

SHRI M.M. PALLAM RAJU: Sir, I thank Dr. Karan Singh for his observations. He has been so committed to the cause of education. I am sure that his commitment finds a reflection in the way this Ministry is functioning. The UGC is the regulatory authority through which the Central Government enforces its vigilance on the whole subject of education. I agree that it needs to be strengthened. We are working towards it. We will definitely take suggestions from all the hon. Members towards strengthening the UGC.

MR. CHAIRMAN: Thank you. Now, Question 303. *...(Interruptions)...*

प्रो. एस.पी. सिंह बघेल : सर, मेरी पार्टी के 15 सांसदों में से अकेला मैं एक सवाल पूछना चाहता हूँ। *...(व्यवधान)...*

MR. CHAIRMAN: Supplementary question is not a party right.

PROF. S.P. SINGH BAGHEL: I know, Sir. लेकिन, आपकी कर्टसी की मर्सी कभी इधर भी हो सकती है? *...(व्यवधान)...*

श्री सभापति : सवाल हर तरफ रोटेट होते हैं। अगर आपको दिलचस्पी हो, तो आपको डेटा दिखाया जा सकता है। यह सेलेक्टिविटी की बात नहीं है। *...(व्यवधान)...* Please *...(Interruptions)...*

Misuse of Section 66A of the IT Act

*303. SHRI JAI PRAKASH NARAYAN SINGH: Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether it is a fact that Section 66A of the IT Act is prone to misuse by law enforcement agencies;

(b) whether the said Section goes beyond the parameters of restriction of speech set out under Article 19 of the Constitution of India; and

(c) if so, the steps being taken by Government to amend the Section so that it is not misused by police and other law enforcement agencies?

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI KAPIL SIBAL): (a) to (c) A Statement is laid on the Table of the House.

Statement

(a) No, Sir. Section 66A was provided in the Information Technology Act,

2000 based on the international best practices and similar provisions in the Communications Acts of a number of countries.

(b) The provisions of section 66A of the Information Technology Act, 2000 are in line with the freedom of speech and expression and citizen's rights enshrined in articles 19 and 21 of the Constitution of India.

(c) The Government has held discussions with stakeholders including the Industry Associations, intermediaries and users to address the issue of proper implementation of the provisions of the Act. It has been agreed to provide necessary guidelines to prevent misinterpretation of the provisions of the Act and to minimise the unintended consequences.

श्री जय प्रकाश नारायण सिंह : सर, अभी हाल ही में मुम्बई में धारा 66A के तहत फेसबुक पर कमेंट करने पर दो लड़कियों को गिरफ्तार किया गया। यह बात हर कोई जानता है कि पुलिस को गिरफ्तार करने की ताकत भी है और अधिकार भी है, लेकिन क्या सरकार आई.पी.सी. का ज्ञान पुलिस ऑफिसर्स को देती है या नहीं कि इस धारा के तहत वे उनको गिरफ्तार कर सकते हैं या नहीं कर सकते हैं? अगर वे ऐसा नहीं कर सकते हैं, तो फिर क्यों उनको गिरफ्तार किया गया और उसके लिए पुलिस को प्रशिक्षण देने के लिए क्या सरकार के पास कोई व्यवस्था है?

श्री कपिल सिब्बल : सर, आपके माध्यम से सबसे पहले तो मैं यह कहना चाहता हूँ कि हमारे हिसाब से कई जगहों पर आई.टी. एक्ट की धारा 66A का दुरुपयोग हो रहा है। उसकी कई वजहें हो सकती हैं। उनमें से एक वजह यह भी हो सकती है कि जो **executing agency** है या जो **Sub-Inspector of Police** है, शायद उसको सेक्शन 66A ...**(व्यवधान)**... यह स्टेट कर रही है। यह कई स्टेट्स में हो रहा है, केवल एक ही स्टेट में ऐसा नहीं है। तो यह जानकारी पुलिस को होनी बहुत जरूरी है कि किस तरह से धारा 66A का इस्तेमाल करना है और यह लाजिमी है। मैं चाहूंगा कि राज्य सरकारें इसके बारे में **executing agencies** को अवगत कराएं।

दूसरी बात यह है कि जहां तक मुम्बई का सवाल है, मैंने कुछ जानकारी मंगवाई थी। वहां दो प्रावधानों का इस्तेमाल हुआ है। उनमें से एक **Section 295 (A) of the IPC** है और दूसरा, **66A of the IT Act** है। फिर, उन्होंने 295(A) तो खत्म कर दिया और उसके बजाए **IPC का 505(2)** लगा दिया। इस आधार पर वह **investigation** चल रही है। व्यक्तिगत तौर पर मैं कह सकता हूँ और आज के दिन सरकार की भी यही राय है कि यह जो मामला मुम्बई में हुआ, वह उचित नहीं था और 66A का इस्तेमाल करना भी उचित नहीं था। लेकिन, मैं समझता हूँ कि आने वाले दिनों में हमको सभी स्टैक होल्डर्स को बिठा कर समझाना होगा

कि जो **freedom of expression** है, वह इस देश में **fundamental** है और चाहे कोई भी सरकार हो, लोकतंत्र के लिए यह बहुत जरूरी है कि हमें **freedom of expression** को पूरी तरह से सुरक्षित रखना है।

जहां तक इसके दुरुपयोग की बात है, हम यह भी विचार कर रहे हैं कि सारी राज्य सरकारों को दुरुपयोग खत्म करने के लिए एक **advisory** दी जाए कि 66ए की जो यह ताकत है, इसका उपयोग सब-इंस्पेक्टर ऑफ पुलिस को खुद नहीं करना चाहिए, जब तक कि उसका **approval at a certain high level** न मिले। इसके बारे में हम सोच रहे हैं और जल्द ही जल्द **hopefully** हम इस पर **advisory** भी लागू करेंगे।

श्री जय प्रकाश नारायण सिंह : मान्यवर, आज कल फैशन हो गया है कि अपने से बड़े को गाली दीजिए और यह मीडिया में आएगा, अखबार में आएगा तथा इससे हमारी महत्ता बढ़ेगी। आम आदमी पार्टी के निर्माता केजरीवाल जी हरेक पार्टी, पार्लियामेंट को, बड़े-बड़े नेताओं को, हरेक पार्टी के नेताओं को गाली-गलौच करते हैं, वह खबर आए दिन मीडिया में बनी रहती है। क्या आईटी एक्ट के तहत कोई ऐसा प्रावधान है, जिसके अंतर्गत ऐसे उलूल-जुलूल गाली-गलौच करने वाले व्यक्तियों पर कोई कार्रवाई हो सके?

श्री कपिल सिब्बल : महोदय, मैं किसी भी व्यक्ति के बारे में आज यहां सदन में कुछ नहीं कहना चाहूंगा, लेकिन इतना जरूर है कि इंडियन पैनल कोड के अंतर्गत हम सब को, किसी के ऊपर कोई आरोप लगाए और गलत आरोप लगाए, तो मान हानि का मुकदमा हो सकता है। ...**(व्यवधान)**... लेकिन, अगर हम आईटी एक्ट में इसका दुरुपयोग करेंगे, तो मैं समझता हूं कि यह लोकतंत्र का खिलवाड़ होगा और मैं यह नहीं समझता हूं कि यह कोई उचित बात है।

SHRI RAJEEV CHANDRASEKHAR: Sir, with due respect to the hon. Minister, I am a bit disappointed with the Minister's response, especially section (b) of the response. I think that he would be in a minority that considers the Act or Section 66A in consistent with the Constitution of India. Section 66A includes terms like grossly offensive, menacing character, etc., that are loosely defined. There is overwhelming evidence that it is these phrases that are being misused. It is not an issue of Sub-Inspector or DSP or application of law. It is this discretion that is being given to whoever is enforcing the law. Recently, a case was filed under Section 66A against a gentleman who sent a cake to a girl with a picture on it. Given the fact that there is overwhelming evidence that there is discretionary interpretation of phrases in Section 66A, would the Government not consider it appropriate to review Section 66A at this stage?

SHRI KAPIL SIBAL: Sir, I fully appreciate the concerns of the distinguished Member. In fact, the whole process of putting these provisions in the Act started way back in 2005 when there were concerns of phishing and all kinds of material being put on the internet which were extremely harmful, especially morphing and things like that. Thereafter, an Expert Committee was set up. And pursuant to the recommendations of the Expert Committee, the reform of the Act was taken forward. Quite frankly, Sir, when the matter went to the Standing Committee, the Government's position was that the punishment imposed should not be more than two years and it should be a non-cognisable offence. If I could read the recommendations of the Standing Committee, it said that the Government was being soft and, in fact, it should be made a cognisable offence. Despite that, we made it bailable. And the distinguished Member was a Member of that Committee. So, I fully appreciate his concerns but I wish those had been reflected in the Report of the Standing Committee. Maybe, we would not have; we have reduced the punishment to two years and made it a non-cognizable offence. But, having said that, I want to invite the attention of the distinguished Members to various statutes all over the world. There has been a lot of criticism as to why we are using this language. But, Sir, through you, I would refer to the UK Communications Act, 2003. Section 127(1) says, "A person is guilty of an offence if he sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character." Please note the words 'grossly offensive or of an indecent, obscene or menacing character', the exact words used in the IT Act. These are the exact words used in the UK Act. Then, Sir, let us come to the US Act. Section 502 of the US Telecommunications Act, 1934, amended in 1996, uses the expression, "Whoever initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person". It is much wider than the Indian Act. Then, Sir, let me invite your attention to the Australian Act. Australian Code, 1995 uses the expression 'menacing, harassing or offensive'. Sir, I daresay that our legislation is consistent with other legislations. But, having said that, I believe that our country cherishes democracy and fundamental rights and we will protect them with greater vigour than perhaps in other nations. So, this country is totally committed to protection of freedom of speech, but, at the same time, there are two aspects to it. And, through you, Sir, I would like to request the Member

to consider that many a time – and we have seen this in the past like the incidents in Kokrajhar – such messages are sent which cause enormous disruptions in society and result in violence. If we were to repeal this Act, I would request the Member to consider what the consequences would be.

SHRI BALBIR PUNJ: Mr. Chairman, Sir, the hon. Minister has conceded that Section 66A has been grossly misused and the misuse has been rampant in various States. Will the hon. Minister tell us the cases of misuse State-wise and what remedial action has been taken? Secondly, we have been hearing about the misuse of this law against two girls in Maharashtra. Isn't it a fact that two teachers of Kishtwar region in Jammu and Kashmir were sacked, harassed and arrested because they put something on Facebook which was thought to be offensive by some people? If that is so, what are the steps the Central Government has taken to redeem the situation as it has done in the case of Maharashtra?

MR. CHAIRMAN: Which of the two questions do you wish to be taken up?
...(Interruptions)...

SHRI KAPIL SIBAL: Sir, I will answer both. ...(Interruptions)... He is an illustrious Member of this House and I would certainly like to answer both.

Sir, first of all, I never conceded that there is such rampant misuse of this. In fact, if you look at 2011, there was not a single incident of misuse of Section 66A. ...(Interruptions)... I have said that there has been misuse. ...(Interruptions)... But, I have never said rampant misuse and concession. ...(Interruptions)...

SHRI BALBIR PUNJ: You said, “in various States.” ...(Interruptions)... You have said that Maharashtra is not the only State. ...(Interruptions)... This is on record. ...(Interruptions)...

SHRI KAPIL SIBAL: Of course, at the moment, data of 2012 is not available with us. But, there is no case limited only to Section 66A other than one. The rest are all penal provisions, provisions of the penal code that are attached alongwith Section 66A. I have with me about five instances. Now, five instances cannot suggest such a rampant misuse in a population of 1.2 billion. But, that does not mean that there is no misuse. There has been misuse. I think we need to educate our executing agencies. I think we need to have interactions with more stakeholders. We need to see as to how this law can be strengthened and improved so that there is a

balance to protect the victims on both sides – those who are victims of the internet and those who are being penalised and persecuted in this fashion. Keeping that in mind, we will certainly move forward after interaction with the stakeholders.

SHRI BALBIR PUNJ: What about Kishtwar? ..(Interruptions)...

SHRI KAPIL SIBAL: Sir, actually it is the State Governments that must take note of this fact. The Central Government, as you know, has no business to interfere in the processes of State Governments. If they misuse the Act there is a remedy in the court. In any case we issue an advisory. That is exactly what we are doing. ...*(Interruptions)*...

MR. CHAIRMAN: Let the next question be asked. ...*(Interruptions)*...

SHRI KAPIL SIBAL: That is exactly what I have said that we are contemplating interaction with stakeholders so that an appropriate advisory can be issued.

SHRI P. RAJEEVE: Sir, the answer to the question is very vague and general. It is same as the wordings of Section 66A of the Information Technology Act, 2000. The second thing is, it is correct that the Parliamentary Committee has made that suggestion. But we are all aware of the fact that both the Houses of Parliament had passed Section 66A without any discussion within two or three minutes. Now, the Minister has mentioned about the international practice. He has correctly stated that these types of words are there in the United Kingdom Act. But in my Private Resolution which will come up in the afternoon today, I have correctly stated that the U.K. Act, 2003, is strictly for the communication between two persons using public electronic communication network, *i.e.*, mails written persistently to harass someone and not “tweets” or “status updates” or that type of thing which is related to the social media. In our country we have very strong provisions for ensuring freedom of speech than in the British Constitution which is unwritten; and it is very vague. How can the Minister evaluate or compare the constitutional validity of the Indian law with the constitutional validity of other laws in the U.K. and the United States of America?

SHRI KAPIL SIBAL: Well, Sir, I am not seeking to validate any law. In fact, through you, Sir, I can inform my learned colleague that the matter now is pending in the Supreme Court. There is a writ petition which has been filed challenging the constitutional validity of this Act. I am sure; the Supreme Court will consider

all the aspects, including the ones raised by my distinguished colleague to ultimately render a finding.

I may also mention to my distinguished colleague that there is another matter in the Allahabad High Court where the *vires* of 66A of the Act has been challenged. We should allow the courts to determine these matters.

Recently, just a few weeks ago, a judgement of the House of Lords on this issue was challenged in the U.K. saying that it was completely unconstitutional. I will just read out from page 605 of GPP *versus* Lord's Bigam judgement, where he says, "Parliament has criminalised only grossly offensive messages under the Indian statute. I have found the respondent's message to be in offensive would have been extraordinary. Hence the justice is initial finding but some added value has to be given to the word "grossly". The question is whether the justice is despite what I have said about the character of the respondent's language were entitled in a particular circumstances of the case to find that this additional criteria was not made." So, the important thing is the executing agency does not quite understand the implication of the word "grossly". Therefore, we need, through advisory, to tell the executing agencies that this Act can only be used once there is a persistent and grossly offensive message which is persistently used against individuals. That's the kind of interaction that we want; and we will certainly work with stakeholders to make that happen.

MR. CHAIRMAN: Question No.304. ...(*Interruptions*)... That's enough. ...(*Interruptions*)... Look this is an evolving situation, please understand.

Improvement in statistical capacity and infrastructure

*304. SHRI C.M. RAMESH: Will the Minister of STATISTICS AND PROGRAMME IMPLEMENTATION be pleased to state:

(a) whether the Ministry has initiated any steps to improve statistical capacity and infrastructure for collecting, compiling and disseminating reliable official statistics for policy planning purposes, particularly at the State and sub-State levels; and

(b) if so, the details thereof?

THE MINISTER OF STATE OF THE MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (SHRI SRIKANT JENA): (a) and (b) A Statement is laid on the Table of the House.