

Section 66A once more

After the Supreme Court struck down the draconian and arbitrary Section 66A of the Information Technology Act, an expert committee appointed by the government has proposed legislation to meet the challenge of hate speech online, by amending the Code of Criminal Procedure, the Indian Penal Code and the IT Act. Such a move could be read as an attempt to recast the whole legal framework to make up for a section which had been excised. This could produce the very "chilling effect" that the Supreme Court had warned against, when it struck down the offending and offensive section in 2015.

In their judgement, Justices Rohinton F. Nariman and J. Chelameswar had observed that the weakness of Section 66A lay in the fact that it had created an offence on the basis of undefined actions, such as causing "inconvenience, danger, obstruction and insult", which do not fall among the exceptions granted under Article 19 of the Constitution, which guarantees the freedom of speech. These very terms, definable only by a dictionary (indeed, the court was provided with a Collins dictionary) and without legal certitude, must recur in any future legislation to the same end.

The court also observed that the challenge was to identify where to draw the line. Traditionally, it has been drawn at incitement, a term which has become abundantly understood through repeated legal usage, while terms like obstruction and insult remain subjective. In addition, the court had noted that Section 66A did not have procedural safeguards like other sections of the law with similar aims, such as the need to obtain the concurrence of the Centre before action can be taken. Local authorities could proceed autonomously, literally on the whim of their political masters.

It is true that certain aspects of information technology require specific laws, for they are novelties. An SQL injection attack is not the same as breaking and entering, and hosting illegal files is not necessarily the same as fencing contraband property. But hate crime is as old as the hills. The court refused to distinguish between traditional media and the internet in this regard, which suggests that existing laws, if diligently applied, should suffice. Unconstitutional curbs on free speech are bound to resurface in any legislation designed to fill the void happily vacated by Section 66A, which had affected the lives of far too many innocents. It was a legislative crime which must not be revisited by the back door.

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