

DISABLE UNCONSTITUTIONAL SECTIONS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Recently, while hearing an application filed by the People's Union for Civil Liberties (PUCL), the Supreme Court expressed shock that despite its [declaration of Section 66A of the Information Technology \(IT\) Act, 2000 as being unconstitutional](#) six years ago (*Shreya Singhal vs. Union of India*), criminal cases are still being registered by the police under this Section. The PUCL said that 1,307 cases had been registered since 2015 across States and therefore the Court must issue guidelines against the registering of FIRs by the police under this head.

In 2015, the Supreme Court had declared Section 66A of the IT Act, which made online posting of information considered as "grossly offensive" a crime punishable by jail, as being violative of Article 19(1)(a) of the Constitution and not saved under the ambit of reasonable restrictions defined in Article 19(2). It had also said that the expressions used in Section 66A were open-ended, undefined and therefore arbitrary.

Editorial | [Undead section: On Section 66A of the IT Act](#)

In 1983, the Court had struck down Section 303 of the Indian Penal Code (IPC), which provided capital punishment for murder by a person serving a life term in another case, as being unconstitutional. In *Mithu v. State of Punjab*, it held that the punishment was not based on rational principle as no judicial discretion was available to a life convict. In 2018 (*Navtej Singh Johar v. Union of India*), the Court [read down Section 377 of the IPC](#) criminalising "unnatural sex" as being unconstitutional. Similarly, in *Joseph Shine v. Union of India* (2018), the Court held adultery as defined under Section 497 of the IPC as being [manifestly arbitrary, discriminatory and violative of the dignity of a woman](#) and therefore, unconstitutional.

Undoubtedly, the [registration of FIRs by the police under these sections](#) is illegal and violative of the Court's directions. Though such cases may not always be registered intentionally, negligence by Station House Officers (SHOs) must be nipped in the bud. The supervisory police officers at the sub-divisional level must ensure that such sections, if invoked due to lack of knowledge at the police station level, are removed at the earliest. The Superintendents of Police must fix responsibility on the erring officer and take corrective action. Everyone responsible for the negligence should not only be answerable to the courts for contempt but also be liable for departmental action. If the SHOs and others don't mend their ways despite reprimands, their annual confidential reports could be dented with adverse entries. Action can also be initiated under the new Section 166A of the IPC which provides punishment for up to two years for disobeying directions under the law.

The best way to avoid registration of offences under sections held unconstitutional is to educate police officers of all ranks about such provisions in basic training institutes. Second, as the Attorney General of India, K.K. Venugopal, had suggested, there could be a mention in brackets near the provision that the provision has been struck down, so that FIRs are not registered under those sections. Third, unconstitutional sections of the IPC can be disabled in the Crime and Criminal Tracking Network and Systems (CCTNS). Most States register FIRs in the CCTNS either on a real-time basis or in offline mode and synchronise this data with the State Data Centre as soon as connectivity is restored. In case police stations don't have connectivity, the data (i.e., FIR in electronic format) are taken to the nearest police station that has connectivity and uploaded. The CCTNS came in handy when the Supreme Court directed the States in 2016 to upload FIRs on official websites within 24 to 72 hours of registration. In Chhattisgarh, we have

disabled these Sections in the system. Other States could follow suit.

The police must ensure that no FIR is registered under unconstitutional sections and no one is harassed for the negligent actions of SHOs.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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