

# Multimedia Training Kit

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## Group Discussions and Case Studies

### Freedom of Association and Freedom of Assembly

Collection of Cases specific to India

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## Scenario 1 – Testing the restrictions to free online speech in India

Section 66A of the Information Technology Act (IT Act) 2000 (Amend. 2008), establishes the punishment for sending offensive messages through any communication service. The particulars that this specific provision highlights in subsection (a) are about information that is “grossly offensive” or has a “menacing character”. Then it goes on in sub section (b) to include information that causes “annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will”. Broadly, it brings under its jurisdiction all kind of digital activity including (but not exhaustive of) status updates, tweets, wall posts, group messages, emails and picture shares across any online platform and using any kind of communication device. When created it was looked at like a game changer in the domain of Internet communication and content regulation about individuals, associations, companies and the Government at large. However, it turns out that it was never used like it was supposed to. Within four years, the first PIL against this law was filed and it was demanded that such a provision be abolished.

**Table 1: Incidents of Section 66A of The IT Act, 2000**

<b>November 2011:</b> Manoj Oswal - for allegedly having caused ‘inconvenience’ to relatives of Nationalist Congress Party chief Sharad Pawar for allegations made on his website. Section 500 of (Defamation), Indian Penal Code, 1860 also used.	<b>April 2012:</b> University Professor Ambikesh Mahapatra arrested for a political cartoon about West Bengal Chief Minister Mamata Banerjee.
<b>November 2012:</b> Two girls arrested over a comment questioning the total shutdown in the city for a political leader's death. Section 295A, IPC also used.	<b>March 2015:</b> Vicky Khan was arrested for sharing a critical post about senior minister Azam Khan of Samajwadi Party

This jurisdiction in the times of WhatsApp did not lose its stand when Sayed Waqar, an MBA student from Bhatkal, Karnataka was arrested based on a complaint by Jayant Tinaikar against an image he received that showed BJP leaders LK Advani, Rajnath Singh, Sushma Swaraj, Baba Ramdev, Maneka Gandhi, Varun Gandhi and others attending the final rites of Narendra Modi. This picture was captioned ‘*Na Jeet Paye Jhooton Ka Sardar — Ab Ki Baar Antim Sanskar* (A false leader will never win, this time it's final rites)’. Even Sayed's roommates were brought in for questioning but were released the same day. The case never saw trial because Sayed was found not to be the originator. Roughly, around 18 arrests were made during the general election for circulating Anti-Modi digital content. However, the constitutionality of such arrests in terms of equality and fairness is questionable.

Finally in 2015, by means of a doctrine in law, as a result of the PIL in 2012, this particular section has been shadowed totally. Shocks to the supports of freedom of online speech came even after that when the Supreme Court ruled that any speech going against any “historically respectable figure” will be considered “putatively obscene”.

### **Additional information**

- <http://bangalore.citizenmatters.in/articles/know-this-law-well-it-can-arrest-you-for-a-facebook-post-or-text-message>
- <http://timesofindia.indiatimes.com/city/bengaluru/MBA-student-arrested-for-anti-Modi-message/articleshow/35610877.cms>
- <http://cyberblogindia.in/autobiography-of-section-66a-of-the-it-act2008/>
- <http://cis-india.org/internet-governance/blog/analysis-of-news-items-and-cases-on-surveillance-and-digital-evidence-in-india.pdf>
- [http://www.telegraphindia.com/1140617/jsp/nation/story\\_18520612.jsp#.VXlwEnWlyko](http://www.telegraphindia.com/1140617/jsp/nation/story_18520612.jsp#.VXlwEnWlyko)

### **Questions for Discussion**

1. In your opinion, what is the correct replacement for this law relating to freedom of online speech; what are the exact words that can demarcate a crime apart from “offensive, ill-will, hatred” etc.?
2. Do you think that there should be a limit on the freedom of speech online; is it that Internet is a free platform for whatever is to be shared?
3. Do you believe Section 66A was barbaric or was it just an exaggeration or misuse of the law?

## Scenario 2 – Cyber Bullying – The case of Kavita Krishnan

Sec 66A introduced via Information Technology Act Amendment 2008 talked about **Punishment for sending offensive messages through communication service, etc.** According to it any person who sends, by means of a computer resource or a communication device

1. any information that is grossly offensive or has menacing character;
2. 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,
3. 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 (Inserted vide ITAA 2008) shall be punishable with imprisonment for a term which may extend to two to three years and with fine.

It encapsulates any message sent via electronic medium or an attachment in the form of text, images, audio, video and any other electronic record transmitted with the message which majorly deals with cyber bullying.

In April 2013, activist Kavita Krishnan was invited by Rediff to participate in a chat discussing violence against women. Being the Secretary of the India Progressive Women's Association she willingly accepted the offer.

Questions started popping at her screen as soon as the setting for the chat was done at her office. After a little while during the session someone with the handle "Rapist" appeared. Like any other stereotypical men, the first message of the rapist to Krishnan read "Tell women to not wear revealing clothes, then we will not rape them" followed by *a gaali*. Krishna replied back. After a moment of silence, the Rapist replied "Kavita tell me where I should come and rape you using condom". Krishna was taken aback and hurriedly replied, 'Give me your name and address, and I'll show you'. This didn't stop the Rapist and he continued threatening Krishnan because of which she had to leave the chat session in between.

On 24<sup>th</sup> March 2015, section 66A became a history after Supreme Court's judgement on arrest of Vicky Khan for making a critical post about Azam Khan, a senior minister of Samajwadi Party. It has become hard to convict anyone under our current laws. Vakul Sharma, a New Delhi-based advocate in Supreme Court who specializes in cyber laws says there is no exact definition of cyber bullying under the Indian Penal Code (IPC) or the Information Technology (IT) Act. Earlier, these cases were booked under Section 66A of the IT Act but that was revoked.

### Additional information

- <http://www.firstpost.com/living/rape-threats-on-rediff-kavita-krishnan-speaks-out-727395.html>
- <http://police.pondicherry.gov.in/Information%20Technology%20Act%202000%20-%202008%20%28amendment%29.pdf>
- <https://www.parentcircle.com/cms/clip/view/438/>
- <http://cyberblogindia.in/autobiography-of-section-66a-of-the-it-act2008/>

- <http://www.livemint.com/Leisure/lpQCFqjgETbXachoWRxysO/Cyber-bullying-Nip-it-in-the-bud.html>

### **Questions for Discussion**

- What kind of policies and law can Indian Government adopt on their own or from other nations to tackle cyber bullying?
- According to you what steps can be taken to have a genuine identity of every user in the virtual world?

## Scenario 3 – Anonymous #OpIndia... Engaged!

In 2012, the Indian Government blocked various file sharing websites on the basis of a “John Doe” order by the courts in favour of a Chennai based firm, Copyright Labs to prevent copyright infringement of an upcoming movie.

Sites like Dailymotion, Vimeo, Pastebin and various torrent tracker websites were blocked in this proactive move to prevent piracy.

In retaliation, hacktivist group Anonymous targeted the websites of various government agencies, bodies and political parties. The web sites of the Department of Telecom, the IT ministry, the BJP and INC parties and the Supreme Court, among others, were all hit by DDoS attacks lasting over a day using the group's preferred weapon: the low orbit ion cannon (LOIC).

Anonymous India had earlier released a video on Youtube warning the Indian government against the arbitrary blocking of the websites and gave a time of 1 week to reverse the order.

### Additional Information

- <https://docs.google.com/file/d/0Bxi2TzVXu15ZU19Ec1RQZX1RdVdUb3c2S3EwSk1Udw/edit?pli=1>
- <http://www.indiancustomers.in/vimeo-dailymotion-pastebin-331.html>
- [http://www.theregister.co.uk/2012/05/21/india\\_anonymous\\_cert\\_ddos/](http://www.theregister.co.uk/2012/05/21/india_anonymous_cert_ddos/)
- [http://www.theregister.co.uk/2012/05/18/anonymous\\_ddos\\_india\\_sites/](http://www.theregister.co.uk/2012/05/18/anonymous_ddos_india_sites/)
- <http://arstechnica.com/security/2012/05/indian-supreme-court-orders-pirate-bay-pastebin-blocks-gets-ddosed/>
- <https://youtu.be/52zwjkSVx2k>

### Questions for Discussion

1. Do you think that hacktivism is an effective tool for protest?
2. Would you have protested against the blocking of website? If yes, how would you have rallied individuals online against the order?