worded legislation. He was apprehended for violating section 66A through mailing to his friends a few cartoons of chief minister of West Bengal — which were already posted on Facebook 15 days back.

There are other ways of the misuse also. Sharing her experience of handling cases under section 66A, Sumedha says, "It is already being used by disgruntled spouses against each other." Though such cases are not very prevalent, this is just a beginning, believes Sumedha.

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In a stakeholders' meeting with the government held on November 25, 2012, in Delhi, Pranesh Prakash, policy director at the Bangalore-based centre for internet and society, pointed at the wrong use of word 'or' in place of 'and' in the clause c of section 66A. Union communications minister Kapil Sibal, however, refused to buzz.

The section 66A clause c reads: "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".

"Let the courts interpret," Sibal told the stakeholders' gathering.

In the first place, if parliament had debated the nuances of clauses and sections of the IT Act 2008 and its implications over freedom of expression and its misuse, there was no need for taking it to the courts.

In a way, critics believe, letting the judiciary interpret the sections of laws passed by parliament, the government has abdicated its own responsibility.

Similarly, the Intermediary Rules 2011 (issued under the IT Act), throttles free speech over the internet. It has made internet service providers, web hosting service providers and social networking sites liable for content posted on their web. According to the rules, user request for taking down content from the internet should be complied with in 36 hours. The rules do not provide a chance to the author to be heard or at least being informed about the axing of the content. This is against the principle of natural justice, say experts. The axing of web pages critical of IIPM business school based on orders of a Gwallior court and blanking out of social media pages praising Afzal Guru by a government's order are a few such examples.

A parliamentary committee, in a report on IT legislation and subsequent amendments submitted on March 23, 2013, has been critical of the government for using vague and contradictory terminology in the legislation. However, the question whether the government will finally take corrective measures remains unanswered. ■

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