

Business Standard

'Centre's guideline on Sec 66 (A) of IT Act has no backing of law'

Sec 87 of IT Act does not permit govt to make subordinate legislation for 66 (A), say experts

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The guidelines issued by the Centre on Thursday on the implementation of Section 66 (A) of the [Information Technology](#) (IT) Act lack the legal tooth to make any meaningful impact. According to experts, this is just a “cosmetic treatment” to divert attention from the controversial section of 66 (A).

According to the guidelines, before registering complaints under section 66 (A) of the IT Act., junior police officials will have to seek the approval from an officer in the rank of Deputy Commissioner of Police in rural areas and Inspector-General in metros. It is the same section under which the Maharashtra police last week arrested two girls in connection with their Facebook comments, criticising the bandh-like situation in Mumbai following the demise of [Shiv Sena](#) leader Bal Thackeray.

However, Section 87 of the IT Act, which empowers government to make rules and regulations to give effect to the provisions of the IT Act, does not apply to Section 66 (A).

Besides, the guidelines will be contrary to the IT Act, which has given the power to police officers of the rank of an inspector to investigate cyber crimes. Sections 78 and 79 of the IT Act say that any police officer of the rank of an Inspector can enter any place, search and make the arrest in cyber crime-related cases.

Before the guidelines in Section 66 (A) of the IT Act were issued, the Cyber Regulation Advisory Committee under the chairmanship of Communication and IT Minister [Kapil Sibal](#) met on Thursday to deliberate on the issue. The consensus opinion at the meeting attended by representatives of government, intermediaries, and industry associations was that the “provisions of section 66 (A) and section 79 of the IT Act, 2000 are quite contextual”. The meeting suggested a “suitable clarification in the form of guidelines in this regard be issued by the government to states and Union territories to clarify the intent and enable uniform implementation across the country”.

“On the one hand, the present notification tries to clarify the position, but on the other, it creates procedural hurdles in an already bureaucratic police system. Because now it would be practically impossible for a common man who is genuinely aggrieved to file a complaint under section 66A of the IT Act, for getting approval of the IG or DCP level official,” said **Salman Waris**, a cyber law expert and a partner in charge of technology practice at a New Delhi-based law firm.

When section 66 (A) was introduced in the amended IT Act in 2008, it was widely criticised for being vague and loose in interpretation.

The section obligates a user not to circulate any message that is offensive or that is malicious in nature, using communication resources or devices. However, experts pointed out that the interpretation of the word 'offensive' is quite confusing, and depends on the understanding of the local policemen who execute it.

"I think we are fundamentally missing the main points. The main problem lies with section 66 (A). It is a can of worms. So, rather than opening it up and killing the can, we are just trying to give some cosmetic cover around the can. The approach is not going to be any productive till the time you amend the IT Act and amend 66 (A) so that it is in sync with the constitutional limitations on free speech under article 90 of the Constitution,".

Source: http://www.business-standard.com/article/economy-policy/-centre-s-guideline-on-sec-66-a-of-it-act-has-no-backing-of-law-112113002012_1.html