



To,

The Hon'ble Chief Justice of India and his companion judges  
of the Hon'ble Supreme Court of India, at New Delhi

The humble petition of the petitioners  
above-named

**MOST RESPECTFULLY SHOWETH:**

1. That the present petition seeks to challenge the constitutional validity of various provisions of the amended Information Technology Act, 2000, under Article 32 of the Constitution of India by way of Public Interest Litigation, including Sections 66A, 69A and 80 as being violative of Articles 14, 19 & 21 of the Constitution of India.

The petitioner no. 1 herein is Common Cause, which is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating common problems of the people and securing their resolution. The petition is signed and filed on behalf of the petitioner no. 1 by its Director Shri. Kamal Kant Jaswal, Former Secretary Department of Information Technology, Government of India. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization. Its initiatives in public interest litigation have greatly contributed to the evolution of this instrument and its adoption in the country for securing redress of public grievances. Mr. Jaswal is authorized to file this petition under the rules of the society.

Memorandum and authorization letter are being filed along with the Vakalatnama.

Petitioner No. 2 is Mr. Somnath Bharti, who is an advocate practicing in this Hon'ble Court and is an alumnus of IIT Delhi. He is the present President of IIT Delhi Alumni Association and has expertise in laws involving technologies and has done extensive research on these issues.

Petitioners have not made any representation to the respondent prior to filing this petition since a similar case is already pending before the Court.

2. That in the last few months various cases have come to light which have demonstrated in no uncertain terms the abuse of the extremely vague and ambiguous provisions of the Information Technology Act, 2000 (as amended in 2008) by authorities. These cases have had a chilling impact upon the enjoyment of fundamental rights by the members of the public.

3. Some of the important events that have happened in this regard are as follows:

(a) A case was registered against Prof. Ambikesh Mahapatra by the State of West Bengal *inter alia* on the ground that he had forwarded some political cartoons which already existed on Facebook.com to some other people. A case under Section 66A, I. T. Act was

registered and the Professor was arrested and later bailed out.

- (b) In the case of Ravi Srinivasan, a complaint was made by Karthi Chidrambaram, son of Mr. P. Chidrambaram, Union Finance Minister, on the ground that the accused had tweeted content defamatory of the complainant. Consequently, a case under Section 66A of the Information Technology Act, 2000 was registered. Ravi Srinivasan was arrested and subsequently released.
- (c) Two employees of Air India were booked for "derogatory" remarks made against the Prime Minister's Office and the national flag while commenting on a strike by Air India pilots. The duo was charged under Section 506(2) of the Indian Penal Code and Sections 66 A and 67 of the Information Technology (IT) Act, besides the relevant sections of the Prevention of Insults to National Honour Act, 1971. Later, the two were granted bail.
- (d) Section 66A again came into sharp focus after Shiv Sena Chief Bal Thackeray's death, when a young girl, Shaheen Dhada, put a post on Facebook questioning the closure of Mumbai and another girl liked her post. For the said matter, a case under Section 66A of the Information Technology Act, 2000 was registered and both the girls were arrested.
- (e) In the Birthday Cake case, a boy was arrested under Section 66A on the ground that he had sent a cake to a girl's house with the girl's image (which had

electronically been transmitted), reproduced on top of the cake. This case really takes the cake, in so far as bizarre applications of Section 66A go.

4. That the following substantial questions of law of general public importance arise from the present petition:

### **QUESTIONS OF LAW**

- A. Whether Section 66A of the Information Technology Act, 2000 containing extremely wide, vague and ambiguous terms is violative of the Article 14 of the Constitution of India, in as much as Section 66A places unreasonable restrictions on online free speech as opposed to free speech in the real world?
  
- B. Whether Section 66A of the amended Information Technology Act, 2000 is violative of Article 19 of the Constitution of India, in as much as the restrictions put on online free speech under Section 66A go far beyond reasonable restrictions defined under Article 19(2) of the Constitution?
  
- C. Whether mere causing of annoyance or inconvenience to a person by legitimate online free speech of another should be a ground for limiting the freedom of online speech, at a time when free speech in the actual world cannot be limited on such grounds under Article 19(2) of the Constitution of India?

D. Whether the vague description of various acts constituting an offence under Section 66A of the IT Act, without any definition or prescription of standards whatsoever and being capable of wanton abuse is violative of the sacrosanct freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution and so also violative of Article 14 and 21 of the Constitution?

E. Whether various terms such as 'grossly offensive' or 'has menacing character', 'annoyance', 'inconvenience', 'danger', 'obstruction', 'insult', 'injury', 'criminal intimidation', 'enmity', 'hatred', or 'ill will', employed in Section 66A, in the context of the digital format, are arbitrary, fanciful and vague, giving the State and its various agencies and instrumentalities a scope for misusing or abusing them and hence are violative of the Constitution of India.

F. Whether the use of vague and arbitrary terms under Section 66A of the amended Information Technology Act, 2000 provides the scope for their blatant abuse by the law-enforcement agencies, thereby prejudicially impacting the enjoyment of the fundamental rights under Chapter III of the Constitution of India?

G. Whether the inherent defect of the unconstitutionality of Section 66A of the amended Information Technology Act,

2000 can be rectified by secondary legislation in the form of guidelines?

H. Whether online freedom of speech and expression should be subject to greater restrictions than freedom of speech and expression in the actual world?

I. Whether Section 69A of the amended Information Technology Act, 2000 is violative of Article 14, 19 & 21 of the Constitution of India, given the fact that it does not provide any effective remedies of redressal for the legal entities/members of the public whose information, generated, transmitted, received, stored or hosted on any computer resource, is blocked for access by the public or caused to be blocked for access under Section 69A of the amended Information Technology Act, 2000?

J. Whether Section 69A of the amended Information Technology Act, 2000 and rules made thereunder, viz. the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 are violative of Articles 14, 19 & 21 of the Constitution of India, in as much as the same do not provide for unblocking of blocked content/information generated, transmitted, received, stored or hosted in any computer resource?

K. Whether Section 80 of the amended Information Technology Act, 2000 is violative of Articles 14, 19 & 21 of the Constitution of India, in as much as the same gives unbridled powers to a police officer, not below the rank of an Inspector, to arrest without warrant any person found in any public place who is reasonably suspected of being about to commit any cybercrime/ offence under the Information Technology Act, 2000?

### **BRIEF FACTS**

5. That the Information Technology Act, 2000 was enacted in India as a legislation to provide legal recognition for transactions carried out by means of electronic data interchange and other means of an electronic communication commonly referred to as electronic commerce, which involved the use of alternatives to paper-based methods of communication and storage of information. Other objectives behind the enactment of Information Technology Act, 2000 were to facilitate electronic filing of documents with Government agencies and to further amend four different laws, viz. the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, and the Reserve Bank of India, 1935.

6. That the Information Technology Act, 2000 was further amended by the Information Technology (Amendment) Act,

2008, which inserted various provisions in the Information Technology Act, 2000.

7. The following important provisions of the Information Technology Act, 2000, as amended by the Information Technology (Amendment) Act, 2008, are under challenge in the present petition.

***“Section 66A- 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 makes by making use of such computer resource or a communication device; or*

*c) 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,*

*shall be punishable with imprisonment for a term which may extend to two three years and with fine.*

*Explanation:- For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."*

***"Section 69A - Power to issue directions for blocking for public access of any information through any computer resource.***

*(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.*

- (2) *The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.*
- (3) *The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.”*

**“Section 80 - Power of police officer and other officers to enter, search, etc.**

- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) any police officer, not below the rank of a Inspector, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act*

*Explanation.—For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.*

- (2) *Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person*

*arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.*

*(3) The provisions of the Code of Criminal Procedure, 1973(2 of 1974) shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.”*

8. That the aforesaid provisions are patently violative of the Indian Constitution and are liable to patent abuse and misuse in view of the subjective discretion given to the authorities concerned. This is corroborated by all the cases mentioned above, viz. Prof. Ambikesh Mahapatra case, Ravi Srinivasan case, Air India Employees case, Shaheen Dhada case, and Birthday Cake case.

9. That the present petitioner as a Society being aggrieved, is challenging the constitutional validity of Section 66A, 69A & 80 of the amended Information Technology Act, 2000 under Article 32 of the Constitution of India *inter alia* on the following grounds, which can be taken in the alternative and without prejudice to one and another.

### **GROUND**

A. That the phraseology of Section 66A of the IT Act, 2000 is so wide and vague and incapable of being judged on objective standards, that it is susceptible to wanton abuse and hence

falls foul of Article 14, 19 (1) (a) and Article 21 of the Constitution.

B. That all terms constituting an offence under Section 66 A of the IT Act have not been defined either under the IT Act, 2000 or under the General Clauses Act or under any other legislation and thus susceptible to abuse and consequentially violative of Article 14 and 21 of the Constitution. That there have been so many examples where the alleged misuse and abuse of section 66A IT act have hit national headlines. They include the application of this section in the cases of Ms Shaheen Dadha, a 21-year-old girl, who was arrested for questioning the shutdown of the city after Shiv Sena Chief Bal Thackeray's death in her post on Facebook, which was 'liked' and shared by her friend, Renu, who was also arrested by Thane Rural police in Maharashtra; businessman Ravi Srinivasan, who was arrested by Puducherry police in October 2012 for his tweets about Union Finance Minister Sri P. Chidambaram's son, Karthi Chidambaram; Ambikesh Mahapatra, a Kolkata professor, who was arrested in April 2012 for posting cartoons critical of Ms Mamata Banerjee on social networking sites, Nandakumar Venkataraman, CEO-designate of Ecole Mondiale International School, Chennai, arrested in 2008 by the Thane Cyber Crime Cell, Maharashtra for hosting an allegedly libellous blog about a company's board of governors; and many more.

C. That Section 66A IT Act has led to extensive abuse and misuse because of its extreme vagueness, incongruity, looseness and ambiguity. This section violates the Fundamental Right under Article 19(1)(a), which guarantees that all citizens shall have the right to freedom of speech and expression, subject to reasonable restrictions provided under Article 19(2), i.e. in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

D. That it is pertinent to point out that there is a judicial precedent established by the Hon'ble Supreme Court and the various Hon'ble High Courts that no arbitrary, vague, incoherent, sloppy, slack, wide, pervasive and blanket ban/restrictions can be imposed on the right to freedom of expression and the right to life and personal liberty.

E. That section 66A is grossly violative of the freedom of expression guaranteed by the Constitution of India and has all the potential and possibilities of being misused and abused, thereby leading to abridgement of human rights and the fundamental rights enshrined in Part III of the Constitution of India.

F. That the vague and wide terms employed in Section 66A of the amended Information Technology Act, 2000 are incapable of being judged on objective standards and are susceptible to wanton abuse and hence are violative of Articles 14, 19 & 21 of the Constitution of India. Seen in the context of the law of the land decided by this Hon'ble Court in *A K Roy vs Union of India (1982) 1SCC 271*, it may be submitted that Section 66A of the amended Information Technology Act, 2000 is capable of wanton abuse and further capable of being extended cavalierly in such a manner as to allow the deprivation of the personal liberty of people, which *per se* would be a flagrant violation of the principle of fairness and justness of procedure that is implicit in Article 21 of the Constitution of India.

G. That Section 66A of the amended Information Technology Act, 2000, is capable of tremendous abuse which could have a chilling effect on online free speech. Its arbitrary invocation has elicited strident protests from all sections of the stakeholders, including the online community.

H. That as per the established law of the land, the constitutional protection of free speech is calculated to insulate the freedom from such a "chilling effect". Section 66A of the amended Information Technology Act, 2000 allows the institution of criminal proceedings on frivolous grounds against law abiding citizens exercising legitimate freedom of speech and expression as guaranteed to them under Article 19 of the

Constitution of India, which by itself is tantamount to harassment of *bona fide* law abiding citizens, inadequately mitigated by eventual discharge.

I. That Section 66A IT Act is extremely vague, wide, all pervasive, confusing, incongruent and ambiguous, and violates the Fundamental Rights of the citizen under Articles 14, 19 and 21 of the Constitution of India, and has all the possibility of being misused and abused.

J. That Section 66A of the Information Technology Act, 2000 infringes the freedom of the press, which is considered as the fourth estate, which takes upon itself the responsibility to inform and educate the public through various media and in this case, the internet, more particularly through websites, blogs, posts, tweets etc. It is the settled view that the freedom of speech and expression includes the freedom of the press and circulation. The importance of this freedom enshrined in the Constitution cannot be overemphasized as it forms a part of the fundamental rights which are the touchstone of our democratic set-up. Freedom of press is the most cherished and valued freedom in a democracy; and democracy cannot survive without a free press. In absence of a free and independent press, free debate and open discussion are not possible and so also, the process of generating thoughts would be stifled. The Apex Court has time and again through various judicial pronouncements reiterated the primacy and

significance of the freedom of press. It would be apt here to mention the most relevant case of *The Indian Express Newspapers (Bombay) Pvt. Ltd & Ors. Vs. Union Of India & Ors. AIR 1986 SC 872* wherein the Apex Court as early as 1985 held that that freedom of press is the heart of social and political intercourse and it has assumed the role of a public educator. The Court in its powerful and poignant words held that the constitutional guarantee of this freedom is not so much for the benefit of the press as it is for the benefit of the public as it exposes the weaknesses of the governments and makes for an informed electorate. The Court also held that:

*“16. The theory is that in a democracy freedom of expression is indispensable as all men are entitled to participate in the process of formulation of common decisions. Indeed, freedom of expression is the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succor and protection to other liberties. It has been truly said that it is the mother of all other liberties. The Press as a medium of communication is a modern phenomenon. It has immense power to advance or thwart the progress of civilization. Its freedom can be used to create a brave new world or to bring about universal catastrophe.”*

Section 66A is capable of being used as a handle to curb the freedom of the press and hence is violative of the Constitution of India.

K. The Section 66A of the Information Technology Act negates the law laid down in *Life Insurance Corporation of India & Union of India & Anr. vs. Prof Manubhai D. Shah & Cinemart Foundation AIR 1993 SC 171*, wherein the Court held the freedom of speech to be a basic human right in the following words:

8. *"Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The People of India declared in the Preamble of the Constitution which they gave unto themselves their resolve to secure to all citizens liberty of thought and expression.*

*The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to*

*circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution.”*

- L. That the freedom to air one's views, howsoever inconvenient or annoying, is the life-line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound the death knell of democracy and help usher in autocracy or dictatorship.
  
- M. That Section 66A of the amended Information Technology Act, 2000 is otherwise violative of the law laid down by this Hon'ble Court in the case of *Pepsi Foods Limited v/s Special Judicial Magistrate (19888) 5SCC 749*, wherein this Hon'ble Court has stipulated that the criminal law cannot be set into motion as a matter of course and that the order of the Magistrate while summoning the accused must reflect that he has applied his mind to the facts of the case. Given the established principles of law in this regard, it is submitted that Section 66A has elements which have the effect of curtailment of freedom of speech and expression.

N. That Section 69A of the amended Information Technology Act, 2000 is violative of Article 14, 19 & 21 of the Constitution of India, given the fact that it does not provide any effective remedies of redressal for the legal entities/members of the public whose information, generated, transmitted, received, stored or hosted on any computer resource, is blocked for access by the public or caused to be blocked for access under Section 69A of the amended Information Technology Act, 2000. Section 69A of the amended Information Technology Act, 2000 and rules made thereunder being the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 are violative of Articles 14, 19 & 21 of the Constitution of India, in as much as the same do not provide for unblocking of blocked content/information generated, transmitted, received, stored or hosted in any computer resource.

O. That Section 80 of the Information Technology Act, 2000 is violative of the Constitution as it gives absolute, unbridled, and arbitrary powers to a police officer of the rank of an Inspector to arrest any person at any public place on the reasonable apprehension that he is about to commit any offence under the Information Technology Act, 2000. It may be submitted that there can be no scientific formula or objective guideline, which could give any guidance to a police officer in arresting any person in a public place who is about to commit an

offence/cybercrime under the Information Technology Act, 2000. There is a total failure of the said Section to lay down any criteria which could serve as a pragmatic guideline for giving effect to the intent of the legislature. This is as per this stipulated law of the land laid by the Hon'ble Supreme Court in *A K Roy vs Union of India (1982) 1SCC 271*. Section 80 of the amended Information Technology Act, 2000 is capable of patent abuse and allows a police officer of the rank of an Inspector to arbitrarily exercise the powers conferred by it. It is respectfully submitted that there are no checks and balances under Section 80 of the amended Information Technology Act, 2000 and that it is susceptible to patent abuse and in its current form violative of Articles 14, 19 & 21 of the Constitution of India.

That the petitioners have not filed any other petition, suit or claim regarding the matter is dispute in this Hon'ble Court or any other Court or Tribunal throughout the territory of India.

### **PRAYERS**

Under the circumstances, the petitioners respectfully pray that this Hon'ble Court may be pleased to:

- (a) Issue appropriate writ declaring Section 66A of the amended Information Technology Act, 2000 as violative of Articles 14, 19 & 21 of the Constitution of India and hence unconstitutional;

(b) Issue appropriate writ declaring that Section 69A of the amended Information Technology Act, 2000 is violative of Articles 14, 19 & 21 of the Constitution of India and hence unconstitutional;

(c) Issue appropriate writ declaring that Section 80 of the amended Information Technology Act, 2000 is violative of Articles 14, 19 & 21 of the Constitution of India and hence unconstitutional;

(d) pass such other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Drawn by

Filed by

**PAVAN DUGGAL**

**PRASHANT BHUSHAN**

Advocate

Advocate for the Petitioners

New Delhi

Dated: \_\_\_\_/January/2013