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DECODING SECTION 66A OF IT ACT - PART II

How not to get arrested under 66A for your online chatter

Aids policy Section 66A has both positive and negative effects: it can be a powerful weapon against online trolls and



At the same time it can also be misused.

[malusare](#), 09 Jul 2014, Citizen Matters

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Bengaluru has largest internet penetration among the cities in the state. The chances of Section 66A of Information Technology Act being used here are high compared to other cities. In the [first part](#), we explained what is Section 66A of IT act and various views on the same. In this write up, we try to provide some guidelines on how the law is implemented, and how to be safe.

What constitutes offense?

Advocate Pavan Duggal in his article [Section 66A OF IT Act - your friend or foe?](#) has cited 17 points that may get you booked under Section 66A of the amended Indian Information Technology Act, 2000. Therefore stop!

- 1) If you swear or abuse somebody, the swear words could be said to be grossly offensive. The same could also be said to be having menacing character and your act could come within the ambit of Section 66A(a) of the amended Indian Information Technology Act, 2000.
- 2) Anything defamatory which affects the character, reputation, standing or goodwill of a person could also be deemed to be grossly offensive.
- 3) Making false allegations against the character of a person or character assassination could also qualify as grossly offensive and having menacing character.
- 4) Using insulting words or symbols which are obscene, could also qualify as grossly offensive and having menacing character.
- 5) Calling someone names could also be brought within the ambit of being grossly offensive or having menacing character
- 6) Posting pictures of a person in uncomplimentary situations and environments could also be said to be grossly offensive or having menacing character. For example, if you morphed someone's face on the face of erotic/nude model's body, your action wouldn't be just obscene, but would also be grossly offensive and menacing.
- 7) Electronic morphing which shows a person depicted in a bad light could also be seen as an example of information being grossly offensive or having menacing character.
- 8) Using vernacular bad words in English alphabets could also qualify as grossly offensive or having menacing character.
- 9) Threatening somebody with consequences for his life, apart from being separate offences, could be also construed as information which is grossly offensive or menacing.
- 10) Threatening to expose the ill-deeds of somebody could also qualify as menacing.
- 11) Information containing malicious, mischievous character assassination

- 12) Information containing morphed pictures aimed at hurting religious sentiments.
- 13) Information showing deities of particular religions in an uncomplimentary light.
- 14) Putting the picture of a person against a slogan/phrase/saying which does not depict his true character or personality.
- 15) Deceiving the addressee or recipient about the origin of such messages. For example, sending emails from a fake email account to another person, could qualify as an offence under Section 66A.
- 16) Further, misleading the addressee or recipient about the origin of such messages, e.g. sending e-mails and SMSs in the name of [Reserve Bank of India](#) for big lotteries, could also invite the provisions of Section 66A.
- 17) E-mail containing fake recruitment offers to unsuspected members of the public, could also qualify as an offence under Section 66A.

What words are offensive under Section 66A?

We enquired with the three out of seven DCPs and a Cyber Crime officer in charge of Bengaluru city about the basis for deciding whether a post is just a comment or an offence. All of them had one answer: It depends on the nature of the complaint filed.

Dr. T D Pawar, DCP of Bangalore South-East zone said: “We decide what sections are to be imposed, based on the nature of the complaint lodged in the FIR. The complainant explains which words, gestures, signs or the images that are used online were offensive or threat to the nation or someone’s life.”

Once the FIR is filed, the case goes to cyber cell for further investigation. If the person is found guilty, then depending on the nature of the complaint, the punishment is awarded. Pawar says: “Then the person is booked under the related sections of the Indian Penal Code which is like a bible for us. We follow the rules and procedures mentioned in it thoroughly. It has all the definitions like what is defaming, pornography etc.”

In other words, 66A is used along with other sections of Indian Penal Code, as Section 66A is not very powerful itself, but empowers other IPC sections.

On the lines of what Pawar said, Roopa D, Superintendent Police of Bangalore Cyber Crime Branch said, “It is difficult to say which words are not to be used. It is subjective in nature. The words that cause annoyance, enmity etc. are also subjective. We look at the way the word is used or it is perceived or may be the history of the conversation and whether it really has some intent to instigate any animosity or problem in the community or nation. Mostly we receive complaints against stalkers.”

How does the police track you?

To procure data on any case, Cyber Crime Branch cell of the respective state has to go through series of levels. In case of social networking sites like Facebook, they seek help from [Interpol \(CBI\)](#), Delhi to ask details from the service provider whose services were used by the victim to post or send complaints.

Therefore the entire investigation is at the mercy of the service providers who may or may not provide details. Roopa said, “Many a times they (Facebook) decline from giving information on the grounds that it is not available as their server does not have information more than a month-old. They (Facebook) say it gets deleted after a month. Only if there is high traffic on a particular post, the information on three-month-old data can be retrieved from Facebook.”

She said, it is difficult to retrieve any message or photos circulated via WhatsApp, as the company has failed to provide the details asked by the cops. “Since WhatsApp makes use of phone numbers, we are able to track data circulated on it,” she said. “We have the necessary experts in our cell. Sometimes technology changes at faster rate than we can imagine. On such occasions we seek help from outside agencies to retrieve data from hard disk or any other source.”

However, she said e-mails are easily trackable, especially the mails on gmail, hotmail, rediff mail, as their servers have the capacity to store data for a longer period of time. One more reason is. they have their offices in India. “These companies are cooperative during the investigation,” said Roopa. At times, when Facebook gets linked with Gmail, older facebook information becomes trackable.

How can you not get arrested under section 66A?

Since the ambit of the section 66 A is very vast, Pavan Duggal advises to be careful and not to flirt with danger. He advises to be extremely careful while making use of Computer, Computer System, Computer Network or using Mobile Phone, Smart Phone, iPhone, iPad, Tablet, Smart Devices, Personal Digital Assistants, BlackBerry or any other communication devices.

SP Roopa suggests that making use of privacy option on Facebook and any other social networking sites where you can be make your post open to only targeted people who know you is the best option.

“Try not adding people whom you do not know. Take precautions before adding any one or you can always block them,” she says.

She adds that one should try not to be in controversy, abstain oneself from making comments that are offensive in nature. “Do criticise, but let the criticism be constructive in nature that benefits all. Try to keep away from the generally taunted, offensive words,” she suggests.

Gautam Bhatia, an expert in free speech, says, “So I think the quest for finding suitable language vis-a-vis 66A is ultimately a futile one.”

Is 66A dangerous?

Pavan Duggal calls section 66A, a whirlpool in which if you get caught, it is very difficult to get out.

Section 66 A is perceived as ‘draconian’ by many. Because,

- 1) An individual's basic right of freedom of expression and speech is curbed at the behest of someone’s perception.
- 2) Punishment under this section can extend up to imprisonment upto three years.
- 3) It is cognisable i.e. anyone can be arrested without an arrest warrant.

Roopa, Superintendent of Police, Cyber Crime Branch, said that because the section is cognisable it becomes difficult for the police to decline from registering the case. She adds, “Police officers do try to settle or pacify the matter with the two parties without lodging an FIR, but there are times when the parties doesn’t listen. If we do not take action after registering the case, we will be questioned.”

One of the benefits of the section 66A is that it is bailable, she adds. However, the section changes its nature when it gets clubbed with provisions of the criminal laws, with a different set of rules becoming applicable.

Is Section 66A redundant?

Pranesh Prakash, Policy Director of [The Centre for Internet and Society \(CIS\)](#) has called the section “largely redundant” in his blog [“Breaking Down Section 66A of the IT Act”](#) for obvious reasons that the section echoes what other sections of the IPC talk about.

However he believes that, "Its unconstitutionality can be cured by better, narrower wording, even then one would need to ensure that there is no redundancy due to other provisions in other laws."

How similar are the provisions of the Section 66A with other sections of other acts? Here is table that Pranesh has presented with the help of his colleague Snehashish Ghosh :

Section	Term(s)/phrase(s) used in 66A	Term(s)/ phrase(s) used in similar sections
Section 66A (heading)	Punishment for sending offensive messages through communication service, etc	Section 127, CA, 2003, "Improper use of public electronic communications network"
Section 66A(a)	Any person who sends, by means of a computer resource or a communication device	Section 1(1), MCA 1988, "Any person who sends to another person..."
Section 66A(a)	Grossly offensive	Section 1(1)(a)(i), MCA 1988; Section 127(1)(a), CA, 2003; Section 10(2)(a), Post Office (Amendment) Act, 1935*; Section 43(1)(a), Telecommunications Act 1984*; Section 20, India Post Act 1898
Section 66A(a)	Menacing character	Section 127(1)(a), CA, 2003
Section 66A(b)	Any information which he knows to be false	Section 1(1)(a)(iii), MCA 1988 "information which is false and known or believed to be false by the sender"; Section 127(2)(a), CA, 2003, "a message that he knows to be false"
Section 66A(b) "purpose of..."	Causing annoyance	Section 127(2), CA, 2003
	Inconvenience	Section 127 (2), CA, 2003
	Danger	
	Insult	Section 504, IPC, 1860
	Injury	Section 44 IPC, 1860, "The word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property."
	Criminal intimidation	Sections 503 and 505 (2), IPC, 1860
	Enmity, hatred or ill-will	Section 153A(1)(a), IPC, 1860
	Persistently by making use of such computer resource or a communication device	Section 127(2)(c), CA, 2003, "persistently makes use of a public electronic communications network."
Section 66A(c)	Deceive or to mislead	-

Pavan Duggal believes that the section 66 A of the IT act 2000 needs to be re-visited. He says it is unconstitutional and goes much beyond the scope of Article 19(1) of the constitution that guarantees Freedom of Speech and Expression.

"There is no need for such a provision as there are already reasonable restrictions stated in the article 19(2) that states freedom of speech and expression shouldn't affect the sovereignty and integrity and security of the country, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." Therefore he believes that the section 66 A needs to be struck down.

How to be safe online

Given the complexity of the issue, here are some simple, gentle guidelines you can follow, to be safe on cyberspace.

- Maintain separate lists of friends on Facebook depending upon your closeness to them. Separate list for family, close friends, acquaintances will enable you to categorise who can see your posts.
- Smart phones have made life easy, but the applications you install are capable of reading the information stored in the cell phone. Check the privacy section of the app before installing. All the latest Facebook and twitter versions are capable of storing your phone identity and SIM number and associating it with your Facebook or Twitter accounts. Be careful about what you install on your cell.
- Do not install unknown apps on your mobile. Most of the apps are capable of identifying your location, phone number etc.
- Be gentle in your expressions that can be viewed publicly.
- Do not spread information you are not sure about, or feel may be a rumour or false.
- Block suspicious people who might be trolling you.
- Do not add unknown people as friends
- Facebook, Twitter or email groups are “social” in nature, hence should be treated as public forums.
- You might get annoyed with many posts which you may not like, but do not counter them with offensive or confrontational comments. A little diplomacy on what you comment on public forums does not hurt.
- Understand the social and cultural changes around you when you are posting on controversial matters. You might think it might not be offensive, but someone with a completely different cultural or social value base might take issue with it, and if they are powerful and want to make you a target, they might file a complaint.

While there are chances of Section 66A misused by vested interests, there is also a positive side to it: you can use it as a weapon against those who harass you online.

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Nikita Malusare is a Staff Journalist at Citizen Matters.

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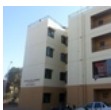
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