



## Undead section

The invalid Sec. 66A is often invoked out of ignorance but serves as a tool of harassment.

### A tool of harassment

1. It is quite disconcerting that the Supreme Court has been informed for the second time in two years that Section 66A of the IT Act, which was struck down as unconstitutional six years ago, is still being invoked by the police and in some trial courts.
2. One can see why the Court deemed it “a shocking state of affairs” when a petition by the People’s Union for Civil Liberties (PUCL) came up for hearing.
3. Section 66A made messages deemed by the police to be offensive or menacing to anyone, or those that caused “annoyance”, a criminal offence if these were sent through a computer or computer resource. It prescribed a prison term of up to three years on conviction.
4. In its landmark judgment in Shreya Singhal (2015), the Court ruled that the provision was vague and violated the freedom of free speech. It was so broadly defined that it took into its sweep protected speech also, and therefore upset the balance between the exercise of the free speech right and the imposition of reasonable restrictions on it.
5. In January 2019, too, the Court’s attention was drawn to the same problem of the invalidated provision being used by the police to register cases based on complaints.

### The dead section being invoked to harass:

1. Not much seems to have changed since then, and it is quite surprising that the police headquarters and prosecutors in the various States had not disseminated the effect of the Court ruling among officers manning police stations.
2. There were also instances of courts framing charges under Section 66A even after lawyers had cited the 2015 judgment. The PUCL has said as many as 745 cases are still pending in district courts in 11 States.
3. It is not difficult to surmise that police officer who receives complaints and register them as First Information Reports may not be aware of the judgment,



though one cannot rule out instances of the section being invoked deliberately as a tool of harassment.

4. Ignorance of the law is no excuse for the citizen, and it must equally be no excuse for police officers who include invalidated sections in FIRs.
5. Recently, police in Uttar Pradesh booked a journalist for defamation under Section 500 of the IPC, even though the Supreme Court has ruled that defamation can be pursued only by way of private complaints and there can be no FIR.

### Way Forward:

1. The current hearing may result in directions to States and the police, as well as the court registries, for appropriate advisories to both station-house officers and magistrates, but it is not necessary for those concerned to wait for such orders.
2. Police chiefs and the directorates of prosecution must proactively begin a process of conveying to the lower courts and investigators all important judgments and their effect on the practices relating to the investigation, prosecution and the framing of charges from time to time.